

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/437/2018

Order reserved on: 21st August, 2019

Order issued on: 22 OCT 2019

Shri Monish Uppal

.... Complainant

Vs

Ms. Naina Goyal, ACS-39018, CP No. 15360

.... Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer
CS Nagendra D Rao, Member
CS B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Mrs. Anita Mehra, Assistant Director

FINAL ORDER

1. A Complaint in Form-I dated 5th June, 2018 is filed by Shri Monish Uppal, (hereinafter referred to as 'the Complainant') against Ms. Naina Goyal, (ACS 39018 CP 15360), (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 Whole Time Practice and was the Statutory Auditor of M/s. Marut Techno Tools Private Limited (hereinafter referred to as 'MARUT') and M/s Mega Self Lube Bearings Private Limited (hereinafter referred to as 'MEGA'), both for the FY 2014-15. Both the Companies have moved application under Section 140 of the Companies Act, 2013 for removal of the Complainant as Statutory Auditors for the FY 2014-15 and the primary ground for removal is that the Complainant has got the books and records of the said Companies.
3. The Complainant in his Complaint has *inter-alia* alleged the following against the Respondent: -
 - a) The Respondent is fully aware of the entire facts about the dispute as she has certified e-Form MGT-7 for the Special Resolution passed by both the Companies for removal of the Complainant as Statutory Auditors; and filed e-Form ADT-2 before the office of Regional Director (Northern Region) for removal of the Complainant as Statutory Auditors for the FY 2014-15.
 - b) The Respondent has certified e-Forms MGT-7 of MARUT and MEGA for the FY 2014-15, 2015-16 and 2016-17, wherein the Respondent has also



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- certified various financial data for the respective FYs of the MARUT and MEGA i.e. Secured Loans, Unsecured Loans, Turn Over and Net worth.
- c) Both the Companies, MARUT and MEGA, in their e-Forms ADT-2 have stated that they have not prepared the Financial Statements for the FYs 2014-15, 2015-16 and 2016-17; and the Respondent is well aware of this fact as the said e-Form ADT-2 is certified by the Respondent.
 - d) MARUT and MEGA both have stated on oath on 17.05.2018 (after April, 2018) that annual accounts for the FY 2014-15 are not approved by the Board of Directors. The Complainant has provided copies of the relevant replies with respective Affidavits at Annexure C of the Complaint.
 - e) The Companies has annexed ante dated letters with said e-Form MGT-7 admitting disputes with the Statutory Auditors, *inter alia* stated that the Company has made all compliances and disclosures in respect of applicable provisions of Companies Act, 2013 during the year except for filing of Financial Statements and Annual Return for the Financial Year 2014-15 under Section 137 and 92 of Companies Act, 2013, respectively, due to the ongoing dispute between the Statutory Auditors and the Company duly filed with the office of Regional Director and ROC vide SRN C69615896 dated 14th November, 2015.
 - f) The Respondent has certified the said e-Forms MGT-7 in grossly wrongful, false and negligent manner as the financial data in e-Form MGT-7 of both MARUT and MEGA, can't be derived without drawing the Financial Statement for the respective FYs, whereas both the Companies on oath are claiming that they have not drawn their respective Financial Statement for the FYs 2014-15, 2015-16 and 2016-17. The Respondent has abused her professional position, capacity and allowed, facilitated both the Companies to project a totally false and wrong position. The Complainant has alleged professional and other misconduct against the Respondent under Clauses (5), (6), (7) & (8) of Part I of Second Schedule and Clause (2) of Part IV of First Schedule to the Act.
 - g) The Complainant has sent legal notice to the Respondent but the Respondent chosen not to reply to the same, thereby meant that the Respondent has nothing to state on the subject matter.
4. The Respondent in her Written Statement dated 7th July, 2018 has *inter- alia* contended that:
- a) The entire complaint is nothing but a personal vendetta by the Complainant against the Respondent due to various pending disputes between the Complainant and MARUT & MEGA since year 2015. An Order dated 20th June, 2018 of Office of Ld. Regional Director was passed wherein it accorded and passed an Order for removal of the Auditor/Complainant and confirmed that the Auditor/Complainant has committed professional lapses and has mandated to report improper or wrong disclosures. The Auditor/Complainant has failed to provide a proper Auditor's Report as well as reporting of incorrect observation in the Report indicated lack of professional skill of Auditor/Complainant.
 - b) MARUT & MEGA has also filed complaint against the Complainant with the ICAI.
 - c) The Respondent has denied all the allegations made by the Complainant and has inter-alia stated that the Respondent has certified the figures of turnover, net worth, secured loan and unsecured loan, mentioned in e-Form MGT-7 for the Financial Years 2014-15, 2015-16 and 2016-17 of MARUT & MEGA based on the information received from the



