

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/242/2014

Order Reserved On: 13th March, 2018

Order Issues On: 25th April, 2018

Shri K.S. Pal & Shri Sita Ram Thakur

.....Complainants

Vs.

Shri Pankaj Kumar Chaudhary, FCS-6642

.....Respondent

Present

Mrs. Meenakshi Gupta, Director (Discipline)

None for the Complainant and Respondent

FINAL ORDER

1. A complaint dated 13th June, 2014 in Form 'I' was filed by one S/Shri K. S. Pal and Sita Ram Thakur (herein after referred to as 'the Complainants') against one Pankaj Kumar Choudhary, FCS-6642 (CP.5417), (hereinafter referred to as 'the Respondent'), under Section 21 of the Company Secretaries Act, 1980 read with sub rule (1) of the of Company Secretaries (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007.
2. The Director (Discipline), after considering the material on record and all facts and circumstances of the matter, held the respondent prima-facie guilty of professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act 1980 as he did not exercise the necessary due diligence while certifying Form 32, more specifically, as he failed to verify certain vital documents prior to certification of the Form.
3. On 9th June, 2015, the Disciplinary Committee agreed with this *prima-facie* opinion dated 9th April, 2015 of the Director (Discipline) holding the respondent guilty of professional misconduct, and directed the Director Discipline 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. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties asking them to submit respectively, a written statement (from respondent), and rejoinder (from complainants).



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4. The respondent made two written statements, the first dated 17th July 2014 [during the initial pleadings prior to finalization of prima facie opinion (PFO)], should be read with the second written statement dated 24th June 2015, which was a response to the prima-facie opinion from Director Discipline. The Complainants made one rejoinder dated 12th August, 2014 in response to the initial written statement from respondent (prior to the finalization of the prima facie opinion). The Written Statement of the Respondent to the prima-facie opinion was sent to complainants for their rejoinder. However, there was no response from the complainants.
5. The Disciplinary Committee commenced its hearings on 9th June, 2015. The case proceedings in this case were extremely frustrating, with 11 hearings and repeated adjournments spread over 3 years. The Respondent, in person or through representative was present at no more than four hearings. The Complainants did not appear at all. The Disciplinary Committee repeatedly provided 'a last and final opportunity' to the parties, and recorded its severe displeasure at the parties taking these proceedings so lightly and treating Disciplinary Committee with evident lack of respect.
6. A close examination of the case records presented to the Disciplinary Committee (by the Disciplinary Directorate), along with a review of the case hearings on record reveals the following:
 - (i) The respondent filed Form 32 on 11th December, 2012 for the appointment of three persons S/Shri Dharmendra Kumar, Mukesh Kumar, Hem Prakash Sharma & Sanjay Kumar Kashyap as Promoter Directors, in the company SKN Associates Pvt. Ltd, and one day later, in the light of Government of India, Ministry of Corporate Affairs circular No 1/2012 dated 10th February 2012 (duly attached), the Registrar of Companies marked the said company SKN Associates Pvt. Ltd. as having management dispute, vide letter dated 12th December 2012 (duly attached), stating as follows: "Please note that SKN Associates Pvt. Ltd having CIN U74899DL1983PTC016634 has been Marked as having management dispute for the following reasons: Complaint has received against Company vide SRN B63594592 from Mr. Kapil Chopra regarding aggravated by cession of directorship of Complainants. Hence Company is marked as management Dispute in view of Ministry's Circular No. 1/2012 dated 10.02.2012. You are requested to settle the matter amicably or get an order/interim order from a Court or Tribunal of competent jurisdiction. Till such dispute is settled, the documents filed by the company and by the contesting groups of



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Directors will not be approved/registered/recorded and will thus not be available in the registry for public viewing".

- (ii) This action of the respondent (filing of Form(s) 32 on 11th December 2012) first prompted the marking of SKN Associates as being in a management dispute vide letter dated 12th December, 2012 from the Registrar of Companies, Government of India. A second fall-out was that 2 out of 3 Directors of SKN Associates filed a complaint with the ICSI on 13th June 2014, stating that they (the then current Directors of SKN Private Limited) do not know the Respondent as M/s. SKN Associates Pvt. Ltd has never hired him for any professional work, directly or indirectly; and that the Respondent has, in conspiracy with one Shri Kapil Chopra, certified Form 32 pertaining to appointment of S/Shri Dharmender Kumar, Mukesh Kumar, Hem Parkash Sharma and Sanjay Kumar Kashyap as directors of M/s. SKN Associates Pvt. Ltd. without exercising due diligence.
- (iii) Throughout the hearings before the Disciplinary Committee, the respondent has nowhere contested the following statements by the complainants: (a) that the respondent has made this filing being referred to; (b) that M/s. SKN Associates Pvt. Ltd. has 3 directors, of which 2 directors are the complainants; and (c) that in this situation no Board resolution could have been passed unless at least 2 of the 3 Directors participated in any Board meeting. One implication clearly is that the Form(s) 32 were certified and uploaded without prior authorisation from the Board.
- (iv) Respondent has stated that at a meeting on 16th November, 2012 and in his presence, three persons have signed a Letter of Consent to being appointed Directors of the company at Mayapuri Factory premises at New Delhi. This contention of the Respondent was reflected in the Interim Order dated 27th August, 2017 issued on 19th September 2017. However, in the absence of a Board Resolution taking note of the written consent obtained, and authorising further follow up action viz. certification of Form(s) 32 and so on, merely the fact of having the said written consent is insufficient and not wholly relevant. When directed to produce documentation in connection with the said meeting of 16th November, 2012, and/or any Board meeting that may have followed, the respondent was never able to produce any record related to convening of this/ any other meeting. He has repeatedly failed to produce the documents despite being given abundant opportunity. Moreover, the respondent has nowhere claimed that this was a Board meeting which may have



