

Furnishing correct particulars by Members to the Institute, Council or its Committees, Disciplinary Authorities: Professional Ethics

All the members of the Institute whether they are in practice or not, are expected to furnish correct particulars in any information, statement, return or form, which they submit to the Institute, Council or any of its Committees, Director (Discipline), Disciplinary Committee, Quality Review Board or the Appellate Authority.

“Professional and Other Misconduct”: The expression “*professional and other misconduct*” as defined in Section 22 of the Company Secretaries Act, 1980 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.

There are two Schedules to the Company Secretaries Act, 1980 viz. First Schedule and Second Schedule. First Schedule is divided into four parts and Second Schedule is divided into three parts.

Part III of the First Schedule and Part II of the Second Schedule to the Company Secretaries Act, 1980 deals includes acts or omissions of Professional Misconduct in relation to the Members of the Institute, generally i.e. whether they are in Practice or not.

CASE STUDY

1. A complaint of professional or other misconduct has been filed *inter-alia* alleging some disputed transfer of shares of a company and that the Respondent was also handling the work related to issue and transfer of shares of the said company. The Respondent was the Company Secretary of one of the group companies from year 2006 to 2016. The company has made public offer of equity shares in the year 2007 whereby the Respondent had allegedly issued some fake certificates and had sold a certificate containing one lakh shares to the Complainant in October, 2015 which was thereafter transferred in the name of the Complainant. Further, in March, 2019, the Complainant had made an application to the company for transfer of these shares to some other person, but the company has returned his certificate with a letter stating that the said share certificate is fake certificate purportedly issued by the Respondent who was handling this activity for the Company and hence, is not on the Register of members maintained with the company. He understood from the company that the Respondent had misused his position and printed many such share

certificates in the name of his relatives and sold them in the market. The Respondent has embezzled hard earned money of the Complainant and has brought disrepute to the profession as a result of this fraud.

2. The Respondent has stated that he was Whole-time Company Secretary from February, 2006 to July, 2016 and had never accepted any other position. The company had appointed its registrar and share transfer agent (RTA) which was handling and maintaining the shares holder register and share transfer register and also made all the required entries in the Statutory Registers. The company is unlisted as per the records of the MCA and has never got any permission or approval from SEBI for public offer for issuance of its equity shares to the public in open market. The Complainant has taken money from him which he did not return. A legal case before District Court is *sub-judice* against the Complainant. The Director wrote a letter to harass the Respondent as he left his promoted company after ten and half years of service due to monetary issues. All the directors of the company belong to one family, and they manage each and every affair of the company. All the companies of the Director are indebted to him for professional services for more than Rupees ten lakhs and the management of all these companies refused to pay his outstanding dues. The Director and the complainant had some personal relations and filed the complaint with *malafide* intention. The shares were transferred from her sister to the Complainant's name on October, 2015 by RTA is legal transfer which is also shown in share transfer list of the company which was certified by the Respondent for the Financial Year 2015-16. The same share certificate was transferred to her in the year 2012. The Respondent denied that he sold these shares to the Complainant. He has stated that her sister holds three lac shares of the company out of which, she transferred one lac shares to the Complainant. The Respondent has further stated that the letter issued by the Director also mentions that the shareholders holding fake certificates received dividend in the year 2012, which cannot be possible, if the said share certificates are fake. The Respondent has further stated that the holders of entire Seventeen Lakhs shares are *bona fide* shareholders and each and every record is available at RTA and ROC. Till January/ April, 2019, all these share certificates were legally issued and transferred by the company, which now has suddenly become fake. The Respondent has stated that out of Seventeen Lakhs, the company had transferred Thirteen lakhs shares. The Respondent has also stated that the liquidation order was passed by the Hon'ble

