



## BEFORE THE BOARD OF DISCIPLINE

### THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 149/2012

In the matter of complaint of professional or other misconduct filed by Shri Anil Kumar P Sanghvi against Shri Vinayak Sadashiv Khanvalkar, FCS-2489 (CP No. 1586) (Partner – M/s. Kanj & Associates)

**Coram:** Sudhir Babu C, Presiding Officer  
Umesh H Ved, Member  
Sutanu Sinha, Member

#### ORDER

1. A complaint 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 (the Rules) and also in Form G dated 9<sup>th</sup> July, 2012 by Shri Anil Kumar P Sanghvi (hereinafter referred to as the 'Complainant') against Shri Vinayak Sadashiv Khanvalkar, FCS-2489 (CP No. 1586) (Partner- M/s. Kanj & Associates) (hereinafter referred to as the 'Respondent').
2. The Complainant had *inter-alia* alleged that the Respondent had issued the Compliance Certificate without checking the validity of the meetings, notices calling the meetings and attendance at the meetings. The Complainant further stated that he is lodging the instant complaint regarding the draft Compliance Certificate for the financial year ended on 31<sup>st</sup> March, 2007 for M/s. Maharashtra Erectors Private Limited issued on 23<sup>rd</sup> October, 2010. The Complainant has *inter-alia* cited the following observations in the said draft Compliance Certificate:-

As per Clause (4) of the said draft, the board meetings conducted on 30<sup>th</sup> September, 2006, 5<sup>th</sup> January, 2007, 7<sup>th</sup> February, 2007 and 26<sup>th</sup> March, 2007 is to be regarded as 'Bogus' Board Meetings as in respect of such meetings no notices has been issued to him. Hence, the said meetings were to be considered as never held as he had never attended the said meetings. Hence, in respect of the said meetings the proceedings recorded and signed and the recording of the same in attendance register also should be considered as false and invalid. Further, in the same clause there is nothing mentioned as to whether company has given proper notices in respect of such board meetings





or not. It means either the Respondent has acted negligently in respect of the same or he did not want to disclose about the same.

The Complainant further stated that the Respondent is not sure whether the statutory registers have been kept and maintained by the company or not as per the provisions of the AOA, MOA and the Companies Act, 1956 as stated in the draft compliance certificate (clause (1) and Annexure A) because the Complainant was refused the inspection of the same at the registered office of the company after giving an application for the same. Also, he was refused to take out the photocopies of the required registers.

The Complainant has further stated that he had sent an objection letter dated 4<sup>th</sup> November, 2010 to M/s. Maharashtra Erectors Private Limited and directors Mr. Chandrakant P. Sanghvi and Mrs. Mina A Sanghvi and also served a copy of the same to M/s R. R. Pethe & Company, Chartered Accountants and M/s. Kanj & Associates, Company Secretaries in respect of the draft copy of the annual accounts of the company along with the draft copy of the Compliance Certificate sent to him.

3. Pursuant to sub-rule (3) of Rule 8 the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 17<sup>th</sup> July, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 24<sup>th</sup> July, 2012. The Respondent at the outset has denied all the averments made by the Complainant and has stated that the so called Compliance Certificate alleged to have been issued by him and which is attached to the complaint is neither on the letterhead of M/s. Kanj & Associates nor it is signed by him. The Respondent has further stated that the said complaint is defective and liable to be rejected.
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 31<sup>st</sup> July, 2012 asking him to file the rejoinder followed by a reminder dated 21<sup>st</sup> August, 2012. The Complainant submitted his rejoinder dated 27<sup>th</sup> August, 2012.
5. The Complainant in his rejoinder has *inter-alia* stated that the complaint is not defective as per Regulation 15(2) of the Company Secretaries Regulations, 1982. The same is 'submitted in prescribed Form G. The Complainant has submitted a fresh copy with all the pages initialled and duly verified by him. He further stated that nowhere in the Act or Regulations, it is mentioned to pay stamp duty on the verification. The Complainant has further stated that as the matter relates to issue of Compliance Certificate, no specific clause is required to be mentioned by him. The Complainant further stated that the copy of the Compliance



*De*

*[Handwritten signature]*

*ca*



Certificate has been sent to him as part of the financials and the Directors' Report which specifically says that the Compliance Certificate has been duly certified by the Respondent, partner of M/s. Kanj & Associates. The Complainant further stated that immediately on receipt of the Compliance Certificate as a part of the Annual Report, he sent a letter dated 4<sup>th</sup> November, 2010 to the Chairman of M/s. Maharashtra Erectors Private Limited and a copy to M/s. Kanj and Associates, Company Secretaries, which has not been replied till date.

6. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that the Complainant has filed the instant complaint regarding the draft Compliance Certificate dated 23<sup>rd</sup> October, 2010 for the financial year ended on 31<sup>st</sup> March, 2007 for M/s. Maharashtra Erectors Private Limited, allegedly prepared by the Respondent which is unsigned. The Respondent has denied the averments made by the Complainant and has stated that the so called Compliance Certificate alleged to have been issued by him and which is attached to the complaint is neither on the letterhead of M/s. Kanj & Associates nor it is signed by him. The Director (Discipline) in his *prima-facie* opinion has written that a draft signifies a tentative provisional or preparatory writing of any document for purpose of discussion. It is a rough sketch of writing or a document from which the final or fair copy is made. The draft Compliance Certificate allegedly prepared by the Respondent cannot constitute to be a professional or other misconduct and therefore, the Respondent is *prima-facie* not 'Guilty' of professional or other misconduct under the First and/or Second Schedule of the Company Secretaries Act, 1980.
7. The Board on 3<sup>rd</sup> May, 2013 considered the *prima-facie* opinion dated 28<sup>th</sup> March, 2013 of the Director (Discipline) and material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is not 'Guilty' of professional or other misconduct under the Company Secretaries Act, 1980 and closed the matter.

Accordingly, the complaint stands disposed-off.

(Sutanu Sinha)

Member

(Umesh H Ved)

Member

(Sudhir Babu C)

Presiding Officer

Date: 17<sup>th</sup> June, 2013  
New Delhi

