

An Ethical Communication with the previous incumbent Company Secretary in Practice

As per Section 22 of the Company Secretaries Act, 1980, “*professional and other misconduct*” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Company Secretaries in Practice are required to communicate to the previous incumbent in writing prior to accepting the position as a Company Secretary in Practice previously held by another Company Secretary in Practice. Communication must be in writing.

A member of the Institute in practice shall be deemed to be guilty of professional misconduct under Clause (8) of First Schedule if he accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing.

CASE STUDY:

1. A complaint of professional or other misconduct was received against one Company Secretary in Practice (hereinafter referred to as ‘the Respondent’) from another Company Secretary in Practice (hereinafter referred to as ‘the Complainant’),
2. The Complainant has *inter alia* stated that the Respondent has accepted an assignment for audit, compliance filings and other services from one public limited company (hereinafter referred to as ‘the company’) for FY 2022-23. The Complainant has diligently served the company for an extended period. The Respondent has done this without informing the Complainant.
3. The Board of Discipline agreed with the prima facie opinion of Director (Discipline) that the Respondent is ‘guilty’ of Professional Misconduct under Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 and decided to proceed further in the matter in accordance with Act and the Rules to finally conclude as to whether the Respondent is guilty or not in the matter.
4. The Complainant in his Rejoinder to the prima facie opinion of the Director (Discipline) has reiterated his allegation made earlier in the Complaint.
5. Both the parties appeared before the Board of Discipline. The Complainant reiterated his allegation and submitted that the Respondent did not inform before accepting the assignment of audit, compliance filings and other services of the Company. The Respondent admitted that he did not inform the Complainant before accepting the assignment of audit, compliance filings and other services of the Company. The Respondent submitted that he was not aware of the particular guidelines while accepting the assignment from the Company.
6. Upon admission of the guilt by the Respondent and facts of the matter, the Board of Discipline held the Respondent ‘Guilty’ of Professional Misconduct under Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980. In terms of the Rule 15(1) of the Rules, an opportunity of being heard is granted to the Respondent before passing any order under sub-section (3) of Section 21A of the Act.
7. After giving an opportunity of being heard to the Respondent, the Board of Discipline passed an Order of ‘Reprimand’ and Fine of Rupees Ten thousand under Section 21A(3) of the Company Secretaries Act, 1980.

