



BEFORE THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC:NI/2010

The information received against Shri P. K. Mittal for contravention /non compliance of the Election Code of Conduct.

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

ORDER

1. The Institute had received an e-mail dated 19th November, 2010 from Shri Sushil Kumar Khemka forwarding therewith an email dated 19th November, 2010 received by him from Shri P K Mittal circulating his manifesto/circular outside his constituency i.e. NIRC.
2. Further, the Institute had also received an e-mail dated 24th November, 2010 from Shri S K Jain forwarding therewith an email dated 18th November, 2010 received by him from Shri P K Mittal circulating his manifesto/circular outside his constituency i.e. NIRC.
3. The Institute sought the comments from Shri P. K. Mittal *vide* letter dated 25th November, 2010. Shri P K Mittal in his reply dated 8th December, 2010 had submitted as under-

" In this connection, I wish to inform you that I have absolutely no intention or desire to circulate my manifesto to persons outside the territories of NIRC as otherwise it is of no benefit, in any manner, for my election to the Central Council. It is, however, humbly submitted that, my office staff, due to over sight, mailed a copy of Election Manifesto to a person outside NIRC, which was purely unintentional and was due to bona-fide mistake on his part.

2. I further wish to submit thereafter I have told my staff to be most cautious and careful in dispatching the Election Manifesto. The above was purely unintentional and bona-fide mistake and, therefore, may kindly be ignored. "

4. Sub-rule 3 of Rule 42 of the Company Secretaries (Election to the Council) Rules, 2006 (the Election Rules) provides as under:





- 5.) A manifesto or circular issued shall conform to the following requirements in the interest of maintaining dignity in the elections, namely:-
- (a).....
 - (b).....
 - (c).....
 - (d) the distribution of a manifesto or circular shall be restricted only to the members of the constituency concerned."
6. Further, sub-rule (1) of Rule 42 of the Election Rules provides that a member shall be deemed to have brought disrepute to the Council under Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980, 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 Rule 42 of the Election Rules.
7. Mr. S Kumar, the then Director (Discipline) was of the *prima-facie* view that-

".....It may however be mentioned that although, Shri P K Mittal cannot disown the responsibility cast on him under the Rules, however, the contention of Shri P K Mittal that he had absolutely no intention or desire to circulate his manifesto to person outside the territories of NIRC as otherwise it is of no benefit to him and the manifesto was circulated by any other person without his knowledge and direction, the contentions of Shri P K Mittal can be accepted in the present context.

In view of the foregoing, the Respondent is *prima facie* not guilty of violation of Clause (d) of sub-rule (3) of Rule 42 of the Rules."

8. The Board at its meeting held on 18th May, 2011 had considered the *prima-facie* opinion of Shri S Kumar, the then Director (Discipline) and had decided that the reply received from Shri P K Mittal be sent to Shri S K Jain and Shri Sushil Kumar Khemka for filing the rejoinders. The Board had further decided that the *prima-facie* opinion of the Director (Discipline) may be reviewed on the basis of the rejoinder received, if any, and the same may be placed at the subsequent meeting.
9. Accordingly, a copy of the reply received from Shri P K Mittal was sent to Shri S K Jain and Shri Shushil Kumar Khemka *vide* letters dated 20th May, 2011.
10. Shri S K Jain *vide* his letter dated 7th June, 2011 submitted his rejoinder. Shri Sushil Kumar Khemka *vide* his e-mail dated 9th June, 2011 sought some





clarifications which were provided to him vide e-mail dated 13th June, 2011.

11. The Board at its meeting held on 21st July, 2011 noted the supplementary note along with the amended *prima-facie* opinion dated 21st July, 2011 of Mr. S Kumar, the then Director (Discipline) after taking into consideration the rejoinder dated 7th June, 2011 of Shri S K Jain.
12. Shri S K Jain vide his e-mail dated 21st July, 2011 requested to grant 15 days time to submit his supplementary rejoinder which was granted by the Board. Accordingly, vide letter dated 22nd July, 2011, the decision of the Board was communicated to Shri S K Jain.
13. Shri Sushil Kumar Khemka vide e-mail dated 21st July, 2011 sought certain clarifications on the attachments of the letter dated 25th November, 2010 sent to Shri P K Mittal in the matter. Accordingly, a letter dated 27th July, 2011 was sent to Shri Sushil Kumar Khemka attaching therewith a copy of the letter dated 25th November, 2010 addressed to Shri P K Mittal along with all the annexures.
14. The Board took note of the e-mails dated 21st July, 2011 sent by the informants and supplementary note along with the *prima-facie* opinion of the then Director (Discipline) and after discussion, decided that an opportunity be given to the informants for making their submissions. Shri S K Jain vide letter dated 16th August, 2011 submitted his additional rejoinder. Shri Sushil Kumar Khemka vide e-mail dated 6th August, 2011 again sought some information which were provided to him vide letter dated 27th September, 2011.
15. Further, sub-rule (4) of Rule 5 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 reads as under:-

"(4) If the subject matter of a complaint is, in the opinion of the Director, substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take any of the following action, as the case may be,—

(a) if such a previous complaint is still under the examination of the Director, then the new complaint may be clubbed with the previous complaint and in such case the fact may be conveyed to the first complainant, new complainant and respondent respectively.



