

**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/405/2017

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Shri Nitin Anil Kapoor

.... Complainant

Vs.

Shri Haresh Sanghvi, FCS 2259, CP 3675

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint dated July 20, 2017 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 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 'the Rules') by Shri Nitin Anil Kapoor (hereinafter referred to as 'the Complainant'), against Shri Haresh Sanghvi FCS: 2259 COP: 3675, H.P. Sanghvi & Company (hereinafter referred to as 'the Respondent'). The Complainant in his Complaint dated July 29, 2017 has inter-alia alleged:

- (i) That a search report dated 30th June, 2006 stated to be issued by the Respondent as annexed with the complaint relating to the cessation of Shri Nitin Anil Kapoor (Complainant) in respect of Form-32 without carrying out any search or inspection. The Respondent is, therefore, guilty of professional misconduct for issuing the Search Report without due diligence.
- (ii) That the search report issued by the Respondent stated that, on the information collected and records available for inspection at the Office of Registrar of Companies, Maharashtra- Mumbai, Shri Nitin Kapoor S/o Shri Anil Kapoor residing at Scholar Bldg, 3rd Floor, East Wing, Mumbai -400039 was ceased to be the Director of the



Company with effect from 26th November 2005 and Form No.32 dated 26th November 2005 pursuant to the provisions of Section 303(2) of the Companies Act,1956 has was filed by the company on 12th December, 2005. The said Form 32 has been duly registered as Serial No. 46 on 29th June 2006 by the office of the Registrar of Companies, Maharashtra.

- (iii) That the Registrar of Companies (ROC), Mumbai its vide letter no. ROC/RTI/2010/5052 dated 26/03/2010, in reply of a RTI application dated 26/02/2010 duly filed by Complainant, stated that as per ROC records it appears that no Form 32 was filed in respect of Shri Nitin Anil Kapoor resignation. Though, the Respondent in his search report stated that the said Form -32 has been duly filed and registered with ROC, Mumbai.
- (iv) That a reply sent by ROC, Mumbai in respect of another RTI application filed by Complainant dated 07/09/2015, the ROC, Mumbai vide its letter ref no.ROC/RTI/2015/ August/82/3844 dated 15/09/2015 stated that apart from Shri Nitin Anil Kapoor, no one else had conducted a search of M/s.Swagatam Investments & Trading Private Limited between 01/03/2005 upto 31/03/2007.
- (v) That ROC, Mumbai sent a letter no. ROC/RTI/2016/Dec/G-33/651 dated 16/01/2017, in respect of RTI filed by Complainant dated 27/12/2016, stated that no person have taken physical inspection of the said company during 01/01/2005 to 31/06/2006.
- (vi) That search report has been issued by Respondent without conducting a search or inspection of records registered & maintained by ROC, Mumbai.
2. The Board of Discipline considered the material records and prima-facie opinion dated 27th February, 2018 of the Director (Discipline) wherein she is prima-facie of the opinion that the allegations in the instant matter are pertaining to a search report dated 30th June, 2006 stated to be issued by the Respondent as annexed with the complaint, relating to the cessation of Shri Nitin Anil Kapoor (Complainant) in respect of Form-32 without carrying out any search or inspection. The Respondent has inter-alia stated that the matter is very old and he has



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no old records/documents whatsoever, including those relating to and concerning the subject matter. However, the Respondent has annexed true copy of Form -32 and true copy of cash receipt evidencing the filing of Form -32 with ROC, Mumbai regarding cessation of Mr. Nitin Anil Kapoor as director of M/s. Swagatam Investments & Trading Company Private Limited.

3. The Search Report given by the Respondent is dated 30th June, 2006, the matter is more than 11 years old and the Respondent in his written statement categorically stated that the matter is very old and he has no old records/documents whatsoever including those relating to and concerning the subject matter. In this regard, attention is drawn to Rule 12 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct Of Cases) Rules, 2007 which provides as under:

"12. Time limit on entertaining complaint or information

Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Act'.

4. In view of the aforesaid observations and considering the provisions of Rule 12 of the **Rules and all the facts and** circumstances of the matter, the Director (Discipline) is of the view that *the member against whom the complaint has been filed, would find it difficult to lead evidence to defend himself on account of the time lag which is more than 11 years and also on account of switchover of physical system to MCA 21 portal by the Central Government.*
5. In view of the above observations and keeping view of the provision of Rule 12 of the Rules, the Board of Discipline after considering the 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



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C. M. Hemraj

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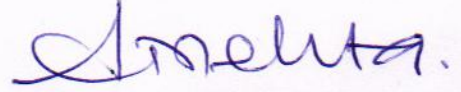
(Discipline), to **"Close the Case"** under Rule 12 of the Rules read with the Company Secretaries Act, 1980.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Atul H Mehta
Presiding Officer