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management of the Companies. The mere fact of accounts being not audited due to some disputes between Statutory Auditors/Complainant of both the stated Companies has nothing to do with the answering Respondent. Further, even the e-Form MGT-7 nowhere provides that the same is based on the audited figures in the stated e-form.

- d) The Financial Statements of both the Companies were not audited in the stated financial years but the same have been prepared by the Company and also filed with the Income Tax Department and on the basis of those drafted Financial Statements, the Respondent has certified the figures of e-Form MGT-7. Furthermore, the Respondent has also taken a Management Representation letter from both the Companies which acknowledge and confirm all the facts and figures mentioned in the e-Form MGT-7.
 - e) The Respondent agreed of having aware of the fact that due to some disputes between Statutory Auditors/Complainant and the Companies, both the Companies have not held their Annual General Meeting in the stated Financial Year and also not approved their Financial Statements, and this fact has also been disclosed by the Respondent in point (viii) of Part I (i.e. details of AGM) in all e-Forms MGT-7 filed with the Registrar of Companies (ROC); and also attached a clarification letter in this regard with all the e-Forms MGT-7.
 - f) The Respondent has exercised due diligence by checking all the figures from the drafted Financial Statements which were submitted to Income Tax Department and also took Management Representation letter from both the Companies and also disclosed all material and relevant facts in all e-Forms MGT-7 of both the Companies filed with ROC for the FYs 2014-15, 2015-16 and 2016-17.
 - g) The Respondent has prayed to dismiss the present Complaint as it is based on assumption.
5. The Complainant in his Rejoinder dated 6th August, 2018 has further *inter-alia* stated, that:
- a) The Respondent has consciously chosen not to rebut and tender Para by Para reply and therefore, the Respondent by her conduct accepts the averments made by the Complainant in the initial complaint, which are not specifically rebutted or replied by the Respondent.
 - b) The allegations of personal vendetta as levied by the Respondent are completely wrong and hence denied vehemently. The Respondent is an independent professional and is liable for all her professional actions. The dispute has no co-relation with the misconduct of the Respondent.
 - c) The pending proceedings against the Complainant and as cited by the Respondent are not related to the present proceedings. It is stated by the Respondent to divert the ICSI.
 - d) The Respondent in gross abuse of her position as a Company Secretary in Practice has allowed and certified the false information of MGT-7 and assisted MEGA & MARUT to wrongly and mischievously complete the regulatory compliances and allowed the filing of false information and documents on the portal of MCA.
 - e) The Respondent has taken a defence that "MGT-7 itself nowhere provides that the same is based on audited figures" the said defence is sham & wrong. The provisions of the Companies Act, 2013 for the first time defined the expression net worth under Section 2(57) which clearly states that "net worth" has to be computed based on the figures derived



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from audited Balance Sheet. The said provision came into effect on 12th September, 2013 vide notification of instant dated and henceforth the above said provisions were in due effect and force on 31st March, 2015; 31st March, 2016 and 31st March, 2017 i.e. the period upto which the Respondent has certified the e-Form MGT-7 of both MEGA and MARUT.

