

the second set of Newsletters after 30th September .2014 the name of the Respondent was removed but the content, form, design etc. were similar as of the newsletter issued prior to 30th September 2014.

3. The Complainant has alleged that the Respondent is guilty of professional misconduct under Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980, read with clauses (xxi) and (xxii) of the Election Code of Conduct dated 9th September 2014 and is also guilty of Clause (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980, read with Rule 42 (4) (viii) and (xii) and Rule 16 (4) of the Company Secretaries (Election to the Council) Rules, 2006.
4. The Respondent in his written statement dated 21st February 2015, has denied the allegations on merits and raised preliminary objections regarding the maintainability of the complaint. It has been stated that any dispute relating the alleged misconduct, if any, committed during the election and in particular concerning Rule 42 of the Company Secretaries (Election to the Council) Rules, 2006, and Election Code of Conduct had to be filed before the Returning Officer, who, in turn, after examination of the allegations, could refer the matter to the disciplinary authorities for further action. In the present case, the complainant did not file any such complaint to the Returning Officer and hence the present complaint is defective and does not lie.
5. The Complainant has admitted that he was circulating the Newsletters for sharing the information and updating the knowledge of professionals and the public at large till 29th September, 2014. The said Newsletters was discontinued w.e.f. 30th September, 2014, and the Advisory of the Returning Officer prohibiting such Newsletters was issued by the Returning Officer on 31st October, 2014 i.e. 30 days after discontinuing the Newsletters.
6. The Complainant has stated that he had no concern with the Newsletters issued after 30th September, 2014 as there are the blog of cs-professional.com and in the said blog no name of the Respondent, his candidature or appeal has been mentioned and, therefore, no mileage can be drawn from the said blogs for furtherance of the election.
7. The Respondent has further stated that the allegations of the Complainant that the Newsletters are similar/ deceptively similar in all aspects, namely, form, content, design, font style, color scheme and presentation do not hold water and have been made with ulterior motive and malafide intentions.



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8. The Complainant in his Rejoinder dated 12th March 2015, the Complainant has reiterated the allegations made by him in his complaint. The Complainant has stated that while the website www.csrajivbajaj.com may have been discontinued but the other website www.cs-professional.com which was being used for the electioneering of the Respondent was very much in operation after 30th September, 2014. The Newsletters hosted on the said website cs-professional.com till 27th October, 2014 and circulated from email ids, viz., csprofessional005@gmail.com, teamcsprofessional@gamil.com etc. are the essence of the complaint.
9. The Complainant and the Respondent were called for hearing before the Director (Discipline) on 21st June, 2016. Both the parties appeared before Director (Discipline) on 21st June, 2016. The Complainant requested the Director (Discipline) to send notice to domain name registrar, www.godaddy.com for ascertaining the ownership status of the domain name cs-professional.com. The Respondent has challenged the authority of Director (Discipline) to call the parties to appear for hearing and reiterated the submissions already made in his written statement.
10. The Disciplinary Directorate vide letter(s) dated 6th July 2016 and 16.08.2016 followed by an e-mail dated 29th November 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.
11. The Board of Discipline in its meeting held on 27th February, 2017 considered the prima-facie opinion dated 27th December, 2016 wherein Director (Discipline) is prima-facie of the opinion that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980 in the absence of any evidence on record to substantiate the allegations made in the complaint. The Board of Discipline after examining the Complaint, written statement, Rejoinder, other material on record and prima-facie opinion dated 27th December, 2016 of the Director (Discipline) directed the Director (Discipline) to provide a last and final opportunity to the Complainant to substantiate his allegations made in the complaint and to produce sufficient evidences that the Respondent owns the website/domain as alleged in the Compliant.
12. Pursuant to the decision of the Board of Discipline, a letter dated 25th May, 2017 was sent to the Complainant under Section 21C of the




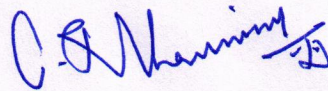
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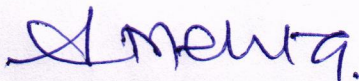
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Company Secretaries Act, 1980 asking him to submit the evidence in support of the allegations made in the complaint that the Respondent owns the website/domain as alleged in the Complaint.

13. The Respondent vide letter dated 30th May, 2017 reiterated his earlier submissions and stated that his complaint has been duly supported with documentary evidence as annexed with the original complaint and rejoinder thereon. The Respondent further stated that godaddy.com does not provide customer's information under any circumstances except under properly served summons and requested Director (Discipline) and Board of Discipline to enforce production/ furnishing of requisite information by/from the third party and the Respondent by exercising their powers under the Act and the Rules made thereunder.
14. The Board of Discipline in its meeting held on 3rd May, 2018 considered Further Investigation report dated 26th April, 2018 wherein Director (Discipline) has reiterated the prima-facie dated 27th December, 2016 that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980.
15. The Board of Discipline observed that in the Complaint of professional or other misconduct filed by Shri D. P. Gupta against Shri Rajiv Bajaj, FCS-3662 (DC/275/2014) on the similar cause of action has held 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.
16. 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 Atul H Mehta
Presiding Officer

