

Attachments to e-forms – ‘Selecting correct file is paramount’

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 as to whether the correct file has been selected or picked as attachment in the process of filling or filing or certification of e-forms with the MCA Portal.

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 Practicing Company Secretary (hereinafter referred to as ‘the Respondent’). The Complainant has stated that it has come to their knowledge that certain foreign directors/entities have engaged dummy persons as subscribers to the MOA as well as Directors.
2. The Complainant has *inter alia* stated/alleged against the Respondent that he has registered one Private Limited Company (hereinafter referred to as “the company”) by using forged documents/ falsified addresses/ signatures. During physical verification, it has been observed that the email ID used during the registration of the documents of the company is associated with more than thirty similar shell companies incorporated in various cities in India. The consent given by one Indian national for appointment as Director in the company is in the name of one other Private Limited Company instead of the company which has been incorporated through the Respondent, and it has been wrongly mentioned in the Form DIR-2. Further, the registered office address which was duly certified by one another professional in Form INC-22 contains false statement, wherein the annexed rent agreement has been used as deceit.
3. The Respondent has denied the allegations and *inter alia* stated that the company was incorporated by a consultancy firm/company. For the purpose of incorporation and filing, the promoters of the company authorized him to use the said email ID so that they could easily revert to any legal communication and fulfil its role as advisory whenever required.
4. The Respondent has stated that he was not aware of any of the shell companies where the aforementioned email ID is used. He has further stated that at the time of incorporation of the company wrong form DIR-2 was attached with the Form INC-32 (SPICE) Form inadvertently.
5. The Respondent has also submitted that he had incorporated the company with correspondence address and later another professional has certified the Form INC-22 without his knowledge or consent.
6. The Complainant in his rejoinder has stated that the company is a subsidiary of company incorporated outside India with all promoters having residence outside India and role of Indian director appointed in subsidiary company of foreign company has been very crucial from compliance perspective, but the Respondent has attached wrong Form DIR-2 in appointment which cast serious doubts on his role.
7. The Disciplinary Committee agreed with the *prima facie* opinion of the Director (Discipline) and decided to adjudicate the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) read with the Companies Secretaries Act, 1980 (the Act) to finally conclude as to whether the Respondent is guilty or not in the matter.
8. The Respondent has further submitted that attachment of wrong Form DIR-2 is a clerical mistake and the same can be rectified with the due process of law. Information to be mentioned in Form DIR-2 is correctly mentioned in Form INC-32 (SPICE) and the same has been certified by the Indian Director.
9. The Respondent pleaded not guilty before the Disciplinary Committee and submitted that the mistakes are of clerical in nature and are inadvertent. The Respondent has stated that the company was incorporated by a consultancy firm/ company and during incorporation, the promoters of the company authorized him to use email ID for the purpose of incorporation and filing. The Respondent has admitted that wrong Form DIR-2 was attached inadvertently at the time of incorporation of the company.
10. The Disciplinary Committee observed that the Respondent has certified Form INC-32 (SPICE) for incorporation of the company as a subsidiary of a company incorporated outside India in which Form DIR-2 for appointment of Indian Director was attached which is related to some other company.
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. After giving an opportunity of being heard to the Respondent, the Disciplinary Committee passed an order of ‘Reprimand’ and Fine of Rs.10000/- (Rupees Ten Thousand) under Section 21B (3) of the Company Secretaries Act, 1980.