

THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC: 162/2012

Date of Decision: 6th January, 2015

Shri Ramesh Kumar Srinivasa
Shri Naresh Kumar Bhardwaj

.....Complainant 1
.....Complainant 2

Vs.

Shri Subramanyam S, FCS-5429

.....Respondent

ORDER

1. A complaint dated 22nd October, 2012 in Form I was filed under Section 21 of the Company Secretaries Act, 1980 read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) by Mr. Ramesh Kumar Srinivasa and Mr. Naresh Kumar Bhardwaj (hereinafter referred to as the 'Complainant 1 & Complainant 2') against Mr. Subramanyam S, FCS-5429 (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent is working as a fulltime employee in multiple companies without taking permission from the ICSI. The Complainants further alleged that the Respondent in collusion with one Mrs. Geeta L and Mr. Viswanthan S has created forged documents of M/s. Ascent Software Solutions (India) Pvt. Ltd., and got them certified backdated by paying bribe through Mr. A R Pai (FCA). The Complainant has also alleged that the Respondent has destroyed documents and books of the company. The Complainants further alleged that the Respondent has been involved in misleading the management, courts, public and agencies without providing details and certified wrong backdated financial records like bank balances, Loan Approval facilitating and resulting in serious defalcations. The Complainants further alleged that the Respondent has brought disrespect to the profession and to the Institute by being involved in bribing, money



laundering and creating loss to the government and public by forging documents and uploading/providing wrong information to the various government agencies like service-tax and income-tax and the ROC. The Complainants further alleged that the Respondent has digitally signed Form 32 on 25th July, 2011 pertaining to the change of his designation from Additional Director to Director of M/s. Ascent Software Solutions (India) Pvt. Ltd., and uploaded the same at the ROC on 4th August, 2011 after digitally signed on 25th July, 2011. However, Form 32 should be digitally signed by the Managing Director or Director or Manager or Secretary of the company as in case of an existing company, the person signing the Form should be different from the person in whose respect the Form is being filed.

2. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 7th November, 2012 calling upon him to submit the written statement. An e-mail dated 4th December, 2012 was received from the Respondent requesting time till 10th December, 2012 to submit the written statement which was granted to him *vide* letter dated 5th December, 2012. The Respondent submitted the written statement dated 10th December, 2012 in which he *inter-alia* denied all the allegations and stated that he has never acted in any capacity either as a Company Secretary in Practice or in employment with the company. He further stated that he was CEO and the Complainants have no *locus-standi* in preferring this complaint to the ICSI. The Respondent further stated that the allegations made in the complaint appeared to be arising more out of a business transaction dispute which is currently contested and is pending for adjudication in different judicial, *quasi-judicial* and other forums.
3. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant 1 & 2 *vide* letter dated 13th December, 2012 asking them to submit the rejoinders. The Complainants submitted the rejoinders dated 26th December, 2012.
4. Pursuant to rule 9 of the Rules, Director (Discipline) after examination of the complaint, written statement, rejoinders and other material on record, *inter-alia* observed that the complaint filed against the member of the Institute



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appears to be arising more out of a dispute in business transactions. As per the Respondent the matter is pending adjudication in different judicial, *quasi-judicial* and other forums. As per the records, the Respondent is neither working as Company Secretary in employment nor in practice in the company. The Respondent has verified and signed the alleged Form 32 pertaining to change in his designation w.e.f. 30th September, 2008 quoting that he has been authorised by the Board of Directors' resolution no. 3 dated 8th September, 2008 to sign and submit the Form. The Form 32 (formulated by MCA) states that "in case of an existing company the person signing the Form should be different from the person in whose respect the form is being filed". Moreover, the said form appears to have been signed by the Respondent without any authority. The Respondent has also verified and signed Form 23 for change of name of the company from M/s. Cosmashakthi Software Solutions Pvt. Ltd., to M/s. Ascent Software Solutions (India) Pvt. Ltd., quoting that he has been authorised by the Board of Directors' resolution no. 3 dated 19th May, 2008 to sign and submit the Form.

