

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 225/2014

In the matter of complaint of professional or other misconduct filed by Mr. Varun Dewan against Mr. Parminder Singh Bathla, FCS-4391 (CP No. 2585).

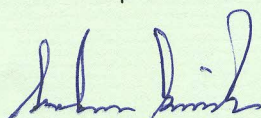
Date of decision: 26th September, 2014

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

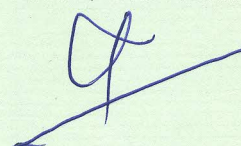
ORDER

1. A complaint dated 3rd March, 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. Varun Dewan (hereinafter referred to as the 'Complainant') against Mr. Parminder Singh Bathla, FCS-4391 (CP No. 2585) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent in connivance with the other directors and shareholders of the company has acted against him. He further alleged that the Respondent has not exercised due diligence for certifying e-forms (i) Form 5 for increasing the Authorised Capital of M/s. Dewan Alloys & Metals Pvt. Ltd. from Rs. 1,25,00,000/- to Rs. 1,30,00,000/-. (ii) Form 2 pertaining to allotment of 4,00,000 equity shares by M/s. Dewan Alloys & Metals Pvt. Ltd., to M/s. Usha Equity Pvt. Ltd., and (iii) Form 32 pertaining to removal of the Complainant from the directorship of M/s. Dewan Alloys & Metals Pvt. Ltd. He further stated that the audited Balance Sheet of the company as at 31st March, 2013 states that the Authorised Capital of the company is Rs. 1,25,00,000/- and it also does not reflect allotment of 4,00,000 equity shares to M/s. Usha Equity Pvt. Ltd., whereas the amount of Rs. 50,00,000/- is reflected in the Balance Sheet pending allotment.

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 6th March, 2014 calling upon him to



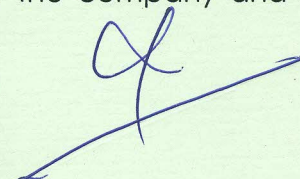
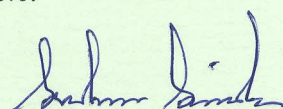
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submit the written statement followed by a reminder dated 31st March, 2014. The Respondent submitted the written statement dated 31st March, 2014 wherein the Respondent has denied the allegations levied against him and has stated that he has certified Form 2, Form 5 and Form 32 after exercising due diligence. The Respondent further stated that the EOGM of the company was held on 30th March, 2013 wherein increase in the Authorized Capital of the company was duly approved by the shareholders and the Minutes of the said meeting also show the attendance of the Complainant in the said meeting. He further stated that the shareholders have adopted the Balance Sheet as at 31st March, 2013 in their AGM held on 1st February, 2014. He further stated that contents of Form 5 are correct and all the figures were taken from the records of the company on 26th April, 2013. The Respondent further stated that he has certified Form 2 and filed the same with MCA on 29th April, 2013 vide SRN S20951703. A total of 4,00,000 shares were issued to M/s. Usha Equity Pvt. Ltd. He further submitted that the contents of Form 2 are correct and receipt of Rs. 50,00,000/- in the company account has been duly certified by the directors. The Respondent further submitted that he has certified Form 32 and filed with MCA on 17th August 2013. He further submitted that the company directors presented the copies of notices of the three consecutive meetings sent through speed post and the postal receipts and the Minutes of such meetings at the time of certification. The Postal receipts clearly show the dispatch of notices to the Complainant.

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 9th April, 2014 asking him to submit the rejoinder followed by reminder dated 8th May, 2014. The Complainant submitted the Rejoinder dated 24th June, 2014, wherein the Complainant has *inter-alia* stated that the Respondent has not come with clean hands and have concealed material and vital facts and presented a distorted and incorrect version of the facts before the Hon'ble Committee, thereby attempted to misguide and mislead the Hon'ble Committee and just by stating false and misleading fact have even played fraud upon this Hon'ble Committee. The Complainant has stated that the Respondent is actively involved in the conspiracy hatched by the company and its other directors.



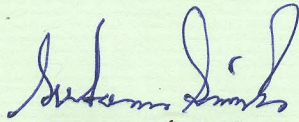
4. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, *prima-facie* observed that the Complainant has based his allegations that the Respondent has not exercised due diligence while certification of Form 2 and Form 5 on the basis of an audited Balance Sheet of M/s.Dewan Alloys & Metals Pvt. Ltd., as at 31st March, 2013, which stated that the Authorised Capital of the company is Rs. 1,25,00,000/- and does not reflect such allotment of 4,00,000 equity shares to M/s. Usha Equity Pvt. Ltd., whereas the amount of Rs. 50,00,000/- is reflected in the said Balance Sheet pending allotment. However, it is observed that the Statutory Auditors i.e. M/s. Khanna Yakhmi & Associates who had certified the Balance Sheet of the company as at 31st March, 2013 on 20th August, 2013 had subsequently issued a revised audit report dated 24th December, 2013 attaching therewith revised Balance Sheet of M/s.Dewan Alloys & Metals Pvt. Ltd., as at 31st March, 2013, which clearly indicates the enhanced authorised capital of the company. Further, the said revised audited balance sheet also reflects the money received from allotment of 4,00,000 equity shares. Further, the Respondent has also attached the Minutes of the EOGM held on 30th March 2013 which shows the attendance of Mr. Varun Dewan, the Complainant as a shareholder and director present at the EOGM held on 30th March, 2013. As far as certification of Form 32 pertaining to the removal of the Complainant is concerned, the Respondent has attached the copies of the Minutes of three meetings along with the notices of the those three consecutive meetings and proof of dispatch of the said notices to the complainant through speed post which he relied upon for certification of the Form 32 pertaining to the removal of the Complainant. Unless and until there is suspicion apparent, the Respondent can reasonably rely on the genuineness of the documents submitted to him for certifications. Though, the Complainant has alleged that the postal receipt and documents attached by the Respondent are forged but the Complainant has not substantiated to this allegation. In view of the foregoing, the Director (Discipline) observed that the Respondent is *prima-facie* not guilty of professional Misconduct under the Company Secretaries Act, 1980.




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5. We have considered the *prima-facie* opinion dated 22nd 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. 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: 18th October, 2014