- f) The Guidance Note of the Institute August, 2014 edition categorically states and casts the following duties on Company Secretary in Practice while certifying the Form MGT 7 to check whether accounts are audited and to check whether the computations are done according to the provisions of 2 (91) and 2 (57) of the Companies Act, 2013.
- g) Form MGT 7 pg 7 Para V categorically mandates disclosure of Turnover & Net worth of Company.
- h) Under the scheme of the Companies Act, 2013, there is no document called draft Financial Statement and the Respondent is grossly making a false and wrong statement on oath. The Respondent has failed to place on record the draft Financial Statement along with her reply.
- i) The subject Companies have later on filed their respective Financial Statement for the relevant three F.Ys – 2014-15, 2015-16 and 2016-17 and the figure of Net worth in the Form AOC 4 doesn't tally with the disclosure certified by the Respondent in MGT 7 for FY 2016-17 for MARUT and for FYs 2015-16 & 2016-17 for MEGA.
- j) The Respondent has tried to mislead the Hon'ble ICSI as the clarification letter as attached to the said Form MGT-7 is a company's letter and the Respondent has not attached any letter/representation on her own letter head. Further, even the said letter as attached by subject Company is wrong and false as the said letter states that Company has complied with all the provisions of Companies Act, 2013 except the filing of Financial Statement and Annual Return meaning there by that audit of Financial Statement was complete because audit of Financial Statement and filing of Financial Statement are two separate activities carried out different point of time. It is an admitted position that at the time of filing of MGT-7 audited Financial Statement was not available.
- k) The Respondent has been grossly negligent in the conduct of her professional duties and has failed miserably in her duties by certifying the MGT-7 despite having express knowledge of the non-availability of Audited Financial Statement.
- l) The subject Companies has paid managerial remuneration to all its Directors i.e. Anil Sahay; Poonam Sahay and Urvashi Sahay during the Financial Year 2014-15; 2015-16; 2016-17 but has wrongly given disclosure in the respective MGT-7 that all the three Directors are Non-Executive, whereas all these Directors are Executive Directors. Hence, the Respondent has wrongly certified Form MGT-7 for all the three Financial Years.
- m) The Respondent has been grossly negligent in certification of Form MGT 7 with respect to figures of secured loans as there are variations in the figures of secured loan as per Forms MGT 7, AOC 4 and MGT 9 of MARUT for the FY 2014-15, 2015-16 and 2016-17.
- n) The Respondent has wrongly certified Form MGT 7, by mentioning 'YES' in respect of question at Para XI, which should have been "NO", as detailed below: -

"Whether the company has made compliance and disclosures in respect of applicable provisions of The Companies Act, 2013 during the year-YES"



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- o) The Respondent has been grossly negligent in certification of Form MGT 7 with respect to figures of long term borrowing of MARUT, as per Forms MGT 7, AOC 4 and MGT 9 of MARUT for the FYs 2014-15, 2015-16 and 2016-17.
- p) The Respondent is primarily relying on the filing of the Income Tax Return by the subject Companies, but that is not relevant here because the Respondent's duty was limited to certify the MGT-7 based on audited Financial Statements and as admitted by the Respondent, she has not placed her reliance on the audited Financial Statement, as the same were not available at the time of certification of MGT-7.
6. Pursuant to sub-rule (5) of Rule 8 of the Rules, the Disciplinary Directorate vide letters dated 26th June, 2019 and 15th July 2019 asked the Respondent to submit comments on the Rejoinder dated 6th August 2018 of the Complainant and certified copies of Form 32/DIR-12 for the appointment of the three Directors namely Shri Anil Sahay, Ms Poonam Sahay and Ms Urvashi Sahay in M/s Maruti Techno Tools Private Limited and M/s Mega Self Lube Bearings Private Limited, as the Complainant has raised new allegation in his Rejoinder dated 6th August, 2018.
7. The Respondent, in her response vide letter dated 23rd July, 2019 has submitted replication to the Rejoinder, *inter-alia* stating that: -
- a) The conduct and intention of the Complainant is nothing but personal vendetta against the Respondent.
- b) The Respondent has taken all the Financial Statement and representation into consideration, which were also filed before the Income tax Department. Therefore, the Respondent is not liable of Professional Misconduct.
- c) The definition of 'Net Worth' is used out of context and, therefore, needs no reply.
- d) All the due disclosures have been annexed with MGT-7 and therefore issue should not arise.
- e) The financial returns of both the Companies were already drafted, though unaudited, due to dispute between the Companies and the Auditor, but were submitted before the Income Tax Department.
- f) The table which represents the Net Worth shows subtle differences the Net worth filed with AOC-4 and MGT-7 is because the Financial Returns went unaudited till 2018 and anyways the difference in the Net Worth is a subtle one as per the accounting practice and does not in any way depict misconduct on the Part of the Respondent.
- g) The clarification letters attached to the said Forms MGT-7 were already on the Company's letterhead and, therefore, were not required to be on the letterhead of the Respondent.
- h) The tabular representation pointing towards the differences in their Managerial Remuneration and Secured loan as per MGT-7, MGT-9 and AOC-4 respectively are minor differences due to unaudited Financial Statements and have nothing to do with the answering Respondent and otherwise also none of these involve gross misconduct of the Respondent in any manner.
- i) The Respondent further stated that the allegation of the Complainant that no Financial Statements were prepared before filing of MGT-7 is wrong, baseless and need no further reply.



