

**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**

**ICSI/DC/NI/2014**

Order reserved on: 18<sup>th</sup> January, 2018

Order issued on : 18<sup>th</sup> January, 2018

**Securities & Exchange Board of India (SEBI)**

.... Complainant

**Vs.**

**Shri S.D.Tole, FCS-1658**

....Respondent No. 1

**Shri Nikhil Kulkarni, ACS-25381**

....Respondent No. 2

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

**FINAL ORDER**

1. The Board of Discipline examined the Information, Written Statement, prima-facie opinion of the Director (Discipline).
2. The Board of Discipline noted the following: -
  - (i) The Institute received a letter dated 10.08.2015 on 20<sup>th</sup> August, 2015 from SEBI alleging that the Company had engaged in manipulation of books of accounts for the period 2009-10 and 2010-11 and misled the investors by not providing a true and fair view of its quarterly and yearly financials.
  - (ii) SEBI has carried out an investigation into trading activities of certain entities in the scrip of Twilight Litaka Pharma Limited (TLPL) for the period December 16, 2009 to December 15, 2010 and observed that TLPL had engaged in manipulation in books of accounts for the period 2009-10 and 2010-11 and misled the investors by not providing a true and fair view of its quarterly and yearly financials. SEBI has also provided a copy of Forensic Audit Report of M/s Sarath & Associates, appointed by SEBI for forensic audit of books of accounts of the company for FYs 200910 & 2010-11.



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- (iii) The modus operandi followed by the Company was that the Company had, over the years, adopted a method of inflating the sales and purchases through circular trading through group companies. In this regard, the company floated several paper entries to accommodate transfer entries of funds through discounting the purchase bills and letter of credits against non-existent purchases from various bank accounts. The opening balance of some of the accounts was not matching with the closing balances of the previous financial years.

In view of the above, SEBI observed that company and its directors had provided false and misleading financial statements for FYs 2009-10 & 2010-11. It was also alleged that S. D. Tole (Company Secretary during FY 2009-10) and Nikhil Kulkarni (Assistant Company Secretary during FY 2010-11) signed the Annual reports of the company for FY 2009-10 & 2010-11 respectively which were false and misleading.

- (iv) The Board noted that the Respondent No. 1 has *inter-alia* in his written statement to the complaint stated that: -

- a. He joined the company in the year 1992 as a Company Secretary and worked as such only till October, 1992. Thereafter, due to seniority, respondent no. 1 was designated as Director without there being any change in the work profile.
- b. The company was registered under the Companies Act, 1956 having its registered office in Pune and engaged in business of manufacturing and dealing in pharmaceutical products.
- c. The functions and routine operations of company were managed from Head Office in Mumbai. The Managing Director of the company, who was a Chartered Accountant, was looking after and monitoring and supervising the activities of Finance, Taxation & Accounts in addition to the overall management and supervision.
- d. Respondent No. 1, relying upon an Organizational Chart, sought to contend that his duties and position in the company were that of Human Resource (HR), Admin and Legal. On the basis of said Organizational Chart, a Note was prepared by the company on 16.08.2005 indicating the above duties, scope of work and responsibilities of Respondent No. 1.
- e. He also relied upon a letter dated 24.01.2007 addressed by the Managing Director of the company, a Chartered Accountant, wherein it was assured that utmost care was taken by Mumbai



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Head Office in finalizing statements of sales, stocks, receivables and payables etc. As per Respondent No. 1, there were sufficient credible checks and balances and all the statements were objectively verified under the supervisions of MD and thereafter, the data was mailed to Pune office for further processing.

- f. Entire procedure followed for adoption of Annual Accounts which included, inter alia, preparation of statement of accounts, finalization of accounts by MD & CFO, completion of audit by audit committee and approval by Board of Directors and certification by Board and MD that the information contained in the accounts did not contain any false or misleading statements or figures.
- g. The Balance Sheet was drawn as per the provisions of the Companies Act, 1956 and relevant formalities under the law had been complied with.
- h. He relied upon Circular No. 7 of 1972 dated 12/05/1972 issued by Ministry of Company Affairs to the effect that a CS has a restrictive role and responsibility when there are MDs and others who are responsible for accounting activities.
- i. The Audited Balance Sheet is signed by both, Directors as well as Company Secretary under the Companies Act in different capacities. While Directors sign the Balance Sheet on behalf of Board confirming that Balance Sheet reflects true and fair view of affairs/operations of company whereas, the Company Secretary signs the Balance Sheet to confirm that Company has complied with all the relevant provisions of applicable Acts and Rules such as holding of Audit Committee & Board Meetings and its proper conduct, due notices were given to Stock Exchange etc.
- j. The Income Tax Department, which had referred the matter to SEBI for investigation has completed the assessment of the said Financial Year without there being any addition and/or disallowance of the suspected turnover/purchase for the said years.
- k. He relied upon a settled case by the Institute- "Satyam Case" where the position of CS in that case was similar to the present case. In that case, the Institute had discharged the CS from all allegations and involvement and given a clean chit.
- l. He had been working in the company for the last 20 years as CS and during the said tenure there was not a single incidence of



*C. D. Khurana*

*[Signature]*



fine or penalty imposed by ROC/SEBI etc.