5. The matter was inquired and it was observed that the Respondent being a Company Secretary has transgressed established and definite rule of action by verifying and signing the above forms which is not expected from a professional. It was also observed that the misconduct on the part of the Respondent cannot be simply ignored.
6. The Board of Discipline on 21st July, 2014 considered the *prima-facie* opinion dated 16th May, 2014 of the Director (Discipline); and the material on record, found that the Respondent has filed Form 32 on 25th July, 2011 under his digital signature in respect of change of his own designation from 'Additional Director' to 'Director' of M/s. Ascent Software Solutions (India) Pvt. Ltd., and has also uploaded the same on the MCA portal on 4th August, 2011. The Board perused Form 32 filed with MCA and found that it contained the following endorsement:

"To be digitally signed by Managing Director or director or manager or secretary of the company (in case of an existing company, person signing the form should be different from the person in whose respect the form is being filed)".



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The Board also observed that the Respondent being qualified Company Secretary is absolutely not expected to discharge such practice. The Board observed that in view the conduct and action on the part of the Respondent amounts to professional misconduct which cannot be simply ignored and he is 'Guilty' in terms of clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980. The Board 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, copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letters dated 5th August, 2014 asking them to submit their written statement and rejoinders, respectively.

7. The Respondent *vide* letter dated 18th August, 2014 submitted his written statement. A copy of the written statement was sent to the Complainants *vide* letter dated 21st August, 2014 asking them to submit their rejoinders. However, no rejoinders were received from the Complainants.
8. The Board on 29th October, 2014 after considering the material on record; decided to call upon the parties to appear before it on 16th December, 2014 at Trivandrum. However, the meeting of the Board of Discipline scheduled to be held on 16th December, 2014 at Trivandrum, which was rescheduled. Accordingly, *vide* letter dated 23rd December, 2014 parties were called upon to appear before the Board on 6th January, 2015.
9. On 6th January, 2015, Mr. Ramesh Kumar, Complainant – 1 appeared before the Board of Discipline and made oral submissions. He stated that he is also making submission on behalf of Mr. Naresh Kumar, Complainant – 2 in the matter. Mr. Subramanyam S, the Respondent also appeared before the Board and made oral submissions. Mr. Subramanyam S, the Respondent during the course of his submissions admitted that there was a lapse in procedure followed by him while filing the said Form 32. The Board of Discipline, after considering the submission made by the parties, the material on record; the facts and circumstances and gravity of the offence committed by the Respondent, held the Respondent is 'Guilty' of misconduct



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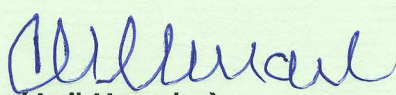
as per Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 as he brought disrepute to the profession as he did not take due care and did not exercise due diligence while verifying and signing the said Form 32 pertaining to change of his own his designation and also verifying and signing Form 23 for change of name of the company from M/s. Cosmashakthi Software Solutions Pvt. Ltd., to M/s. Ascent Software Solutions (India) Pvt. Ltd.

10. The Board apprised the Respondent about the sub-rule (1) of Rule 15 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007. The Respondent stated that he has nothing further to say and requested for a lenient view in the matter. At this stage the Respondent prayed that no separate hearing is required and case now be considered for grant of punishment. Thereafter, the Board gave an opportunity of being heard to the Respondent before passing order under Section 21A (3) of the Company Secretaries Act, 1980. The Respondent again submitted that he has nothing further to add and requested for a lenient view in the matter.

11. We, after considering the material on record and in the totality of the issues involved in the matter, pass the following order:

- (i) Reprimand; and
- (ii) Fine of Rs. 50,000/-.

The aforesaid fine is to be paid by the Respondent within 30 days of receipt of the order by him.


(Anil Murarka)
Member


(P K Mittal)
Presiding Officer

Date: 18th January, 2015