

Due diligence in certification of e-Form DIR-12

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 exercise due diligence in certification of e-Forms regarding (i) appointment and cessation of Directors w.r.t. consent or resignation letters of director; (ii) in certification of e-Forms regarding notice of change of registered office of a company w.r.t. date of change in such registered office. Company Secretaries in Practice are also expected to take special care while witnessing signatures of any director/subscriber.

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 of professional or other misconduct was received against one Practising Company Secretary (hereinafter referred to as ‘the Respondent’). The Complainant has *inter-alia* stated that the Respondent while filing records with the Registrar of Companies (ROC) at the time of forming two companies (accused) has mentioned that shareholders of both the companies as mentioned in the Memorandum of Association have signed in presence of the Respondent in one particular city in India, but on examination of shareholders of both the companies, it has been revealed that most of them have denied to have signed in presence of the Respondent in that city. The shareholders of both the companies have stated that they signed the papers at some other places etc. and have not invested any amount in the companies.
2. The Complainant stated that the Respondent was indulging in keeping the Digital Signatures (DSC) and password of the directors of the companies during that time and was filing the data of the companies/ directors with the ROC on behalf of them through his subordinate staff.
3. The Complainant has further alleged that the role of the Respondent is filing the records of the company with the ROC in irregular manner, and the Respondent deviated the basic objective and principles and needs to be dealt with as per the rules of the Act. The Complainant has also submitted the documentary evidence recorded, while investigation of the case.
4. The Complainant argued the matter and stated that the Respondent has not exercised due diligence while certifying the form (DIR-12 in Companies Act, 2013) for appointment of one director and for cessation of another director as the same email address has been used for both the directors. The Complainant has further stated that the consent letter is undated, and the Respondent has misused the DSC and password of the directors of the company. The Respondent has argued that there was no provision for mentioning separate email address for different directors.
5. The Respondent in his written statement has submitted that the allegation made against him is totally baseless and based on oral mis-statement of those promoters/subscribers to the Memorandum and Articles of the said companies. The Respondent further stated that his responsibility is to see whether the formation of the companies is as per rules and regulations prescribed under the provisions of the Companies Act or not. The Respondent stated that he is not responsible as to whether the shareholders have paid the subscription money or not after incorporation and opening of bank account. The Respondent further submitted that he has witnessed only the signature of the shareholders of the companies on the subscribers’ sheet to subscription money. The Respondent submitted that he is unaware of the fact as to why the shareholders are saying that they have not visited that particular city, although they have admitted to personally sign the subscriber’s pages.
6. The Respondent further stated that the relevant forms were prepared by the Respondent’s staff and sent to other professionals for verification and certification before filing the forms. The Respondent stated that many times professionals assigned work to other professionals due to time constraint.
7. The Respondent submitted that another professional was his associate partner and occasionally used to visit his office. The Respondent further stated that the staff working under that other professional has used his DSC and password to file the aforesaid form as they normally do in regular course. The Respondent further stated that he never used DSC of another professional or of his colleague.
8. According to the Director (Discipline), 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 agreed with *prima facie* opinion based on the preliminary findings of the Director (Discipline) and 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.
9. The Respondent pleaded ‘not guilty’ before the Disciplinary Committee. Accordingly, the Disciplinary Committee decided to proceed with the matter.
10. The Disciplinary Committee observed that the Respondent has certified forms for appointment as well as cessation of Directors and the Respondent has mentioned same email address for the directors in both the company. The Disciplinary Committee has further observed that the Respondent has also certified and filed form (INC-22 in Companies Act, 2013) for change of address of the company. However, it is observed that the company in its annual report mentioned the registered office of the company for which the form was filed at some later date. It shows that the company was using the premises as its registered office even before the date mentioned in the form filed with ROC for change of its registered office. And the Respondent has failed to take note of the same. The Disciplinary Committee has further observed that the Respondent has admitted that the letter of consent from the directors of the company without date is an inadvertent mistake made by him.
11. 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 before certifying the forms for appointment of the directors in both the company and form for change of address of the company. After giving an opportunity of being heard to the Respondent, the Disciplinary Committee passed an order of ‘Reprimand’ under Section 21B (3) of the Company Secretaries Act, 1980.