

## THE BOARD OF DISCIPLINE

### THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 222/2014

In the matter of complaint of professional or other misconduct filed by Mr. Padmanabh A. Panditrao against Mr. Prasad H. Joshi, FCS-6697 (CP No. 7381).

Date of decision: 26<sup>th</sup> September, 2014

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

### ORDER

1. A complaint dated 17<sup>th</sup> January, 2014 in Form '1' was filed under Section 21 of the Company Secretaries Act, 1980 (the Act) 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. Padmanabh A. Panditrao (hereinafter referred to as the 'Complainant') against Mr. Prasad H. Joshi, FCS-6697 (CP No. 7381) (hereinafter referred to as the 'Respondent'). A letter dated 30<sup>th</sup> January, 2014 was sent to the Complainant asking him to submit the requisite fees Rs. 2500/- for filing the complaint which he submitted vide his letter dated 11<sup>th</sup> February, 2014.
2. The Complainant has *inter-alia* alleged that the Respondent has certified Form 32 regarding his cessation and that of Mr. Raghvendra S. Panditrao and Ms. Geetanjali P. Panditrao from the directorship of M/s. Panditrao Mines & Minerals Pvt. Ltd., without exercising due diligence. He further alleged that the Respondent did not take proper care to verify the notices of the meeting, acknowledgments of receipt by directors, holding of meeting, attendance registers etc., and he also did not confirm the genuineness of the purported resignation letters of aforesaid persons before certifying the alleged Form 32. Further, the e-mail id mentioned in the Form 32 of a director being removed is mentioned as [pjoshi30@rediffmail.com](mailto:pjoshi30@rediffmail.com) which happens to be the e-mail id of Mr. Prasad H Joshi, the Respondent. Thereby, any communication from MCA regarding filing of Form 32 has not received by the persons removed. The



*Sutanu Sinha*

*[Signature]*



Complainant further alleged that the Respondent has also certified Form 2 for allotment of 950 equity shares without exercising due diligence allegedly made in a Board meeting on 5<sup>th</sup> September, 2013. The said allotment was in favour of Mr. Krishna A. Panditrao (MD) and Mrs. Janaki S. Panditrao (Director) (475 equity shares each) without first offering it or giving the opportunity or notice to other 4 directors which is in contravention of AOA of the company and the Companies Act. The said allotment is illegal and void and in contravention of Section 62 of Companies Act, 2013. The Respondent has certified and filed said Form 2 without verifying the compliances requisite and mandatory for the company for making the allotment.

3. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent vide letter dated 18<sup>th</sup> February, 2014 calling upon him to submit the written statement. An e-mail dated 14<sup>th</sup> March, 2014 was received from the Respondent along with a scanned copy of letter dated 14<sup>th</sup> March, 2014 requesting for additional time to submit the written statement. The Respondent was granted additional time to submit the written statement vide letter dated 14<sup>th</sup> March, 2014. The Respondent submitted his written statement dated 22<sup>nd</sup> March, 2014 wherein he denied the allegations levied against him and *inter-alia* stated that there is dispute in the management of M/s. Panditrao Mines & Minerals Pvt. Ltd. The Respondent further stated that M/s. Panditrao Mines & Minerals Pvt. Ltd. has been his client since 2010, when the Complainant was MD of the company. The Respondent further stated that in early September, 2010, he was contacted by Mr. Krishna Panditrao, MD of M/s. Panditrao Mines & Minerals Pvt. Ltd., for certification of Form 32 and Form 2 which he did on the basis of the relevant documents provided to him by the company and the request letter received by him from the MD of the company.
4. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement dated 22<sup>nd</sup> March, 2014 was sent to the Complainant vide letter dated 25<sup>th</sup> March, 2014 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 16<sup>th</sup> April, 2014 wherein he, *inter-alia* had reiterated to his earlier submissions and made certain additional submissions.



*[Handwritten signature]*

*[Handwritten signature]*



5. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, *prima-facie* observed that there is a dispute between the Complainant and his brother and they have filed several complaints against each other. It is further observed that the Respondent has also certified Form 32 for change of designation of the Complainant from MD to Director of M/s. Panditrao Mines & Minerals Pvt. Ltd., for which the Respondent had also used his e-mail id ([pjoshi30@rediffmail.com](mailto:pjoshi30@rediffmail.com)) for which the Complainant is not complaining. It is further observed that the Respondent has certified the alleged Form 32 and Form 2 on the basis of following documents—

For Form 32: pertaining to cessation of the Complainant, Mr. Raghvendra S. Panditrao and Ms. Geetanjali P. Panditrao from the directorship of M/s. Panditrao Mines & Minerals Pvt. Ltd.

(a) Certified copy of Minutes of Board meeting of 5<sup>th</sup> September, 2013, (b) Certified true copies of resolutions accepting resignations signed by the majority of directors, (c) Attendance register of the Board meeting in which Mr. Mr. Krishna Panditrao, Mrs. Janaki Panditrao, Mrs. Vijayalaxmi Panditrao and Mr. Raghvendra Panditrao were present, (d) Register of directors in which the fact of resignation of Mr. Padmanabh Panditrao, Mrs. Geetanjali Panditrao and Mr. Raghvendra Panditrao was recorded and (e) Photocopies of resignation letters certified by Managing Director.

For Form 2: (a) Certified copy of Minutes of Board meeting held on 5<sup>th</sup> September, 2013, (b) Certified true copies of resolutions of allotment of shares, (c) Attendance Register of the Board Meeting in which Mr. Mr. Krishna Panditrao, Mrs. Janaki Panditrao, Mrs. Vijayalaxmi Panditrao and Mr. Raghvendra Panditrao were present, (d) Register of Members, (e) Share application forms received from the applicants, (f) Ledger extract of amount received as share application money and (g) Share certificates.

The Sessions Court, Kolhapur while granting anticipatory bail to the Respondent has specifically observed that:

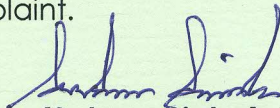
*"So far as applicant in Cri. Bail Applicant. No. 678/2013 is concerned, he is merely a Company Secretary. Even in the complaint, the complainant could not point out as to how the Company Secretary could be said to be involve in the entire episode. Merely because he has performed his professional duties in submitting Form 32 with Registrar of Companies will not ipso facto make him liable. The possibility that, he has submitted the Form No. 32 and therefore being sought to be prosecuted cannot be ruled out. Apart from this, even from the police papers, no such material is indicated regarding involvement of said applicant in forgery of document*






or that he has knowledge. In such circumstances, he has made out a case for anticipatory bail."

6. The doctrine of Indoor Management affords that persons dealing with a company having satisfied themselves, are not bound to inquire into the regularity of any internal proceeding. In this case, the Respondent has filed the relevant documents on the basis of which he certified and filed the said Form 32 and Form 2. The allegations levied by the Complainant against the Respondent do not find any merit to say that the Respondent has not exercised due diligence in the conduct of his professional duties. In view of the foregoing, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.
  
7. We have considered the *prima-facie* opinion dated 16<sup>th</sup> September, 2014 of the Director (Discipline); the material on record and agree with the *prima-facie* opinion that the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980 as he has filed the alleged Form 32 and Form 2 on the basis of relevant documents mentioned above. We, therefore, conclude that no case is made out against the Respondent, and accordingly, close the matter and dispose-off the complaint.

  
(Sutanu Sinha)  
Member

  
(P. K. Mittal)  
Presiding Officer

Date: 18<sup>th</sup> October, 2014

