

OFFICE OF THE FIRST APPELLATE AUTHORITY

(Appointed under Right to Information Act, 2005)

The Institute of Company Secretaries of India

ICSI House, C-36, Institutional Area, Sector-62

Noida – 201 309 (U.P.)

Appeal No. 44/2019

IN THE MATTER OF:

Monish Uppal
Optek House, 30/29, Third Floor
East Patel Nagar
Delhi – 110 009

Appellant

Vs.

Central Public Information Officer
The Institute of Company Secretaries of India
'ICSI House'
22, Institutional Area, Lodi road
New Delhi – 110 003

Respondent

Date of Order : 18th December, 2019

ORDER

1. The Appellant has filed first appeal dated 6th December, 2019 under section 19(1) of the Right to Information Act, 2005 against response issued vide letter Ref. No. RTI 2005/2847(19) dated 08.11.2019 by the Central Public Information Officer (CPIO) (hereinafter referred to as Respondent) of the Institute of Company Secretaries of India.
2. The Appellant vide his application dated 05.11.2019 had requested as under :

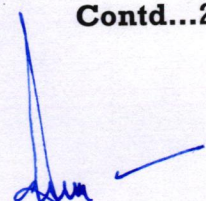
"Q1. The Hon'ble ICSI has come out with an August 2014 Edition "Guidance Note on Annual Return", whether the Hon'ble MCA has advised Hon'ble ICSI to come out with such Guidance Note.

Q2. What is the objective of notifying the said guidance note.

Q3. Whether it's mandatory for a Company Secretary in Practice to ensure before certifying that the disclosure related to TURNOVER and NETWORTH is based on audited Financial Statement as per the definition stated in The Companies Act, 2013.

Q4. If a Company Secretary in Practice certifies a MGT-7 prepared by a Company admittedly based on unaudited financial results, whether the same is in compliance of the provisions of Section 92; Sec 2(57) {NETWORTH}; Sec 2(92) of The Companies Act, 2013 or NOT".

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3. The Respondent vide letter dated 13.11.2019 had informed the Appellant that the queries are in the nature of seeking clarification/ opinion and so does not fall within the definition of 'information' under Section 2(f) of the Right to Information Act, 2005.

4. The Appellant in the instant Appeal has submitted as under :

"Query No. 1 : If MCA have advised ICSI to come out with a Guidance Note, then there must be a written communication by MCT to ICSI, hence the information sought by applicant was based on an existing DOCUMENT and is not in a nature of clarification or opinion. The ICSI has chosen to tender a wrong reply. Hence the applicant humbly places the same query to MCA in an appeal jurisdiction.

Query No. 2 : There must be a background paper / note before the drafting and release of guidance note and hence the information sought by applicant was based on an existing DOCUMENT and is not in a nature of clarification or opinion. The ICSI has chosen to tender a wrong reply. Hence the applicant humbly places the same query to MCA in an appeal jurisdiction.

Query No. 3 : The guidance note of ICSI itself mandates that a Company Secretary in practice must ensure that the Balance Sheet is audited before certifying the MGT-7 for relevant Financial Year. Hence the information sought by the Applicant is based on the following existing document(s):-

- 1. Guidance Note on certification of MGT-7 issued by ICSI.*
- 2. :Provisions of The Companies Act, 2013*

Hence if desired the ICSI could have easily addressed the said query, but they have chosen to deny to answer the same and hence the Applicant place the same query before the MCA in appeal jurisdiction.

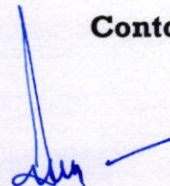
Query No. 4 : AT the threshold the Applicant regret the unfortunate typo error of stating Sec 2(91) as 2 (92) and hence Sec 2(92) be read as 2 (91) please. Keeping in view the provisions of Sec 2(57) as well as guidance note on certification of MGT-7 the position of The Companies Act, 2013 is very clear that the NET WORTH figure has to be based on audited Balance Sheet. The ICSI being the sole regulator of Company Secretary should have come clean on the this query and should have stated there position on record. But they choose to again tender an evasive reply. Hence the Applicant place the same query before the MCA in appeal jurisdiction."

5. The Respondent has informed against the instant appeal as under :

"Query no. 1: No directions received from the Ministry of Corporate Affairs.

Query No. 2: We reiterate our reply that the query is in nature of opinion and does not fall within the definition of information under section 2(f) of the Right to Information Act, 2005. However, we submit that as a knowledge building and capacity building initiative, Institute brings the guidance notes.

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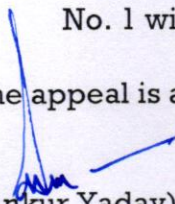


Query No. 3: We reiterate our reply that the query is in nature of opinion and does not fall within the definition of information under section 2(f) of the Right to Information Act, 2005.

Query No. 4: We reiterate our reply that the query is in nature of opinion and does not fall within the definition of information under section 2(f) of the Right to Information Act, 2005."

6. This Office has carefully considered the application, the response, the appeal and the records made available and finds that the matter can be decided based on the material available on record.
7. This Office concurs with the submissions of the Respondent except in case of Query No. 1.
8. The Respondent is directed to provide the information in respect of Query No. 1 within 10 working days from the date of issue of this Order.

The appeal is accordingly disposed of.


(Ankur Yadav)

First Appellate Authority

Copy to :

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3. Directorate of IT For publishing on the website