

**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/331/2015

Order reserved on : 9th April , 2018
Order issued on : 3rd May 2018

Shri Rajiv Bajaj FCS 3662

...Complainant

Vs

Shri Hitender Mehta FCS 3946

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 30th October 2015 in Form 'I' 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 CS Rajiv Bajaj ,FCS 3662 (hereinafter referred to as 'the Complainant') against CS Hitender Mehta, FCS 3946 (hereinafter referred to as 'the Respondent')
2. The Complainant in his Complaint dated 30th October, 2015 has inter-alia stated as under:-
 - (i) that the Respondent failed to comply with the true disclosure requirements about his occupation pursuant to sub-rule (4) of Rule 9 the Company Secretaries (Election to the Council) Rules, 2006 as despite being practising advocate by profession willfully suppressed this very major material information about his actual occupation while filing his nomination form and as such fraudulently mislead the electorate in order to take undue advantage by hiding his real occupation. The Respondent described his occupation as "*Partner, Vaish Associates, Corporate, Tax and Business Advisory Law Firm*". The actual name of the firm is Vaish Associates, Advocates.
 - (ii) that The Respondent has failed to supply basic, true and complete information about his Occupation in the Statement under the CS Election



Rules, as prescribed by the Council vide Gazette Notification No 1 of 2014 dated 9th September 2014.


- (iii) that the Respondent has violated Rule 42(4)(xii) of the Company Secretaries (Election to the Council) Rules, 2006.
3. The Respondent in his written statement dated 15th December 2015 has *inter-alia* stated as under :-
- (i) that the Complaint has been filed by the Complainant who is a Council Member of the ICSI, the procedure stated in Rule procedure stated in Rule 3(2) and/ or Rule 3(3), as the case may be, of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 has not been followed, and, therefore, is liable to be dismissed on this ground.
- (ii) that the disclosure is made by the members of professional Institutes and/or bar councils in a manner, as has been done by the Respondent. For instance, if 'Mr. X' practicing company secretary (CS) and is partner of a CS firm, say "XYZ Associates", he holds himself out as "Mr. X, Partner, XYZ Associates, Company Secretaries". Likewise, a practicing Chartered Accountant (CA) who is a partner in a CA firm, holds himself out as "Mr. X. Partner. XYZ Associates, Chartered Accountants". The above disclosure is perfectly in order and clearly indicate the profession being practiced by the said CS or, as the case may be, the said CA. Likewise, the Respondent also holds himself out as "Hitender Mehta, Partner, Vaish Associates, Corporate, Tax and Business Advisory Law Firm", which is perfectly in order and clearly indicate the occupation of, or the profession being practiced by, the Respondent. The same disclosure has been made by the Respondent in the Statement under the CS Election Rules as well as in his manifesto circulated to the electorate.
- (iii) that the Respondent has clearly, completely and truthfully disclosed in para I(c) of the Statement under CS Election Rules, particulars about his occupation as Partner of Vaish Associates, Corporate, Tax and Business Advisory Law Firm. Therefore, no false statement has been made by the Respondent in the Statement under the CS Election Rules.
- (iv) that the Respondent has been associated with M/s Vaish Associates which is a Corporate, Tax and Business Advisory Law Firm since 2005, and the same is well known amongst the CS fraternity. Vaish Associates is a law firm of international repute and has been in existence for over four decades and enjoys tremendous reputation and goodwill as one of the prominent law firms of India.



