

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

ICSI/DC/392/2017

Order Reserved On: 14th May, 2019

Order Issued On: 27 JUN 2019

Registrar of Companies, Rajasthan

.....Complainant

Vs

Shri Suresh Chandra Sharma FCS-3374, CP-2531

.....Respondent

CORAM:

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

Present:

None for the Complainant
The Respondent in person
Mrs. Meenakshi Gupta, Director (Discipline)
Mr. Vikash Kumar Srivastava, Assistant Director

FINAL ORDER

1. A complaint dated 27th March, 2017 was filed in Form-'I' under Section 21 of the Company Secretaries Act, 1980, ("the Act") 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, ('the Rules'), by the Registrar of Companies Cum-OL, Jaipur through Shri Sanjay Kumar Gupta ('the Complainant') against Shri Suresh Chandra Sharma (FCS-3374, CP No 2531) ('the Respondent').
2. The Complainant in his Complaint has inter-alia stated that during the course of inspection of M/s Tanushree Logistics Private Limited ("the Company") under section 209A of the Companies Act, 1956 carried out by the Regional Director, North-Western Region, Ahmedabad which was ordered by Ministry of Corporate Affairs vide its letter no. 1/53/2011-CL-II(ER) dated 27.10.2011, it has been observed that the Company has not attached schedule in respect of Notes on accounts with its Balance Sheet as on 31.03.2010 & 31.03.2011. Company Secretary in practice, the Respondent, had signed e-form No. 23AC and 23ACA related to the aforesaid Balance Sheet. Inspection Report of Deputy Director (Inspection) provides that the Respondent may be warned to be more



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careful in future in their certification in respect of filing documents on MCA portal.

3. The Respondent in his Written Statement dated 5th May, 2017 has *inter-alia* contended that: -

- (i) The Respondent has certified Forms 23AC and 23ACA on behalf of the Company. While filing the forms company faced problem due to large size of attachment. The Company's computer specialist removed the notes on account at the time of filing, because the company was under the impression that this remaining part would be filed by using addendum facilities. However, MCA did not provide such addendum facility. Efforts were made to get e-Form 67 uploaded for the same but the same also had not been provided by MCA.
- (ii) Due to facing problem in reducing the size of the Annual Report below the maximum limit, i.e. 2.5 MB upto which an e-form along with attachments could be filed through MCA portal, the Company was unable to attach the complete set of Annual report.
- (iii) The company was under the impression that remaining part of Annual Report, could be filed through addendum facility. In due course, it comes to our notice that such addendum was not being made for STP forms.
- (iv) Due to non-availability of the addendum facility for filing the remaining part of Annual Report, company approached the MCA through Help Desk in respect of filing of remaining part of Annual Report but company did not get any satisfactory reply.
- (v) The Respondent and the company had also approached to the Registrar of Companies, Rajasthan, Jaipur for filing of the remaining part of Annual Report through Addendum but it could not materialize.
- (vi) During the Inspection of the Company, the Company made available complete set of Annual Accounts to the Inspecting Officer of RD Office, which shows that the Company had no intention to hide such information.
- (vii) The Company had approached to the professional computer analyst for reducing the size of Annual Report and by help of analyst, the Company filed e-Form 62 for these years with the concerned Register of Companies, Rajasthan, Jaipur and the same was taken on record by the Registrar of Companies, Rajasthan, Jaipur.
- (viii) Annual accounts including balance sheet for the financial year 31.03.2010 and 31.03.2011 were audited accounts duly sealed and verified/certified by M/s Agarwal Pradeep Kumar & Company, Chartered Accountants (Auditor of the Company) and also been signed by the directors of the company.
- (ix) Section 209A of the Companies Act, 1956 vests powers in inspecting Officials in relation to inspection, procuring of documents and their



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production, etc. of the Company being inspected and duty has been cast on the employees of the Company, officers of the Company, directors of the Company for providing the necessary papers/ information/ documents to the inspecting officer.

(x) The Respondent has submitted reply on 16.06.2014 to the office of the Regional Director, North-Western Region, Ahmedabad. Shri Kamal Harjani, Dy. Director, Inspection gave his comments on 15.09.2014 that the Company filed the complete set of annual accounts subsequently through e-forms 62, with the office of the Registrar of Companies, Rajasthan, Jaipur. These e-forms 62 were also recorded by the ROC office.

