

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC: 237/2014

Date of Decision: 6th January, 2015

Ministry of Corporate Affairs (MCA)

....Complainant

Vs.

Mr. Naresh Kumar, FCS-5950

.... Respondent

ORDER

1. A complaint dated 8th May, 2014 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) by the MCA (hereinafter referred to as the 'Complainant') against Mr. Naresh Kumar, FCS-5950, CP No. 3615 (hereinafter referred to as the 'Respondents'). The Complainant has *inter-alia* stated that the Respondent was asked to resubmit e-Form 1 after deleting certain words as architect & finance from the object clause of the MOA as the same were not allowed as per circular issued by the MCA. The Complainant further stated that it was observed that there is a variation in the contents of the directors filled in the e-forms and information in the MOA were different as the MOA & AOA of different company has been attached with said e-Form 1. The Complainant further stated that the same was regretted by the Respondent *vide* email dated 3rd May, 2013.
2. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 22nd May, 2014 calling upon him to submit the written statement. The Respondent has *inter-alia* stated that the alleged e-Form 1 was not digitally signed by him. However, the same was digitally signed by the director of M/s. Adworth Media Pvt. Ltd. The



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Respondent further stated that he has not received letter dated 30th August, 2013 from the office of the Regional Director (NR) as the address mentioned in the said letter is wrong as the same can be verified from the records of the ICSI. The Respondent further stated that he has not received the aforesaid letter from the office the Regional Director (NR) on that basis of which the Regional Director (NR) has sent a letter dated 4th October, 2013 to the MCA stating that no reply was received from the Respondent.

3. 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 5th June, 2014 asking him to submit the rejoinder followed by a reminder dated 10th July, 2014. The Complainant submitted the rejoinder dated 15th July, 2014 wherein it is *inter-alia* stated that there is a variation in the contents of the directors in the e-form 1 and MOA/AOA of some other company are attached to e-Form 1 dated 7th March, 2013 and has stated that they do not have any further comments to offer in the matter.
4. Pursuant to rule 9 of the Rules, Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, observed that the alleged e-Form 1 has not been signed by the Respondent but by the director of M/s. Adworth Media Pvt. Ltd. Further, the Complainant has not attached the email dated 3rd May, 2013 of the Respondent. It is also observed that the Respondent has denied to have received any letter from the office the Regional Director (NR) as the same was sent on wrong address the said contention of the Respondent can be accepted in the matter as A-26, Hauz Khas, New Delhi-110016 on which the said letter was sent is neither the residential nor the professional address of the Respondent. Hence, the Respondent is *prima-facie* not guilty of professional Misconduct under the Company Secretaries Act, 1980.
5. The Board of Discipline on 5th September, 2014 considered the *prima-facie* opinion of the Director (Discipline) and the material on record; felt that certain information be called from the Complainant. Accordingly, Director (Discipline) was requested to check up over phone with Mr. Sanjay Gupta,



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Dy. Director, MCA, the officer authorised by the MCA. Thereafter, the Board had deferred the matter.

6. The *prima-facie* opinion dated 28th August, 2014 of the Director (Discipline) was once again placed before the Board of Discipline on 26th September, 2014. The Board was informed by the Director (Discipline) that he has spoken to Mr. Sajnay Gupta, Dy. Director, MCA over phone and has requested him for doing the needful and Mr. Sanjay Gupta has assured that he will provide the necessary information / documents as quickly as possible. However, the Board, during the course of hearing noted that neither any information nor any document has been received from MCA. The Board felt that the case be adjourned for want of receipt of information from MCA. The Board thereafter adjourned the matter.

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7. The Board of Discipline on 29th October 2014, while taking note of the action taken on its decision taken at its previous meeting, took note of the records in the respect of the case. The Board observed that the alleged e-Form 1 has not been signed by the Respondent but by the director of M/s. Adworth Media Pvt. Ltd. The Board advised the Director (Discipline) to write to the MCA requesting ^{them} ~~him~~ to file the evidence(s) to show that Mr. Naresh Kumar, the Respondent has signed the said Form. Accordingly, *vide* letter dated 13th November, 2014 the MCA was asked to submit the evidence(s) to show that the alleged e-Form in the complaint has been signed/certified by the Complainant. A letter dated 16th December, 2014 was received from the MCA.

8. The Board of Discipline on 19th December, 2014, took note of the letter dated 16th December, 2014 received from the MCA. The Board after considering the material on record, advised to place the matter at its next meeting. The Director (Discipline) after re-examining the matter continued to hold his *prima-facie* opinion dated 28th August, 2014 in the matter intact.

9. The Board of Discipline on 6th January, 2015, considered the *prima-facie* opinion dated 28th August, 2014 of the Director (Discipline) and the material




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on record. The Board agreed with the *prima-facie* opinion. It observed that Form 1 i.e. application and declaration for incorporation of a company under the Companies Act, 1956 does not carry the signature of the Respondent. On the contrary the said Form has been signed by one Mr. Prakher Mittal, director of the company. This fact was communicated to the Complainant *vide* letter dated 13th November, 2014 issued by the Disciplinary Directorate. In response to the letter, the Complainant has sent a communication dated 16th December, 2014 in which there is no denial of the fact that the alleged Form has not been signed by the Respondent but by someone else. The letter dated 16th December, 2014 of the Complainant alleges something totally different to whatever has been alleged in complaint i.e. that the Respondent witnessed the Memorandum of Articles of Associations of the company. Although the allegation that the Respondent has witnessed the Memorandum of Articles of Associations of the company, it does not find place in the main complaint. The Board was of the view that if someone has signed any document as witness, it does not violate any provision of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

In view of the above, we find that the complaint has absolutely no merit and therefore, deserves to be dismissed and we accordingly do so.

Accordingly, the complaint is dismissed.



(Anil Murarka)
Member



(P. K. Mittal)
Presiding Officer

Date: 18th January, 2015

