

Due Diligence in Certification of E-Forms

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 while certification of various E-Forms. Mentioning correct figures and amounts of shares and share capital in Form MGT-7 is very important. Cross checking various figures and amounts from records of the client company is the correct option.

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 Practising Company Secretary (hereinafter referred to as ‘the Respondent’) for professional 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 *inter alia* alleged that the Respondent has certified forms of a private limited company (hereinafter referred to as ‘company’) and these forms are factually and legally wrong. The Respondent has certified it without application of mind and professional diligence. The Complainant has further stated that the Respondent has certified form MGT-7 for the financial year 2022-23 of the Company. The Respondent has wrongly reported total amount of equity shares of Rs. 1,02,50,000/- under authorized capital in form MGT-7, while correct amount of authorized capital is Rs. 1,10,00,000/- as mentioned in Memorandum of Association and Master Data of the Company. It is further alleged that the Respondent has claimed to be authorized *vide* Board of Directors resolution for certifying form MGT-7 along with Director. Whereas the fact is that the resolution is silent about authorizing the Respondent for certifying form MGT-7 for FY 2022-23.
3. The Director (Discipline) has opined that the Respondent is *prima facie* ‘Guilty’ of Professional Misconduct under clause (7) of Part-I of the Second Schedule to the Act.
4. 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.
5. The Respondent has submitted that the Complainant had to recover Rs. 1,59,65,038/- from the Company. The Complainant has sent legal notice to him and to all the directors of the Company. The Respondent has further submitted that there was an omission by his staff while certifying form MGT-7 for the financial year 2022-23 of the Company, but it was, unintentional and there is no loss to the stakeholders of the Company. The Respondent has further apologized and requested a lenient view.
6. The Respondent pleaded guilty to the charges before the Disciplinary Committee.
7. The Disciplinary Committee observed that the Respondent has pleaded guilty to the charges and he has admitted in his Written Statement that there was an omission in mentioning the authorized share capital of the company by his staff while certifying form MGT-7 for the financial year 2022-23 of the Company, but it was, unintentional and there is no loss to the stakeholders of the company.
8. 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 Company Secretaries Act, 1980.
9. 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.