

THE DISCIPLINARY COMMITTEE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI: DC: 265/2014

Order Reserved On: 3<sup>rd</sup> June, 2019

Order Issued On: 27 JUN 2019

M/s. Hotel Oasis (Surat) Pvt. Ltd.

..... Complainant

Vs.

Shri Dilip N Motwani  
ACS -5016, COP No. 2431

.....Respondent

**CORAM:**

Shri Ranjeet Pandey, Presiding Officer  
Shri Nagendra D Rao, Member  
Shri B Narasimhan, Member  
Mrs. Meenakshi Datta Ghosh, Member

**PRESENT**

Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Gaurav Tandon, Assistant Director  
None for the Complainant  
Shri Dilip N Motwani, the Respondent in person

**ORDER**

1. A complaint dated 7<sup>th</sup> October, 2014 in Form 'I' was filed by M/s. Hotel Oasis (Surat) Pvt. Ltd. (hereinafter referred to as 'the Complainant') against Shri Dilip N Motwani, ACS-5016, CP No. 2431 (hereinafter referred to as 'the Respondent') 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').
2. The Complainant inter-alia alleged that the Respondent has wrongly certified Forms 20B and 23AC for the FY 2012 and 2013 without proper authority from M/s. Hotel Oasis (Surat) Pvt. Ltd. The Complainant further stated that the Respondent was aware about the pending management dispute before certifying the forms which were signed by Shri Satyaketu Patel as Managing Director of the Complainant Company. However, as per MCA record Shri Satyaketu Patel was not Managing Director of the

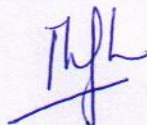


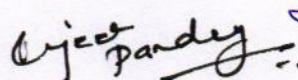
*Shri Ranjeet Pandey* *[Signature]* *[Signature]* *[Signature]*

Complainant Company at that time. The Complainant has further stated that the list of shareholders given in the Annual Return for the FY 2012-13 is different from the previous year list of shareholders available online. The Complainant has also stated that the Directors' Report is very specific that company has not obtained Compliance Certificate even though it is supposed to obtain. Therefore, the attachment to Form 23AC was not complete. Further, SRN of form 66 is also not mentioned. Further, the Respondent, instead of verifying the contents of the Forms uploaded by him from the records of the company, has blindly relied on the Directors' Report and the Auditors' Report for the correctness and genuineness of the documents. Further, the Respondent, despite being aware of the dispute, has acted on a presumption that the Annual Accounts were approved and adopted by the shareholders' under Section 210 of the Companies Act, 1956.

3. On the other hand, the Respondent denied the allegations levied against him and stated that there is a dispute in the management of the Complainant Company and there is no law which forbids certifying documents, when there is internal management dispute or where the matters are *sub-judice*. The Respondent further stated that the Complainant in the instant complaint is the Respondent in the CLB matter and is trying to create obstacles for his client for not abiding by Section 159, 220 and 160 of the Companies Act, 1956. The Respondent further stated that the documents were filed with the ROC for compliance of the Company. It is in the domain of the ROC to decide or adjudicate that filing of Form 20B, 23AC for year 2012 & 2013 were wrong or not. The Respondent has further stated that he was not present at the AGM/Board meeting and, therefore, his certification is based on presumption of "Doctrine of Indoor Management". Further, while filing the forms with the ROC, he has attached letters as an optional attachment.
4. The Complainant in his rejoinder while reiterating his earlier submissions stated that the Respondent has accepted that he had knowledge of ongoing CLB matter and under these circumstances any responsible professional member should become extra careful and should make double sure that whatever documents he certifies is nothing but complete in all respects, absolute truth and far from fallacy. But the Respondent has done absolutely reverse.
5. The Director Discipline in *prima-facie* opinion dated 12<sup>th</sup> September, 2016 was of the *prima-facie* opinion that ~~that~~ the Respondent is 'Guilty' of professional misconduct and other misconduct under Item (7) of Part I of





 Vijay Pandey





the Second Schedule to the Company Secretaries Act, 1980 as the Respondent did not exercise due diligence while certifying the alleged Form 20B and Form 23AC pertaining to M/s. Hotel Oasis (Surat) Pvt. Ltd. for the FY 2012 and 2013.

