

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

ICSI/DC/418/2017

Order reserved on: 3rd April, 2019

Order issued on : 12 JUN 2019

M/s. Magic Glass Pvt. Ltd.
through Shri Viral Bharat Nagori

.....Complainant

Vs

Shri Mahesh Athavale, (FCS-2412, CP No 1488)

..... Respondent No. 1

Ms. Anagha Anasingaraju, (FCS-6630, CP No 6635)

..... Respondent No. 2

CORAM:

Shri Deepak Kumar Khaitan, Presiding Officer
Shri Manish Gupta, Member
Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Gaurav Tandon Assistant Director, Disciplinary Directorate

ORDER

1. A complaint dated 16th November, 2017 in Form-'I' was filed by M/s. Magic Glass Pvt. Ltd., through Shri Viral Bharat Nagori (hereinafter referred to as 'the Complainant'), against Shri Mahesh Athavale, FCS-2412, CP No. 1488) Partner of M/s Kanj & Associates (hereinafter referred to as 'the Respondent No. 1') and Ms. Anagha Anasingaraju, FCS-6630, CP No 6635) Partner of M/s Kanjmag & Co. (hereinafter referred to as 'the Respondent No. 2') 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').
2. That the Complainant inter-alia alleged that the Respondent No. 1 i.e. Shri Mahesh Athavale through his firm filed Company Petition No. 267 of 2017 against the Complainant (formerly known as M/s. Veeral E Safety Glass Private Limited) which is in conflict of interest and hence, an act of professional misconduct. In support, he has stated that the Respondent's firm was consultant to the Complainant's Company and was paid consultancy charges in the year 2004 to 2007. Further, Shri



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Viral Nagori had apprised the Respondent No. 2 on 23rd February, 2017 regarding the dispute between Shri Viral Nagori and Shri Kodre for the Complainant (M/s Magic Glass Private Limited) and has exchanged some emails with the Respondent No. 2.

3. That both the Respondents denied the allegations levied against them and have stated that Firm M/s. Kanj & Associate had given consultation to the complainant's company about 10 years ago and that cannot hold back the professional for taking future assignments. They further submitted that the Complainant had just made vague and sweeping allegations without attaching any evidence with the complaint as to what confidential information was disclosed. Further, the Complainant has not stated the specific Clause of / Parts of Schedule(s) to the Company Secretaries Act, 1980 under which the alleged act of commission or omission of the Respondents falls. The Respondents have also stated that Shri Viral Nagori during his meeting with the Respondent No. 2 had discussed some other matter and subsequently the offer made by the Respondent No. 2 which was not accepted.
4. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, through prima facie opinion dated 9th January, 2019 opined that the Respondent is 'Not Guilty' of professional misconduct under any of the items of First and/or Second Schedule to the Act as the Respondents firm i.e. M/s Kanj & Associate were consultant to the complainant company about 10 years ago from filing of the said petition. Moreover, the allegations made in the complaint are not substantiated by documents on record.
5. The Board of Discipline on 17th January, 2019 had considered the *prima-facie* opinion dated 9th January, 2019 of the Director (Discipline) and the material on record. The Board observed that the Director (Discipline) *inter-alia* was of the view that the Respondent(s) are 'Not Guilty' of professional misconduct under any of the items of First and/or Second Schedule to the Company Secretaries Act, 1980 as the Respondent No. 1 firm i.e. M/s Kanj & Associate was consultant to the Complainant Company about 10 years ago from filing of Company Petition No. 267 of 2017 against the Complainant (formerly known as Veeral E Safety Glass Private Limited). Moreover, the allegations related to conflict of interest in the complaint are not substantiated by the Complainant by documents on record. The Board of Discipline after considering the material on record and all the facts and circumstances of the case, directed the Director (Discipline) to take a legal opinion as to whether there is any conflict of interest by the Respondents in the matter.



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6. Accordingly, legal opinion from Shri R D Makheeja, Advocate was sought and wherein Shri R D Makheeja, Advocate vide his legal opinion dated 14th February, 2019 opined as under-

(a) On the facts on the records there is no conflict of interest on the part of the Respondent No. 1 by taking up the assignment against the Company after 10 years of having rendered professional services by him to the Complainant Company more than twelve (12) years ago on a few occasions.

(b) The Complainant Company has not disclosed the information and documents shared by it with the Respondent No. 2 during the meeting alleged to have been held on 23rd February, 2017.

(c) Seeking of offer for some services from professional which did not materialize does not block that professional from taking assignments from the other side.

(d) Unless the details of the documents and information shared by the Director of the Company with the Respondent No. 2 are provided with the evidence, it cannot be said that there is conflict of interest.

7. In addition, a letter dated 14th February, 2019 was also issued to the Complainant asking to provide the following documents –


(a) Certified copy of the Petition No 267 of 2017 filed before the Hon'ble Company Law Tribunal, Mumbai Bench as referred in the complaint.

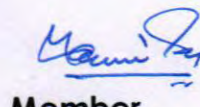
(b) Certified Copy of Offer letter received by him from Ms. Anagha Anasingaraju, FCS-6630.

8. The Complainant vide its letter dated 25th February, 2019 provided the requisite documents.

9. The Board of Discipline considered the material on record, Legal Opinion and prima-facie opinion of the Director (Discipline). It finds no conflict of interest. Having consideration of all the facts, it agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondents are 'Not Guilty' of professional and other misconduct under the Company Secretaries Act, 1980. Accordingly, the complaint is dismissed and closed.




Member


Member


Presiding Officer