

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

DC: 353/2016

Order Reserved on: 26th June, 2019

Order issued on: 30 JUL 2019

Shri Bibekananda Mohanty
Registrar of Companies,
Office of the Registrar of Companies
West Bengal

.....Complainant

Vs.

Shri Rantu Kumar Das, ACS-26997

.....Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer
Mrs. Meenakshi Datta, Member (Govt. Nominee)
CS B Narasimhan, Member
CS Nagendra D Rao, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kumar Srivastava, Deputy Director, Disciplinary Directorate
Respondent along with Shri Suryaneel Das, Advocate and Shri Prasant Kumar Sarkar PCS

FINAL ORDER

1. A Complaint dated 11th September, 2015 in Form 'I' filed under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as '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 (hereinafter referred to as 'the Rules') by Registrar of Companies through Shri B. Mohanty, ROC (hereinafter referred to as 'the Complainant') against Shri Rantu Kumar Das, (ACS - 26997) (hereinafter referred to as 'the Respondent').
2. The Complainant has alleged that the Respondent has certified Form 20B pursuant to Section 159 of the Companies, Act 1956, erroneously for M/s. Infinity Realcon Limited (hereinafter referred to as 'the Company') for the year ending on 31st March, 2012 without attaching list of preference shareholders. This act of the Respondent contravenes Item (7) of Part I of the Second Schedule to the Act.
3. The Respondent in his written statement dated 21st July, 2016 has *inter-alia* stated that he had uploaded the Annual Return in PDF Format. However, the details of the preference shareholders could not be appended to Form 20B as the maximum MB limit of 2.5 was exceeded as such the complete list of shareholders could not be



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submitted. The Respondent submitted that he has inadvertently, pressed "Yes" button indicated against Clause No. 15 of Form 20B instead of "No" as he should have done as he could not attach the details of preference shareholders. However, the Respondent asked the Company vide his letter dated 7th January, 2013 to submit the CD containing the details of preference shareholders with the Registrar of Companies, West Bengal and the Company conveyed to the Respondent that the CD had been duly submitted with the ROC. After receiving Show Cause Notice dated 13th April, 2015 from the Registrar of Companies, West Bengal, the Respondent tried to contact the Company. However, there is no response from the Company to the e-mails and calls of the Respondent. The Respondent has further submitted that submission of CD with the Registrar of Companies, West Bengal is the responsibility of the Company. As a certifying professional, the responsibility of the Respondent is to follow up with the Company to ensure that CD with the requisite particulars has been submitted with the Registrar of Companies.

4. Pursuant to sub-rule (4) of Rule 8 of the Rules, copy of written statement dated 21st July, 2016 of the Respondent has been sent to the Complainant vide letter dated 27th July, 2016 for submission of the rejoinder. Letter dated 16th September, 2016 has again been sent to the Complainant for submission of the rejoinder. However, no rejoinder to the written statement to the Complaint has been received.
5. In pursuance of Section 21 of the Act read with the Rules, the Director (Discipline) has formed *prima-facie* opinion dated 19th August, 2017 wherein the Director (Discipline) is *prima-facie* of the opinion that the Respondent is 'Guilty' of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Act as the Respondent has not exercised due diligence while certifying Form 20B as he has not attached List of preference shareholders as attachment after clicking 'Yes' against Clause No. 15 in the Form 20B which is mandatory requirement.
6. The Disciplinary Committee in its meeting held on 8th December, 2017 agreed with the *prima-facie* opinion dated 19th August, 2017 of the Director (Discipline) and decided to adjudicate the matter in accordance with Rule 18 of the Rules read with the Act to finally conclude whether the Respondent is 'Guilty' or not.
7. Copy of the *prima-facie* opinion dated 19th August, 2017 of the Director (Discipline) sent to the Respondent and the Complainant vide letter(s) dated 10th November, 2017 asking them to submit their written statement and the rejoinder, respectively.
8. The Respondent vide letter dated 14th December, 2017 has submitted his written statement to *prima-facie* opinion wherein he has *inter-alia* stated that the Respondent was appointed by the Company to certify and file Form 20B for the Financial Year 2011-12 with ROC, West Bengal. The Respondent has stated that he has checked the following documents for certification of Form 20B:
 - (i) List of Equity Shares.
 - (ii) List of preference shareholders.
 - (iii) List of Directors, and Annual Return as per Schedule V, Part II.
9. The Respondent has further submitted that the Company was required to attach documents with Form 20B as per Section 159 of the Companies Act, 1956. While attaching the list of Equity Share Holders, List of Directors and Annual Return as per Schedule V, he did not enclose list of preference shareholders as the size was more



