

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
ICSI/DC: 240/2014

Date of decision: 9th June, 2015

Ministry of Corporate Affairs

.....Complainant

Vs.

Ms. Jyoti Sharma, ACS-24848

.....Respondent

ORDER

1. A complaint dated 8th May, 2014 in Form-I 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 the MCA through Mr. Sanjay Kumar Gupta, Dy. Director (hereinafter referred to as the 'Complainant') against Ms. Jyoti Sharma, ACS-24848, CP No. 8987 (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* stated that a charge ID No. 90206382 for Rs. 153 crores was created on 22nd June, 2005 in favour of the State Bank of India. Subsequently, the said ID was modified by M/s. AVTEC Ltd., on 28th September, 2005, 27th October, 2005, 20th March, 2007, 29th May, 2007, 23rd January, 2009, 13th September, 2011 and 21st December, 2011. The last modification was done on 21st December, 2011 and the amount of charge stood on this date was Rs. 203 crores consisting of term loan of Rs. 70 crores and working capital loan of Rs. 133 crores. The Complainant further stated that it is observed that on 7th March, 2012 the term loan of Rs.70 crores was satisfied by the company and no-dues letter was issued by the State Bank of India *vide* its letter dated 7th March, 2012 to the company. Further, the company was required filing Form 8 for modification of charge ID No. 90206382 by reducing total amount by Rs.70 crores whereas the company, instead of filing Form 8, filed Form 17 for satisfaction.
3. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 22nd May, 2014 calling upon her to submit written statement. The Respondent submitted written statement dated 12th June, 2014. The Respondent *inter-alia* submitted that the certification of e-Form 17 was based on the documents and records produced before her by the company and further information and explanation given to her by the officials of the company. The Respondent further stated that since it was a Form relating to satisfaction of a charge, the form was backed-up by certificate of satisfaction of charge issued by the company's bankers, i.e. State Bank of India. She further stated that the charge-ID was filled in the e-Form and the outstanding amount against that particular charge id was automatically pre-filled by the MCA portal, which was the same amount for which the form was being filed duly supported by certificate of satisfaction of charge issued by the company's banker, i.e. SBI.



4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 17th June, 2014 asking to submit rejoinder. The Complainant submitted rejoinder dated 2nd July, 2014 wherein the Complainant *inter-alia* stated that the complaint is self-explanatory and no further comments to offer in the matter.
5. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record *vide* his *prima-facie* opinion dated 8th August, 2014 observed that the Respondent was more dependent on the information / e-form provided by the company, instead of examining the matter or verification of figures from the company's records. Had the Respondent verified/ examined the earlier registered documents on the same charge ID, the mistake would not have happened. The Respondent did not exercise due diligence in the conduct of her professional duties and therefore, the Respondent is *prima-facie* 'Guilty' of Professional Misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980.
6. The Disciplinary Committee on 28th August, 2014 considered the *prima-facie* opinion dated 8th August, 2014 of the Director (Discipline); and the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letters dated 29th August, 2014 asking them to submit the written statement and the rejoinder. The Respondent submitted written statement dated 12th September, 2014, however, no the rejoinder was received from the Complainant.
7. The parties *vide* letter dated 7th November, 2014 were called upon to appear before the Disciplinary Committee on 20th November, 2014. Ms. Jyoti Sharma, the Respondent appeared before the Disciplinary Committee but, the Complainant did not appear before it. The Disciplinary Committee adjourned the matter. The parties *vide* letter dated 23rd December, 2014 were again called upon to appear before the Disciplinary Committee on 12th January, 2015.
8. On 12th January, 2015, Ms. Jyoti Sharma appeared before the Disciplinary Committee but, the Complainant did not appear again. The Respondent submitted a copy of the letter dated 11th September, 2014 addressed to her by the Company Secretary of M/s. AVTEC Limited, CK Birla Group wherein it was *inter-alia* stated that "This is in reference to the caption letter issued to you in relation to wrong certification of Form 17 by the Institute of Company Secretaries of India (ICSI). In this relation we hereby confirm that it is an inadvertent mistake made by the company along with SBI as Banker and charge holder for which we have submitted rectification request to MCA. We can assure you that on our behalf you can inform ICSI that certification was done on request of the company and bank and it was only an error of judgement' and unintentional. You can submit this letter to ICSI and by this we humbly request ICSI to kindly pardon you for this mistake and not to initiate any action against you as a professional." The Disciplinary Committee in the interest of justice adjourned the matter again.
9. The Complainant *vide* letter dated 5th January, 2015 (received in the Institute on 13th January, 2015) *inter-alia* asked the Institute to intimate the status of the case



and the next date of hearing which was informed *vide* letter dated 13th January, 2015 .

10. The parties *vide* letter dated 15th May, 2015 were again called to appear before the Disciplinary Committee on 9th June, 2015. On 9th June, 2015, Mr. Shyam Sunder, Dy. Director, MCA and Ms. Jyoti Sharma, the Respondent appeared before the Disciplinary Committee and made their submissions. Ms. Jyoti Sharma, the Respondent stated that she did not do anything *malafide* and it was just an error of judgement of the company that they filed Form 17 instead of Form 8. She also referred the letter dated 11th September, 2014 given by the Company Secretary of AVTEC Limited, CK Birla Group. Ms. Jyoti Sharma admitted that she had mainly relied on the information / e-form provided by the company, instead of examining the matter or verification of figures from the company's records for certification of the alleged Form.
11. The Disciplinary Committee after considering the submissions made by the parties and the material on record held the Respondent 'Guilty' of professional misconduct under Clause (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980, as she did not exercise due diligence while performing her Professional duties. The Disciplinary Committee apprised the Respondent about the provisions 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 and decided to give an opportunity of being heard to the Respondent before passing any order under Section 21B(3) of the Company Secretaries Act, 1980. The Respondent admitted her mistake and stated that she will be more careful in future.
12. Thereafter, the Disciplinary Committee gave another opportunity of being heard to the Respondent before passing any order under Section 21B (3) of the Company Secretaries Act, 1980. The Respondent accepted the decision of the Disciplinary Committee and requested for a lenient view.

We, after considering the material on record and in the totality of the issues involved in the matter pass the following order:

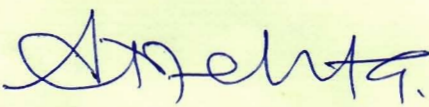
'Reprimand'

Accordingly, the complaint stands disposed-off.


(S K Tuteja)
Member


(S K Agrawala)
Member


(Ashish C Doshi)
Member


(Atul H Mehta)
Presiding Officer

Date: 30/07/2015