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- j) Form MGT-7 was based on the unaudited Financial Statement because of the dispute between the Complainant/Auditor and the Companies.
- k) The Respondent has relied upon the Financial Statements which were also placed before the Income Tax Department; and the unavailability of audited Financial Statements because of the dispute between the Complainant and the Companies has left no option to her other than relying upon the unaudited Financial Statements.
8. Pursuant to sub-rule (5) of Rule 8 of the Rules, the Disciplinary Directorate vide letter dated 22nd July, 2019 asked the Complainant to submit certified copies of Form 32/DIR-12 for the appointment of the three Directors namely, - Shri Anil Sahay, Ms. Poonam Sahay and Ms. Urvashi Sahay in M/s Maruti Techno Tools Private Limited and M/s Mega Self Lube Bearings Private Limited.
9. The Complainant in his response, vide letter dated 25th July 2019 has submitted copies of the following documents: -
- MARUT
- Form 32 filed with the Office of Registrar of Companies, NCT of Delhi & Haryana in the course of incorporation of the Company, showing Mr. Anil Kumar Sahay and Ms. Urvashi Sahay as the First Directors of the company in terms of its Articles of Associations (Article 22).
 - Form 32 filed with the Office of Registrar of Companies, NCT of Delhi & Haryana for the appointment of Ms. Poonam Sahay as Executive Director with effect from 14.08.2008.
 - Financial Statements and Board of Directors Report of MARUT for the FY 2014-15 depicting the payments of Rs. 540,000/- to Ms. Urvashi Sahay under the head of Salaries & wages in Schedule 19
 - Balance Sheet and Directors Report for the FYs 2015-16 & 2016-17.
- MEGA
- Form 32 filed with the Office of Registrar of Companies, NCT of Delhi & Haryana in the course of incorporation of the Company showing that Mr. Anil Kumar Sahay and Ms. Urvashi Sahay are the First Directors of the Company in terms of Articles of Associations (Article 22).
 - Financial Statements and Board of Directors Report for the FY 2014-15 clearly depicting payments of Rs. 21,00,000/- to Ms. Poonam Sahay & Rs. 24,00,000/- to Mr. Anil Sahay (related party transactions).
 - Balance Sheet and Directors Report of the FY 2015-16 & 2016-17.
10. The Complainant has also submitted relevant reports of both the Companies, counter signed by the representative of the Companies, which were available to the Complainant in the capacity of Statutory Auditor of FY 2014-15, indicating Mr. Anil Sahay, Ms. Poonam Sahay and Ms. Urvashi Sahay drawing salaries; and TDS has also been deducted in accordance with the provisions of Section 192 of the Income Tax Act, 1961.
11. The Director (Discipline) in the prima facie opinion dated 20th August, 2019 has observed that -
- a) The Respondent is well aware of the fact that the Companies have not prepared their Financial Statements for the FYs 2014-15, 2015-16 and 2016-17 as she has filed the respective Forms ADT-2 of both the Companies.
- b) As contended by the Respondent, the Complaint is clearly an outburst action by the Complainant, due to various pending disputes between the Complainant and MARUT & MEGA since year 2015. An Order dated 20th