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[Signature]



(b) if *prima facie* opinion has been formed by the Director in such a previous complaint and the case is pending before the Board of Discipline or the Committee, then the Director shall bring the new complaint before the Board of Discipline or the Committee, as the case may be, and the latter shall either club the complaint with the previous complaint or close it or ask the Director to deal with it as a separate complaint, as it deems fit.

(c) if orders have already been passed by the Board of Discipline or the Committee on such a previous complaint, then the Director shall present the new complaint before the Board of Discipline for its closure: Provided that even in case where the new complaint is clubbed with a previous complaint under this sub-rule, only the first complainant would be the complainant for the purposes of investigation under these rules."

16. The Board at its meeting held on 4th October, 2011 considered the above and decided that since the subject matter of the information received from Shri S K Jain and Shri Sushil Kumar Khemka are substantially the same and the *prima-facie* opinion has been formed by the then Director (Discipline), both the information received in the matter, be clubbed. The Board also noted the e-mail dated 6th August, 2011 of Shri Sushil Kumar Khemka and the letter dated 27th September, 2011 of the Institute to Shri Sushil Kumar Khemka and decided that Shri Sushil Kumar Khemka be provided with a copy of the e-mail dated 19th November, 2010 sent by Shri P K Mittal to him and others, with a copy to Shri P K Mittal asking them to submit their comments within 10 days of receipt of communication from the Institute.
17. Accordingly, letter dated 5th October, 2011 was sent to Shri Sushil Kumar Khemka asking him to file the rejoinder within 10 days of the issue of the letter. A copy of the letter was also sent to Shri P K Mittal with a request to submit his comments on his e-mail dated 19th November, 2010 within 10 days of the issue of the letter.
18. Shri Sushil Kumar Khemka vide e-mail dated 21st October, 2011 addressed to Shri N K Jain had raised certain queries in response to the letter dated 27th September, 2011 and 5th October, 2011.
19. Shri P K Mittal vide his letter dated 6th November, 2011 *inter-alia* stated that he had no intention or desire to circulate his election manifesto to the persons located outside the territory of NIRC during the elections in 2010. He stated that he had requested his Assistant to send the manifesto to the members belonging to the territory of NIRC only, however, due to his misunderstanding he had mailed election manifesto to few persons





outside the territory of NIRC to whom generally the newsletter of his law firm were being sent. He further submitted that upon realising his mistake he did not proceed to send the election manifesto to other persons. He further submitted that the Assistant was not authorised to send the election manifesto to any person outside the territory of NIRC but he urged that since, the Assistant had exceeded his authority; it was not binding to him. Shri P K Mittal had also cited the following Judgements:

- (i) Ramkrishna Raja Vs Registrar of Companies, 2005 (123) Company cases 319 (Madras) -Judgement of Hon'ble Madras High Court

Para 12 of the above Judgement states as under –

'The Principal cannot be held responsible for every act done by an agent'.

- (ii) Patangrao Kadam Vs Prithvi Raj Sayaji Rao Yadav Deshmukh Manu/SC/0133/2001- Judgement of Hon'ble Supreme Court

Para 15 of the above Judgement states as under –

'It is the general rule that the act of an agent does not bind his principal unless it is within the authority given to him. An agent is having an authority to do every lawful thing which is necessary to do an act authorised, but in law an agent can neither be authorised to do an unlawful thing / act nor an agent can be permitted to do so.'

20. Shri P K Mittal further submitted that dispatch of election manifesto to a few persons outside the territory of NIRC in no way enhanced his election prospects and at the same time it did not cause any injury to the election prospect of any other members. He further stated that he has not committed violation of any Code of Conduct.
21. A copy of the additional rejoinder dated 16th August, 2011 submitted by Shri S K Jain was forwarded to Shri P K Mittal vide letter dated 8th November, 2011 with a request to submit his comments within seven days of the issue of the letter.
22. Shri P K Mittal vide his letter dated 16th November, 2011 referred the additional rejoinder dated 16th August, 2011 of Shri S K Jain and has stated that his reply dated 6th November, 2011 might be read as part of reply and that it was incorrect to allege that any false statement has been made by him in his reply. He also stated that he has not violated the code of conduct or the election rules.





