

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC/148/2012

In the matter of complaint of professional or other misconduct filed by Shri Radhakishan Bhagwandas Ruchandani against Shri Dinesh V Gohil, FCS-3784 (CP No. 2206).

Date of decision: 5th September, 2014

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

ORDER

1. A complaint dated 7th July, 2012 in Form 'I' was filed by Shri Radhakishan Bhagwandas Ruchandani (hereinafter referred to as the 'Complainant') against Shri Dinesh V Gohil, FCS-3784 (CP No 2206) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that he is a director and shareholder of M/s. Bee Cee Lene Textile Mills Pvt. Ltd. The Complainant further stated that there are management disputes in the company and the management has categorically stated on affidavit before the CLB, Mumbai that they do not have any statutory records of the company for the period before 1st April, 2009 and no Board Meeting has taken place since last so many years. It is an admission on oath that there are no records maintained by the company for the period prior to 2009 by the management. The Complainant has *inter-alia* alleged that the Respondent had issued Compliance Certificate for the years 2006, 2007, 2008 and 2009 for M/s. Bee Cee Lene Textile Mills Pvt. Ltd, wherein he has certified that the company has maintained statutory records and the Board meetings have also taken place. The Complainant has further alleged that the Respondent has also not obtained No Objection Certificate from the previous incumbent.
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 the complaint was sent to the Respondent vide letter dated 11th July, 2012 calling upon him to submit the written statement followed by a reminder letter dated 6th August, 2012. The Respondent submitted the written statement dated 30th July, 2012.



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Dinesh V Gohil

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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 7th August, 2012 asking him to file the rejoinder. A letter dated 7th August, 2012 was received from the Complainant requesting to expedite the matter. The Complainant submitted his rejoinder dated 17th August, 2012. Further, a letter dated 26th September, 2012 was received from the Complainant requesting to expedite the matter. A letter dated 4th January, 2013 was sent to the Complainant seeking certain information. A letter dated 11th January, 2013 received from the Complainant providing the clarifications. A letter dated 15th April, 2013 was sent to the Respondent seeking certain clarifications. A letter dated 25th April, 2013 received from the Complainant. A letter dated 30th April, 2013 received from the Respondent providing certain clarifications. A letter dated 8th July, 2013 received from the Complainant seeking status of the complaint. The Complainant was provided with the status of the case vide letter dated 12th July, 2012. A letter dated 2nd September, 2013 was sent to the Complainant seeking the status of the Petition No. 46/2012 filed before the CLB, Mumbai Bench. However, no reply was received from the Complainant. A letter dated 11th September, 2013 received from the Complainant enclosing certain documents. A letter dated 8th October, 2013 was received from the Complainant along with order dated 16th September, 2013 passed by CLB, Mumbai Bench.

4. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement and the material on record and *prima-facie* observed that there is a dispute amongst the management of M/s. Bee Cee Lene Textile Mills Pvt. Ltd., and the records of the company prior to April, 2009 are not in the possession of the company. It is also observed that company has filed a petition before the CLB, Mumbai in 2012, wherein *inter-alia* it has been stated that the records of the company prior to April, 2009 are in the possession of the Complainant. Further on clarification, the Respondent has stated that the work pertaining to the issuance of the Compliance Certificate for the year 2005-06 was assigned to him by the Complainant which the Complainant is disputing. However, the Complainant has disputed his appointment. The Respondent has also not placed on record any document pertaining to his appointment or visits to the company. Hence, it is difficult to comment anything on the record of the company as the Compliance



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Certificate for the years 2006, 2007, 2008 and 2009 and the petition before the CLB, Mumbai has been filed in the year 2012 and the same is pending adjudication. It is also observed that the Respondent has claimed that he had intimated to the previous professional/incumbent i.e. Shri Dhiren R. Dave, PCS, before taking up the assignment of issuance of the Compliance Certificate but has not submitted any proof relating to sending such communication. Shri Dhiren R. Dave on the other hand has denied to have received any intimation from the Respondent.

Rajasthan High Court in J S Bhati vs. Council of ICAI (S. B. Civil Misc. Appeal No. 136 of 1973) has observed that mere obtaining a certificate of posting does not fulfill the requirements of Clause (8) of Part I as the presumption under section 114 of the Evidence Act that the letter in due course reached the addressee cannot be replaced that positive degree of proof of delivery of letter to the addressee which letters of the law in this case require. The Court further held that the communication which has been properly acknowledged by the addressee would be effective communication.

Therefore, the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (8) Part I of the First schedule of the Company Secretaries Act, 1980, as the expression 'communicating with him' requires more than mere intimating his intention by dispatching a letter. Further, mere posting the letter is not sufficient compliance but acknowledgement by the addressee of the same is essential. Further, in the Instant case Shri Dhiren R. Dave, the previous company secretary, has also denied to have received any intimation from the Respondent.

5. The Board of Discipline at its meeting on 4th May, 2014 had considered the *prima-facie* opinion dated 18th November, 2013 of the Director (Discipline); material on record agreed with the *prima-facie* opinion 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. Accordingly, a copy of the *prima-facie* opinion dated 18th November, 2013 of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 2nd December, 2013 calling upon them to submit the written statement and the rejoinder, respectively. The Respondent *vide* letter dated 14th December, 2013 submitted the written statement, a copy of which



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was sent to the Complainant *vide* letter dated 19th December, 2013 calling upon him to submit the rejoinder. The Complainant *vide* letter dated 24th December, 2013 submitted the rejoinder.

