

**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**

ICSI/DC/336/2015

Order reserved on: 22nd June, 2019

Order issued on: 30th August, 2019

M/s Abhishek Corporation Ltd.

.... Complainant

Vs.

Ms. Anuja Subhash Mallikar, ACS-26173

.... Respondent

CORAM:

Shri Deepak Kumar Khaitan, Presiding Officer

Shri Manish Gupta, Member

Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Ms. Anita Mehra, Assistant Director, Disciplinary Directorate

ORDER

1. A Complaint dated 16th November, 2015 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 read with sub-rule (1) of 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') by M/s Abhishek Corporation Limited (hereinafter referred to as 'the Complainant') against Ms. Anuja Subhash Mallikar, ACS-26173 (hereinafter referred to as 'the Respondent').
2. The Respondent was employed as Company Secretary and tendered resignation on 12th June, 2014 from M/s Abhishek Corporation Limited. As per the terms of appointment, her resignation was supposed to be accepted by the Board. However, she didn't wait for approval and left the company immediately and never came to the company. The Complainant received a complaint dated 19th October, 2015 from ROC filed by Respondent for non filing of DIR-12 regarding resignation of the Respondent. The Complainant came to know that the Respondent had joined M/s. Menon Pistons Ltd. after tendering resignation. The Complainant was shocked as to how the Respondent has joined M/s. Menon Pistons Ltd. without being relieved by the Complainant.



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3. The Respondent's resignation letter dated 12th June, 2014 clearly mentioned that Respondent would resign with effect from 27th July, 2014. However, the Respondent joined M/s. Menon Pistons limited on July 10, 2014 not only before being relieved by the Complainant but also before completion of her notice period. The act of the Respondent showed gross negligence in performing her duties as a Company Secretary. Form DIR -12 filed by M/s Menon Pistons limited regarding appointment of the Respondent shows her appointment w.e.f 23rd July 2014 whereas the date of appointment in the Board resolution of the company shown as 10th July, 2014. The Complainant has *inter-alia* alleged against the Respondent as follows:

- Didn't wait for approval and left the company immediately and never came to company. She did not reply to several reminders of the Complainant about her continuation.
- An advance of Rs 50000/- was given to the Respondent out of which 21,604/- is still due.
- Joined another company M/s. Menon Pistons Limited on 10th July, 2014 without being relieved by the Complainant. This act of the Respondent showed gross negligence in performing her duties as a Company Secretary.
- The Respondent has provided false PAN to M/s. Menon Pistons for filing Form DIR 12 for her appointment as Company Secretary.
- Manipulations & misrepresentations in paper work and submission made to ROC, showed the carelessness, negligence of the Respondent in her duties.
- The Respondent holds office in more than one company which led to violation of sub-section (3) of Section 203 of the Companies Act, 2013 which says that, "A whole time Key Managerial Personnel shall not hold office in more than one company except in its subsidiary company at the same time".
- The Respondent informed the Bombay Stock Exchange Limited inspite of knowing the fact that her resignation was not accepted and the communication sent to BSE was done without using letter head of the Company as well as without taking signature of any other responsible officer.
- Because of the Respondent's misbehaviour/ negligence penalty of Rs 2,61,889/- was levied on the Complainant. The penalty was imposed for non compliance of quarterly compliances required under the Listing Agreement.
- The Respondent played with the records of the Company.
- As per her resignation letter, the Respondent had availed leave from 10th July, 2014 to 26th July, 2014 which was subject to approval by the management. However, without waiting for even approval/ sanction of leave and left the company immediately and this was the period in which BSE compliances were required to be done for June, 2014 quarter, and due date for compliance was 15th July, 2014. She availed unauthorized leave which led to non-compliances and penalty.



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4. The Respondent in her Written Statement has contended that the Service Agreement Bond containing terms and condition of employment did not contain any clause regarding acceptance of resignation letter and she had submitted another resignation letter dated 9th July, 2014. The Respondent had settled the advance amounting to Rs. 50,000/- from her unpaid salary and her unpaid Diwali Bonus from Company and the remaining amount of Rs. 9,324/- was refunded to the Complainant on 9th July, 2014. From July 9, 2014 she had not received any single letter or mail from the Complainant regarding advance which itself showed that settlement was accepted by Complainant. That on Sept 10, 2014 she had written a mail to Complainant with Cc to Mr. Anasaheb Mohite, Managing Director for filing Form DIR 12 for her resignation but there was no reply from their end. She further stated that whole responsibility of filing DIR 12 for resignation of Company Secretary was of the Complainant but intentionally refuse to file the said Form.
5. The Respondent further stated she had submitted another resignation letters which was final and in which she clearly mentioned that she resigned from Company w.e.f. July 9, 2014 and the Complainant itself attached two resignation letters to its Form DIR 12.
6. The Respondent further stated that it was a typographical error by M/s Menon Pistons Limited in providing her PAN. It was a human error. Form DIR 12 of her appointment was filed by Mr. Amit Pasare Practicing Company Secretary there was a possibility of typing error in her PAN. The Respondent has stated that she has completed all necessary compliances till her resignation. The Respondent completed all necessary compliance till her resignation. After her resignation it was not her responsibility to do compliance. It is whole responsibility of the Complainant. But Company failed to complete the compliance which resulted in huge penalty by BSE. The Respondent further stated that after resignation she helped the Company in various matters and provided supporting. The Respondent further added that the Complainant failed to file DIR 12 for her resignation in spite of various reminders so she made complaint to Registrar of Companies, Pune for further necessary action. The Respondent further added that in spite of her resignation, the Complainant reflected her name in Annual Report in year 2014-15 which was totally wrong; and made false complaint against her which harms her reputation as Company Secretary.
7. The Complainant in its Rejoinder to the Written Statement has *inter-alia* stated that the Respondent in the whole reply, nowhere mentioned that her resignation was accepted by Company's Managing Director on particular date and she was relieved as a Company Secretary. The Respondent just interpreted various circumstances and documents which she felt as acceptance of resignation. She had not produced any document showing acceptance of resignation by the Board/ Managing