6. The Disciplinary Committee at its meeting held on 19<sup>th</sup> September, 2016 had considered the *prima-facie* opinion dated 12<sup>th</sup> September, 2016 of the Director (Discipline) and had agreed to the same and had decided to proceed further in the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Act, 1980. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties vide letter(s) dated 24<sup>th</sup> November, 2016 calling upon them to submit their written Statement/Rejoinder, respectively to the *prima-facie* opinion of the Director (Discipline) which they submitted mainly reiterating their earlier contentions.
7. Thereafter, the parties were called for hearing before the Disciplinary Committee on 19<sup>th</sup> August, 2017, 25<sup>th</sup> April, 2018, 12<sup>th</sup> March, 2019. However, the hearings were either adjourned on the request of the Complainant or the Respondent.
8. Once again the parties were called upon to appear before the Disciplinary Committee on 3<sup>rd</sup> June, 2019.
9. On 3<sup>rd</sup> June, 2019, the Respondent appeared before the Committee and made his submissions. However, none appeared for the Complainant. The Disciplinary Committee, after considering the material on record, the *prima-facie* opinion of the Director (Discipline); the submissions of both the parties; observed that the Respondent, in his letter (undated) addressed to the Registrar of Companies, Ahmedabad, which is stated to have been attached as an optional attachment to the Forms 20B & 23AC, stated as under:

***"I am uploading the Annual filing on the presumption that the Annual Accounts were approved and adopted by the shareholders under Section 210 of the Companies Act, 1956."***

This demonstrates that the Respondent has failed to exercise due diligence by not verifying the correctness of the Forms/documents from the records of the Company before certifying them and proceeded to certify them to be correct on some presumptions without any basis that too when he was aware that there was a dispute in the Company. The Respondent also failed



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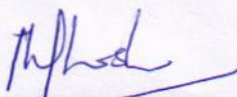
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Bijoy Pandey

to ascertain as to whether Shri Satyaketu Patel was the Director/ Managing Director of the Complainant Company , at the time of certification or not, even though he had signed the letter addressed to the Registrar of Companies, Ahmedabad, and attached with Annual Filing Forms, as the Managing Director of the Complainant Company. The Respondent also failed to verify as to whether Shri Satyaketu Patel was authorized by the Board of Directors of the Company to sign those Forms/documents. Further, the Respondent has not given a satisfactory answer on the Annual Return showing different list of shareholders than previous' year without any transfer/ allotment of shares during that year. The circumstances under which the Forms were certified should have created reasonable doubts in the mind of the Respondent; more so when he was aware that there was a dispute in the Company. The Respondent is trying to rely on Doctrine Of Indoor Management which applies to third party doing business with the company and does not save the professional who is supposed to verify and certify that all the compliance required to be done under the Act have been done properly and then certify the content of the document Therefore, his defense of "Doctrine of Indoor Management" is not applicable in the instant case.

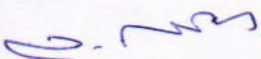
In view of the observations made above and after examining the totality of facts and circumstances in this matter, the Disciplinary Committee holds that the Respondent is 'Guilty' of professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 as the Respondent did not exercise due diligence while certifying the alleged Form 20B and Form 23AC pertaining to M/s. Hotel Oasis (Surat) Pvt. Ltd., for the FY 2012 and 2013.

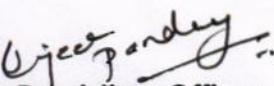
The Disciplinary Committee decided to provide an opportunity of being heard to the Respondent pursuant to sub- rule (1) of Rule 19 of the Rules. The Disciplinary Committee further decided to call upon the Respondent to appear before it at the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee. In case, the Respondent for sudden or personal reasons is unable to attend the hearing as may be decided; the Respondent may appear through an authorized representative along with a duly signed and attested letter of authority addressed to the Disciplinary Committee seeking exemption from personal appearance failing which, the matter will be heard *ex-parte*.

  
Member

  
Member



  
Member

  
Presiding Officer