

**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**

ICSI/DC/329/2015

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Shri Utkarsh Patel

.... **Complainant**

Vs.

Shri Ranjit B Kejriwal, FCS-6116, CP No-5985

.... **Respondent**

Present:


Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder and prima-facie opinion of the Director (Discipline).
2. The Board of Discipline noted the following: -
 - (i) The Complainant is a Partner having 50% share in M/s J10 Green Infrastructure, has filed a complaint dated 20th October, 2015 in the prescribed Form-I.
 - (ii) The Complainant's contention was that -
 - a) The Respondent has filed Income Tax Returns without the signature of the Complainant. The Partnership Deed has specific provision about signature of both partners on the Accounts. However, the Respondent did not take his signature before filing the Income Tax Returns.
 - b) The Respondent accepted Professional Assignment as Income Tax Consultant of J10 Green Infrastructure and did unprofessional acts of filing/accepting accounts with signature of only one partner.
 - c) The Respondent was aware about the Partnership Deed. Clause 8 of the Deed specifically mentions about the requirement of signature of both the partners.
 - d) The Respondent did not reply to the two letters sent to him for providing the necessary records as required by the



1

Complainant. Being 50% Partner of the Firm, the Complainant considers himself to be eligible to get such records. The Respondent did not provide the copy of the accounts and returns filed by him even on demand.

- e) The Respondent accepted the professional assignment from the fellow partner by getting appointed as Secretarial auditor of M/s Siddhi Vinayak Shipping Corporation Ltd.
 - f) The Respondent accepted the position of Secretarial Auditor even though he was not eligible for the same. Respondent's father was director of that company during the year for which he was appointed as Secretarial auditor.
 - g) The Respondent is guilty of Professional Misconduct as per second Schedule, Part I, Item 2 to 9 read with Section 21, 21(B) & 22 of the Company Secretaries Act, 1980.
 - h) The Respondent is guilty of Professional Misconduct as per First Schedule, Part I, Item 8 read with Section 21, 21(B) & 22 of Company Secretaries Act, 1980.
- (iii) The Respondent denied the allegations levied against him in his written statement dated 28th January, 2016. The Respondent's contention was that -
- a) The Complaint is totally frivolous, baseless and devoid of any merit.
 - b) The Complainant is the co-ordinator of Shri Utkarsh Patel and co-promoter in M/s Hard Pillars Pvt. Ltd.
 - c) The Complainant & Shri Utkarsh Patel entered into a partnership with Shri Rakesh Sarawagi on 29th June, 2012 in name and style of "J10 Green Infrastructure" for carrying on the business of construction.
 - d) The Firm filed its Income Tax Return u/s 139 of the Income Tax Act, 1961 r/w Rule 12 of the Income Tax Rules, 1962 on 05.08.2013. The return was verified by one of the partners of the firm Shri Rakesh Sarawagi and filed with the Income Tax Authority as per Income Tax Act, 1961.
 - e) Section 140(cc) of the Income Tax Act, 1961 provides for verifying the income tax return by managing partner and where there is not one than by any other partner.
 - f) That the Complainant, Shri Utkarsh Patel & partners of M/s J10 Green Infrastructure approached the Respondent along with two other persons for the incorporation of Hard Pillars Pvt. Ltd. which was incorporated on 19th November, 2013.
 - g) S/Shri Utkarsh Patel and Rakesh Sarawagi never discussed of any dispute with the Respondent during the period.
 - h) The Respondent filed all the forms of the company in which the Complainant was director with Shri Pradip D Patel for the year ended 2014 with MCA.



[Handwritten signature]

[Handwritten signature: C. M. Mistry]

[Handwritten signature: A]

- i) Upto June 2015, there was no dispute as to the returns filed.
- j) One of the partners Shri Rakesh Sarawagi, filed some civil and/or criminal suit/complaint against the Complainant alleging fraud and other allegation(s) and the matter is sub-judice.
- k) That after dispute Complainant demanded copy of books of accounts from the Respondent through representative/ employee of Hard Pillars Pvt. Ltd. the Respondent informed that he did not maintain any record of the books of accounts of M/s J10 Green Infrastructure.
- l) That the Respondent received two letters from the Complainant (in his individual capacity and not as partner of M/s J10 Green infrastructure) asking for the copies of all balance sheet, profit and loss account of firm and income tax returns of the firm filed till date.
- m) That the Respondent informed the Complainant that he does not possess the books of accounts including Balance sheet and profit and loss account. The Respondent uploaded the xml file of M/s J10 Green Infrastructure on the website of Income Tax Department.
- n) The matter was sub-judice, therefore, the Respondent did not provide any document as it will lead to the violation of Clause (1) of Part (I) of the Second Schedule to the Company Secretaries Act, 1980.
- o) That the Respondent received another letter from the Complainant dated 15th September, 2015 threatening the Respondent for filing of professional misconduct proceedings against him. Further, the Respondent was also marked for his non- professional involvement in unnamed listed company.
- p) The Respondent stands unaware if the Complainant is still continuing as 50% partner of M/s J10 Green Infrastructure.
- q) That the Respondent was never appointed formally for taking care of any specific Income Tax work of M/s J10 Green Infrastructure. Neither the Respondent was entrusted with any specific accounts related work of the firm.
- r) That Shri Rakesh Sarawagi visited the office of Respondent for uploading of the xml file on income tax website. The Respondent uploaded the same on the website.
- s) The Respondent further contends that filing of income tax return of an unaudited partnership firm is the absolute assignment and responsibility of the assessee itself and no professional can certify/ verify/ testify any contents of income tax return of an unaudited firm in any manner under any provisions of the Income Tax Act, 1961.

3. The Board of Discipline considered the prima facie opinion dated 21st September, 2017 of the Director (Discipline), along with material on record, that the Respondent is "Not Guilty" of professional misconduct



3

[Handwritten signature]

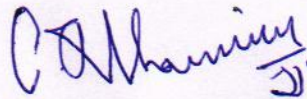
[Handwritten signature]

under the Company Secretaries Act, 1980 as the allegations levied by the Complainant against the Respondent do not find any merit to say that the Respondent has done any work with oblique motive to bargain false professional assignment from the partner of the Complainant. The Respondent has exercised due diligence in the conduct of his professional duties and has not concealed any material fact during his appointment.

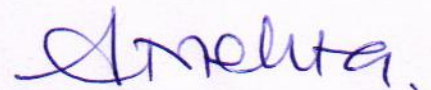
4. **The Board of Discipline at its meeting held on 27th February, 2018, after considering the aforesaid observations, material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed to the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980.**



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Atul H Mehta
Presiding Officer