Director. They had first time heard about concept of provisional and final resignation letter. There is no such concept in their company and rather they heard it for the first time. The Complainant also questioned the motive of the Respondent behind giving first resignation letter if it was not final and how come second letter become final resignation letter.

8. The Complainant further stated that the Respondent had submitted copy of letter submitted to BSE on the letterhead of the Company. The said letter neither available on BSE website nor it was public documents and even the said letter was not available in the records of the Company. She obtained signature of Mr. Ravi Shetti along with other documents and submitted it to BSE and took away the said letter with her. This letter being printed on the letterhead and it is record of Complainant and how can Respondent take it away from their records. The Complainant alleged stated that Respondent had played with the records of the Company. The Complainant clarified that the Respondent had submitted her resignation addressed to Managing Director and took signature' on letter to BSE of Mr. Ravi Shetti who was not concerned with the matter.
9. After examining the matter, the Director (Discipline) vide prima facie opinion dated 27th April, 2016 opined that the commission of the said act of providing wrong PAN for filing of Form DIR-12 does not amounts to professional misconduct under the First and/or Second Schedule to the Company Secretaries Act, 1980 except that the matter be referred to the Council of the Institute under item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980 to decide whether or not, such act done by the member in employment brings disrepute to the Profession or the Institute.
10. The Board of Discipline on 13th October, 2016 considered the prima-facie opinion of Director (Discipline) dated 27th April, 2016.
11. The Board of Discipline after considering the prima-facie opinion advised that provisions of Section 22 of the Company Secretaries Act, 1980 be examined to decide what are the acts and omissions covered under the term Other misconduct vis-a vis the First and Second Schedule of the Company Secretaries Act, 1980 which specify the instances of other misconduct also. The Board of Discipline further advised to take legal opinion in the matter and place for consideration after further investigation.
12. The Board of Discipline on 31st July, 2018, considered the Further Investigation Report of the Director (Discipline) dated 24th July, 2018 wherein the Director (Discipline) reiterates her earlier prima-facie opinion dated 27th April, 2016 that the allegations except the commission of the act of providing wrong PAN for filing of Form DIR 12 are matter of disputes between employer and employee, which are to be governed by the terms and conditions of employment; and does not



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amount to professional misconduct or other misconduct under any of the items(s) of First and/or Second Schedule to the Company Secretaries Act, 1980. However, the act of providing wrong PAN, appears to be a deliberate act by the Respondent member in employment for the purpose of filing e-Form DIR12 with the office of ROC for her appointment, knowing the fact the Respondent could not file Form DIR 12 unless the filing of Form DIR 12 was done by the Complainant in respect of her resignation with the previous company.

13. The Board of Discipline agreed with the Further Investigation Report of the Director (Discipline) dated 24th July, 2018 that the commission of the act of providing wrong PAN by the Respondent for filing of Form DIR 12 be referred to the Council of the ICSI for its opinion under item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980 to decide whether or not, such act done by the Respondent member in employment, has brought disrepute to the Profession and/or the Institute. The Board of Discipline directed the Director (Discipline) to refer the matter to the Council of the Institute for its opinion under Item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980.
14. The Council at its 256th meeting held on 15th November, 2018 at New Delhi considered the matter and after deliberations decided to refer the matter back to the Board of Discipline with advise- (a) An opportunity of being heard be given to the Respondent and thereafter the matter be placed before the Council for its consideration. (b) The Practising Company Secretary who had certified Form DIR 12 of appointment of the Respondent with the second employer company with wrong PAN number of the Respondent be also examined and investigated.
15. The Board of Discipline on 17th January, 2019 took note of the proceedings of the Council of its 256th meeting held on 15th November, 2018 at New Delhi. The Board of Discipline advised the Director (Discipline) to provide an opportunity of being heard to the Respondent and also call upon The Practising Company Secretary who had certified Form DIR 12 of appointment of the Respondent with the second employer company with wrong PAN number of the Respondent and thereafter place her further investigation report in the matter for consideration of the Board of Discipline.
16. On 22nd June, 2019, the Board of Discipline noted that the Director (Discipline) has provided an opportunity of being heard to the Respondent and CS Amit Dilip Pasare, ACS-26198, COP-10083, Practising Company Secretary who had certified Form DIR 12 of appointment of the Respondent with the second employer company with wrong PAN number of the Respondent. The Respondent and, who has certified the said Form DIR 12, were called to appear before the Director (Discipline) on 4th April, 2019.



