

**THE DISCIPLINARY COMMITTEE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

**ICSI/DC: 165/2013**

**IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER  
MISCONDUCT**

**Date of Decision: 13<sup>th</sup> January, 2014**

**M/s. Kare Partners Group India Pvt. Ltd.**

**....Complainant**

**Vs**

**Mr. Virendra Sharma, ACS – 28250**

**....Respondent**

**ORDER**

1. A complaint dated 23<sup>rd</sup> November, 2012 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 Dr. Aditya Khindaria, Chairman & Director, M/s. Kare Partners Group India Pvt. Ltd., (hereinafter referred to as the 'Complainant') against Mr. Virendra Sharma, ACS-28250 (CP No. 10231) (hereinafter referred to as the 'Respondent').
2. The Complainant *inter-alia* alleged that the Respondent has falsified the secretarial records of M/s. Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd., and has certified incorrect e-forms 20B and Form 32 allegedly on 28<sup>th</sup> September, 2012 without approval or notice to the company and to majority shareholders of M/s. Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd.
3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 30<sup>th</sup> November, 2012 calling upon him to submit the written statement followed by a reminder dated 27<sup>th</sup>



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December, 2012 however, the written statement was not received till 16<sup>th</sup> April, 2013.

4. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint and the material on record and formed his *prima facie* opinion dated 16<sup>th</sup> April, 2013 in the matter and placed the same before the Board of Discipline on 3<sup>rd</sup> May, 2013; the Board of Discipline considered the same and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
5. The Respondent *vide* letter dated 6<sup>th</sup> May, 2013 was asked to file the written statement to the *prima-facie* opinion of the Director (Discipline). The Complainant *vide* letter dated 6<sup>th</sup> May, 2013 was asked to file the rejoinder to the written statement of the Respondent on the *prima-facie* opinion of the Director (Discipline).
6. The Respondent *vide* letter dated 29<sup>th</sup> April, 2013 submitted the written statement to the complaint (received on 6<sup>th</sup> May, 2013) wherein he *inter-ala* denied the allegations levied against him and *inter-alia* stated that he has not made any changes / falsification in the secretarial records of M/s. Kamesh Bhargava Hospitals and Research Centre Pvt. Ltd. The Respondent further stated that he has certified the alleged e-Forms on the basis of the Annual Return and minutes of the meetings shown to him by Shri Akhil Bhrgava, Managing Director of the company.
7. The Board of Discipline at its meeting held on 17<sup>th</sup> June, 2013 considered the material on record and decided to send a copy of the written statement of the Respondent to the Complainant asking him to file the rejoinder, if any. A copy of the written statement was sent to the Complainant *vide* letter dated 18<sup>th</sup> June, 2013 asking him to submit the rejoinder wherein the Complainant retreated his submissions in the complaint and few additional submissions.



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8. 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 not placed on record any evidence substantiating his allegation pertaining to falsification of the records of the company. It is further observed that the Respondent has certified and filed Form 20B on the basis of the Annual Return and the Minutes of the Board Meeting held on 13<sup>th</sup> September, 2012. It is also observed that Form 32 has been certified by the Respondent on the basis of the resolution passed by the Board of Directors held on 13<sup>th</sup> September, 2012. Further, the meeting of the Board of Directors held on 13<sup>th</sup> September, 2012 has been disputed by the Complainant. Further, the Respondent should have insisted to check the other documents related to the said meeting such as (1) notices sent to the directors (2) attendance sheet of the said meeting (3) AOA of the company (4) the consents of Ms. Manjari Bhargava and Shri Rajnish Rametra for being appointed as additional directors of the company rather than merely relying on the Minutes signed by Shri Akhil Bhargava, Managing Director of the company who also has signed the alleged Form 32 and Form 20B. It would not be out of place to mention that in the Minutes in which Ms. Manjari Bhargava is appointed as director, she is surprisingly shown as a director already. Further, the Respondent should have checked the AOA of the company which provided that the Board shall at all times consist of 5(five) directors not including lender or government nominees. Further, by appointing Ms. Manjari Bhargava and Shri Rajnish Rametra as directors on the Board of the company, the number of directors was increased to 7 (Seven) which is in violation of the AOA of the company. Hence, the Respondent is *prima-facie* 'Guilty' of professional or other misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence and has been grossly negligent in conduct of his professional duties.



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9. The *prima-facie* opinion dated 16<sup>th</sup> September, 2013 of the Director (Discipline) was placed before the Disciplinary Committee at its meeting held on 3<sup>rd</sup> October, 2013 for its consideration. The Committee had adjourned the matter.
10. The *prima-facie* opinion dated 16<sup>th</sup> September, 2013 of the Director (Discipline) was again placed before the Disciplinary Committee on 25<sup>th</sup> November, 2013.
11. The Disciplinary Committee on 25<sup>th</sup> November, 2013 considered the *prima-facie* opinion dated 16<sup>th</sup> September, 2013 of the Director (Discipline); the material on record; and agreed with the *prima-facie* opinion that the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties and decided to proceed further in the matter in accordance with Chapter V of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.
12. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 27<sup>th</sup> November, 2013 asking them to submit the written statement and rejoinder, respectively.
13. The Respondent *vide* letter dated 11<sup>th</sup> December, 2013 submitted his written statement wherein he pleaded guilty and has requested the Committee to take a lenient view.
14. The parties *vide* letters dated 1<sup>st</sup> January, 2014 were called upon to appear before the Disciplinary Committee on 13<sup>th</sup> January, 2014.
15. On 13<sup>th</sup> January, 2014, Ms. Manjula S, Advocate appeared before the Disciplinary Committee on behalf of the Complainant and made oral



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submissions. The Respondent also appeared before the Committee and admitted that he did not exercise due diligence while performing his professional duties.

16. The Disciplinary Committee considered the (i) oral/written submissions made by the parties (ii) letter dated 11<sup>th</sup> December, 2013 of the Respondent wherein he pleaded guilty and requested the Committee to take a lenient view; and (iii) material on record; concluded that the Respondent is 'Guilty' of professional misconduct under clause (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties. The Committee communicated the same to the Respondent. Thereafter, the Disciplinary Committee gave an opportunity of being heard to the Respondent before passing any order under Section 21B (3) of the Company Secretaries Act, 1980.

17. The Respondent accepted the decision of the Committee and requested for a lenient view.

18. The Disciplinary Committee after considering the material on record and in the totality of the issues involved in the matter, passed the following order:

- (i) Removal of name of the Respondent from the Register of Members of the ICSI for a period of 30 days; and (ii) fine of Rs.5,000/.

The order shall be effective after the expiry of 30 days of issue of this order.


  
**(S K Tuteja)**  
Member

  
**(B Narasimhan)**  
Member

  
**(Gopalakrishna Hegde)**  
Member



Date: 07/02/2014

  
**(S N Ananthasubramanian)**  
Presiding Officer