

**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/275/2014**

Order reserved on: 26th September, 2017

Order issued on : 18th January, 2018

Shri D P Gupta, FCS-2411

.....Complainant

Vs.

Shri Rajiv Bajaj, FCS-3662

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint in Form 'I' dated 2nd December, 2014 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 D. P. Gupta (hereinafter referred to as 'the Complainant') against Shri Rajiv Bajaj, FCS-3662 (hereinafter referred to as 'the Respondent').
2. In his complaint, the Complainant has *inter-alia* alleged that the Respondent has violated Clauses XXII and XVI of the Election Code of Conduct, 2006. It has further been alleged that the Respondent has also violated Rule 42(4) read with Rule 16(4) of Company Secretaries (Election to the Council) Rules, 2006. In support of his averments, he has attached some copies of e-Newsletters alleged to have been issued by the Respondent. It has been stated that the Respondent was circulating e-Newsletter in his own name, *CS Rajiv Bajaj*, upto 30th September, 2014. Thereafter from 01st October, 2014, the e-Newsletters were issued by the respondent in the name of *CS Professional* the contents of which were exactly similar in terms of fonts/ink/style etc. except the watermark and photo.
3. The Respondent in his written statement dated 15th January, 2015, has *inter alia* stated that the Newsletters attached by the Complainant were issued by the Respondent till 30th September, 2014 before the filing of his nomination papers & much before publication of the final list of the candidates. Therefore, the annexures do not have any relevance with the Code of Conduct.



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4. The Complainant in his Rejoinder dated 5th February, 2015 *inter-alia* admitted that the blog *csrajivbajaj.com* has been deactivated after 30th September, 2014 and the blog *csprofessional.com* was activated immediately after that. It has been reiterated that the newsletter sent through *csrajivbajaj.com* and *csprofessional.com* were exactly similar in terms of fonts/ink/style etc., except the water mark and photo. That the Newsletters were immediately stopped after filing the complaint.
5. On examination of the Complaint, Written Statement of the Respondent, the Rejoinder of the Complainant and other material on record, the Director (Discipline) vide letter(s) dated 06.07.2016 and 16.08.2016 followed by an e-mail dated 29.11.2016 requested Go Daddy India and other concerned persons to advise about different aspects of blog/ website like creation date, owner/admin details, IP Address from which the data was mainly uploaded in the said blog/website, domain status of "cs-professional.com." etc but there has been no response from Go Daddy. The Director (Discipline) had also referred the matter to Directorate of IT of ICSI seeking certain information relating to the case but without any assistance.
6. The Board of Discipline considered the *prima-facie* opinion dated 12th September, 2017 of the Director (Discipline) wherein the Director (Discipline) stated that the allegations have not been not been proved by the complainant by adequate evidence. The respondent is not guilty of professional misconduct either under Item (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980, or under Item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980, in the absence of any evidence on record to substantiate the allegations made in the Complaint.
7. The Board of Discipline observed that the Complainant has made a general statement that the Respondent has violated Clauses XXII and XVI of Election Code of Conduct, 2006, without furnishing the details to show how and in what manner the alleged violations have been committed and to which elections the alleged violations relate. In support of his allegations, the Complainant has only annexed an order dated 30.12.2011 passed by the Board of Discipline in DC-E 05/2010 against the Respondent on the basis of the information received by Disciplinary Directorate in relation to election to the Council held in 2010, whereby the Board of Discipline held the Respondent guilty of having violated clause (f) of Sub-Rule (3) of Rule 42 of the Company Secretary (Election to the Council) Rules, 2006 and awarded the punishment of "reprimand". The Complainant has been given full opportunity, including personal hearing, by the Director (Discipline), to substantiate the allegations made in the complaint that the alleged Newsletters circulated after 30th September, 2014 were issued/ belonged to or had any connection with the Respondent. The Complainant failed to discharge his obligation to




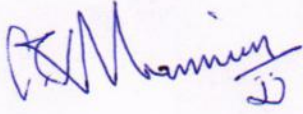
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substantiate the allegations. Pursuant to his request, the Director (Discipline) also asked "Go Daddy" to provide the requisite information in order to ascertain whether the blog "cs-professional" belonged to CS Rajiv Bajaj, the Respondent herein but no information was received. The Complainant has failed to show that the alleged violation of Code of Conduct, 2006, related to the elections held in 2014, as the violation in relation to the election held in 2010 has already been decided by the Board of Discipline vide its Order dated 30.12.2012 in DC: E-05/2010 and has no relevance in so far the present complaint is concerned.

8. In the context of allegation relating to the alleged publication of e-Newsletter by the Respondent, reference can be made to the order dated 14th February, 2014 passed by the Ld. Appellate Authority in Appeal No. 02/ICSI/2013 – In the matter of Shri Pradeep K. Mittal Vs. The Board of Discipline and Ors. wherein it has *inter-alia* been held that on the date when the Appellant sent his manifesto and photographs containing image of the logo of the Institute through email, the directions prohibiting such circulation was not in force and, therefore, the Respondent could not be held to be guilty of violating the guidelines. In the present case also since the Respondent had stopped publication of his blog "csrajivebajaj on 30th September, 2014 i.e. before the date of filing of his nomination, he could not be held liable for violation of the Election Rules. Moreover, the Complainant has not been able to establish that the blog CS professional was published by the respondent, or that the Respondent was responsible in any way for the publication of "cs-professional".
9. The Board of Discipline after considering the material on record, the *prima-facie* opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with the *prima-facie* opinion of the Director (Discipline) that no adequate evidence could be produced by the Complainant in order to show that the alleged Newsletters were published by the Respondent and, therefore the Respondent was "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 and accordingly decided to close the complaint.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