23. The Board at its meeting held on 30th December, 2011 considered the matter and felt that since the pleadings stand completed in the matter of complaint of Shri S K Jain, the Director (Discipline) may submit his *prima-facie* opinion for consideration of the Board based on the material available on record. As regards the complaint of Shri Sushil Kumar Khemka, the Board felt that sufficient opportunities have been provided and both the complaints having already been clubbed, the Director (Discipline) might also consider the material available on record so far provided by Shri Sushil Kumar Khemka while forming the *prima-facie* opinion. The Board further directed that before proceeding further in the matter, the provisions contained in Rule 7 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 be complied with.

24. Accordingly, in compliance to Rule 7 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, Shri Sushil Kumar Khemka and Shri S K Jain were asked to file the complaint in Form I together with the prescribed fee vide letters dated 16th January, 2012. However, no reply was received from either of them.
25. Pursuant to the direction of the Board of Discipline on 30th December, 2011, the Director (Discipline) examined the matter further and placed his *prima-facie* opinion dated 29th June, 2012 wherein he *inter-alia* stated as under:

"Rule 42 of the Company Secretaries (Election to the Council) Rules, 2006 specifically provides for disciplinary action against member in connection with Conduct of Election. Rule 42(3) (d) of the Company Secretaries (Election to the Council) Rules, 2006 provides that the distribution of a Manifesto or Circular shall be restricted only to the members of the constituency concerned.

*It is observed that Shri P K Mittal had circulated his Election Manifesto for the ICSI Election 2010, not once but twice to several persons outside his constituency i.e. the NIRC on 18th November, 2010 and 19th November, 2010; hence, he is *prima-facie* guilty of contravening Rule 42(3) (d) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980"*

26. The Board while considering the *prima-facie* opinion dated 29th June, 2012 of the Director (Discipline) and other material on record enquired from the Director (Discipline) as to whether the allegation of Shri S K Jain in





This additional rejoinder dated 16th August, 2011 regarding usage of the ICSI logo and the name of the Institute of Company Secretaries of India by Shri P K Mittal at number of places, in his manifesto is in contravention of the Company Secretaries (Election to the Council) Rules, 2006 and the Code of Conduct for the ICSI - Elections.

27. The Director (Discipline) after examining, placed before the Board his supplementary *prima facie* opinion dated 30th June, 2012 which *inter-alia* stated as under:

"Shri P K Mittal had circulated his election manifesto containing his photographs and the ICSI Logo in violation of the said directives/instructions issued by the Returning Officer. Hence, Shri P K Mittal is also *prima-facie* guilty of contravening Rule 42(4) (viii) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980."

28. The Board of Discipline agreed with the *prima-facie* opinion dated 29th June, 2012 and the supplementary *prima-facie* opinion dated 30th June, 2012 of the Director (Discipline) and 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.

29. Accordingly, the *prima-facie* opinion dated 29th June, 2012 along with the supplementary *prima-facie* opinion dated 30th June, 2012 of the Director (Discipline) was sent to the Respondent *vide* letter dated 13th September, 2012 asking him to submit the written statement to the *prima-facie* opinion of the Director (Discipline) latest by 26th September, 2012.

30. The Respondent *vide* letter dated 1st October, 2012 requested for extension of time for four weeks up to 25th October, 2012, which was granted by the Board and accordingly he was communicated *vide* letter dated 11th October, 2012.

31. The Respondent *vide* letter dated 16th October, 2012 wrote that he had received the letter dated 13th September, 2012 on 15th September, 2012. He in the said letter stated that-

'Kindly refer to your letter 13th September, 2012 received by me on 15.09.2012 and giving a time of 26th September, 2012 and thereafter my letter dated 1.10.2012 seeking one month time.

2. From the papers supplied to me, however, I find that neither the Order Sheet whereon the Board of Discipline has formed an Opinion





nor the copy of the Opinion/Order duly signed by all the learned members has been supplied.

