

**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/NI/03/2017

Order reserved on: 19th November, 2018

Order issued on : 17 JAN 2019

Shri Rajendra Kr. Goenka

.... Informant

Vs.

Shri Dinesh Agarwal, FCS-6315

.... Respondent No. 1

Shri Bijay Agarwal, ACS- 36489

.... Respondent No. 2

CORAM:

Shri C Ramasubramaniam, Presiding Officer for the meeting
Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Mrs. Anita Mehra, Assistant Director
Mr. Gaurav Tandon, Assistant Director

FINAL ORDER

1. The Board of Discipline examined the Information, Written statement of the Respondent, other material on record, prima-facie opinion and further investigation report of the Director (Discipline).
2. The Board of Discipline considered the following: -
 - 2.1 An information dated 8th November 2016 was received 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 Shri Rajendra Kr. Goenka ('the Informant') against Shri Dinesh Agarwal, FCS-6315 (hereinafter referred as the 'Respondent No. 1') and Shri Bijay Agarwal, ACS-36489 (hereinafter referred as the 'Respondent No. 2').
 - 2.2 The Informant is a Director of M/s Lotus Homes Limited having Registered Office at Kolkata and has *inter-alia* alleged the following against the Respondents: -
 - a) that both the Respondents have committed high level of professional misconduct by entering into a deep rooted criminal conspiracy with certain people to cheat by way of impersonation and to illegally take over the management of the Company. The Informant was shocked on or about 7th September, 2017 to notice that there has been considerable change in the management of M/s Lotus Homes Limited, it did not hold any Board Meeting or other meeting after March, 2015, thereby appointing or removing any director.



- b) That the Respondent No. 1 has induced, Mrs. Ruchi Bhagat as Director of the Company, and the Respondent No. 2 has induced S/Shri Sanjay Kumar Bhagat, Sanjeev Kumar Mishra, Santosh Kumar Bhagat, Satyendra Kushwaha and Shambhu Kushawaha as Directors of the Company, by fraudulently retrieving and mis-utilising the digital signature of the Informant without his knowledge and permission.
- c) that both the Respondents have uploaded forged and manufactured documents with ROC and has created fake letterheads of the Company bearing incorrect address and a fake e-mail ID of the company in name of the Informant (rajendrangoenka@indiatimes.com) without his proper authorization and prior knowledge and has mis-utilised it for uploading supporting documents in connection with Form DIR 12.
- d) The management and financial affairs of the company was taken over from previous management causing unjust loss to the Informant and other erstwhile Board members. The induced directors after gaining power and control over the Board had changed registered office of the Company. The Informant had also initiated and lodged a complaint with Crime Branch, Lal Bazaar, Kolkata.

2.3 The Respondent No. 1 has denied all the allegations leveled against him and has inter alia stated that: -

- a) The details of composition and change in Board of Directors of the company as provided by the Informant are factually incorrect and false as per the records available with ROC, WB or MCA21.
- b) The Respondent No. 1 has denied fraudulent retrieval, dishonest intention and misuse of digital signature of the informant, which is totally wrong and beyond his knowledge. Further as per provisions of the Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008 as referred in Section 42 (1) and (2), the Digital Signature Certificate ('DSC') is required to be kept in a security device being an e-Token, fully protected with a password, to be known only by the owner and in his/her possession only as it is a case sensitive material.
- c) He has pre-certified following two e-forms: -
- i) Form DIR-12 on 28.08.2015 towards appointment of one Ms. Ruchi Bhagat as an Additional Director of the Company on 20.03.2015 after due diligence as per guideline of the Institute.
- ii) E-Form INC-22 for change in Registered Office of the Company after exercising due diligence and after personally inspected the places of new registered office of the Company for physical verification of address and found it to be properly functioning and after due diligence as per guideline of the Institute.
- d) Pre-certification of forms were done on the basis of valid documents produced before them by the authorised representative of the company, having letter of authorisation, duly certified by Board of Directors of the Company, at the time of meeting with them towards rendering pre-certification professional services for the concerned matters, produced all the required and valid documents before them, as follows- i) certified copies of minutes of proceedings of the Board Meetings, ii) resolutions



 

passed by the Board of Directors, iii) consent letters, iv) letters of appointments v) proof of registered office address and vi) other relevant papers in physical as well as e-forms for filing with MCA and those were counter verified by them before pre-certifying the above forms and found authentic before naked eyes.

