

**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/373/2016

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Shri Shaleen V. Vaid

..... Complainant

Vs

**Mrs. Pooja Mayank Jain
FCS-F8160, COP-9136**

..... Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 23rd December, 2016 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 ('the Act') 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 ('the Rules') by Shri Shaleen V. Vaid (hereinafter referred to as 'the Complainant') against Company Secretary Mrs. Pooja Mayank Jain, Membership No. – FCS-8160, C.P. No. 9136 (hereinafter referred to as (hereinafter referred to as 'the Respondent').
2. The Complainant has inter-alia stated that:
 - (i) The Respondent as a Practising Company Secretary has illegally, unlawfully, intentionally and fraudulently certified Form AOC 4 for the Financial Year 2014-15 and 2015-16 for M/s OFFSHORE HOOKUP AND CONSTRUCTION SERVICES (I) PVT LTD (hereinafter referred to as the 'Company ') as the Annual General Meetings for the respective years were not held as per the provisions of Companies Act 2013.
 - (ii) The Respondent through her Firm VPP Associates has also illegally and fraudulently uploaded Form ADT -1 (SRN: G13847819) of the company for appointment of M/s V.N. Keshwala & Co., Chartered Accountant



(FRN 104988W) as Auditor of the Company to fill up the casual Vacancy in the office of the Auditor.

3. The Respondent in her written statement on 27nd February 20107 has *inter-alia* stated submitted that:
- (i) the Complainant is a vexatious litigant who has been indulging in forum shopping. He has filed complaints containing similar issues against the Company and its shareholders and other Directors who are actually his family members i.e. his Father, Brother, Sister-in-law, Grandfather and Paternal Aunt before various forums including Hon'ble Bombay High Court, Hon'ble Company Law Board (CLB) and now, National Company Law Tribunal.
 - (ii) that the complainant has accepted the above-mentioned fact of receipt of the notice of the 29th and 30th Annual General Meeting on 09th September 2015 and 06th September 2016 in his complaint. As per the Notification F.No.1/1/2014-CL.V dated and effective from 5th June, 2015 issued by the Ministry of Corporate Affairs, provisions of Section 101 of the Companies Act, 2013 shall not apply to a Private Limited Company, if the Articles of Association of the Private Limited Company provides otherwise. Article 19 of the AOA of the Company provides that Annual General Meeting may be called by giving seven days' notice to the members. It further permits sending of shorter notice than seven days' on approval being accorded by members holding not less than seventy-five per cent of the paid up share capital of the company.
4. The Complainant in his Rejoinder dated 5th April, 2017 has reiterated his allegations as contained in the complaint and *inter-alia* stated that the reliance placed on the Articles is totally irrelevant and misplaced as the Articles of Association of the Company refer to Section 171 to 186 of the Companies Act, 1956 which shall not apply to the Company as they have been repealed and new provisions relating to proceedings at general meeting have been enacted under the Companies Act, 2013.
5. The Board of Discipline in its meeting held on 27th February 2018 considered the *prima-facie* opinion dated 27th October 2017 of the Director (Discipline) wherein she is *prima-facie* of opinion that the Respondent is "Not Guilty" of professional or other misconduct under any of the provisions of the Company Secretaries Act, 1980 for certification of



AOC4 for 2014-15 and for the year 2015-16 as the legal position and the documents on record reveal that the company has validly called and held Annual General Meetings for FY 2014-15 and 2015-16. Further, the Respondent is also not guilty for uploading Form ADT -1 (SRN: G13847819) of the company for appointment of M/s V.N. Keshwala & Co., Chartered Accountant (FRN 104988W) as Auditor of the Company, as the Respondent has not signed the said Form ADT -1


6. The Board of Discipline considered the material on record, prima-facie opinion of the Director (Discipline) and all the facts and observed as under :-


- (i) Article 19 of the Articles of Association of the company provides for calling of the Annual General Meeting by giving not less than seven days' notice in writing or at a shorter notice if the consent is accorded thereto by members holding not less than 75 per cent of the paid up share capital of the company. Notification No. G.S.R. 464(E) dated June 5, 2015 issued by the Ministry of Corporate Affairs allows a private company to have provision in Articles of Association pertaining to Notice of Meeting.
- (ii) Section 20(2) of the Companies Act, 2013 provides that a document may be served on any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. It also provides that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.
- (iii) As regards the allegation of the Complainant of shorter notice, the allegation cannot be sustained as a private company is entitled to contain a provision in its Articles different from the provisions of the Act as to the Notice of Meeting is concerned. Article 19 of the AOA of the Company provides that Annual General Meeting may be called by giving seven days' notice to the members. It further permits sending of shorter notice than seven days' on approval being accorded by members holding not less than seventy-five per cent of the paid up share capital of the company.
- (iv) a letter dated 24th September, 2015 from the company addressed to the Complainant indicates that AGM Notice with all documents were sent by e-mail and courier as hand delivery was not




accepted by the Complainant on 7.9.2015. The company once again sent the notice with all the documents again by Registered Post. As regards dispatch of notice through courier, Companies Act, 2013 and SS-2 expressly permit service of notice upon members through courier. Section 101 of the Companies Act, 2013 also provides that accidental omission or non-receipt of notice by a member will not invalidate the meeting.

- (v) In the conspectus of the aforesaid position, it cannot be held that the 29th Annual General Meeting held on 30th September, 2015 is invalid. Since the legal position and the documents on record reveal that the company has validly called and held its 29th Annual General Meeting, the Respondent cannot be held guilty of wrongly certifying Form – AOC 4 for FY 2014-15. Further, the allegation of Complainant that he received shorter notice dated 1st September, 2016 for 30th Annual General Meeting (AGM) of members of Company on 19th September, 2016 is not sustainable, hence, the Respondent cannot be held guilty of wrongly certifying Form – AOC 4 for FY 2015-16.
- (vi) The Respondent has submitted that Form ADT – 1 does not require certification by a Practising Company Secretary and thus, the same was not certified by the Respondent. Since the Respondent has not certified Form ADT-1, the Respondent cannot be held guilty for professional misconduct in regard to uploading the said form.
- (vii) That the Board had provided a general authority to Shri Abhishek Vir Vikram Vaid in its Board Meeting held on 01st April, 2016 to file various forms required to be filed with Ministry of Corporate Affairs.
7. In view of the observations made in para 6 above, the Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline) 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 the Company Secretaries Act, 1980.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

