

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC/141/2012

In the matter of complainant of professional misconduct filed by filed by M/s. Lakshmi Cement and Ceramics Industries Limited against Mr. G. Nagaraju, FCS-6924 (CP No. 4025)

Date of decision: 5th September, 2014

Coram: Mr. P K Mittal, Presiding Officer
Mr. Anil Murarka, Member
Mr. Sutqnu Sinha, Member

ORDER

1. A complaint dated 25th May, 2012 in Form I was filed by M/s. Lakshmi Cement and Ceramics Industries Ltd., (hereinafter referred to as the 'Complainant') against Mr. G. Nagaraju, FCS-6924 (CP No. 4025) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent has illegally and fraudulently certified and uploaded two Form 32 of M/s. Lakshmi Cement and Ceramic Industries Limited viz. pertaining to the (i) appointment of Mr. Medistty Srinivasaiah as director of the company to fill up the casual vacancy and has been shown as Promoter, Non-Executive Director of M/s. Lakshmi Cement and Ceramic Industries Limited and cessation of Mr. Seshadri Gundanna as director of the company w.e.f. 23rd August, 2010 and (ii) cessation of Mr. Sanjeev Ramesh Khandelwal and Mr. Sandeep Pawar as directors of the company w.e.f. 30th September, 2009.
2. Pursuant to sub-rule (3) of rule 8 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a copy of complaint was sent to the Respondent *vide* letter dated 15th June, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 6th July, 2012 wherein he has denied all the averments made by the Complainant and stated that he had verified and certified the alleged e-forms Forms 32 based on the records of the company provided to him at the time of certifying these forms.
3. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 11th July, 2012. The Complainant submitted the rejoinder dated 30th July, 2012 wherein the



Sutqnu Sinha

G. Nagaraju

Complainant has *inter-alia* stated that the averments made by the Respondent are devoid of any material and are too general to make any comment. He further stated that the complaint against the Respondent has been filed on the basis of records and documents available with the company and each allegation made in the complaint against the Respondent is supported by material evidence.

4. A letter dated 13th August, 2012 received from Mr. B. Ramaswamy. The Respondent *vide* letter dated 9th July, 2013 was asked to submit copies of all the documents relied upon by him while certifying the alleged forms. He *vide* letter dated 23rd July, 2013 submitted the copies of the following documents:

- (i) Consent letter dated 23rd August, 2010 of Mr. Medistty Srinivasaiah to act as a director of the company.
- (ii) Resignation letter dated 23rd August, 2010 of Mr. Seshadri Gundanna from the directorship of the company.
- (iii) Minutes of the meeting of the Board of Directors of the company held on 23rd August, 2010.
- (iv) Notice dated 7th August, 2009 for the AGM of the company on 30th September, 2009.
- (v) Minutes of the AGM of the company held on 30th September, 2009.
- (vi) Minutes of the meeting of the Board of Directors of the company held on 12th May, 2009.
- (vii) Minutes of the meeting of the Board of Directors of the company held on 7th August, 20

5. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, observed that it is apparent that there are management disputes in M/s. Lakshmi Cement and Ceramic Industries Limited., and the proceedings are pending before ROC and Hon'ble High Court of Karnataka. The Board of Directors appoints additional directors and those directors hold office only up to the date of the next AGM of the company as per Section 260 of the Companies Act, 1956. Accordingly, the additional director appointed by the Board ceases to hold office on the date of AGM held next after the date of his appointment as additional director. Further, as per Section 166 of the Companies Act, 1956, the time limit has been fixed for holding AGM. Accordingly, if in any year an AGM has not been held within the prescribed time limit, the additional director cannot continue in the office after the expiry of the statutory period laid down under the Companies Act, 1956 for holding the AGM. Further, the additional director vacates office either on the day on which the next AGM is held or on the last day on which such meeting



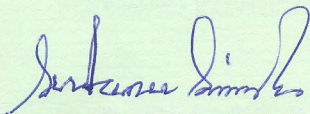
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should have been held in accordance with the provisions of the Companies Act, 1956, whichever is earlier. The Respondent has also stated that he had verified the books of accounts of the company and there were no entries in the books regarding receipt of deposit of Rs. 500/- on such account and also there were no proposals notifying the candidature of Mr. Sanjeev Khandelwal and Mr. Sandeep Pawar. The Complainant has not advanced any rebuttal on the same. Therefore, the Respondent is *prima-facie* not guilty of professional or other misconduct under the Company Secretaries Act, 1980.

6. The Board at its meeting on 5th September, 2014 considered the *prima-facie* opinion dated 21st August, 2014 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion. The Board observed that the Respondent had certified the alleged Forms 32 of M/s. Lakshmi Cement and Ceramic Industries Limited and uploaded the same based on the records of the company provided to him at the time of certifying. It is also noted that the Respondent had submitted the copies of documents which he relied to certify and upload the alleged Forms 32.
7. We conclude that Mr. G Nagaraju, FCS-6924 (CP No. 4025), the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980 and therefore close the matter.

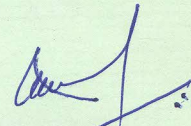
Accordingly, the complaint stands disposed-off.



(Sutanu Sinha)
Member



(Anil Murarka)
Member



(P. K. Mital)
Presiding Officer

Date: 19th Dec, 2014