

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/324/2014

Order reserved on: 27th February, 2017

Order issued on : 8th April, 2017

Shri Suresh Chandra Sharma, FCS-3374

.....Complainant

Vs

Shri Tarun Agarwal, ACS-17958

..... Respondent


Present:

Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion, reinvestigation report of Director (Discipline) and other material on record.
2. The Complainant has *inter-alia* alleged that the Respondent prepared and certified Forms 23AC & 23ACA-XBRL dated 31st March, 2014 and Form 20B dated 31st March, 2014 without informing to earlier incumbent i.e. the Complainant.
3. The Respondent in his reply to the complaint, stated that:
 - (a) the said forms were certified by CA Kailash Chand Agarwal and not by him. He merely assisted CA Kailash Chand Agarwal with the procedures of filing and CA Kailash Chand Agarwal has received the professional fees from the company for the said assignment.
 - (b) that there is no such regulation to attain prior approval from previous consultants before proceeding with the ROC filing of companies other than for Compliance Certificate and Secretarial Audit which is not the case here.

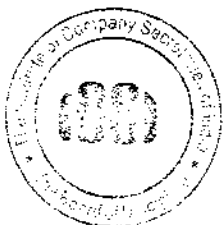


 **A. B. Sharma**



(c) That as to the matter of generating challans for filing; is there any restriction on the person using a login id on the MCA portal for assisting someone. The Respondent enclosed the copy of Form 20B and Form 23AC-xbrl 23ACA-xbrl showing that the forms were digitally certified by CA Kailash Chand Agarwal which is self-sufficient for turning down the complaint against him and requested to take necessary action against Shri Suresh Chand Sharma for filing the fraudulent complaint.

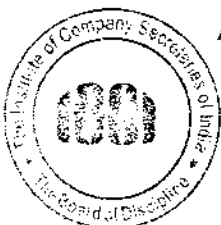
4. The Board of Discipline at its meeting held on 6th January 2016 considered the prima-facie opinion of the Director (Discipline) dated 5th August, 2015 that the Respondent is guilty of Professional Misconduct under Item (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 ('the Act').
5. The Board of Discipline remanded the same to further investigate the matter under sub-rule 2(c) of Rule 9 of the Chapter III of the Rules in terms of the Guidance Notes issued by the ICSI for attestation services by the Company Secretaries. The Board further advised to seek an opinion on the ambit of Item (8) of Part I of the First Schedule to the Act.
6. Pursuant to the decision of Board of Discipline, the matter was referred to the Practising Company Secretaries Committee for its opinion on the services falling under ambit of Item (8) of Part I of the First Schedule to the Act. The PCS Committee in its 73rd meeting held on 26th May 2016 after deliberations, requisite clarifications recommended that the following services be included as falling within the ambit of Item(8) of Part I of the First Schedule to the Act:-
 - i. Signing / Certification of Annual Return
 - ii. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
 - iii. Issuance of Certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchange
 - iv. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002
 - v. Conduct of Internal Audit of Operations of the Depository Participants
 - vi. Certification under Clause 49 of the Listing Agreement





C. S. Manning

AKS

7. The Guidance Note No. 4.9.13 of Code of Conduct for Company Secretaries published by the Institute provides that in respect of the services indicated in clauses i to vi as stated in para 6 above, it shall be mandatory to send a prior written communication to the earlier incumbent.
8. The Board of Discipline In its meeting held on 13th October 2016 while taking note of the action taken report in the Complaint of professional or other misconduct filed by Mr Suresh Chandra Sharma, FCS-3374 against Mr Tarun Agarwal, ACS-17958 (DC : 324/2015) was of the view that the need for sending a prior communication arises only in relation to exclusive area of practice of PCS under the Companies Act, 1956/ 2013 and accordingly the term "accepting a position of Company Secretary" as laid down under Item (8) of Part I to First Schedule to the Act applies only in such exclusive areas of practice.
9. The Director (Discipline) after further investigating the case and considering the opinion of the Practising Company Secretaries Committee as stated above and all facts and circumstances of the case, is of prima-facie opinion that the Respondent is not guilty of professional misconduct under Item (8) of Part I to First Schedule to the Act, on the following grounds:-
 - (i) That the certification of Forms 20B and 23AC-xbrl and 23ACA-xbrl are not the exclusive areas of practice of Practising Company Secretary. Hence, the Respondent was not mandatorily required to communicate with the Complainant before accepting the aforesaid assignment of certification of e-forms.
 - (ii) Moreover, the Respondent had taken up the assignment of certification of Form 23AC, 23ACA and 20B jointly with CA Kailash Chand Agarwal but he has not certified the alleged forms pertaining to M/s. Hotel Gaudavan Pvt. Ltd.; the said form were digitally certified by CA Kailash Chand Agarwal.
10. The Board of Discipline at its meeting held on 27th February, 2017 considered the *further Investigation Report of the Director (Discipline)* dated 18th February, 2017 along with the prima-facie opinion dated 5th August, 2015 and agreed to the same.




C. A. M. Narayana


11. The Board of Discipline after considering the aforesaid observations, material on record and all the facts and circumstances of the case, agreed to the prima-facie opinion of the Director (Discipline) that the Respondent is "Not Guilty" of Professional or other misconduct under Clause (8) of Part I of First Schedule to the Company Secretaries Act, 1980.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Ashish Doshi
Presiding Officer

