

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/26/2008

Order reserved on: 26.09.2017

Order issued on: 18.01.2018

Shri Jay Praful Kamani

.....Complainant

Vs.

Shri Akhilesh Kumar Srivastava, ACS- 18197

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint in Form 'I' dated 4th February, 2008 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 Shri Jay Praful Kamani (hereinafter referred to as 'the Complainant') against Shri Akhilesh Kumar Srivastava, ACS-18197 (hereinafter referred to as 'the Respondent').
2. The Complainant has *inter-alia* alleged that-
 - (i) The Respondent was neither associated with M/s Narbheram Co. Ltd. (hereinafter referred to as 'the Company') nor authorized by the Company to represent and to do any/all acts on behalf of the Company. The respondent without authority has been making representation before the Registrar of Companies, Kolkata and various other statutory bodies in connivance with Mr. Rajen Praful Kamani and Mrs. Tarulata Rajen Kamani, posing themselves as Directors of the Company with an intention to cause harm to the Company.
 - (ii) The Respondent has abused his authority as a practising Company Secretary and has connived with the ex- Directors, Mr. Rajen Praful Kamani and Mrs. Tarulata Rajen Kamani with malafide intention to create nuisance and cause harm to the shareholders of the Company.



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- (iii) No Board Meeting has been held on 27.08.2007 of the Company authorizing Mr. Rajen Praful Kamani to file Form DIN-3.
- (iv) Mr. Rajen Praful Kamani and/or Mrs. Tarulata Rajen Kamani have never been authorized by the Company to represent or file documents with any statutory bodies or authority.
- (v) Filed forms in violation of ex-parte order of Hon'ble High Kolkata restraining the Respondent from representing the Company before any forum or authority.
3. The Respondent in his written statement dated 2nd May 2008 has *inter-alia* stated that: -
- i. The DIN 3 was filed in the month of August, 2007 after being duly authorized by Mr. Rajen P Kamani and Mrs. Tarulata Rajen Kamani through a valid Board Meeting. After filing DIN 3, their names appear on the MCA portal as signatories of the Company. After some time their names disappeared and on inquiry by Mr. Rajen Praful Kamani with Registrar of Companies, Kolkata, it was revealed that Mr. J P Kamani, the Complainant has filed two Forms 32 showing cessation of Mr. Rajen Praful Kamani and Mrs. Tarulata Rajen Kamani.
 - ii. That Respondent had no idea of any ad-interim injunction operating against him as it was not served at the correct address. The injunction order was served at 9A, Poonam Building, 5/2, Russel Street, Kolkata – 700071 and which is not his address. As the address given in the petition before the Hon'ble High Court was wrong and he did not receive a copy of the said order, he went ahead with filing of the said documents.
 - iii. Mr. Rajen Praful Kamani and Mrs. Tarulata Rajen Kamani, the clients of the Respondent authorized him to file form DIN-3 in the month of January, 2008. He further stated that he was informed by his client that vide a board meeting dated 6th January, 2008, the Company has taken a decision to appoint Mr. Rahul P Kamani as an Additional Director and authorized him to file e-form – 32 with the ROC. That the Respondent, being a practising Company Secretary and after being prima facie satisfying himself with the documents furnished to him, performed his professional duties.
 - iv. The Complainant himself asked Mr. Rajen Praful Kamani vide letter dated 21.08 2007 to furnish DIN-2.
 - v. Mrs Sushila P Kamani vide letter reference No NRC/70/2007-08 dated 30th August 2007 cautioned Mr. Rajen Praful Kamani that in absence of DIN 2, the company was not able to comply in filing form 32 and



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C. S. Kamani

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DIN 3 of his directorship and responsibility of the same lies solely with him only.