- e) The documents brought by the said authorised representative were duly executed and certified by the company executives/ directors and the Respondent No. 1 was not involved in drafting or execution of any of the documents related to the matter. Hence the question of counterfeiting any letter head or any other documents is irrelevant and false.
- f) The said authorised representative only had carrying with himself the digital signature certificates (DSCs) of the Informant and Shri Sanjay Kumar Bhagat and he himself certified the aforementioned forms on behalf of the signatories in the respective forms as per authorisation provided to him in the aforesaid letter borne by him.
- g) Email id rajendragoenska@indiatimes.com was already registered in the name of company as on date of pre-certification of above e-forms and was pre-filled in the form before pre-certification. It can be verified from MCA21 records. Hence, the Respondent No. 1 denied of having involved in creating or misusing such email id. He has no idea about creating fake 'letterhead' and fake 'email id' of the company.
- h) The Respondent No. 1 denied his involvement in any illegal change of registered office of the company. He pre-certified one Form INC-22 on 01.09.2015 towards notice of change in situation of registered office of the Company from 2, India Exchange Place, 2nd Floor, Room No. 13, Kolkata-700001 to 17, Rowland Road, Kolkata-700020 w.e.f. 25.08.2015, after personally inspected the place of new registered office for physical verification of address and found it to be properly functioning and after due diligence as per guideline of the Institute.
- i) Respondent No. 1 has not received any intimation or communication from Crime Branch, Lal Bazar, HQ Kolkata Police regarding the police compliant mentioned in Para 10 of the Information Letter.
- j) His role as practising professional was limited to verification of documents evidencing the events for which the aforementioned forms were being filed and pre-certification of those forms on the basis of such documentary evidence upon satisfaction. These forms were duly pre-filled before presented before him with all documents scanned and pre-attached and authorised representative himself affixed DSCs of authorised signatories of the company. Respondent No. 1 verified the contains of the forms and its attachments with the physical documentary evidence present before him and upon finding those to be satisfactory, Respondent No. 1 affixed his DSCs in the respective forms.
- k) That duration of pre-certification of all forms is 4 days and it is beyond common sense that the Informant had no clue about his DSC not with himself and not searched about it or made a complaint regarding loss of it, when DSCs at that time period were only issued in a private security token which are generally kept in custody of the signee himself.



[Handwritten signature]

[Handwritten signature]

- l) That intimation of approvals of all forms filed with MCA21 are delivered via E Mail to all the stakeholders involved in the e-filing and the Informant being Board Member of the company was unaware of such changes in company for long period. Respondent No. 1 or any other official of the Company were not contacted by him citing such serious allegation since pre-certification of forms done on 28.08.2015 and 01.09.2015 till he came to know the matter through this Information i.e. more than 1 year and 7 months. Such a behaviour and neglect by a Senior Director of a company is beyond understanding.
- m) The Respondent No. 1 came to know that a management dispute case in the above matter is pending before the CLB/NCLT and a status quo has been passed by the concerned authority.

