THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

DC: NI: 02/2012

In the matter of information received against Mr. Deependra Om Prakash Shukla FCS - 5652 (CP No. 5364) and Ms. Divya S Momaya, ACS-17325 (CP No. 7885).

Date of Decision: 24th October, 2013

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

ORDER

1. The Institute had received a letter dated 10th September, 2012 from the MCA along with a copy of the complaint from one Mr. Arun Gandhi against M/s. Anant Extrusions Limited & others and Company Secretaries M/s. Deep Shukla & Associates (Mr. Deependra Om Prakash Shukla FCS -5652, Ms. Divya S Momaya, ACS-17325) and Charudatta Mantrei & Co. Chartered Accountants.

2. Mr. Arun Gandhi, in his complaint to the MCA *inter-alia* has stated/alleged that he has made regular complaints against M/s. Anant Extrusion Ltd., for not filing the Annual Returns and other documents with the ROC. But instead of giving summons/notices for prosecutions, the ROC has helped them and reported to higher authorities that no complaint was made and the company is regular in filing the Returns and Forms. Mr. Arun Gandhi further alleged that the dates of the Board meetings were not mentioned in point No.4 of the Compliance Certificate for the year 2007, 2008 and 2009 which shows that there were no Minute books. Mr. Arun Gandhi further alleged that the Respondents have certified Form 32 pertaining to the appointment of Mr. Sandeep Kumar Sood as Director of M/s. Anant Extrusion Ltd., without exercising due diligence.

3. Pursuant to Rule (7) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a letter dated 27th September, 2012 was sent to Shri Arun Gandhi asking him to file the complaint in Form-I. However, Mr. Arun Gandhi sent emails to the Institute instead of filing the complaint in Form 1.

4. Mr. Deependra Om Prakash Shukla FCS -5652 and Ms. Divya S Momaya, ACS-17325 the Respondents were called to submit their comments which they submitted *vide* letters dated 29th November, 2012.

5. The Respondent 2 (Ms. Divya Momaya) has *inter-alia* stated that she had filed the documents (Form 32) referred in the complaint after taking into consideration the evidence produced before her by the said company i.e. certified copies of the Minutes of the Board Meeting of the company held on 28th August, 2005 in which Mr. Sandeep Kumar Sood was appointed as Additional Director and the original Minutes book of the AGM of the company in which Mr. Sandeep Kumar Sood was appointed as director and copy of the Notice of the AGM and certified true copy of the resolutions regarding appointment and regularization of appointment of Mr. Sandeep Kumar Sood as director of the company. She stated that these documents were duly verified by her and found them true and correct.

6. Ms. Divya S Momaya, the Respondent 2 was asked to submit the copies of all the documents she relied upon for certifying the alleged Form 32 pertaining to the appointment of Mr. Sandeep Kumar Sood as director of M/s. Anant Extrusion Limited.

7. Mr. Deependra Om Prakash Shukla, the Respondent 1 also provided the copies of the Compliance Certificates for the FY's ending 2008, 2009 and 2010 issued to M/s. Anant Extrusion Ltd.

8. Pursuant to Rule 9 of the Rules the Director (Discipline) examined the material on record and was of the *prima-facie* opinion that though there is a considerable

delay in filing of Form 32 pertaining to the appointment of Mr. Sandeep Kumar Sood as director of M/s. Anant Extrusion Ltd. However, Ms. Divya S Momaya, the Respondent 2 has complied with necessary due diligence in filing of the alleged Form 32 pertaining to the appointment of Mr. Sandeep Kumar Sood as director of M/s. Anant Extrusion Limited. The Respondent 1 has issued the Compliance Certificate to the company for the FY's ending 2008, 2009 and 2010 clearly indicating the dates of the Board meeting of the company. Further, it is difficult to comment as to whether there is falsification of records of the company or not since the ROC has reported to the higher authorities that no complaint was made whereas a complaint was filed by the Complainant against the company with the ROC. Hence, it can reasonably be assumed that the Respondents have relied on the documents submitted by the company. Hence, both the Respondents 1 and 2 are not guilty of professional misconduct under the First and/or the Second Schedule of the Company Secretaries Act, 1980.

9. The Board of Discipline at its meeting held on 24th October, 2013 considered the material on record; *the prima-facie* opinion dated 18th September, 2013 of the Director (Discipline). After detailed deliberations, the Board considering the nature of issues involved and in totality of the circumstances of this case, agreed with *the prima-facie* opinion of the Director (Discipline) and arrived at the conclusion that both the Respondents 1 and 2 are not guilty of professional misconduct under the First and/or the Second Schedule of the Company Secretaries Act, 1980 and accordingly, closed the matter.

Accordingly, the complaint stands disposed-off.

(Sutanu Sinha)
Member

(Umesh H Ved)
Member

(Sudhir Babu C)
Presiding Officer

Chennai
Date: 08th November, 2013

The Institute of Company Secretaries of India
The Board of Discipline