

Due Diligence encompasses completeness of information



A member of the Institute in practice shall be deemed to be guilty of professional misconduct under Clause (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

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 expected to check completeness of information in any given Form including its attachments, as required, before its certification.

CASE STUDY:

1. A complaint of professional or other misconduct was received against one Practising Company Secretary (hereinafter referred to as ‘the Respondent’). The Complainant has *inter-alia* stated/ alleged that an inquiry u/s 206(4) of the Companies Act, 2013 was conducted against a public limited company (hereinafter referred to as ‘the Company’). Upon examination of the Annual Returns (Form MGT-7) of the company from F. Y. 2017-18 to F.Y. 2019-20, it is noticed that list of shareholders and share transfers list are not attached to MGT-7. Instead of the list of shareholders and share transfer list, plain sheets as annexures are attached with these forms on the MCA portal in order to hide the name of the owners of the company. The Respondent
2. who has certified these forms MGT-7 with incomplete attachments are liable for professional misconduct for concealing material facts/ information in these forms.
2. The Respondent has submitted that he had visited and verified the documents of the company. He has admitted that he has failed to check the attachments in the impugned MGT-7 certified by him.
3. The Disciplinary Committee considered the matter and observed that the Respondent has certified Form MGT-7 of the company for the F. Y. 2017-18, 2018-19 and 2019-20. The company was having total 14 shareholders (body corporates other than promoters). It is observed that in place of list of shareholders, plain sheet has been attached with the forms. Plain sheet containing words “*AS PER ANNEXURE*” has been attached and uploaded with the forms MGT-7 for F.Y.2017-18 and 2018-19 and a plain sheet containing the words “*AS PER LAST RETURN*” is attached and uploaded with the form MGT-7 for the F.Y. 2019-20. Further, instead of list of shares/ debentures transfer sheet, plain sheet containing the words “*AS PER ANNEXURE*” is attached and uploaded with form MGT-7 for the F.Y.2017-18.
4. The Disciplinary Committee held the Respondent ‘Guilty’ of Professional Misconduct under clause (7) of Part I of the Second Schedule to the Company Secretaries Act,1980.
5. After giving an opportunity of being heard to the Respondent, the Disciplinary Committee passed an order of ‘Reprimand’ and Fine of ₹ 50,000/- (Rupees Fifty Thousand) under Section 21B (3) of the Company Secretaries Act, 1980.