THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

DC: 119/2012

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Ms. Sivagami Somasundaram **.....COMPLAINANT**

Vs

Shri Arvind Kumar Tiwari **.....RESPONDENT**

ORDER

1. A complaint in Form 'I' dated 1st February, 2012 was filed 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 (the Rules) by Ms. Sivagami Somasundaram (hereinafter referred to as 'the Complainant') against Shri Arvind Kumar Tiwari, ACS – 22646 (hereinafter referred to as 'the Respondent').

2. The Complainant has stated that she is one of the Directors of M/s. Green Foods Pvt. Ltd., and has *inter-alia* alleged that the Respondent had committed wrongful and criminal act of forging and fabricating the records of M/s. Green Foods Private Ltd, by certifying, signing and filing the following Forms knowing the contents of the same to be false;

Dates of purported Board Meetings	e-Form	Filed on	Purpose	Signed by
24.03.2011	32	09.06.2011	Appointment of Shri Yasadhar Sharma	Shri Ajai Kumar Gurha
25.03.2011	32	10.06.2011	Resignation of Mrs. Usha Gurha and Shri Ajai Kumar Gurha	Shri Yasadhar Sharma
01.06.2011	32	16.06.2011	Resignation of Shri Yasadhar Sharma	Shri Karuvalil Joji Philip

5. The Complainant has further alleged that the Respondent had used the digital signature of Shri Karuvalil Joji Philip, the Director of M/s. Green Foods Pvt. Ltd, without his permission for filing Form 32 dated 16th June, 2011 for alleged resignation of Shri Yasadhar Sharma.

6. The Complainant has further stated that she and two other Directors namely Shri Deepak Raghavan and Shri Karuvalil Joji Philip have neither received a notice nor attended the purported Board meetings on 24th March, 2011, 25th March, 2011 and 1st June, 2011. She further stated that none of the aforesaid directors were in Vidisha when the purported meetings of the Board were held nor were they aware about any business conducted at the said meetings and the subsequent filing of e-Forms.

7. The Complainant has further stated that Shri Ajai Kumar Gurha has signed Form 2 on 17th April, 2011 and another Form 2 on 30th April, 2011when Shri Ajai Kumar Gurha is allegedly shown to have resigned from the office of the director with effect from 25th March, 2011. The Respondent wilfully failed and neglected to note the same from the records.

8. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was forwarded to the Respondent *vide* letter dated 8th February, 2012 calling upon him to submit his written statement. The Respondent *vide* letter dated 1st March, 2012 sought time till the end of March, 2012 to file the written statement. The Respondent was granted 7 days time to file the written statement *vide* letter dated 9th March, 2012. Reminder dated 22nd March, 2012 was issued to the Respondent to submit the written statement which he submitted *vide* letter dated 22nd March, 2012.

9. The Respondent has denied the allegations made by the Complainant and has *inter-alia* stated that M/s. Green Foods Pvt. Ltd. was incorporated on 24th January, 2008 and he was approached by the promoters of M/s. Green Foods Pvt. Ltd., for the secretarial consultancy services and for filing of various forms with ROC, Madhya Pradesh for the financial years 2007-08, 2008-09 and 2009-10.

10. The Respondent has stated that since his association with company as company Law Consultants, Shri Ajay Kumar Gurha, Mrs. Usha Gurha, Shri Yasadhar Sharma and Shri Anshul Gurha were dealing with him on behalf of the company.

11. The Respondent further stated that he had verified these three e-Forms on the basis of certified copy of the resolution passed in the Board meeting and Extraordinary General Meeting of the company. He further stated as under:

    (i) Shri Yasadhar Sharma was appointed as director of the company on 24th March 2011 and Form 32 for the appointment was signed digitally by Shri Ajai Kumar Gurha as he was

authorized by a resolution passed in the EOGM of the company held on 24th March, 2011.

(ii) Mrs. Usha Gurha and Shri Ajai Kumar Gurha resigned from the company on 25th March 2011 and Form 32 for the resignation was signed digitally by Shri Yasadhar Sharma as he was authorized by a resolution passed in the Board meeting of the company held on 25th March, 2011.

(iii) Shri Yasadhar Sharma resigned from the company with effect from 1st June 2011 and Form 32 for the resignation was signed digitally by Shri Karuvalil Joji Philip as he was authorized by a resolution passed in the Board Meeting of the company held on 22nd May, 2011.

(iv) With reference to filing of two Form 2 mentioned in the 'Particulars of Evidence Adduced' which were signed by Shri Ajai Kumar Gurha and another professional is not relevant to him.

(v) As a practice he never used to take specific permission for using digital signature of any person.