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17. Accordingly. CS Amit Dilip Pasare, ACS-26198, COP-10083 appeared in person before the Director (Discipline) and made submissions stating that he has filed eForm DIR 12 for appointment of the Respondent in Menon Pistons Limited on the basis of information provided by the Company. CS Amit Dilip Pasare submitted copy of the said eForm DIR 12 was downloaded from the MCA Portal after receiving notice for hearing in this case. Resolution for appointment of the Respondent, consent of the Respondent and appointment letter were found attached with the said eForm DIR 12.

18. Shri G P Madaan, Advocate on behalf of the Respondent made the following oral submissions before the Director (Discipline), denying the allegations against the Respondent: -

- (i) There was no notice period clause in the appointment letter.
- (ii) Allegations regarding penalty to the Company due to her resignation is not proved.
- (iii) The company faced various issues due to their non-payment of listing fee/statutory dues, for which the Respondent cannot be held responsible. Management was not supportive and not paying fees.
- (iv) Company never disputed letter sent to the BSE and not denied. It is an admission of acceptance of resignation of the Respondent by the Company.
- (v) Company did not file eForm DIR 12 of the Respondent within time. The Respondent has also filed a Complaint for the same with the ROC.
- (vi) Complainant Company does not come to ICSI with clean hands. It showed the Respondent is CS even after her resignation also, which shows malafide on part of the Complainant Company.
- (vii) Wrong PAN in consent letter was a mistake, which was due to clerical error.

19. During hearing before the Director (Discipline), a copy of submissions made by CS Amit Dilip Pasare, ACS-26198, CP-10083 was also made available to Shri G P Madaan, Advocate. During hearing, the Director (Discipline) advised the Respondent to submit in writing her submissions or documents, if any, in support of her defence. No further submissions are received.

20. After considering the matter, the Board observed that apparently there is difference of four days between the effective date of resignation of the Respondent with the first employer and the effective appointment date with the Second employer as per two Forms DIR 12, but there are also multiple dates of resignation of the Respondent from M/s Abhishek Corporation Limited, which are as follows:

- (a) As per letter dated 9th July, 2014 sent by M/s Abhishek Corporation Limited to BSE the date of resignation is 9th July, 2014.



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- (b) As per letter dated 9th July, 2014 sent by M/s Abhishek Corporation Limited to NSE the date of resignation is 9th July, 2014.
- (c) As per letter dated 15th September, 2015 sent by the Respondent to the ROC, the date of resignation is 10th July, 2014.
- (d) As per Form DIR 12 filed by M/s Abhishek Corporation Limited (on 24th September, 2015 with additional fees after due date) the date of resignation of the Respondent is 31st March, 2015.
- (e) As per resignation letter attached to aforesaid Form DIR 12 filed by M/s Abhishek Corporation Limited, the date of resignation of the Respondent is 27th July, 2014.

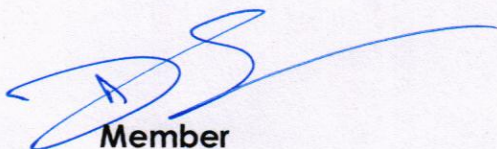
21. In view of the above, it is clear that even M/s Abhishek Corporation Limited is not certain about the date of resignation of Respondent and more so when the DIR 12 filed by M/s Abhishek Corporation Limited in this regard is itself contradictory with two different dates. As regards, the PAN of Respondent, it appears to be typo/clerical error. The Board relied on the following judgements of the Hon'ble Supreme Court of India -

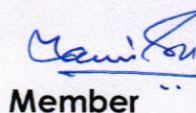
- (a) In the case of **Union of India & Ors. Vs. J. Ahmed (1979) SC 1022 and Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors. (2007)** where it was held that innocent mistake does not constitute any misconduct.
- (b) In the case of **Shri Harish M. Mankodi vs. State of Gujarat, (2001) 1 SLR 484** it was held that procedural mistake does not amount to misconduct. Misconduct presupposes deliberate, conscious and mala-fide intention.

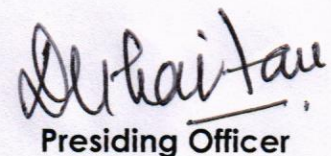
22. Accordingly, the Board of Discipline is of view that the Respondent cannot be held guilty of professional or other misconduct under the Company Secretaries Act, 1980. However, the Respondent is cautioned to be more careful in future.

23. The Director (Discipline) is advised to place the order before the Council of ICSI apprising about the decision of the Board in the matter.

24. Accordingly, the matter stands closed and disposed off.


Member


Member


Presiding Officer

