



MOMIN JURIS LAW

"Tailoring Secretarial and Compliance Services Seamlessly"

DUE DILIGENCE REGARDING RECEIPT OF SHARES SUBSCRIPTION AMOUNT

As per **Section 22 of the Company Secretaries Act, 1980**, the term "*professional and other misconduct*" includes any act or omission specified in the Schedules to the Act. However, this provision does not restrict or diminish the authority or responsibility of the **Director (Discipline)** under **Section 21(1)** to investigate the conduct of any member of the Institute under other circumstances.

When undertaking assignments related to **company incorporation, Company Secretaries in Practice** are expected to exercise due diligence by verifying and confirming the **receipt of share subscription money** in accordance with the **Memorandum of Association** of the proposed company.

Failure to exercise such diligence, or being **grossly negligent** in performing professional duties, may amount to **professional misconduct** under **Clause (7) of Part I of the Second Schedule** to the Company Secretaries Act, 1980.

CASE STUDY:

1. A complaint of professional or other misconduct was received against one Practicing Company Secretary (hereinafter referred to as 'the Respondent'). The Complainant has disputed certification of form INC- 20A of one (OPC) private limited company (hereinafter referred to as 'the company') by the Respondent and stated that the company is involved in a scam.
2. The Respondent has received Form INC-20A of the company from a Consultancy firm, which was signed digitally by the director of the company. There was an attachment with the signature of the director that the subscription money of Rs.10,000/- was received in cash. The Respondent has further stated that she directly or indirectly does not have any relation or knowledge with respect to the involvement of the said company in the scam.
3. The Complainant stated that on scrutiny of form INC- 20A, it is clearly visible that the subscriber has paid only Rs.10,000/- as subscription amount, but in SPICe Form, agreed for Rs.1,00,000/- (10,000 shares @ Rs.10/- each). As mentioned in the attachment to the form Rs.10,000/- was paid in cash, which cannot be treated as valid proof of payment for value of shares.
4. The Respondent denied the allegations and stated that Consultancy firm engaged in providing services related to incorporation of companies as well as compliances under the Companies Act, 2013. The Respondent used to get forms for certification from a Company Secretary working in the said firm and was under belief that it is a CS firm. After receipt of documents relating to the complaint, the Respondent enquired about the said firm and found that it is registered as a private limited company.

5. The Respondent has received the impugned INC 20A from the said consultants, and was informed that the sole subscriber of the company had agreed to subscribe Rs. 10,000/- as subscription money. SPICe form was not sent to the Respondent. The Respondent did not suspect any foul play and believed the information provided by the said Consultants. The Respondent checked the applicable provisions of the Companies Act, 2013 and found that there is no prohibition/ restriction for receiving the subscription money in cash. Since under the provisions of the Income Tax, a sum to the extent of Rs.10,000/- is allowed to be paid in cash, so the Respondent was under the Bonafide belief that subscription money upto Rs.10000/- could be paid in cash.
6. The Respondent has certified INC 20A and on the date of certification of the impugned form INC-20A, the Director was shown on MCA website and his Form DIR-12 for resignation was not filed with the Registrar of Companies till that date. On scrutiny of Form DIR-12, it is evident that the said Director digitally signed the form on 3rd June, 2021 and his resignation was effective from 2nd June, 2021.
7. The Complainant reiterated the allegations and stated that on scrutiny of INC 20A of the company it is clearly visible that subscriber has paid Rs.10000/- as subscription amount but as per Spice form agreed to pay Rs.100000/- (10000 shares at Rs.10/- each) and Rs.10000/- was paid in cash which cannot be treated as valid proof of payment for value of shares. The Respondent should have scrutinized the form before certification carefully.
8. The Respondent pleaded not guilty to the charges and stated to have missed verifying the subscription amount from the SPICe form and certified the form under Bonafide belief that the subscription amount is correct.
9. The Disciplinary Committee observed that the Respondent has not verified the subscription amount from Form INC-33 (SPICe+ MoA) which shows that subscriber has agreed to Rs.1,00,000/- (10000 shares at Rs.10/- each), but the company has declared receipt of Rs.10,000/- as subscription money on which the Respondent has relied and certified form INC 20A.
10. The Disciplinary Committee held the Respondent 'Guilty' of Professional Misconduct under Clause (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980. After giving an opportunity of being heard to the Respondent, the Disciplinary Committee passed an order of 'Reprimand' and Fine of '10000/- (Rupees Ten Thousand) under Section 21B (3) of the Company Secretaries Act, 1980.

