

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

DC/435/2018

Order reserved on: 30th August, 2019
Order issued on : 30th August, 2019

Shri Santosh Kumar Loya

.....Complainant

Vs

Shri Ramesh Atluri, ACS-30844, CP 16418

.....Respondent

CORAM:

Shri Deepak Kumar Khaitan, Presiding Officer
Shri Manish Gupta, Member
Shri Ashok Kumar Dixit, Member

Present:

Ms. Anita Mehra, Assistant Director, Disciplinary Directorate

ORDER

1. A Complaint dated 17th May, 2018 in Form I is filed by Shri Santosh Kumar Loya (hereinafter referred to as 'the Complainant') against Shri Ramesh Atluri, ACS-30844, CP 16418 (hereinafter referred to as 'the Respondent') 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').
2. The Complainant is a Chartered Accountant in practice as "LOYA & ASSOCIATES" at Hyderabad and appointed as Statutory Auditors of M/s Katta Corp Private Limited ('the Company'), auditing Financial Statements for FY 2013-14 and provided Audit Report. From the FY 2014-15, the Company had not prepared Financial Statements and had not submitted for audit. The Company did not pay audit fees for FY 2013-14 until last week of filing this Complaint. The Complainant came to know about serious internal disputes between the Directors, and different cases had been filed with NCLT. One of the group has filed application for removal of auditors u/s 140 (1) of the Companies Act, 2013 in Form ADT-2 dated 07.02.2018. After meeting/hearing with Regional Director on 08.05.2018, long pending Audit fees for FY 2013-14 of the Complainant was released on 10.05.2018.



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Page 1 of 5.
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3. The Complainant *inter-alia* alleged against the Respondent as under:

- 3.1 Wrong certification of Form MGT 7 by the Respondent stating that, "The AGM was not held due to non-cooperation and hurdles created by the Statutory Auditors of the Company M/s Santosh Loya & Associates, Chartered Accountants in Audit & finalisation of Financial Statements." The Complainant requested the Respondent to provide documentary evidence for the same *vide* emails dated 07.04.2018 and 17.04.2018, which are not responded by the Respondent.
- 3.2 Defaming other professional Member of ICAI by the Respondent. Without going into the facts and not doing basic due diligence as mandated by the ICSI Code of Conduct and Ethic, the Respondent has caused serious and irreparable damage to the Auditors by tarnishing the goodwill and reputation.
- 3.3 Gross negligence by the Respondent. The Respondent has failed to even check the name of the auditor appointed by the company and quoted as M/s. Santosh Loya & Associates, whereas the name stands as Loya & Associates. The Complainant has provided a copy of Board Resolution for appointment filed with the ROC, in support of his allegations.

4. The Respondent in his Written Statement dated 4th July, 2018 has *inter-alia* stated as under: -

4.1 Regarding allegations for Wrong certification of Form MGT 7

- The Respondent has strongly objected the word wrong certification of Form MGT 7.
- The certification was done based on available information provided by the client Company and he is not the generator of the information of the Company and infact it is the document belonging to the Company. He cannot access such information of the Company. The Auditor is requested to approach the Company's Director or other authorized persons for documentary evidence about the reasons of non-conducting the AGM as he may have access the information.
- Information provided in Form MGT 7 is generated by the Company only. It is not just attachment of Digital Signature Certificate of the Director and it is an undertaking of the Director who signed on the prescribed Form indicates that the signed Director accepts information provided in the Columns. There may be several transactions among the Company, Bankers, Statutory Auditors, Financial Institutions etc. and his role of signing the Form is limited to check the document and correctness of information in particular to the technical matters. In respect of other matter, the certification is in general nature. He cannot



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Page 2 of 5
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correct or interfere in the declarations made by the Company. The reason of not holding AGM is mentioned by the Company and it is declaration by the Company's Director. The Respondent cannot question why AGM is delayed and cannot issue show cause notice to the Company about non-conducting of AGM.

- The communication sent by the complainant to csatluri@gmail.com is not an official email id and is not frequently visited, hence could not be addressed properly/ responded in due time. There is no negligence and non-response to email does not amount to wrong certification.
- The Respondent has stated that he is unaware about the internal disputes in the Company and non-payment of fees to the Statutory Auditors, referred to in the Complaint. There is no connection to certify Form MGT 7 irrespective of fees paid to Statutory Auditor, non-submission of documents to the Statutory Auditor or cases with courts etc. Providing such information by the Complainant is to create a negative impression on the issue and hence the allegation is invalid.

