



BEFORE THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 120/2012

In the matter of complaint of professional or other misconduct filed by Shri P K Grover, Director, the ICSI against Shri Rakesh Kumar Srivastava, FCS - 5147.

Coram: Sudhir Babu C, Presiding Officer
Umesh H Ved, Member
Sutanu Sinha, Member

ORDER

1. The Board was apprised by the Director (Discipline) that on 3rd December, 2010 at 03:12 PM (IST) an e-mail was circulated by one 'John Smith' titling 'ICSI Elections, 2010 important information for Members'.
2. M/s. e-Minds Legal Consultants Pvt. Ltd., was mandated by the ICSI vide e-mail dated 3rd May, 2011 to investigate and identify the sender of the alleged e-mail in the fictitious name of 'John Smith'. M/s. e-Minds Legal Consultants Pvt. Ltd., submitted their Report dated 13th January, 2012 to the ICSI. The Council of the ICSI in its 205th meeting held on 18th January, 2012 taken note of the Report dated 13th January, 2012 of M/s. e-Minds Legal Consultants Pvt. Ltd., on cyber investigation of mail received from 'John Smith' and after considering the same, decided to send the Report to the Director (Discipline) for initiating the action under the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007, against the member(s) whose identity has been established and find mentioned in the Report. The Council authorised Mr. P K Grover, Director (Administration) to send the matter to the Director (Discipline).
3. Mr. P K Grover vide his letter dated 9th February, 2012 had forwarded the said Report to the Director (Discipline). Pursuant to Rule 7 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Directorate vide letter dated 10th February, 2012 asked Mr. P K Grover to file the





complaint in Form-I. Mr. P K Grover vide letter dated 14th February, 2012 filed the complaint in Form I.

4. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was forwarded to the Respondent vide letter dated 15th February, 2012 calling upon him to submit the written statement followed by a reminder dated 12th March, 2012. The Respondent vide letter dated 9th March, 2012 submitted the written statement. A copy of the written statement was forwarded to the Complainant vide letter dated 14th March, 2012 asking him to submit the rejoinder. A letter dated 15th March, 2012 received from the Respondent informing that he has dispatched the written statement on 9th March, 2012. The Complainant submitted the rejoinder dated 27th March, 2012.
5. Pursuant to Rule 9 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and formed his *prima-facie* opinion dated 20th June, 2012 which stated as under:

"On 3rd December, 2010 at 03:12 PM (IST) an e-mail was circulated by one 'John Smith' titling 'ICSI Elections, 2010 important information for Members'.

The Complainant has alleged that the said e-mail was sent by the person in order to exercise undue influence in the minds of the potential voters of the ICSI Council Elections, 2010.

The Respondent in his defence has *inter-alia* stated that there is no evidence which suggests that he is the creator of the said e-mail.

It is observed that the said e-mail was circulated on 3rd December, 2010 containing the issues related to the ICSI Council Elections, 2010 which were scheduled on 10-11th December, 2010. The Report dated 13th January, 2012 of M/s. e-Minds Legal noticeably affirms with reasonable certainty that the person responsible for creating the said e-mail is Shri Rakesh Kumar Srivastava, FCS – 5147 working with M/s. Laxmi Contsyn Limited., 19/X-1, Krishnapuram, G T Road, Kanpur, UP – 208 007 who has been a contesting candidate in the Central Council Elections, 2010. The Report also affirms that the said e-mail was circulated with a possible motive to influence the decision of the members





with regard to their vote and with an attempt to hinder the smooth conduct of the election process. The names of Mr. Nesar Ahmad and Mr. P K Mittal, who were also the contesting candidates for the Central Council Elections, 2010, were also mentioned in the said e-mail. The Report also states that the creator of the e-mail has used fictitious name and e-mail id as 'John Smith' instead of disclosing his true identity.

The Report dated 13th January, 2012 of M/s. e-Minds Legal and the defenses advanced by the Respondent in the written statement lead to unerringly inescapable conclusion that the Respondent is the creator of the said e-mail in the name and style of - john smith johnsr2400@gmail.com. The said conduct of the Respondent is found to have contravened the provisions contained in Rule 42(4)(ii), (iii), (viii) and (xii) of the Company Secretaries (Election to the Council) Rules, 2006, which are re-produced hereunder:

“42(4)(ii)

undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or any other person, with his connivance, with the free exercise of any electoral right.