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June, 2018 of Office of Ld. Regional Director was passed wherein it accorded and passed an Order for removal of the Statutory Auditor/Complainant and the Companies confirmed that the Statutory Auditor/Complainant has committed professional lapses and has mandated to report improper or wrong disclosures. The Statutory Auditor/Complainant has failed to provide a proper Auditor's Report, as well as reporting of incorrect observation in the Report indicated lack of professional skill of Auditor/Complainant.

- c) MARUT & MEGA has also filed complaint against the Complainant with the Institute of Chartered Accountant of India (ICAI).
- d) Both the Companies MARUT and MEGA failed to get audited Financial Statements due to some ongoing disputes with the Complainant i.e. the Statutory Auditors for the FY 2014-15.
- e) The Respondent has nowhere mentioned that the alleged Forms MGT 7 was based on Audited Financial Statements rather; there were clear disclosures in this regard in all the alleged Forms MGT 7. Moreover, as per the Complainant, both the Companies have also filed the Audited Financial Statements for these FYs later on.

12. The Director (Discipline) is *prima-facie* of the *opinion* that in the given circumstances, the Respondent is not guilty of Professional Misconduct under the Company Secretaries Act, 1980 for wrong certification of Form MGT 7, as the Respondent has certified the same on the basis of financial figures provided to her by the respective Companies vide letter dated 18th April, 2018, which were submitted to the Income Tax Department and also clearly indicating in the Forms itself that *no AGM was held due to ongoing dispute between Statutory Auditors (Complainant) and the Company and the same is still pending before Regional Director vide form ADT 2*. However, the Respondent is *prima-facie* 'Guilty' of professional misconduct under Item (7) of Part I of Second Schedule to the Company Secretaries Act, 1980 for indicating in Forms MGT-7, the Directors Shri Anil Sahay, Ms. Poonam Sahay and Ms. Urvashi Sahay as 'Non-Executive' instead of 'Executive', which is substantiated by the Financial Statements and Directors Report for the FY 2014-15 and Forms 32 filed with ROC for appointment of Ms. Poonam Sahay as 'Executive Director' for both the Companies.

13. The Disciplinary Committee in its meeting held on 21st August, 2019 considered the *prima facie* opinion of the Director (Discipline) dated 20th August, 2019.

14. **The Disciplinary Committee agreed with the opinion of Director (Discipline) on the first point that the Respondent is 'not guilty' of Professional Misconduct under the Company Secretaries Act, 1980 for wrong certification of Form MGT 7, as the Respondent has certified the same on the basis of financial figures provided to her by the respective Companies vide letter dated 18th April, 2018, which were submitted to the Income Tax Department and also clearly indicating in the Forms itself that *no AGM was held due to ongoing dispute between Statutory Auditors (Complainant) and the Company and the same is still pending before Regional Director vide form ADT 2*.**

15. **However, the Disciplinary Committee disagreed with the *prima facie* opinion of the Director (Discipline) on the second point for holding the Respondent as 'Guilty' of professional misconduct under Item (7) of Part I of Second Schedule**



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to the Company Secretaries Act, 1980 for indicating Shri Anil Sahay, Ms. Poonam Sahay and Ms. Urvashi Sahay as 'Non-Executive' instead of 'Executive' in Forms MGT-7, as the Disciplinary Committee is of view that although it is a mistake, but it is cannot be considered as substantial mistake and may not have much impact on Company's Master data. It may be viewed as a non-intentional typographic error done by the Respondent, while filling the Form MGT 7. Moreover, the Disciplinary Committee found no malafide intention of the Respondent for doing the same.

16. Hence, the Disciplinary Committee after considering all the facts and circumstances in the matter holds the Respondent as "Not Guilty" of professional or other misconduct under any of the Schedules to the Company Secretaries Act, 1980.
17. Accordingly, the Complaint is disposed off.

Member

Member

Member



Presiding Officer