- NCLT, in the year 2018, so the company has itself violated the provisions of the Companies Act, 2013, IBC and NCLT order by transferring the shares of the company after the order of NCLT for liquidation of company. The Director does not have any power and authority to write and sign the letter in the capacity of director of the company as all the powers of the board of directors and KMP of the company has been ceased by the NCLT.
3. The Respondent has stated that the Complainant is making false statement for his share transfer as no share transfer can happen during the liquidation process and value of shares comes down to a negligible value or nil for the company under liquidation. The transferor has written a letter to RTA. and sought information from them regarding the genuineness of shares purchased by her from the company and also about one lac shares which were sold to the Complainant. He himself purchased 5 lacs shares of the company from a local broker. The Respondent further stated that in e-Form MGT-7, which was certified by him, the attachment of the list of shareholders of the year 2015-16 is the same list which was in an excel sheet converted into PDF for the purpose of filing. It is common occurrence at the time of filing of such forms or documents that at the time of conversion of the attachments, the signatures in said documents do not get captured. Therefore, in accordance with MCA clarification, only putting the name of director with DIN, designation, and address on the document on behalf of company shall suffice. The Respondent further stated that his email id was created on the registered server by the company and was used even after the Respondent's resignation. The Respondent is a bonafide holder of the five share certificates of the company. Though there was a financial transaction between the Complainant and the Respondent, he categorically denied that the Respondent has issued any fake share certificate of the company. The Respondent stated that he has submitted five original share certificates to the company with transfer deed with a request of transfer as well as conversion into demat account. The issue of signatures not being captured in the pdf attachments to the forms shall be considered as authenticated since the forms are being signed digitally by the directors.
 4. The Complainant has *inter-alia* stated that the Respondent was the only person to whom all the investors of the company were in touch for transferring the shares of the company. The Complainant further stated that the RTA worked according to the instruction of the Respondent. He had purchased the shares from the Respondent and given consideration in cash. The address of the Respondent is shown on all three certificates held by his sister. He did not take any legal action against the Respondent as Director of the company had assured him to resolve the issue of fake share certificates allegedly issued by the Respondent. He has never received any dividend on these shares purchased by him.
 5. The Disciplinary Committee observed that the Respondent has admitted that he has provided his professional services to the group companies, though he denied holding any position in the company whose shares have been purchased by the Respondent and submitted the original share certificates to the Director, despite he taking the plea that no transfer of shares can happen during the liquidation process and top of all the value of shares comes down to a negligible value or nil for a company under liquidation. He has also stated that the powers of Director have ceased, by virtue of liquidation order. Hence, the submission of the Respondent makes it clear that there are contradictions in his both actions i.e. purchase/transfer/conversion of shares post liquidation of the company.
 6. The Disciplinary Committee also observed that Form MGT-7 filed for the year 2015-16 is certified by Respondent is in violation of Section 398 of Companies Act, 2013 read with Rule (7) and (8) of the Companies (Registration Offices and Fees) Amendment Act, 2014 together with FAQ on PDF conversion by the MCA (relied by the Respondent), as the attachment namely-list of shareholders for the year 2015-16, was neither signed nor marked as "sd/-" by the director of the company and also no DIN of the signing director of the company has been mentioned in the said attached list.
 7. The Respondent has denied having any cordial relationship with the management of the company, after his resignation from the group company. On the contrary, it is observed that he has certified several forms including annual return after his resignation from the group company. The Respondent has further denied his association /involvement in the company. On the contrary, it is observed that the official email id of the Respondent has been used in several forms certified/filed for the company, which establishes that the Respondent was actively involved into the affairs of the said company during his employment with the parent company. The Respondent has denied having sold the shares to the Complainant. It is observed from the records that follow-up with the Registrar of Companies for the letters allegedly written by a lady was done under his email which establishes that the Respondent has been thickly involved in the share transaction between her Respondent and all the communications/ benefits relating to the said share certificates received from the company before transfer to the Complainant directly sent at the address of the Respondent. Furthermore, the address of the Respondent is also the address of the transferor. It is also on record that the transfer deeds of disputed shares do not bear any stamp. Also, the disputed share certificates submitted by the Complainant are marked as cancelled. The Respondent failed to provide the application along with acknowledgement filed by him for the alleged transfer of these shares in his name and also as per available records, it has been observed that neither any follow-up was done by the Respondent

with the company for alleged transfer nor any action was taken. The Respondent has failed to provide any rebuttal as to why the original shares were marked as cancelled by the company. It is observed that the Respondent in his written statement to the complainant he has stated that the certain share certificates were legally issued and transferred by the company, while in written statement to the prima facie opinion of the Director (Discipline), he has stated that he had purchased the shares from local broker for transfer in his name. The Respondent has not disclosed this fact until it was specially asked of him through a letter. If these shares have transferred in the name of the Respondent, then he should have mentioned the same in his written statement. The letter issued by the company to the Complainant specifically mentions that the transferee of the shares under one certificate is Respondent and for three certificate is the wife of the Respondent, instead of the two different names, as alleged by the Respondent. The Respondent has also placed a document from the local broker regarding purchase of shares along with copies of share certificates and a copy of transfer deed. It is observed that the same shares certificates were provided by the Complainant, but it bears the signature of the Respondent at the back side of the share certificates which was admitted by the Respondent in his letter. In the process of transfer of shares from one shareholder to another, there is no requirement in law to sign by any party to the deed at the back side of the share certificate. Further, the certificate bears different date from the date on which the Respondent was alleged to have purchased the said shares. The Respondent has stated that 5 lacs shares were legally issued and transferred by the company, but it has been observed from three share certificates that the folio number of the Transferor and the transferee is same. Moreover, the Respondent argued that he is a *bonafide* share holder of five lakhs shares under certificate, though it is on record that the said shares certificates are not transferred by the company in the name of Respondent stating that these were fake share certificates.

8. The Disciplinary Committee further observed that there is a clear involvement of the Respondent in the affairs of the company especially relating to transfer of shares etc. It was an established practice for companies to appoint an RTA for obtaining connectivity with the Depositories for dematerialization of the shares but maintain the physical records in its possession. The possibility of manipulation of the records, Register of Transfer and Register of Members by the Respondent at the time of acting as Company Secretary of the group company and interacting with the RTA cannot be ruled out as all the necessary compliances of the company were done under the official email ID of the Respondent, which was directly handled by him. This is especially so, since the company itself acted through its director (later on he died) who had cancelled the share certificates lodged by the Respondent for alleged transfer of shares in his name stating that they were

fake and were issued by the Respondent either in his name or in the name of his relatives.

9. The Disciplinary Committee held the Respondent 'Guilty' of Professional Misconduct under Clause (7) of Part I of Second Schedule to the Company Secretaries Act, 1980 for not exercising necessary due diligence while certification of e-form MGT-7 of the company for the Financial Year 2015-16 and also under Clause (3) of Part II of Second Schedule to the Company Secretaries Act, 1980 for giving false information regarding purchase of five share certificates from a local broker and submitting the same to the company for execution of transfer and conversion of same in demat despite knowing that they were not genuine.
10. The Disciplinary Committee passed an Order of Removal of the name of the Respondent from the Register of the members for a period of 3 (three) years; and imposed a Fine of ₹4,00,000/- (Rupees Four Lakh), against the Respondent.



YOUR OPINION MATTERS

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