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than 2.6 MB (Mega Byte). The Respondent checked all the documents and found all enclosures except the list of preference shareholders. Number of preference shareholders was more than 1000 due to which file size was more than 2.6 MB (Mega Byte). The Respondent further submitted that he always referred to the Instruction for Filing e-Form 20B Schedule V in Clause 15 which provides that Option 'No' in the Form should be selected only in case the list of shareholders, debenture holders is large in size and the same is to be submitted in a CD separately with the office of the concerned ROC. The Respondent had selected 'Yes' because the list of equity shareholders was already attached with Form 20B. So the mistake on his part was not intentional but only a mistake due to technical reasons. The Respondent had instructed *vide* letter dated 7th January, 2013 to the MD, of the Company that the list of preference shareholders be submitted physically with the ROC, West Bengal within 30 days of filing of Form 20B. The Respondent had further submitted that exercising reasonable caution and wisdom during pre-certification, based upon the documents provided by the company is proof enough that the Respondent had exercised due-diligence and due compliance with the procedure and hence cannot be termed as act of guilt for a professional.

10. Notice dated 22nd February, 2019 was issued to the Respondent and the Complainant for appearance before the Disciplinary Committee on 12th March, 2019.
11. The Respondent appeared with authorised representative and reiterated his submissions made earlier. The Complainant *vide* e-mail dated 5th March, 2019 has requested for adjournment on account of tremendous pendency of inquiry, inspection and investigation. At the request of the Complainant, the Disciplinary Committee decided to adjourn the matter.
12. Notice dated 12th June, 2019 was issued to the Respondent and the Complainant for appearance before the Disciplinary Committee on 26th June, 2019.
13. Respondent appeared with Shri Suryaneel Das, Advocate and Shri Prasant Kumar Sarkar PCS. An e-mail dated 24th June, 2019 has been received from the Complainant requesting therein for adjournment on the account of their inability to spare any officer for appearance because of tremendous pendency of inquiry, inspection & investigation and ongoing session of the Parliament. The Disciplinary Committee noted that the Complainant has requested for adjournment on second time on the similar grounds and after considering the request, decided to proceed *ex-parte*.
14. The Respondent has reiterated the submissions made and drawn attention of the Disciplinary Committee that he had written a letter dated 7th January, 2013 to the Company within 16 days of filing of Form 20B. Hence, there is no *malafide* intention on his part and the error is due to technical reasons only.
15. The Disciplinary Committee after considering the submissions of the Complainant and the Respondent, material on record and the fact and circumstances of the matter, has observed that the Respondent has certified Form 20B for the Company for the Financial Year 2011-12 and filed *vide* SRNQ04782272 dated 22nd December, 2012. In Form 20B the Respondent opted 'Yes' against Column 15 "Whether Complete List of shareholders has been enclosed as attachment". However, List of preference shareholders was not attached. It is clearly mentioned in Form 20B that in case "No" is opted against Column 15 details of the shareholders, debenture holders in CD separately with the ROC are to be submitted. In the instant Complaint "Yes" has been



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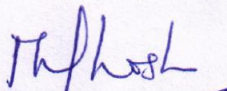
opted by the Respondent but one of the list i.e. List of preference shareholders was not attached. However, the Respondent vide letter dated 7th January, 2013 had asked the Company to submit list of preference shareholders in CD to ROC, West Bengal. The letter has been sent through Speed Post EW201956265IN on 7th January, 2013. On receipt of Show cause Notice dated 13th April, 2015 from ROC, West Bengal, the Respondent tried to contact the Company. However, the Company did not reply to his communications. Letter dated 12th May, 2015 sent to the Company returned undelivered with the endorsement 'address does not exist. Letter sent to the Managing Director at his residential address has also returned undelivered. The Disciplinary Committee further observed that there is a mistake on part of the Respondent which appears to be a mistake due to technical reasons about which the Respondent had informed the Company, immediately, to submit the CD containing list of preference shareholders to ROC, West Bengal. The Disciplinary Committee has further observed that the Complainant has neither submitted the rejoinder to the written statement dated 21st July, 2016 to the Complaint nor has he submitted the rejoinder to the written statement dated 14th December, 2017 to the *prima-face* opinion.

16. In view of the above, the Disciplinary Committee after considering all the material available on record, the submissions and the arguments adduced before it by the Respondent and in totality of the facts and circumstances of the case, is of the opinion that the mistake of the Respondent can't be construed as not exercising due diligence or grossly negligent. Hence, the Disciplinary Committee finds that the Respondent is "Not Guilty" of professional or other misconduct under the Company Secretaries Act, 1980. However, the Disciplinary Committee advises the Respondent to exercise caution in all statutory filings in future.

Accordingly, the complaint is disposed off.


Member


Member


Member




Presiding Officer