

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 260/2014

In the complaint of professional or other misconduct filed by Mr. Sudipta Kumar Dey against Mr. Nikus Kumar Sarkar, FCS-1134 (CP No. 4951).

Date of decision: 12th August, 2015

Quorum: CS Ahalada Rao V, Presiding Officer
CS Vineet Chaudhary, Member
CS Sutanu Sinha, Member

ORDER

1. A complaint dated 16th September, 2014 in Form 'I' 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. Sudipta Kumar Dey (hereinafter referred to as the 'Complainant') against Mr. Nikus Kumar Sarkar, FCS-1134, CP No. 4951 (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that the Respondent has mentioned wrong SRN as Z99999999 for the Auditor's appointment in a Form 23AC pertaining to M/s. New Bengal Press Pvt. Ltd., as the original SRN for the Auditor's appointment is different.
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 29th September, 2014 asking him to submit the written statement followed by a reminder dated 30th October, 2014. The Respondent submitted written statement dated 3rd November, 2014 wherein he has denied the allegation levied against him and *inter-alia* stated that he had used the default SRN provided by the ROC as mentioned in the ROC filing instructions which was used till F.Y. 2012-2013 to upload the Form 23AC in case of non-availability of SRN of Form 23B. The Respondent further stated that the Complainant was having some personal differences with the company and he has not filed Form 23B with the ROC.
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 10th November, 2014 asking him to file rejoinder. A letter dated 25th November, 2014 was received from Mr. Subhasish Dey, Advocate (Complainant's Brother). The Complainant submitted rejoinder dated 29th November, 2014 wherein he reiterated his earlier submissions and made certain other submissions. A letter dated 23rd December, 2014 was received from the Complainant enquiring about the status of the case which was provided *vide* letter dated 12th January, 2015.
4. Pursuant to Rule 9 of the Rules, the Director (Discipline), on examination of the complaint, written statement, rejoinder and other material on record, *prima-facie* observed that the Respondent has used default SRN Number Z99999999 in Form 23AC filed with the ROC



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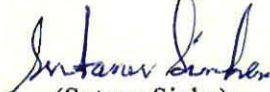
pertaining to M/s. New Bengal Press Pvt. Ltd., for F.Y. 2012-2013 as the SRN of Form 23B was not available with him. It is also observed that the Complainant has not raised any other issue in respect of filing of Form 23AC. The Director (Discipline) further relied on the relevant portion of instruction No. 10 issued by the Ministry of Corporate Affairs (MCA) for filing Form 23AC which provides as under:-

“enter the SRN of Form 23B filed in relation to the appointment of the auditor who has audited the attached balance sheet If available. If the SRN of Form 23B is not available or in case information by auditor to ROC in Form 23B is not required to be filed, you may enter Z99999999”


The Director (Discipline) therefore, *prima-facie* observed that the Respondent is not guilty of Professional and other misconduct under the Company Secretaries Act, 1980.

5. On 12th August, 2015, the Director (Discipline) placed his *prima-facie* opinion dated 16th July, 2015 before the Board of Discipline. The Board of Discipline after considering the relevant portion of the instructions issued by the MCA for filing Form 23AC; material on record and in totality of the circumstances of this case agreed with the *prima-facie* opinion of the Director (Discipline) and held that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980. The Board closed the matter.

Accordingly, the complaint stands disposed-off.


(Sutanu Sinha)
Member


(Vineet Chaudhary)
Member


(Ahalada Rao V)
Presiding Officer

Date: 04.09.2015

