

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/ DC: 220/2014

In the matter of complainant of professional misconduct filed by filed by Mr. Vivek Jetly against Mr. Jayesh Vyas, FCS-5072, (CP No. 1790).

Date of decision: 26th September, 2014

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

ORDER

1. A complaint dated 17th January, 2014 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. Vivek Jetly (hereinafter referred to as the 'Complainant') against Mr. Jayesh Vyas, FCS-5072 (CP No. 1790) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent has misused his position and started attending all the Board meetings of M/s. Sudama Chem-tech Pvt. Ltd., without invitation and in-spite of his strong opposition. The Complainant further alleged that the Respondent has falsified and concocted the records of the company and has also threatened him. The Complainant further alleged that the Respondent tried to create disputes amongst the directors of the company and also tried to remove him from directorship of the company on the basis of falsely created documents. The Complainant further stated that he inspected the company records and observed that the Respondent has charged professional fees for preparation of Minutes of Board meeting and General Meeting and updation of the statutory registers. The Complainant further stated that the Respondent has certified many documents on or behalf of the company and has also issued the Compliance Certificates for the same financial year despite being disqualified to be a PCS for issuing the Compliance Certificates to the company as per Section 226(3) and (4) of the Companies Act, 1956.



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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 27th January, 2014 calling upon him to submit his written statement. The Respondent submitted the written statement dated 14th February, 2014 wherein he denied all the allegations levied against him and *inter-alia* stated that due to *inter-see* disputes amongst the directors of the company, he is being unnecessarily and unfortunately, being targeted and dragged in the dispute. He further stated that the Complainant was removed from the Board of the company by a resolution passed by the Shareholders at a requisitioned meeting and being aggrieved by his removal, the Complainant has invoked the jurisdiction of CLB, Mumbai, by filing a petition under Section 397/398 of the Companies Act, 1956, wherein the Complainant has made him and other professionals party, wherein he has made similar allegations. The Respondent further stated that he has not tried to remove the Complainant from the directorship of the said company as alleged and he has not attended meetings of the Board of Directors of M/s. Sudama Chem-tech Pvt. Ltd., except the meeting of the Board of Directors convened on 16th October, 2013 on the invitation received by him from the Managing Director of the company. The Respondent further stated that he is a PCS and was engaged by the company to advice on the company law and allied matters and to oversee the compliance of the relevant provisions of the Companies Act, 1956 and he was neither assigned the work of maintaining the records nor he provided any services in his capacity as a PCS. He stated that the certification of the forms by the Company Secretary who has issued the Compliance Certificate does not fall within the scope of "Professional Misconduct". The Respondent further stated the provisions of Section 226(3) and (4) of the Companies Act, 1956 do not apply to the Company Secretaries.
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 18th February, 2014 asking him to submit the rejoinder followed by a reminder dated 22nd March, 2014. The Complainant submitted the rejoinder dated 17th March, 2014.
4. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record,



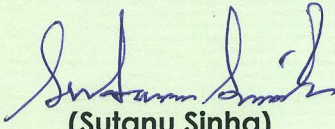
Sudama Singh

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[Signature]

observed that there are disputes amongst the directors of the company. The Complainant has invoked the jurisdiction of CLB, Mumbai by filing a petition under Section 397/398 of the Companies Act, 1956. The provisions of Section 226(3) and (4) of the Companies Act, 1956 do not apply to the Company Secretaries. Further, there is no bar that the PCS issuing the Compliance Certificate cannot certify e-forms or provide other secretarial services to the company to whom he has issued the Compliance Certificate. The Complainant has not substantiated his allegations pertaining to the falsification of the records by the Respondent. The Respondent appears to have attended the meeting of the Board of Directors convened on 16th October, 2013 on the invitation received by him from the Managing Director. Mere presence of the Respondent in the said meeting on invitation is not at all guilt on his part. The Director (Discipline) in view of the foregoing, *prima-facie* observed that the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980.

5. We have considered the *prima-facie* opinion dated 22nd September, 2014 of the Director (Discipline); the material on record and we agree with the *prima-facie* opinion of the Director (Discipline) that the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980, accordingly, we, therefore, close the matter and dispose-off the complaint.


(Sutanu Sinha)
Member


(P. K. Mittal)
Presiding Officer

Date: 18th October, 2014

