

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

ICSI/DC/NI/01/2018

Order Reserved on: 27th June, 2019

Order issued on: 31 JUL 2019

Registrar of Companies, North East Region, Shillong

....Informant

Vs.

Shri Rakesh Agarwalla FCS-7674, CP No. 8495

....Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer

Shri Nalin Kohli, Member (Govt. Nominee)

Mrs. Meenakshi Datta Ghosh, Member (Govt. Nominee)

CS Nagendra D Rao, Member

CS B Narasimhan, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Ms. Anita Mehra, Assistant Director

Respondent in person

FINAL ORDER

1. Information vide letter dated 11th April, 2018 was received from ROC, North East Region Shillong, ('the Informant') alleging professional misconduct by Shri Rakesh Agarwalla, FCS-7674, CP No. 8495 ('the Respondent'). The informant has alleged that the Respondent has done wrong certification of e-form AOC 4 of M/s Vibgyor Associates Pvt. Ltd. for the year ended 31st March, 2016. The Financial Statements filed with ROC did not include Cash Flow Statement as included in the definition of Financial Statements under Section 2 (40) of the Companies Act, 2013. In spite of Cash Flow Statement not being attached to the financial statements, the Respondent certified e-form AOC-4 stating that the same is including required attachments.
2. Office of ROC, Shillong conducted an inquiry of M/s Vibgyor Associates Pvt. Ltd. for the year ended 31st March, 2016 u/s 206 of the Companies Act, 2013 on directions received from the MCA. On inquiry, it was found that the financial statements filed by M/s Vibgyor Associates Pvt. Ltd. for the year ended 31st March, 2016 did not include Cash Flow Statement as included in the definition of Financial Statements under Section 2(40) of the Companies Act, 2013. In spite of Cash Flow Statement not being attached to the Financial Statements, the Respondent certified e-form AOC 4 stating that the same is including all the required attachments.



Thus, there is a case of wrong certification. The Informant has referred the matter to the Ministry of Corporate Affairs for directions and the Ministry vide letter no. File No. 4/45/2018/CL-II (NER) dated 27th March, 2018 has advised the office of ROC, Shillong to refer the matter to the Institute for necessary action.

3. The Respondent in his Written Statement dated 19th July, 2018 has *inter-alia* stated that he has identified the error and asked the management of the Company to submit the Cash Flow Statement as applicable to the Company. In response, the Company has submitted the Cash Flow Statement with the Registrar of Companies in Form No. GNL-2 filed vide SRN G93211217 and ROC has duly approved the Form. The Respondent has contended that it was missed inadvertently without any malafide intention. The Cash Flow Statement which was not forming part of the Financial Statements is submitted by the Company for filing with Registrar of Companies and the same was left out due to oversight. As the error is rectified now, the Respondent has requested to condone the mistake and not to initiate any action in the matter.
4. The Director (Discipline) in the prima facie opinion dated 31st January, 2019 has opined that the Respondent is 'guilty' of professional misconduct under clause (7) of Part I of Second Schedule to the Company Secretaries Act, 1980 for wrong certification of Form AOC 4 of M/s Vibgyor Associates Pvt. Ltd. for the year ended 31st March, 2016 as he has filed the Financial Statements of the Company without attaching the Cash Flow Statement. The Respondent has admitted his mistake, although the mistake is rectified by the company by filing the Cash Flow Statement with the Registrar of Companies on 19th July, 2018 i.e. after the receipt of this Complaint.
5. The Disciplinary Committee after considering the *prima-facie* opinion dated 31st January, 2019 of the Director (Discipline), material on record and all facts and circumstances of the matter, agreed with the *prima-facie* opinion of the Director (Discipline). Accordingly, the Disciplinary Committee decided to adjudicate the matter in accordance with the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Act, 1980, to finally conclude as to whether the Respondent is guilty or not in the matter.
6. The Respondent in his Written Statement to the prima-facie opinion of the Director (Discipline) vide letter dated 6th May, 2019 *inter-alia* stated that the Cash Flow Statement was missed inadvertently without any malafide intention and requested to condone his clerical error/mistake and not to consider it as professional misconduct.
7. The Respondent vide letter dated 13th June, 2019 was called upon to appear before the Disciplinary Committee on 27th June, 2019.

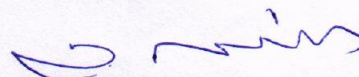


Handwritten signatures and initials in blue ink, including the name 'Ajay Pandey'.

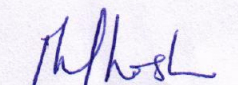
8. On 27th June, 2019, the Respondent appeared in person and made oral submissions reiterating his earlier defence that the Cash Flow Statement was missed inadvertently without any malafide intention and requested to condone his clerical error/mistake and not to initiate any action in the matter.

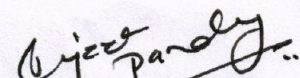
9. After considering all the facts and circumstances of the matter, the Disciplinary Committee holds the Respondent 'not guilty' of professional misconduct under the Company Secretaries Act, 1980, considering the fact that the Respondent has missed to attach the Cash Flow Statement with the Financial Statement while certifying Form AOC 4, inadvertently without any malafide intention; and taken steps to file the Cash Flow Statement with the Registrar of Companies in Form No. GNL-2. However, the Disciplinary Committee advises the Respondent to exercise caution while filing Form AOC 4 in future.


Member


Member


Member


Member


Presiding Officer

