

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/245/2014

Order reserved on: 27th February, 2017

Order issued on : 8th April, 2017

Mr. Vikram Bakshi

.....Complainant

Vs

Mr. Devinder Kumar Jain, ACS-14674

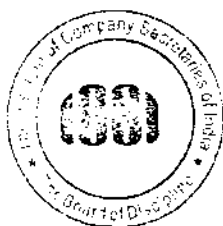
..... Respondent

Present:

Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder and other material on record and observed that there are disputes in the management of M/s. Connaught Plaza Restaurants Pvt. Ltd. and the Respondent was the Company Secretary of the Company.
2. The Board of Discipline considered and agreed with the *prima-facie* opinion dated 21st December, 2016 of the Director (Discipline) in the complaint of professional or other misconduct filed by Mr. Vikram Bakshi against Mr. Devinder Kumar Jain, ACS-14674 that the Respondent is "Not Guilty" of Professional or Other Misconduct under the Company Secretaries Act, 1980 on the reasons given below:
 - (i) The Respondent has signed Form 32 pertaining to change in designation of the Complainant on 27th August, 2013 reflecting change in designation of the Complainant from Managing Director to Director of the company, without the benefit of any approved Board Minutes of the purported Board Meeting dated 6th August, 2013. It may be mentioned that the Respondent has signed Form 32 stating that the Complainant ceased to be Managing Director with efflux of time as he was not re-appointed in the Board Meeting held on 6th August, 2013. In this regard, it may be mentioned that filing Form 32 was in no way unlawful, as it merely reflected a change in status of the Complainant, which had happened by the efflux of time. In the instant case the complainant ceased to be Managing



Director of the company on 17th July, 2013, in accordance with the Agreement dated 11th August, 2011. It is the duty of the Company Secretary of a company in law to make the requisite form filings within 30 days of a change in status.

- (ii) According to the definition of section 2(26) of the Companies Act 1956, a Managing Director must be a director of the company. It is, however, true that a Managing Director ceases to remain in the position of Managing Director when his agreement expires or if he resigns from this position but he continues to be an ordinary director. Hence, the very interpretation of the definition of Managing Director reflects that Managing director would continue as a director with the expiry of his position as a managing director. Therefore, when the term of a Managing Director expires, he cannot continue as a managing director without being reappointed (*Sishu Ranjan Dutta v. Bhola Nath Paper House Ltd. (1983)*).
- (iii) There is no provision in the Companies Act 1956 which states that approval of the Board is required for cessation of his office which is deemed to be vacated after the expiry of the term as mentioned in the agreement. Hence an intimation to Registrar of Companies for change in the position of the complainant from Managing director to director is by virtue of the expiry clause in the Managing Director agreement dated 11th October 2011 and in accordance with section 303(2) of the Companies act 1956 which mandates a return to be filed by the Company to Registrar of companies within a period of 30 days for any change among the directors, managing directors, managing agents, secretaries and treasurers specifying the date of change. In this case, the agreement dated 11th October, 2011 makes it clear that as on 17th July, 2013 the complainant would have ceased to be the Managing Director in the absence of any fresh evidence of reappointment presented before him, such as, an extension of the agreement dated 11th October, 2011. The filing of the said Form 32 was in no way illegal, as it merely reflected a change in status of the Complainant, which had happened by the efflux of time.
- (iv) The merits and demerits with regard to the dispute between the two parties have been agitated on various forums. The issue before the Board of Discipline was limited only to the specific issues of alleged negligence by the Respondent while certifying form 32 which effected the change of status of the complainant from Managing Director to Director of the said Company. Hence, the act of the Respondent CS intimating the actual position to Registrar does not tantamount to professional misconduct or indiscipline. It is also a matter of record that the Respondent Company Secretary in the course of these duties was specifically granted the authority by the



[Handwritten signatures and initials]

Board of Directors of the Company on 29th September, 2008 to sign, certify and file various forms and documents with the ROC and other regulatory authorities. It is pertinent to mention that Secretarial standards as referred to by the Complainant and Respondent are effective from 1st July 2015 and was inapplicable in FY 2013 and 2014 and hence its reference is irrelevant.

- (v) The Respondent had sent an email to the employees of the Company wrongly interpreting Holding and subsidiary company as per section 2(87) of the Companies Act 2013 and stating that M/s. Connaught Plaza Restaurants Pvt. Ltd., has become a subsidiary of McDonalds India Pvt. Ltd., (MIPL) which was totally uncalled for. The Respondent should have taken up the matter first with the Board of the company rather than dispatching emails to employees about the new provision of law. However incorrect interpretation due to non-clarification per se does not amount to professional misconduct provided such interpretation does not cause loss or disrepute to the Company Management and is proven.
- (vi) The Respondent was also alleged of non-inclusion of non-executive director in compounding application filed before the Hon'ble company law Board. It appears that draft of the application, with suggested changes was circulated by him vide email dated 25th September, 2012 to the Complainant with a copy to Mr. P Nagesh, Lawyer, who had been advising the Complainant throughout. This indicates clearly that the Complainant was fully in agreement with the plan to file the compounding application with the above parties. More so, the application was filed in consultation with the lawyers, hence the Respondent could not be reasonably held liable for this allegation.

3. The Board of Discipline after considering the aforesaid observations, material on record and all the facts and circumstances of the case held the Respondent "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

