

**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/ 386/2017

Order reserved on : 3<sup>rd</sup> May 2018

Order issued on : 9<sup>th</sup> June 2018

Shri Avinash B. Bhusari

...Complainant

Vs.

Shri Satyanarayan G. Paliwal  
FCS-3511, CP No. 14132


...Respondent

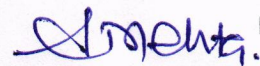
**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

**FINAL ORDER**

1. A complaint dated 14<sup>th</sup> February, 2017 in Form 'I' 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 Avinash B. Bhusari, FCS-1643, CP No. 2443 (the 'Complainant') against Shri Satyanarayan G. Paliwal, FCS-3511, CP No. 14132 (hereinafter referred to as the 'Respondent').
2. The Complainant has inter-alia stated that:(i) the Respondent has been working as consultant with M/s. Stewols India Pvt. Ltd., and M/s. Handiwires Pvt. Ltd. for the year 2015-16. The Respondent has certified/ filed Form MGT 7 and AOC 4 for M/s. Stewols India Pvt. Ltd., and M/s. Handiwires Pvt. Ltd. for the FY 2015-16 without communicating with the Complainant.
3. The Respondent in his written statement dated 18<sup>th</sup> April 2017 has *inter alia* stated that he had filed AOC 4 and MGT 7 of M/s. Stewols India Pvt. Ltd., and M/s. Handiwires Pvt. Ltd., in November 2016. Since September 2016, he has been advising these companies in secretarial work. However, it is factually incorrect that he did not intimate the Complainant in respect of taking over the job. Mr. Shiraz Doongaji, Managing Director of the above companies had spoken to the Complainant on the subject. Further, he had also spoken to the Complainant over phone and the Complainant had no objection on taking over the job by him provided the past dues are paid to the him by the company.

 J. B. Sharma







4. The Complainant in his rejoinder dated 4<sup>th</sup> May 2017 has *inter-alia* stated that the Respondent has neither contacted the Complainant nor taken his no objection before taking assignment the payment received from both the companies was settled for FY 2015-16 but not for the FY 2016-17.
5. The Board of Discipline in its meeting dated 4<sup>th</sup> September 2017 considered the prima-facie opinion dated 14<sup>th</sup> August, 2017 of Director (Discipline), the material on record, and keeping all the facts and circumstances of the case, decided to refer the matter back to the Director (Discipline) for further investigation and place her opinion after considering the deliberations of the PCS Committee in regard to ambit of item(8) of part I of the first schedule of the Company Secretaries Act, 1980.
6. Pursuant to the direction of the Board of Discipline, the matter has further been investigated and the Report dated 10<sup>th</sup> April 2018 placed before the Board of Discipline in its meeting held on 3<sup>rd</sup> May 2018 wherein Director(Discipline) is prima-facie of the opinion that the Respondent is not guilty of the Respondent in "not guilty" of professional or other misconduct under the Company Secretaries Act, 1980 as the Form ACO 4 and MGT 7 are not in exclusive domain of Company Secretary in practice hence will not attract Item (8) of Part I of First Schedule of the Act.
7. The Board of Discipline after considering the material on record, the further investigation report and all the facts and circumstances of the case observed :
- (i) that 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 term "accepting a position of Company Secretary" as laid down in under Clause (8) of Part I of First Schedule of the Company Secretaries Act 1980 applies only in such exclusive area's of practice.
  - (ii) that the Form AOC 4 can be certified by Company Secretary or by Chartered Accountant or Cost Accountant who is in whole time practice.
  - (iii) that Form MGT-7 can be signed by a Director and a Company Secretary, and where there is no Company Secretary then by a Company Secretary in practice. In case of One Person Company and a Small Company shall be signed by the Company Secretary or where there is no Company Secretary, by a director of the company.
8. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case and observation made in para 7 above agreed to the prima-facie opinion of the Director (Discipline), that the



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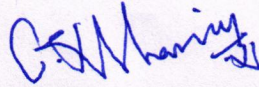
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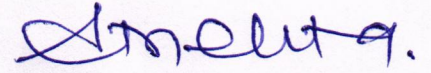
Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 as the Forms are not in the exclusive domain of the Company Secretary in practice and accordingly decided to close the complaint.



**CS Dinesh Chandra Arora**  
Member



**CS C Ramasubramaniam**  
Member



**CS Atul H Mehta**  
Presiding Officer

