Due Diligence By Company Secretaries in Practice-Ensuring Parity in Information

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 collate data from records of the Client as well as previous filings done, to ensure parity in information to be submitted in various e-Forms, before certification.

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.

CASE STUDY:

1. A Complaint has been filed against a Company Secretary in Practice (hereinafter referred to as 'the Respondent') for Misconduct under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as 'the Act') read with Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as 'the Rules').

2. The Complainant has stated that the professionals are duty bound to discharge their duties as per law and certify/ verify documents/e-forms or give certificate/ report after due diligence so that compliance to the provisions of law shall be ensured. However, the professionals had failed to discharge their duties and wilfully connived with Directors/ company/ shareholders/ Foreign individuals in certifying e-Forms knowingly with false information/ documents/ false declaration/ omitting material facts or information in said company.

3. The Complainant has observed from Form MGT-7 for the FY 2019-20 filed in respect of one private limited company (hereinafter referred to as 'the company') that the following is the share holding pattern: -

Name	2018-19	2019-20
X	100000	200000
Y	75000	150000
Z	75000	150000

4. The paid-up share capital of the company has been increased from Rs. 25,00,000/- to Rs. 50,00,000/- as given in audited financial statement of the company for the year ended 31st March, 2020. But the Respondent in Para 8 of Form MGT-8 certified that the company has neither made any allotment nor buyback of securities and there is no alteration in the share capital. It is inferred from the said certification that the Registers are not maintained in accordance with the provisions of the Companies Act, 2013. The Complainant has further alleged that the statutory auditors of the company were reappointed instead they were ratified.

5. The Respondent has not submitted Written Statement.

6. The Director (Discipline) has *prima facie* opined that that the Respondent is *prima facie* 'Guilty' of Professional Misconduct under Clause (7) of Part-I of the Second Schedule to the Act. The Disciplinary Committee decided to adjudicate the matter against the Respondent in accordance with Rule 18 of the Rules read with the Act to finally conclude as to whether the Respondent is guilty or not in the matter.

7. The Complainant has reiterated the submissions made in the Complaint and the Rejoinder.

8. The Disciplinary Committee further noted that despite being given ample opportunity, the Respondent has not submitted Written Statement to the *prima facie* opinion of the Director (Discipline). The Disciplinary Committee observed that Form MGT-7 & Form MGT-8 for the year 2019-20 in respect of the company is certified by the Respondent. The Respondent in Form MGT-8 for the year 2019-20 has stated that (i) the company has neither made any allotment nor buyback of securities and there is no alteration in share capital; (ii) During the year there were no change in Directors of the company; (iii) the Chartered Accountant and Statutory Auditors of the company were re-appointed till the conclusion of ensuing Annual General Meeting. The Disciplinary Committee also observed that these certifications were in contradiction with the Form MGT-7, Form AOC-4 and the Auditor's Report. The Respondent in Form MGT-7 for the year 2019-20 has disclosed that the allotment of 2,50,000 shares made by the company and the change in directorship of the company during the year 2019-20 but failed to collate the same with Form MGT-8. The Disciplinary Committee further observed that in the Notice of the AGM of September, 2019 of the company, it is clearly stated that the agenda is for the ratification of the appointment of the Statutory Auditor and not for his re-appointment. But the Respondent has stated as 'the reappointment'.

9. The Disciplinary Committee after considering the materials on record, the nature of issues involved in the matter and in the totality of the facts and circumstances of the case, held the Respondent 'Guilty' of Professional Misconduct under Clause (7) of Part I of the Second Schedule to the Act for not exercising required due diligence.

10. After giving an opportunity of being heard to the Respondent in terms of Rules of 19(1) of the Rules, before passing of order under Section 21B(3) of the Act, the Disciplinary Committee passed an Order of 'Reprimand' and Fine of Rs. 35000/- (Rupees Thirty-Five Thousand) under Section 21B(3) of the Company Secretaries Act, 1980.