2.4 The Respondent No. 2 has denied all the allegations leveled against him and has *inter-alia* stated that-

- a) The details of composition and change in Board of Directors of the company as provided by the Informant are factually incorrect and false as per the records available with ROC, WB or MCA21.
- b) The Respondent No. 2 has denied fraudulent retrieval, dishonest intention and misuse of digital signature of the informant, which is totally wrong and beyond his knowledge. Further as per provisions of the Information Technology Act, 2000 and Information Technology (Amendment) Act, 2008 as referred in Section 42 (1) and (2), the Digital Signature Certificate ('DSC') is required to be kept in a security device being an e-Token, fully protected with a password, to be known only by the owner and in his/her possession only as it is a case sensitive material.
- c) He has pre-certified only one E-Form DIR-12 on 01.09.2015 towards appointment of one Mr. Sanjeev Kumar Mishra DIN-07244261, Mr. Santosh Kumar Bhagat DIN-00059816, Mr. Satyendra Kushwaha DIN- 07215282. Mr. Shambhu Kushawaha DIN-06429060 and Mr. Sanjay Kumar Bhagat DIN-00430015 as Additional Directors in M/s Lotus Homes Limited on 26.08.2015 after due diligence.
- d) The above pre-certification was done after due diligence and on the basis of valid documents produced before him by the authorised representative of the company, having letter of authorisation, duly certified by Board of Directors of the Company, at the time of meeting with them towards rendering pre-certification professional services for the concerned matters, produced all the required and valid documents before them, as follows- i) certified copies of minutes of proceedings of the Board Meetings, ii) resolutions passed by the Board of Directors, iii) consent letters, iv) letters of appointments v) proof of registered office address and vi) other relevant papers in physical as well as e-forms for filing with MCA and those were counter verified by them before pre-certifying the above forms and found authentic before naked eyes.
- e) The documents brought by the said authorised representative were duly executed and certified by the company executives/ directors and the Respondent No. 1 was not involved in drafting or execution of any of the documents related to the matter. Hence the question of counterfeiting any letter head or any other documents is irrelevant and false.



[Handwritten signature]

[Handwritten signature]

- f) The said authorised representative only had carrying with himself the digital signature certificates (DSCs) of the Informant and Mr. Sanjay Kumar Bhagat and he himself certified the aforementioned forms on behalf of the signatories in the respective forms as per authorisation provided to him in the aforesaid letter borne by him.
- g) Email id rajendrargoenka@indiatimes.com was already registered in the name of company as on date of pre-certification of above e-forms and was pre-filled in the form before pre-certification. It can be verified from MCA21 records. Hence, the Respondent No. 1 denied of having involved in creating or misusing such email id. He has no idea about creating fake 'letterhead' and fake 'email id' of the company.
- h) The Respondent No. 2 denied his involvement in any illegal change of registered office of the company. Further, he did not pre-certify Form INC-22 for change of registered office of the Company.
- i) The Respondent No. 2 has not received any intimation or communication from Crime Branch, Lal Bazar, HQ Kolkata Police regarding the police complaint mentioned in Para 10 of the Information Letter.
- j) His role as practising professional was limited to verification of documents evidencing the events for which the aforementioned forms were being filed and pre-certification of those forms on the basis of such documentary evidence upon satisfaction. These forms were duly pre-filled before presented before him with all documents scanned and pre-attached and authorised representative himself affixed DSCs of authorised signatories of the company. Respondent No. 1 verified the contents of the forms and its attachments with the physical documentary evidence present before him and upon finding those to be satisfactory, Respondent No. 2 affixed his DSCs in the respective forms.
- k) That duration of pre-certification of all forms is 4 days and it is beyond common sense that the Informant had no clue about his DSC not with himself and not searched about it or made a complaint regarding loss of it, when DSCs at that time period were only issued in a private security token which are generally kept in custody of the signee himself.
- l) That intimation of approvals of all forms filed with MCA21 are delivered via E Mail to all the stakeholders involved in the e-filing and the Informant being Board Member of the company was unaware of such changes in company for long period. Respondent No. 2 or any other official of the Company were not contacted by him citing such serious allegation since pre-certification of forms done on 28.08.2015 and 01.09.2015 till he came to know the matter through this Information i.e. more than 1 year and 7 months. Such a behaviour and neglect by a Senior Director of a company is beyond understanding.
- m) The Respondent No. 2 came to know that a management dispute case in the above matter is pending before the CLB/NCLT and a status quo has been passed by the concerned authority.

3 The Board of Discipline noted that after examining the matter, the Director (Discipline) is prima facie of the opinion that the Respondent No. 1 & 2 are "NOT GUILTY" of professional or other misconduct under the Company Secretaries Act, 1980, as there are no documents to substantiate the allegations made against



[Handwritten signature]

[Handwritten signature]
Page 5 of 7

the Respondents and the Informant himself is responsible for use and safe custody of his own DSC.