4. The Complainant in his Rejoinder dated 3rd September 2008 to the Written statement, has inter-alia stated that:-
- (i) The notice of the purported Board meeting explained as scheduled on 05.01.2008 and notice of board meeting scheduled on 06.01.2008 clearly shows the malafide of the Respondent and his clients. He further stated that the notices of the board meeting were issued illegally and without authorization from their Company. The meetings were not only incomplete in quorum but also bad in law as the powers vested with the competent authority of our Company has neither called the meeting nor conducted any meeting nor are there any records of these meetings in the legitimate minutes book and records of the Company.
 - (ii) The letter dated 02.05.2008 does not address the Complaint filed by the Complainant but on the contrary it sidelines the complaints by talking about various other issues, litigations, disputes which clearly indicates Complainants intent to mis-direct the proceedings.
 - (iii) That from the enclosures of the Complaint it is evident that Mr. Rajen Praful Kamani, Mrs. Tarulata Rajen Kamani and the Respondent had received a copy of the injunction order on 03.01.2008 and with a dictate to create further malafide acts immediately attempted to call a purported Board meeting on 05.01.2008 with a view to create confusion and to usurp the assets of the Company and illegally attempted to appoint Mr. Rahul R Kamani as an additional Director.
5. The matter was placed before the Disciplinary Committee in its meeting held on 15th November 2007 for consideration. The Disciplinary Committee vide its order 15th November 2007 directed Director (Discipline) to ascertain the progress of contempt application filed before the Hon'ble High Court.
6. As per records of the Disciplinary Directorate, the Order was communicated to the Complainant vide letter dated 25th November, 2008 wherein the progress of the Contempt petition was sought. The Complainant vide letter dated 2nd December, 2008 informed that the matter is still *sub-judice*. A reminder letter(s) was sent to the Complainant on 8th December, 2008 and 2nd March, 2009 for ascertaining the status of the Contempt Petition. The Complainant requested the Disciplinary Directorate to issue another letter as he did not receive any letter dated 8th December, 2008. Letter was again sent on 16th March, 2009 for ascertaining the status of the Contempt Petition.



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A. Kamani
Rahul R Kamani

7. The Complainant through his advocate sent a letter dated 8th April, 2009 requesting the institute to take appropriate steps against the Respondent as the matter is pending for last one year. Reply sent to the Complainant by Directorate through Advocate Shri R. D. Makheeja stating that there has been no delay on the part of the Institute in processing the complaint filed by the Complainant and delay, if any, has occurred due to the non-cooperation on the part of the Complainant by not furnishing the present status of the contempt application.
8. An e-mail dated 15th February, 2016 along with the Copy of the Order in the matter of NARBHERAM & Co. Ltd., Vs. Rajen Praful Kamani & Ors of Hon'ble Calcutta High Court has been received from the Respondent. The Hon'ble Calcutta High Court passed the order based on an out of court settlement by the parties.
9. The prima-facie opinion of the Director Discipline dated 30th August 2017 was placed before the Board of Discipline at its meeting held on 26th September, 2017. The Board of Discipline after considering the complaint, written statement and other documents on record and the prima facie opinion of Director (Discipline) wherein she is *prima- facie* of the opinion that the Respondent is "**Not guilty**" of Professional or other misconduct under the Company Secretaries Act, 1980 and the oral submissions made by Director (Discipline), noted the following: -
- (i) That the Complainant had certified the following e-forms: -
- DIN-3 of Mr. Rajen P Kamani and Mrs. Tarulata Kamani as Directors of the Company on 27.08.2007
 - DIN-3 of Mr. Rajen P Kamani as Director and Mrs. Tarulata Kamani as Director on 05.01.2008.
 - Form-32 of Mr. Rahul R Kamani as Director on 05.01.2008.
- (ii) That on perusal of the documents, it has been found that the reply given to the ROC, Kolkata from M/s Narbheram & Co. was from the Respondent and the same was accepted as a conclusive reply from the Company. This communication from ROC, Kolkata dated 23.04.2007 to the Regional Director, Eastern Region, Ministry of Company Affairs, Kolkata shows that the Respondent was duly authorized to represent / file reply(s) on behalf of the Company before the authorities.
- (iii) That the complaint was an outcome of management dispute and the Complainant failed to provide sufficient evidence to sustain his allegations of lack of due diligence by the Respondent in certification of DIN 3 and Form 32 as stated above.
- (iv) That the ex-parte ad-interim order of the Hon'ble Calcutta Court restraining the Respondents, their men, servants and agents from

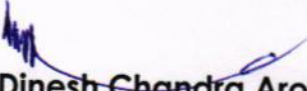


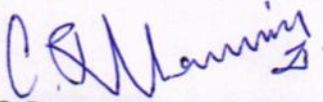
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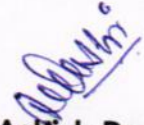
representing the Company before any forum or authority or any other person was not served upon the Respondent as the same was sent to a wrong address i.e. 9A, Poonam Building, 5/2, Russel Street, Kolkata – 700071.

(v) The Complainant had filed a contempt of court application against the Respondent before the Calcutta High Court. However, there has been an out of court settlement as per the order of the Hon'ble Calcutta High Court order dated 21st December, 2015.

10. After considering the aforesaid observations, material on record, *prima-facie* opinion of the Director (Discipline) and all the facts and circumstances in the case, the Board of Discipline agreed with the *prima-facie* opinion of Director (Discipline) that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 and accordingly decided to close the matter.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