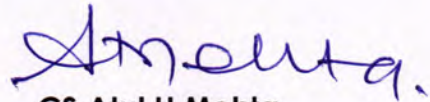
4. The Complainant in his Rejoinder 10th February 2016 has inter-alia stated as under:-
- (i) that the present Complaint filed by the Complainant is as a individual member and therefore the reference to the Rule 3(2) and/or Rule 3 (3) of the Company Secretaries(Procedure of the investigation of Professional & other misconduct and Conduct of Cases) Rules ,2007 is not relevant at all.
 - (ii) that the argument of the respondent that the designations like "Associate Director" "VP Legal" which correctly describe the occupation of a professional are akin to "Partner" without mentioning correctly the exact name of the organisation which in his case is Vaish Associates, Advocates, and he with an intent to deceive the voters & ICSI suppressed & mentioned the name of the Firm as Vaish Associates. It is not at all clear from the above what is the exact occupation of the Respondent. He has tried to deceive the voters by hiding the vital mandatory information.
 - (iii) that the Respondent has failed to address the basic issue as to why he Misrepresented the name of his law firm as "Vaish Associates" and hiding the vital information that it is Vaish associates, Advocates adding that two of the colleagues of the Respondent contesting for the Central Council & Regional Council Elections respectively have very correctly mentioned the name of the Law firm as Vaish Associates, Advocates. He has further stated that the Respondent himself has stated in his LinkedIn Profile the name of his firm as "Vaish Associates, Advocates" but he is repeatedly, illegally & mischievously mentioning name of his firm as "Vaish Associates, Corporate, Tax & Business advisory Law Firm".
5. The Board of Discipline in its meeting held on 9th April 2018 has considered the *prima-facie* opinion dated 27th March, 2018 of the Director (Discipline) alongwith all material available on record in the complaint wherein she is *prima-facie* of the opinion that the Respondent has not violated Rule 42(4)(xii) of the Company Secretaries (Election to the Council) Rules, 2006, as alleged by the Complainant hence is not guilty of professional or other misconduct under the First or Second Schedule to the Company Secretaries Act, 1980.
6. The Board of Discipline after appreciating the material on record, relevant provision of the Act and the Company Secretaries (Election to the Council) Rules, 2006 and facts and circumstances of the matter observed as under:
- (i) that both, the Complainant and the Respondent are Fellow members of the Institute, and both of them contested the Election to the Council of the Institute from Northern India Regional constituency, in the year 2014. While the Complainant was declared elected, the Respondent had lost the election. The Respondent has challenged the election of the Complainant by making complaints against him with different forums, including the Disciplinary Directorate.



- (ii) the present complaint has been filed by the Complainant alleging that the Respondent, while filing his nomination papers both in 2010 and 2014 has suppressed the fact of his being a *practising Advocate* and given false/misleading information about his "Occupation" with an objective to suppress the aforesaid fact of being a practising advocate by describing the name of firm in which he is a Partner as Vaish Associates, Corporate, Tax and Business Advisory Law Firm whereas the complete name of the firm is Vaish Associates, Advocates, is thereby guilty of 'other misconduct' in terms of Clause (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980, read with Rule 42 of the Company Secretaries (Election to the Council) Rules, 2006.
- (iii) that the Respondent has nowhere in his written statement denied that he is a practising advocate being a Partner in a law firm. He has also nowhere, in his written statement, denied that the name of the firm is Vaish Associates, Advocates.
- (iv) that the omission of the word "Advocates" from the name of the firm cannot be termed as falseness, more particularly when he has added words "Corporate, Tax and Business Advisory Law Firm" which clearly indicates that the Respondent is an Advocate and only an Advocate can be a Partner in a Law Firm.
- (v) that the Complainant has failed to mention as to which disclosure has not been made by the Respondent other than his having disclosed about being a Partner in a law firm and mentioning of his degrees i.e. FCS, FCA, LL.B. -in terms of Gazette Notification no. 1 of 2014 dated 9th September 2014.
- (vi) that the Nomination of the Respondent was accepted by the Returning Officer in itself proves that the Statement submitted by the Respondent with the Nomination Form contained all the requisite information, as provided in Schedule 4 to the Company Secretaries (Election to the Council) Rules, 2006.
- (vii) that it is apparent from the Partner, "*Vaish Associates, Corporate, Tax and Business Advisory Law Firm*" that it is a law firm and the Respondent is partner in the firm.
7. After considering the material available on record, relevant provisions of the Act and the Company Secretaries (Election to the Council) Rules, 2006, all the facts and circumstances of the matter, and the observations made para 6 above agreed to the prima-facie opinion of the Director (Discipline) that the Respondent has not violated Rule 42(4) (xii) of the Company Secretaries (Election to the Council) Rules, 2006, as alleged by the Complainant and is not guilty of professional or other misconduct under the First or Second Schedule to the Company Secretaries Act, 1980. Accordingly, the Board of Discipline ordered the closure of the case.


CS Dinesh Chandra Arora
 Member




CS Atul H Mehta
 Presiding Officer