42(4)(iii)

The publication by a candidate or by any other person, with his connivance, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election;

42(4)(viii)

Non-compliance with any of the directives or circulars or instructions issued by the Returning Officer under these Rules in any matter relating to elections;

42(4)(xii)

Contravention or misuse of any of the provisions of these Rules or making of any false statement knowing it to be false or without knowing it to be true, while complying with any of the provisions of these Rules.”





Rule 42 (1) of the Company Secretaries (Election to the Council) Rules, 2006 provides as under:

"A member shall be deemed to have brought disrepute to the Council under Item 2 of Part IV of the First Schedule of the Act if, in connection with an election to the Council of the Institute, he is found to have contravened the provisions of sub-rule (2) or all or any of the clauses of sub-rule (3) or sub-rule (4) of this Rule. "

Item (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 provides as under:

"PART IV

Other misconduct in relation to members of the Institute generally

A member of the institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

(1)....

(2) In the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work."

In view of the foregoing, the Respondent is *prima-facie* 'Guilty' of contravening Rule 42(4) (ii), (iii), (viii) and (xii) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980."

6. The Board at its meeting on 30th June, 2012 considered the *prima-facie* opinion dated 20th June, 2012 of the Director (Discipline), as circulated amongst the members and, agreeing with the same, decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
7. Accordingly, the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent *vide* letter dated 11th July, 2012 asking him to submit the written statement to the *prima-facie*





opinion of the Director (Discipline) to the Disciplinary Directorate with a copy to the Complainant along with all supporting documents and list of witnesses, if any, latest by 25th July, 2012. The *prima-facie* opinion of the Director (Discipline) was also sent to the Complainant *vide* letter dated 11th July, 2012 asking him to submit the rejoinder to the written statement of the Respondent to the Disciplinary Directorate along with all supporting documents and list of witnesses, if any, latest by 30th July, 2012.

8. On his request, the Respondent was given extension of time to submit his written statement by 23rd August, 2012 in view of the illness / sad demise of his father. The Respondent *vide* letter dated 21st August, 2012 submitted the written statement.
9. The Board at its meeting held on 25th August, 2012 while taking note of the ATR of 38th meeting, considered the reply dated 21st August, 2012 of the Respondent and after discussion, advised the Disciplinary Directorate to examine the said reply and place the matter before the Board for its consideration.
10. The Board at its meeting held on 18th December, 2012 considered the comments of the Director (Discipline), issues raised by the Respondent in his reply dated 21st August, 2012, the *Prima-facie* opinion dated 20th June, 2012 of the Director (Discipline) and the material on record; decided to proceed further in the matter.
11. The Board while considering the material on record, decided to call upon the parties to appear before the Board at its meeting at Delhi.
12. Accordingly, *vide* letter dated 16th March, 2013 parties were called upon to appear before the Board of Discipline at its meeting on 4th April, 2013.
13. The Board at its meeting held on 4th April, 2013 noted that the Respondent *vide* letter dated 23rd March, 2013 requested the Board to adjourn the hearing for two months. Shri P K Grover, Director, ICSI, the Complainant appeared before the Board and made oral submissions.
14. The Board considered the letter dated 23rd March, 2013 received from the Respondent; the material on record and decided to provide last and final opportunity to the Respondent to appear before the Board at its meeting on 3rd May, 2013 at Delhi and thereafter, adjourned the matter.