4. The Respondent has made further submissions vide letter dated 9th June, 2017 wherein it has as *inter-alia* stated that sub-Rule (2) of Rule 3 of the Rules provides that a complaint filed by or on behalf of the Central Government or any State Government shall be authorized by an officer holding a Post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a Post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be. However, in Form I, it is not mentioned that the Complainant is authorized by an officer holding a post not below the rank of a Joint Secretary. Further, while lodging the complaint ROC-cum-OL, should also have given a declaration that the Complainant has signed the complaint as a competent officer in view of the governing provisions of the Institute.

5. The Complainant in his Rejoinder dated 6th July, 2017, has reiterated the allegations and *inter-alia* stated that: -

(i) The complaint has been filed on the basis of specific finding of the inspecting officer during the course of inspection under Section 209A of the Companies Act, 1956 after receiving approval of the competent authority.

(ii) The approval for filing the complaint has been given by the officer equivalent to the rank of Joint Secretary and above and the Complaint has been filed by the officer equivalent to the Rank of Under Secretary and above. Hence, the complaint filed by the office is in compliance of the Rules.

(iii) The place and date is printed/ typed in the proforma i.e. 27.03.2017 and place in Jaipur. Further, as per proforma there is no provision or requirement of affixing seal.

5.1 The Director (Discipline) is prima-facie of the opinion that the Respondent has not exercised due diligence as required of him as he has failed to attach the complete set of documents, whereas in the certification clause he has stated that all required attachments have been completely attached to this form. Hence, the Respondent is *prima facie*



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'guilty' of Professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

6. The Director Discipline has inter-alia made the following observations in the prima facie opinion:

(i) The Complainant has rebutted the objection of the Respondent that the Complaint lacks authority and it is not in confirmation with the provisions of the Rules. The Complainant submitted that the Complaint has been filed by the officer equivalent to the Rank of Under Secretary and above with approval of the officer equivalent to the rank of Joint Secretary and above.

(ii) The Certification clause of the Form 23 AC and Form 23 ACA provides as under -

"It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of that and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form."

(iii) It is apparent that the Respondent had not certified the Form properly as the complete set of attachment could not be uploaded and the same has also been admitted by the Respondent that the schedule in respect of Notes on accounts with balance sheet could not be attached due to technical reasons.

(iv) In a complaint filed by MCA against Ms. Deepika Dhiman (DC/296/2016) in which the Respondent did not attach any document with Form 23 AC and Form 23 ACA, the Disciplinary Committee held the Respondent as Guilty. In another complaint filed by MCA against Mr. Sanjeev Gupta, FCS-4063 (DC/238/2014) in which the Respondent while certification of Form 23AC attached profit and Loss account instead of attaching balance sheet, the Disciplinary Committee held the Respondent as Guilty.

7. The Disciplinary Committee agreed with the *prima-facie* of opinion dated 27th June, 2018 of the Director (Discipline) and 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, to finally conclude as to whether the Respondent is guilty or not in the matter vide Interim Order dated 11th September, 2018.

8. The Respondent in his Written Statement to the prima facie opinion of the Director (Discipline) dated 1st October, 2018 has reiterated his earlier



submissions and inter-alia stated that it was merely a technical problem due to size of document permitted to be uploaded on the MCA portal. It was 2.5 MB initially and now increased to 5 MB and now it is 6 MB. Section 209A of Companies Act, 1956 cast duty on the Company, its Officers, and Directors for providing necessary papers to the Inspecting Officer and not on the Professionals. The Disciplinary Committee further observed that Rejoinder on the same is not received from the Complainant.

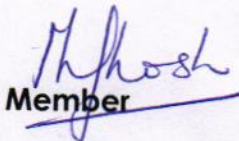
9. The Respondent was called for hearing before the Disciplinary Committee at its meeting held on 14th May, 2019.
10. None appeared for the Complainant. The Respondent appeared before the Disciplinary Committee in person and reiterated his earlier submissions made in his Written Statement. The Respondent submitted that due to the excess size of documents than the permitted size, the files could not be uploaded with MCA portal. Later, the Company filed the complete set of annual accounts through e-forms 62, with the office of the Registrar of Companies, Rajasthan, Jaipur. These e-forms 62 were also recorded by the ROC office.
11. After considering the submissions made by the Respondent, the Disciplinary Committee held the Respondent as "**Not Guilty**" of professional or other misconduct under the Company Secretaries, Act, 1980. However, this pronouncement of not guilty is based on the specific facts and circumstances of this case. **The Disciplinary Committee cautions the Respondent to be more vigilant in future.**
12. **Accordingly, the complaint is disposed off.**



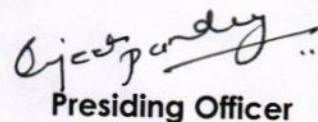
Member



Member



Member

Presiding Officer