

**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/293/2015**

Order reserved on: 27<sup>th</sup> February, 2017

Order issued on : 8<sup>th</sup> April, 2017

**Mr. Suhas P K, FCS-6082**

**.....Complainant**

**Vs**

**Mr. Murali Kanniyath, FCS-6916 (CP No. 7543)**

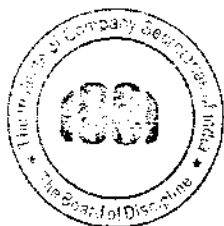
**..... Respondent**

**Present:**

**Director (Discipline)**

**FINAL ORDER**

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion and reinvestigation report of the Director (Discipline).
2. The Board of Discipline noted as under:
  - (i) That the Complainant has *inter-alia* alleged that the Respondent has sent an unsigned intimation letter to the Complainant with regard to taking up the Compliance Certificate work of M/s. Arogya Holistic Ayurvedic Medicare and Resort Ltd. and the Respondent certified and filed Form 32 and Form 5 pertaining to M/s. Arogya Holistic Ayurvedic Medicare and Resort Ltd., without prior intimation to him.
  - (ii) The Respondent in his written statement to the complaint stated that since he has not done any work related to issuance of the Compliance Certificate pertaining to M/s. Arogya Holistic Ayurvedic Medicare and Resource Ltd., hence no question of violation of Clause (8), Part I of the First Schedule to the Company Secretaries Act, 1980 ('the Act') arises and thus the allegations do not stand any ground. As regards allegation raised by the Complainant that his payment was pending with M/s. Arogya Holistic Ayurvedic Medicare and Resorts Ltd., the

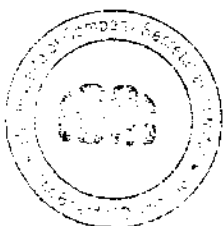






Respondent stated that he has no responsibility to collect the payment for the work undertaken by another CS. However, as a matter of Professional courtesy, he had communicated the same to the Chairman of M/s. Arogya Holistic Ayurvedic Medicare and Resorts Ltd.

3. The Board of Discipline at its meeting held on 5<sup>th</sup> November, 2015 considered the prima-facie opinion of the Director (Discipline) dated 5<sup>th</sup> August, 2015 that the Respondent is *prima-facie* not guilty of professional or other misconduct under the Company Secretaries Act, 1980 as per Guidance Note No. 4.9.13 of the "Guidance Note on Code of Conduct for Company Secretaries (Third Edition October 2011)", it is not mandatory (though desirable) to send a prior written communication to the earlier incumbent with regard to certifying e-forms for various companies. The Board of Discipline advised the Director (Discipline) to investigate the matter further; and if needed, to summon and hear the parties and witnesses related to the matter.
4. The Director (Discipline) after further investigating the case reiterates the earlier opinion in her Further Investigation Report dated 18<sup>th</sup> February, 2017 that the Respondent is *prima-facie* not guilty of professional misconduct under Item (8) of Part I to First Schedule to the Company Secretaries Act, 1980 as sending a prior communication arises only in relation to exclusive area of practice of PCS under the Companies Act, 1956/ 2013.
5. The Board of Discipline observed the following: -
  - the Respondent has admitted that he had certified and filed Form 32 and Form 5 pertaining to M/s. Arogya Holistic Ayurvedic Medicare and Resort Ltd., without prior intimation to the Complainant, as he was not under obligation to send prior intimation to the Complainant before the said certification.
  - The Board of Discipline at its meeting held on 13<sup>th</sup> October 2016 clarified that the need for sending a prior communication arises only in relation to exclusive area of practice of PCS under the Companies Act, 1956/ 2013 and accordingly the term "accepting a position of Company Secretary" as laid down under Clause (8) of Part I to First Schedule of the Company Secretaries Act, 1980 applies only in such exclusive areas of practice.
  - The certification of Form 32 and Form 5 were not in the exclusive domain of the Company Secretaries.

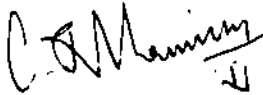


*C. B. Mani*

*ABC*

6. The Board of Discipline at its meeting held on 27<sup>th</sup> February, 2017 considered the further *Investigation Report of the Director (Discipline)* dated 18<sup>th</sup> February, 2017 and agreed to the same.
  
7. The Board of Discipline after considering the aforesaid observations, material on record, prima-facie opinion and reinvestigation report of the Director (Discipline) and all the facts and circumstances of the case, agreed to the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under Clause (8) of Part I to First Schedule of the Company Secretaries Act, 1980.

  
CS Dinesh Chandra Arora  
Member

  
CS C Ramasubramaniam  
Member

  
CS Ashish Doshi  
Presiding Officer