(v) The Respondent No. 2 has *inter-alia* stated that: -

- a) He was appointed in the company as an Assistant Company Secretary on 1<sup>st</sup> April, 2011 and was looking after the Company law and other allied law formalities of the said company.
- b) While discharging his duties, he had taken adequate care to ensure that due procedure stated under relevant laws was followed.
- c) Before signing the Balance Sheet and declaration of quarterly results, the following procedure was followed:
  - (i) The Balance Sheet/Quarterly Financial Returns were prepared by Accounts Department of the company;
  - (ii) These results were audited by the Statutory Auditors of the company;
  - (iii) Subsequently duly audited Balance Sheet of the results were placed before the Audit Committee, whose chairman was a CA, for its recommendation to the Board;
  - (iv) Duly approved and vetted results were placed before the Board for its approval along with Certificate duly signed by the Managing Director and Chief Financial Officer stating that these results give true and fair view of the affairs of the company and nothing is concealed;
  - (v) After adoption of these results, the same were intimated to both BSE and NSE and the results were published in newspapers;
  - (vi) The company was particular in filing returns/forms/balance sheets within time situated under the relevant acts.
- d) He took utmost care while discharging his duties as Assistant Company Secretary. He had no reasonable apprehension to believe that any financial statements were false or misleading.
- e) He relied upon the certification/recommendation made by Statutory Auditors, Managing Director and Chief Financial Officer and Audit Committee and it was only thereafter, that the Balance Sheet for FY 2010-11 was signed.
- f) He resigned on May 15, 2013 and thereafter he was not connected to the company either directly or indirectly.



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3. The Board of Discipline while considering the prima facie opinion dated 23rd September, 2017 of the Director (Discipline) that the Respondents 1 & 2 are 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980, noted the following observations of the Director (Discipline) in this information received from the SEBI: -

- a) Perusal of the information received from SEBI reveals that the primary allegation is that the company has, during the period 2009-10 & 2010-11 engaged in manipulation of books of accounts by floating several paper entities to accommodate transfer entries and thus, inflating the sales and purchases through circular trading activities thereby misleading the investors by not providing a true and fair view of the finances of the company.
- b) The allegations against Respondent No. 1 and Respondent No. 2 are contained in the last para of the information which is reproduced below for ready reference:

*"In view of the above, it is observed that company and its directors has provided false and misleading financial statements for FY 2009-10 & 2010-11. S. D. Tole (Company Secretary during FY 2009-10) and Nikhil Kulkarni (Assistant Company Secretary during FY 2010-11) signed the Annual reports of the company for FY 2009-10 & 2010-11 respectively which were false and misleading"*

- c) On examination of the material on record, it is observed that both Respondent No. 1 and 2 were working as the Company Secretary and Assistant Company Secretary in the company during the relevant period. Respondent No. 1 has, in fact, dealt in detail with the duties and responsibilities carried out by him during the relevant period. Further, it is the submission of the respondents that a Balance Sheet is signed by a Company Secretary to confirm that the company has complied with all relevant provisions of applicable Acts and Rules and not as to the authenticity of the financial statements prepared by accounting team, authenticated by Audit Committee and approved by the Board in its meeting.
- d) Further, a perusal of the allegations leveled against the respondents reveals that no specific allegation has been leveled against the respondents which would warrant initiation of disciplinary proceedings against the respondents under the relevant provisions of The Company Secretaries Act, 1980.



*C. D. Manjiv*  
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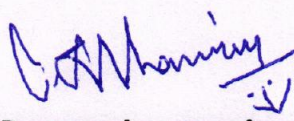
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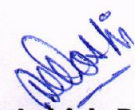


e) In view of Circular No.7/72 Dated 12th May, 1972 issued by the Ministry of Law Justice & Company Affairs (now MCA), the Respondent No. 1 and Respondent No. 2 cannot be held responsible for errors etc. in the balance sheet/books of accounts of the company just because they have signed the Balance Sheet of the company in their professional capacities as 'Company Secretary' and 'Assistant Company Secretary', respectively, of the company; as it is apparent from the records available that they are not charged with the responsibility of maintaining the accounts and also assisting the auditor at the time of auditing. However, both are responsible as 'officers in default' of the company under section 628 of the Companies Act, 1956.

4. The Board of Discipline, after confirming the written statement of Respondent No. 1 & 2 and 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 for the acts and/or omissions alleged by the Informant in view of the observations made by the Director (Discipline) in her prima-facie opinion. Accordingly, the Board has decided to close the matter with a copy of order to the parties.

  
CS Dinesh Chandra Arora  
Member

  
CS C Ramasubramaniam  
Member

  
CS Ashish Doshi  
Presiding Officer