15. Accordingly, vide letters dated 8th April, 2013 the parties were called upon to appear before the Board of Discipline on 3rd May, 2013.
16. The Complainant and the Respondent appeared before the Board of Discipline. The Complainant reiterated the allegations already made by him in the complaint. The Respondent denied the allegations levied against him and stated that the complaint is based on assumptions and presumptions. The Respondent further stated that the facts of the email are substantially the same as hosted by Shri N K Jain, the then Secretary & CEO, ICSI detailing about the writ petition pending before the High Court as on 3rd December, 2010. The Respondent further stated that on receipt of the instant complaint and on subsequent enquiry with the company he came to know that the email id johnsr2400@gmail.com was created somewhere in the year 2009. The Respondent further stated that M/s. e-Minds Legal Consultants Pvt. Ltd., did not conduct proper enquiry. The Respondent further stated that he does not know who has sent the alleged email and that he has not sent the alleged email.
17. The Board enquired from the Respondent as to whether he has filed any police complaint regarding the alleged email sent from the IP address of the company where he is working as Principal Officer. The Respondent replied that no action has been initiated by him and also stated that there are about 7000 employees working in the company and the said email was created around year 2009 for an employee namely John Smith who is not staying in Kanpur. The Respondent further stated that he does not have the password of the said email ID and also stated that he does not know how to operate the computer. In response to his statement, the Board said to the Respondent that even then he cannot disown the responsibility.
18. Further, the Board enquired from the Respondent as to whether he has doubt on any person for sending the alleged email. The Respondent submitted that he has no doubt on anyone. The Board then asked him as to whether he is aware that he being the Company Secretary is the Principal Officer of the company and coming within the purview of Section 5 of the Companies Act, 1956, i.e. an officer deemed to be in default. The Respondent did not give any logical or reasonable reply to the question raised by the Board. The Board informed the Respondent that the said e-mail was sent from the IP address of a computer of M/s. Lakshmi Cotsyn Ltd., 9/X-1, Krishnapuram, G





T Road, Kanpur, UP – 208 007 where you have been working as a Company Secretary-cum-Finance Controller. More so, you were one of the contesting candidates for the Central Council Election, 2010. The Board further emphasized that the Respondent cannot escape from the responsibility as the email was sent out to several members of the ICSI in order to exercise undue influence in the minds of the potential voters at the time of the elections. This email was sent with an attempt to hinder the smooth conduct of the election process and for the purpose of causing inconvenience or annoyance to the Institute, the Council Members as well as for misleading the recipients of the said email. The usage of fictitious name and email id as 'John Smith' instead of disclosing the true identity leads to the conclusion that the Respondent has done the same and this act of the Respondent, who happened to be a contesting candidate for the ICSI Central Council Election, 2010, is in violation of the Company Secretaries (Election to the Council) Rules, 2006.

19. The Board, thereafter considered the material on record and conveyed to the Respondent that he is 'Guilty' of contravening Rule 42(4)(ii),(iii),(viii) and (xii) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980. The Board also categorically emphasized that the Respondent did not take any step or filed a complaint with any authority regarding the said e-mail sent. Thereafter, the Board gave the Respondent an opportunity of hearing in terms of Section 21A (3) of the Company Secretaries Act, 1980 and asked him to state his point of rebuttal, if any and asked him to wait outside the proceeding room and the Board will call him after some time.
20. Thereafter, the Board deliberated on the matter and called the Respondent after some time. The Respondent appeared before the Board again and submitted that nothing was wrong in the said email and that he has talked to at least 10 members of Kanpur who have said that they will come to Delhi in his support. This statement of the Respondent brought displeasure to the Board and the Board informed the Respondent that he was before the Board of Discipline of the ICSI and he was taking the proceedings very lightly. The Board also asked the Respondent as to whether he is aware of the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Respondent stated that he does not know all these things and he also does not have time to attend these kinds of things as he





is very busy in his company and he has to go to Mumbai for the company's work.

21. The Board on 3rd May, 2013 considered the material on record; the submissions of the Respondent and in the totality of the issues involved in this matter, passed the following order against Shri Rakesh Kumar Srivastava (FCS-5147), the Respondent.

(a) Fine of Rs.25,000/- and removal of name of the Respondent from the Register of Members for a period of 30 days.

"On hearing the above order of the Board, the Respondent submitted that Rs.25,000/- or Rs.50,000/- is nothing for him or for his company but the punishment of removal of name is not acceptable to him and for this he will appeal before the Appellate Authority."

(b) The Board further decided that the order at (a) shall be effective after the expiry of 30 days of issue of this order.

(Sutanu Sinha)
Member

(Umesh H Ved)
Member

(Sudhir Babu C)
Presiding Officer

Date: 17th June, 2013