12. The Respondent further stated that the Complainant had filed a similar complaint against Shri Anshul Gurha, Shri Ajai Kumar Gurha and Mrs. Usha Gurha with the ROC, Madhya Pradesh wherein it was *inter-alia* held by the ROC that the e-forms filed for resignation of Shri Anshul Gurha, Shri Ajai Kumar Gurha and Mrs. Usha Gurha were correctly filed without notice of any instance of misfeasance and malfeasance have been taken on records online properly.

13. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was forwarded to the Complainant *vide* letter dated 27th March, 2012 asking her to submit the rejoinder. The Complainant submitted the rejoinder dated 12th April, 2012.

14. The Complainant in the rejoinder has stated that the Respondent has admitted that he had verified and certified the copy of the resignation letter of Shri Yasadhar Sharma. It is pertinent to note that at the bottom of the said letter it is mentioned that a copy of the letter has been sent to the ROC, Madhya Pradesh; however, the said letter has not been attached with the e-form. Further, the Respondent had relied on the minutes of the Board meeting allegedly held on 22.05.2011. It is relevant to note that Shri Karuvalil Joji Philip was not in India on 22.05.2011. Further, the minutes of the Board meeting held on 22.05.2011 have been signed by Shri Yasadhar Sharma, who ironically shown to have already resigned. It is difficult to comprehend as to how someone who has already resigned has the authority to sign the minutes as Chairman of the same meeting.

15. It is pertinent to note that Form 32 filed for alleged resignation of Mr. Yasadhar Sharma was digitally signed by the Respondent and on a careful scrutiny of the said Form, it can be seen that the authority to file e-form is derived from the Board resolution no. 1 passed at the Board meeting held on 1st June, 2011 and not a purported meeting of the Board held on 22nd May, 2011, as claimed by the Respondent. This

once again proves beyond doubt that the Respondent has acted negligently.

16. The Director (Discipline) pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and was of the opinion that the Respondent is *prima-facie* 'guilty' of professional misconduct under the Clause (7) of the Part – I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties while verifying and certifying Form 32 for cessation of Shri Yasadhar Sharma as a director of M/s. Green Tree Foods Pvt. Ltd., w.e.f 1.06.2011 as it was observed that the resignation letter of Shri Yasadhar Sharma is dated 1.06.2011 whereas a reference of his resignation has been made in the minutes of the meeting of the Board of Directors held on 22nd May, 2011 at 11:00AM but in the copy of the Resolution filed by the Respondent it is mentioned as Sunday, the 22nd May,2011 at 10:00AM. The Respondent has apart from failing to notice the difference in the dates of the resignation letter *vis-à-vis* the date of the Board meeting has also failed to verify and check the difference in timings recorded in the extract of the Resolution and the minute's book. The resignation letter, the certified copy of the resolution and the minutes are vital documents for verification of Form 32. The other two Forms filed by the Respondent are ostensibly to be in order as is evident from the letter dated 22nd September, 2011 issued by the ROC, Madhya Pradesh.

17. The Committee at its meeting held on 1st June, 2012 considered the *prima-facie* opinion dated 21st May, 2012 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is 'Guilty' of Professional Misconduct under clause (7) Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties and decided to proceed further in the matter in accordance with Chapter V of the Company Secretaries(Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

18. Accordingly, a copy of the *prima-facie* opinion of Director (Discipline) dated 21st May, 2012 together with the documents relied upon by the Director (Discipline) was sent to the Respondent *vide* letter dated 5th June, 2012 asking him to file the written statement to the *prima-facie* opinion along with supporting documents and list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant latest by 18th June, 2012. A copy of the *prima-facie* opinion of the Director (Discipline) was also sent to the Complainant *vide* letter dated 5th June, 2012 asking her to submit the Rejoinder to the written statement of the Respondent along with the supporting documents and list of witnesses, if any, latest by 28th June, 2012.

19. The Respondent submitted the written statement dated 16th June, 2012.

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20. The Complainant *vide* letter dated 26th June, 2012 had requested for time up to the 15th July, 2012 for filing the Rejoinder. The Complainant submitted her Rejoinder dated 4th July, 2012.

21. The Complainant and the Respondent have been called upon to appear before the Disciplinary Committee at its meeting on 16th August, 2012 *vide* letters dated 27th July, 2012.

22. The Committee heard the parties and after considering the material on record, concluded that the Respondent is 'guilty' of Professional Misconduct under Clause (7) Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties while verifying and certifying the Form 32 for cessation of Shri Yasadhar Sharma as a director of M/s. Green Tree Foods Pvt. Ltd. The Committee, in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, decided to afford an opportunity of being heard to the Respondent before passing order under Section 21B(3) of the Company Secretaries Act, 1980.

(S Balasubramanian)
Member

(S K Tuteja)
Member

(Gopalakrishna Hegde)
Member

(Nesar Ahmad)
Presiding Officer

New Delhi
Date: 25th September, 2012

The Institute of Company Secretaries of India
Disciplinary Committee