4.2 Regarding allegation for defaming other professional Member of ICAI

- The Respondent has stated that it is untrue and being co-professionals he always respect the professionals of all such professional bodies. This allegation is an expansion of first allegation and it was explained there itself. The Respondent objected the words serious and irreparable damage to the Auditors and he is no way connected with the Statutory Auditor's allegation. The name of the Auditor clearly mentioned as Santosh Loya and Associates which differs from the claimed name Loya & Associates, hence, there is no defaming or gross negligence with the claimed name. It is a dispute between the Company and auditor directly. The Respondent is brought into the picture by way of threatening by the senior professional with other junior co-professional in the bad manner. It is a threatening of the co-professional.
- There is a communication gap between the Company and the Complainant. It is mentioned in the Complaint that the Complainant has not been paid audit fee for FY 2013-14 which is released in 10.05.2018.
- The Complainant himself concluded that financial statement were not submitted for Audit, hence, Form MGT 7 could not be signed by any other person. When the Company has not



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Page 3 of 5
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submitted the relevant data to Statutory Auditors who is continuing for past some years, how others will know background information of the Company. There is no connection of certification of Form MGT 7 and non-payment of Audit fee. Certification of documents is generally based on the records, explanation, reference provided by the company/client and thereby certified professional will issue certification or Audit Reports, hence, the allegation is invalid.

4.3 Regarding allegation for gross negligence

- The Respondent has stated that the mentioning of name of the Auditor is not a gross negligence as the information is provided by the company. It is quite natural and frequent that the name of the Auditor can be changed from individual to Firm and vice versa; and hence, name of the Auditor may be shown like.
- The Company provided the information and filed the column which indicates the declaration by the Company. Appointment and changes in connection with Auditors/directors always happen. In depth verification and inspection with MCA is not always required for general and routine matters and the inspection of records of ROC always is unwarranted.
- The Complainant made allegation about the Board resolution filed which is not considerable as Form ADT 1 not filed with ROC against MGT 7 for the period from 01.04.2016 to 31.03.2017. Sharing of Board resolution for the appointment with ROC is untrue statement. There is no gross negligence. Hence, the allegation is invalid.

4.4 Even there is no fault or mistake, the Respondent sincerely apologize to the Complainant as he is senior professional and noted the comments and his feelings and will be more cautious in future to avoid such allegations /remarks.

5. The Complainant vide letter dated 16th July, 2018 followed by a reminder dated 22nd January, 2018 was asked to submit Rejoinder. However, as per records, no Rejoinder has been received from the Complainant till date.

6. The Director (Discipline) in the prima-facie opinion dated 22nd August, 2019, after considering the Complaint, Written Statement from the Respondent, material on record and all the facts and circumstances of the matter, opined that the Respondent is 'Not Guilty' of professional misconduct under the Company Secretaries Act, 1980, as: -

6.1 There are some internal disputes within the Company.

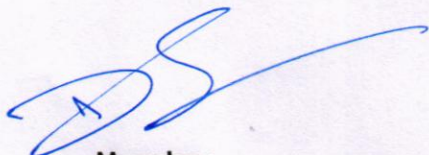


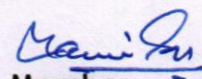
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Page 4 of 5
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- 6.2 There are issues between the Company and the Complainant regarding his non-payment of Audit fees by the Company for FY 2013-14 which is released in 10.05.2018 after intervention of the Regional Director.
 - 6.3 The Company has filed some complaint against the Complainant with the ICAI.
 - 6.4 The Financial Statements of the Company were not submitted to the Complainant for Audit; hence, audit was not done.
 - 6.5 It is also observed that the name of the Auditor in Form MGT 7 is mentioned as 'Santosh Loya and Associates' instead of 'Loya & Associates'.
 - 6.6 It is observed that the Respondent had certified Form MGT 7 based on the information provided by the Company and this Form is also signed by a Director of the Company itself.
 - 6.7 Certification done by the Respondent cannot be considered as defamation of other professionals. The Respondent has only indicated the reason for not holding the AGM as required in sub clause (f) of Clause (viii) of Para 1 of MGT-7 on the basis of information provided by the Company.
 - 6.8 The Director (Discipline) in her prima facie opinion has opined that the allegations against the Respondent are not proved. However, the Respondent needs to be more vigilant in future especially regarding the name of Auditors, while certifying the Forms.
7. The Board of Discipline after considering the materials on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case, the nature of issues involved and given the totality of the circumstances of the case agreed with the prima-facie opinion of the Director (Discipline), that the Respondent cannot be held Guilty of Professional or other misconduct under the Company Secretaries Act, 1980.
8. Accordingly, the matter stands closed and disposed off.


Member


Member


Presiding Officer