3. The above material is absolutely necessary for me to send my Written Statement and to take further action.
 4. On receipt of the above information/documents, I will submit my Written Statement within four weeks.'
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32. The above letter was brought to the notice of the members of the Board of Discipline. A letter dated 3rd December, 2012 was sent to the Respondent apprising him about the relevant provisions of the law for the extension of time.
 33. The Board of Discipline at its meeting held on 18th December, 2012, while taking note of the ATR, had noted that a document titled as 'Order under Rule 9 of the Company Secretaries (Procedure of Investigation of Professional and other misconduct and conduct of Cases) Rules, 2007 in the matter of information received from Shri S K Jain (ACS-1367) and Shri Sushil Kumar Khemka (FCS-3313) against Shri Pradeep Kumar Mittal (FCS-2216)' has been submitted by Shri N K Jain, Secretary & CEO- Member, Board of Discipline to the Disciplinary Directorate on 17th December, 2012. The Board also noted that the matter was placed at item No.9 of the Agenda. The Board on 18th December, 2012 adjourned the matter.
 34. The Board of Discipline at its meeting held on 26th February, 2013 discussed the matter at length and the document dated 17th December, 2012 submitted by Shri N K Jain, the then Secretary & CEO and member of the Board of Discipline. The Board went through the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of Cases) Rules, 2007 and found that there is no provision which warrants a member of the Board to issue such document. The Board presumed that the aforesaid note of Shri N K Jain is a dissent note. The Board while considering the material on record, decided to call upon Shri P K Mittal to appear before the Board of Discipline at its meeting at Delhi.
 35. Accordingly, vide letter dated 16th March, 2013 Shri P K Mittal was called upon to appear before the Board of Discipline.
 36. Shri P K Mittal did not appear before the Board of Discipline and instead vide letter dated 2nd April, 2013 he *inter-alia* requested to provide a copy of the Order sheet whereon the Board of Discipline has formed an opinion and the copy of the opinion/ order duly signed by all the members of the Board. He also stated that after the receipt of the copy of the aforesaid documents, the written statement / reply will be filed and further stated that the stage for personal hearing has not yet arisen.





37. The Board of Discipline at its meeting held on 4th April, 2013 considered the letter dated 2nd April, 2013 received from the Respondent; the material on record; 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 and decided to provide last and final opportunity to Shri P K Mittal to appear before the Board of Discipline at its meeting scheduled to be held on Friday, the 3rd May, 2013 at Delhi and thereafter, adjourned the matter.
38. Accordingly, *vide* letter dated 8th April, 2013 Shri P K Mittal was called upon to appear before the Board of Discipline on 3rd May, 2013.
39. Shri P K Mittal did not appear before the Board of Discipline and instead requested for adjournment *vide* his letter dated 1st May, 2013 (received in the Institute on 2nd May, 2013) for a period of two weeks. Shri P K Mittal has also stated in the said letter that the written statement is enclosed separately.
40. The Board of Discipline at its meeting held on 3rd May, 2013 took note of the letter dated 1st May, 2013 received from Shri P K Mittal. The Board recalled that Shri P K Mittal did not file his written statement within the time specified for filing the written statement. The Board after considering the material on record and after deliberations decided to take on record the said letter of Shri P K Mittal as his written arguments as he did not appear in person or through his authorised representative before the Board in spite of giving the opportunities of hearing on 4th April, 2013 and 3rd May, 2013. The Notices dated 16th March, 2013 and 8th April, 2013 issued to Shri P K Mittal stated that failure on the part of the Respondent to appear before the Board, the Board shall proceed *ex-parte*.
41. The Board of Discipline gave benefit of doubt to Shri P K Mittal on the circulation of his election manifesto *vide* e-mails outside his constituency i.e. NIRC on 18th November, 2010 and 19th November, 2010 as Shri P K Mittal has stated that the said e-mails were sent by his office staff without his authority. However, the election manifesto circulated by Shri P K Mittal contained his photographs and the ICSI logo in violation of the directives /instructions issued by the Returning Officer which contravened Rule 42(4)(viii) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980.
42. The Board of Discipline observed that Shri P K Mittal *vide* his letter dated 16th November, 2011, in response to the letter dated 8th November, 2011 in which he was asked to submit his comments on the additional rejoinder



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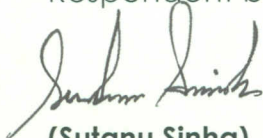


dated 16th August, 2011 received from Shri S K Jain has *inter-alia* stated as under-

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2. At the outset, it is submitted that the reply dated 06.11.2011 already submitted may kindly be read as part of reply to this also. It is wholly incorrect to allege that any false statement has been made in my reply. It is also wholly incorrect to allege that any perjury has been committed by me. It is retreated once again that I have not committed any violation of Code of Conduct for Election/Rules."

43. The Board of Discipline observed that Shri P K Mittal has requested for adjournments twice just before the meetings.
44. The Board on 3rd May, 2013 considered the material on record; nature of issues involved and in totality of the circumstances of this case; decided to proceed *ex-parte*. Thereafter, the Board of Discipline concluded that Shri P K Mittal is 'Guilty' of contravening Rule 42(4) (viii) of the Company Secretaries (Election to the Council) Rules, 2006 read with the Company Secretaries Act, 1980 for circulation of the election manifesto which contained his photographs and the ICSI logo which is in violation of the directives /instructions issued by the Returning Officer.
45. The Board of Discipline decided to give an opportunity of being heard in terms of Section 21A (3) of the Company Secretaries Act, 1980 to the Respondent before passing any order.


(Sutanu Sinha)
Member


(Umesh H Ved)
Member


(Sudhir Babu C)
Presiding Officer

Date: 17th June, 2013

