

**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/267/2014

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 basis of observations given below:
 - (i) The issue before the Board of Discipline was the negligence by the Respondent while certifying Form 32 which effected the change of status of the complainant from Managing Director to Director of the Company. As a Company Secretary, the Respondent is under obligation under section 303 of the Companies Act, 1956 to bring to the notice of Registrar of Companies, any change in the status of the Directors of a company. **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. Hence, the**

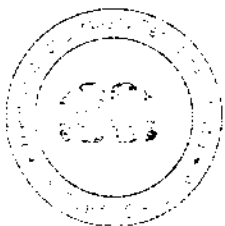



C. D. Manning
SI


ACD

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 his duties was specifically granted the authority by the 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.

- (ii) The Respondent apparently had appointed M/s Deepak Sabharwal & Associates as a legal retainer. **The Respondent has placed on record facts and enumerated the details of processes followed by him in appointment of legal Retainers including conducting of due diligence. However variation if any, to the procedure for appointment of a Vendor or a Legal Retainer cannot tantamount to have brought disrepute to the profession or to the Institute. It may be dealt by the Company according to its policies.**
- (iii) **That by not mentioning the profile as Company Secretary on a website i.e. LinkedIn, but referring his designation as "Head Legal and Secretarial", does not tantamount to have brought disrepute to the profession or to the Institute and is not a violation of section 7 of the Company Secretaries Act 1980.**
- (iv) **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., had 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.**
- (v) **Pertaining to allegation for non-inclusion of non-executive director in compounding application filed before the hon'ble company law Board, it however 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 on the lawyers,**



C. M. Mammayy

Alad

hence the Respondent could not be reasonably held liable for this allegation.

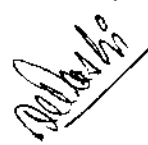
3. The Board of Discipline after the aforesaid observations, material on record and all the facts and circumstances of the case held the Respondent "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Ashish Doshi
Presiding Officer

