

THE DISCIPLINARY COMMITTEE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC/288/2015

Order Reserved on: 24 APR 2019  
Order issued on: 15 MAY 2019

Shri Arjundas A. Alreja

.....Complainant

Vs.

Shri Sanjay Kumar Jain, FCS-4491 CP No. 7287

.....Respondent

**CORAM:**

Shri Ranjeet Pandey, Presiding Officer  
Shri B Narasimhan, Member  
Shri Nagendra D Rao, Member  
Mrs. Meenakshi Datta Ghosh, Member

**PRESENT:**

Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Gaurav Tandon, Assistant Director  
The Respondent in person  
None for the Complainant

**FINAL -ORDER**

1. A Complaint dated 4<sup>th</sup> March, 2015 in Form 'I' was filed by Shri Arjundas A. Alreja (hereinafter referred to as the 'Complainant') against Shri Sanjay Kumar Jain, FCS-4491, CP No. 7287 (hereinafter referred to as the 'Respondent') under Section 21 of the Company Secretaries Act, 1980 read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as 'the Rules').
2. The Complainant inter-*alia* stated that he is one of the directors and a shareholder of M/s. Golden Sill and Shelter Pvt. Ltd. (the company). The said company was incorporated by him and one Shri Shankar Jethani. The Complainant further stated that during the course of inspection of the documents on MCA web portal, it come to his knowledge that the company has filed its Annual Returns for the financial years 2006-2007 to 2009-2010 and balance sheets for the financial years 2006-2007 to 2008-2009 with the ROC without getting the approval of annual accounts by the Board



*Alreja*

*[Signature]*

*[Signature]* Ranjeet Pandey

of Directors and shareholders in duly convened Board and AGMs respectively. It has also come to his knowledge that the balance sheet of the company shows paid-up share capital at Rs. 21,00,000/- however, it would be worthwhile to mention that when no meeting was held to pass a resolution for allotment of shares, or even at the most if any allotment was made (for the sake of argument) no return of allotment was ever filed, it is beyond comprehension as to how can it be possible that the balance sheet and the Profit & Loss account of the company are giving true and fair view of the financial position of the company.

3. The Complainant has *inter-alia* alleged that the Respondent has wrongly certified and filed e-Forms 20B for Annual Returns for the financial years 2006-07 to 2009-10 and filing of e-Forms 23AC & 23ACA for balance sheets and Profit and Loss for financial years 2006-07 to 2008-09 on the MCA portal for the said company. The Respondent has done this act in guidance of Shri. Manoj Chaudhary, the then statutory auditor. The Complainant further stated that he has never received any notice for any Board meeting and/or AGM of the company for approval of annual accounts for the financial years 2006-2007 till date of filing of the complaint, and have not attended any of the meetings. The Complainant further stated that the balance sheets filed with the ROC have been filed and certified by the Respondent without any signatures but merely with the words "Sd/-", thereby creating a misrepresentation that the balance sheets have been signed by the Complainant which had been never signed.
4. The Respondent on the other hand, *inter-alia* stated that the complaint has been filed on 4<sup>th</sup> March, 2015 i.e. after 4 years of filing the alleged forms. Further, the Complainant has not stated about the date of inspection of the documents on MCA portal. It is not expected from a director of a company (having two directors only) to remain unaware /inattentive regarding the affairs and financial position of the company. That soon after the receipt of the copy of complaint, the Respondent contacted Shri. Manoj Kumar Choudhary, Chartered Accountant (the then statutory auditor of the company) along with whom Shri. Shanker M. Jethani, Director of the company who had approached him to file the documents. The Respondent was informed by him that there has been dispute between both the directors of this company.
5. The Respondent further stated that he has never been engaged for work related to allotment of share for this company. However, so far as amount of paid up share capital of Rs.21,00,000/- is concerned, the same were filled in various e-Forms on the basis of the records maintained by the company and made available to him by Shri. Shanker M. Jethani, Director of the company.
6. That after verifying the details and after exercising due diligence he has certified e-Form 20B For Annual Returns for the Financial Years 2006-07 to 2009-10 and e-Forms 23AC & 23ACA for balance sheets and Profit and Loss account for financial years 2006-07 to 2008-09. The fact and figures of the above \said documents were cross verified with the audited trial balance duly signed by the then statutory auditor Manoj Choudhary & Company, Chartered Accountant. The particular/contents of the annual returns for the financial years 2006-07 to 2009-10 and balance sheets and Profit and



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*[Handwritten signature]*

Loss account for financial years 2006-07 to 2008-09 were also verified by Shri. Shanker M. Jethani, director of the company under whose digital signature, the above e-Forms 20B and e-Forms 23AC and 23ACA were uploaded. The Respondent further stated that so far as filing of documents with acronym "Sd/-" is concerned, he has submitted that mere uploading of Sd/-documents never means that these documents are false and fabricated.

7. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, was *prima-facie* of the opinion that the Respondent is "Guilty" of professional misconduct under item (7) of the Part I of the Second Schedule of the Company Secretaries Act, 1980 as he certified and filed e-forms 23AC, 23ACA & 20B of M/s. Golden Sill and Shelter Pvt. Ltd., without checking the relevant record of the company.
8. The Disciplinary Committee on 5<sup>th</sup> August, 2017 considered and agreed the *prima-facie* opinion of the Director (Discipline) dated 27<sup>th</sup> July, 2017 that the Respondent is "Guilty" of professional misconduct under item (7) of Part I of the Second Schedule to the Act as the Respondent has certified and filed e-Forms 20B for Annual Returns for the financial years 2006-07 to 2009-10 and filing of e-Forms 23AC & 23ACA for balance sheets and Profit and Loss for financial years 2006-07 to 2008-09 on the MCA portal for M/s. Golden Sill and Shelter Pvt. Ltd. without checking the relevant record of the company. The Disciplinary Committee further decided to adjudicate the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Act, 1980. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties asking them to submit their written statement and rejoinder, respectively.
9. The Respondent has submitted his Written Statement to the *prima-facie* opinion of the Director (Discipline) *vide* letter dated 4<sup>th</sup> October, 2017 with a copy to the Complainant mainly reiterating his earlier submissions with certain additional submissions. However, no rejoinder has been received from the Complainant.
10. The parties *vide* letter dated 3<sup>rd</sup> April, 2019 were called upon to appear before the Disciplinary Committee on 24<sup>th</sup> April, 2019.
11. On 24<sup>th</sup> April, 2019, the Respondent appeared in person before the Disciplinary Committee and made his oral and written submissions. However, none appeared before the Disciplinary Committee for the Complainant. The Respondent stated that after verifying the details and after exercising due diligence he has certified e-Form 20B for Annual Returns for the Financial Years 2006-07 to 2009-10 and e-Forms 23AC & 23ACA for balance sheets and Profit and Loss account for financial years 2006-07 to 2008-09. The fact and figures of the above said documents were cross verified with the audited trial balance duly signed by the then statutory auditor Shri Manoj Choudhary & Company, Chartered Accountant. The particular/contents of the annual returns for the financial years 2006-07 to 2009-10 and balance sheets and Profit and Loss account for financial years 2006-07 to 2008-09 were also verified by Shri.



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Shanker M. Jethani, director of the company under whose digital signature, the above e-Forms 20B and e-Forms 23AC and 23ACA were uploaded. The Respondent further stated that so far as filing of documents with acronym "Sd/-" is concerned, he has submitted that mere uploading of sd/-documents never means that these documents are false and fabricated.

12. The Disciplinary Committee ask the Respondent as to whether he can produce the balance sheets signed by the Complainant which he has uploaded with acronym "Sd/-" . The Respondent stated that he is unable to produce the same as he is not in touch with the Directors of the company. The Committee thereafter drew the attention of the Respondent to his letter dated 4<sup>th</sup> October, 2017 where he has himself stated that Shri Manoj Choudhary & Company, Chartered Accountant had provided him the authenticated copy of the trial balance relating to three financial years ended 31.03.2007, 31.03.2008 and 31.03.2009 but has remained evasive about the authentication of financial statements for the said financial years. Further, the Respondent also failed to produce any conclusive evidence that the paid up share capital of the company was increased to Rs 21, 00,000/- from Rs 1, 00,000/- . The Respondent thereafter, admitted that he is unable to produce the balance sheets signed by the Complainant and has nothing further to add to what he has already submitted and requested the Committee to take a lenient view in the matter.
13. The Disciplinary Committee apprised the Respondent that he has found Guilty under Item (7) of part I of the Second Schedule to the Company Secretaries Act, 1980 for certifying and filed e-forms 23AC, 23ACA & 20B of M/s. Golden Sill and Shelter Pvt. Ltd., without checking the relevant record of the company and has failed to satisfy the Committee that the balance sheets were signed by the Complainant rather has admitted that the Shri Manoj Choudhary & Company, Chartered Accountant has remained evasive about the authentication of financial statements
14. The Disciplinary Committee further apprised the Respondent about the provision of the Rule 19(1) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with section 21B of the Company Secretaries Act, 1980 about providing an opportunity of being heard to the Respondent before passing the final order.
15. The Respondent informed the Disciplinary Committee that he has nothing further to add and therefore, does not want to come again and requested for an opportunity of being heard to be given today itself. Accordingly, the Disciplinary Committee after a break heard the Respondent pursuant to of Section 21B of the Company Secretaries Act, 1980 read with Rule 19(1) of the Rules wherein the Respondent requested the Disciplinary Committee take a lenient view in the matter while passing the order against him.
16. The Disciplinary Committee after considering the material on record; the nature of issues involved and given the totality of the circumstances of the case, passes the following order against the Respondent under Section 21B (3) of the Company Secretaries Act, 1980 read with Rule 19(1) of the Company Secretaries (Procedure of



*[Handwritten signatures in blue ink]*

Investigations of Professional and other misconduct and conduct of cases) Rules, 2007:

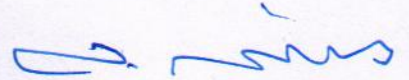
**REPRIMAND**



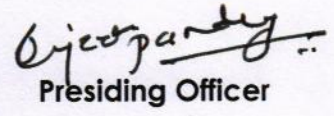
Member



Member



Member



Presiding Officer

AD(4T)