- 4 The *prima-facie* opinion dated 8th January, 2018 of the Director (Discipline) in the matter was placed before the Board of Discipline for consideration on 27th February, 2018.
- 5 The Board of Discipline advised the Director (Discipline) to further investigate the matter, and also to call details from both the Respondents about circulation, if any, of Notice and Agenda for the meeting of Board of Directors of M/s Lotus Homes Limited wherein the appointment of additional directors and change in registered office of the company was approved, for which two e-Forms viz DIR-12 and INC 22 was pre-certified by the Respondent No. 1 and one e-Form DIR-12 was pre-certified by the Respondent No. 2. Accordingly, the Board further advised the Director Discipline to place the further investigation report before the Board.
- 6 The Board of Discipline noted that the following documents/information were called from the Respondents No. 1 & 2 vide letter(s) dated 21st May, 2018: -
 - a) About circulation, if any, of Notice and Agenda for the meeting of Board of Directors of M/s Lotus Homes Limited wherein the appointment of additional directors and change in registered office of the company was approved, for which two e-Forms viz DIR-12 and INC 22 were pre-certified by you.
 - b) Any other documents/information, deem fit by you in the matter.
- 7 And in response, the Respondent No. 1 vide letter dated 28th May, 2018 has reiterated his earlier submissions and also submitted the following documents:-

Form DIR 12 for appointment of 1 Additional Director

 - a) Copy of Notice of Board Meeting dated 20.03.2015.
 - b) Certified copy of Board Resolution dated 20.03.2015 for appointment of Ms. Ruchi Bhagat, as Additional Director.
 - c) Other supporting documents such as consent letter, letter of appointment and interest in other entities.

Form INC 22

 - d) Copy of Notice of Board Meeting dated 25.08.2015.
 - e) Certified copy of Board Resolution dated 25.08.2015 for approval for shifting registered office.
 - f) Other supporting documents such as leave & licence agreement, utility bills and rent control receipt.

Other documents/information

 - g) Copy of documentary evidence in support of use of same email ID used by the company since long (Form 23AC for FY ended on 31.03.2009).
 - h) Copy of documentary evidence in support of use of same letter head prior to the forms in contention (Form MGT 14 dated 30.06.2014).
- 8 And in response, the Respondent No. 2 vide letter dated 28th May, 2018 has reiterated his earlier submissions and also submitted the following documents: -

Form DIR 12 for appointment of 5 Additional Directors

 - a) Copy of Notice of Board Meeting dated 25.08.2015.



- b) Certified copy of Board Resolution dated 25.08.2015 for appointment of Mr. Sanjeev Kumar Mishra, Mr. Santosh Kumar Bhagat, Mr. Satyendra Kushwaha, Mr. Shambhu Kushwaha and Mr. Sanjay Kumar Bhagat as Additional Directors of the Company.
- c) Other supporting documents such as consent letters and letters of appointment.

Other documents/information

- d) Copy of documentary evidence in support of use of same email ID used by the company since long (Form 23AC for FY ended on 31.03.2009)
 - e) Copy of documentary evidence in support of use of same letter head prior to the forms in contention (Form MGT 14 dated 30.06.2014)
- 9 The Board of Discipline further considered that the Director (Discipline), after examining all the material on record, further documents/information received from Respondent No. 1 and Respondent No. 2 vide their letter (s) dated 28th May, 2018 and all the facts and circumstances of the matter, reiterated her earlier prima-facie opinion dated 8th January, 2018 that the Respondents No. 1 & 2 are "**NOT GUILTY**" of professional or other misconduct under the Company Secretaries Act, 1980, as there are no documents to substantiate the allegations made against the Respondents and the Informant himself is responsible for use of his own DSC. Moreover, the Respondent No. 1 & 2 both have produced the desired documents in support of their contentions. They have also produced documents showing the use of same email ID and same letter head by the company on prior occasions also.
- 10 The Board of Discipline considered the Further Investigation Report of the Director (Discipline) dated 15th November, 2018 at its meeting held on 19th November, 2018.
- 11 The Board of Discipline at its meeting held on 19th November, 2018, after considering the material on record, prima-facie opinion and further investigation report of the Director (Discipline) and all the facts and circumstances of the case, agreed with the further investigation report of the Director (Discipline), that the Respondents No. 1 & 2 are "**NOT GUILTY**" of professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Informant. Accordingly, the case is closed.


Member




Presiding Officer