6. The Board of discipline at its meeting held on 9th January, 2014 had adjourned the matter for its next meeting. The Board again at its meeting on 4th May, 2014 considered the material on record and decided to call upon the parties and Shri Dhiren R Dave, PCS to appear before it. Accordingly, *vide* letters dated 19th May, 2014 they were called upon to appear before the Board on 23rd May, 2014.

7. The Board of Discipline at its meeting on 21st July, 2014 noted that postponement of the meeting was communicated to the parties *vide* letters dated 21st May, 2014. It also noted that *vide* letters dated 11th July, 2014, the Complainant, Respondent and Mr. Dhiren R Dave, PCS were again called to appear before it on 21st July, 2014. The Board also noted that the Respondent *vide* e-mail dated 18th July, 2014 has *inter-alia* informed that he is unable to attend the hearing 21st July, 2014 on medical grounds and requested to grant leave of absence. However, the Complainant appeared before the Board and stated that he had written three letters to the Respondent and no reply has been received from the Respondent. On enquiry as to why he has made this complaint after a gap of 6 years when the referred Compliance Certificates were issued during 2006 to 2009, the Complainant stated that he came to know about filing of the Compliance Certificates only on receipt of the letter from ROC in 2011. He also stated that the petition filed before the CLB in relation to M/s. Bee Cee Lene Textile Mills Pvt. Ltd., is listed for hearing before CLB on 25th September, 2014. The Complainant also stated that an affidavit has been filed before the CLB by the Management stating that they do not have any statutory records of the company for the period prior to 1st April, 2009. The Board asked the Complainant to submit the copy of the said affidavit. Mr. Dhiren R Dave, PCS also appeared before the Board and drawn the attention of the Board to the letter dated 14th December, 2013 of the Respondent wherein the Respondent has stated that he had verified the records and registers of M/s. M/s. Bee Cee Lene Textile Mills Pvt. Ltd., at the registered office of the company in the presence of the Complainant and



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based on such verification, he issued the Compliance Certificates. But, the Complainant denied being present there, as stated by the Respondent.

8. The Board of Discipline after hearing the submissions of the Complainant and Mr. Dhiren R Dave, PCS and the material on record, decided to provide last and final opportunity to the Respondent to appear before it. Accordingly, vide letter dated 22nd July, 2014, the Respondent was called upon to appear before the Board on 11th August, 2014. The Respondent was further informed vide letter dated 25th July, 2014 that the hearing of the Board of Discipline scheduled to be held on 11th August, 2014 has been postponed to 14th August, 2014. The Complainant vide letter dated 22nd July, 2014 submitted copies of the three Affidavits confirming that statutory registers for the period 2006 to 2009 are not available with both the parties at dispute.

9. The Board of Discipline at its meeting held on 14th August, 2014 noted that the Respondent has been called upon to appear before it on 14th August, 2014. It also noted that the Complainant vide letter dated 22nd July, 2014 has submitted copies of the three Affidavits confirming that statutory registers for the period 2006 to 2009 are not available with both the parties at dispute. The Board noted that there is no intimation from the Respondent and he has also not appeared in its last meeting. However, in the interest of justice, the Board decided to provide a last and final opportunity to the Respondent to appear before it, failing which it decided that the matter shall be decided *ex-parte*. The Board also noted that in the previous meeting the Complainant had appeared before it and had made his submissions and therefore, no notice is required to be issued to the Complainant. Thereafter, the Board adjourned the matter. Accordingly, vide letter dated 25th August, 2014, the Respondent was called upon to appear before the Board on 5th September, 2014 at New Delhi.

10. On 5th September, 2014, the Board noted that despite having been given ample opportunities, the Respondent did not appear before it. The Board considered the material on record and concluded that the Respondent is 'Guilty' of Professional Misconduct for contravening Clause (8) of Part 1 of the First Schedule of the Company Secretaries Act, 1980 as he had issued Compliance Certificates to M/s. Bee Cee Lene Textile Mills Pvt. Ltd., for the year 2006, 2007, 2008 and 2009 without ensuring as to whether the previous

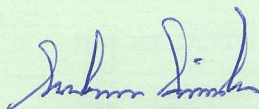


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incumbent had received his intimation before taking up the said assignment. In the instant case, the Respondent has stated to have sent the communication to Shri Dhiren R Dave, the previous incumbent before taking the assignment but Shri Dhiren R Dave has denied to have received any such communication from the Respondent in this regard. The Board noted that the Respondent has not submitted any proof of delivery for such communication to Shri Dhiren R Dave. The Board therefore felt that mere posting the letter by the Respondent is not sufficient compliance. Further, there is no authentic proof of dispatch and at the same time, acknowledgement by the addressee is essential.

11. We decide to afford an opportunity of being heard to Mr. Dinesh V Gohil, FCS-3784 (CP No. 2206), the Respondent before passing any order under Section 21A (3) of the Company Secretaries Act, 1980 read with Rule 19(1) of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 .


(Sutanu Sinha)
Member


(Anil Murarka)
Member


(P. K. Miffal)
Presiding Officer

Date: 19th Dec 2014