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yielded a Board Resolution The Disciplinary Committee is led to believe that since 2 out of the 3 current Directors of SKN Pvt. Ltd. were the complainants therefore, perhaps these documents did not exist as no Board meeting could have been convened whose Board Resolution might have covered this filing.

- (v) After commencement of the proceedings of the Disciplinary Committee, the constant refrain of the respondent that he had access to no documents at any time is not borne out by the sequence of events. On the date of the filing (11th December 2012), there were no restrictions on the respondent's access to any relevant document that he might want to attach to the uploading he made.
- (vi) The respondent failed to comply with a single directive of the Disciplinary Committee. He could never produce any of the documents sought by the Disciplinary Committee; respondent failed to turn in his mobile bill for the relevant period; and finally, the respondent failed to provide copies of the relevant documents as directed by the Disciplinary Committee.
- (vii) It is abundantly clear that there was neither any Board meeting convened nor any Board Resolution passed to admit any new promoter members, and /or to do away with the current Board members. The Respondent knowingly made a completely fraudulent certification and subsequent uploaded the same. He sought to cover his tracks by pleading that he is being dragged into a management dispute, whereas on the date of filing (11th December 2012), there was no management dispute whatsoever. In the initial complaint and in subsequent rejoinder filed by complainant, there appears possibly a suggestion that this certification of Form 32 was done in conspiracy with Shri Kapil Chopra. Once again, at the risk of repetition, on the date of filing, there was no management dispute. The same commenced, it would appear, with this filing. The filing by respondent had no supporting documentation or attachments.
- (viii) There appear to be no mitigating circumstances in this case. The Respondent Shri Pankaj Kumar Chaudhary is ACS 13572 w.e.f. 20.01.2000, holds CP No.5417 w.e.f. 25/06/2003, became FCS-6642 w.e.f 11/11/2011. At the time when the Respondent certified Form(s) 32 on 11th December 2012, he had been a Member for about 12 years and was a CP holder for over 9 years.



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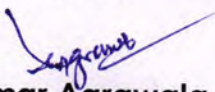
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- (ix) The case records point towards a fraudulent filing by a Respondent, who has experience on his side.
- (x) The Government of India, Ministry of Company Affairs circular dated 10th February, 2012 states that "In the light of some specific cases wherein it appears that either there was lack of consent of the removed/changed director or due process of Law were not followed, it has been decided to supersede the (previous) circulars".

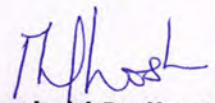
The respondent had the written consent of persons aspiring to become Directors. However, since this written consent could not be followed up with a Board meeting and affirmation through a Board Resolution, therefore in the absence of appropriate supporting documents and relevant attachments, the respondent was actually not equipped to certify Form(s) 32 and to upload the filing. In other words, the respondent has neither completed due diligence and nor followed due process of law.

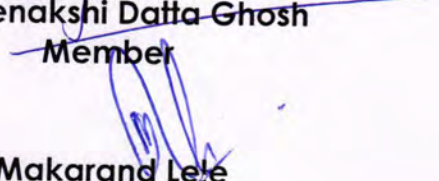
7. On 13th March, 2018, none appeared for the Respondent. Accordingly, the Disciplinary Committee decided to proceed *ex-parte* in the case.
8. After considering the material on record, previous Order of Disciplinary Committee issued on 28th December 2017; observations made in the paragraphs above; the nature of issues involved and given the totality of the circumstances of the case, the Disciplinary Committee passes the following order under Section 21B (3) of the Company Secretaries Act, 1980 read with Rule 19(1) of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007:
- i) **Fine of Rs. 35, 000/- payable within 60 days from the date of issue of this final order; and**
 - ii) **In the event of default in payment of fine, the name of the Respondent shall be removed for 90 days from the Register of Members.**


Santosh Kumar Agrawala
Member


Nalin Kohli
Member




Meenakshi Datta Ghosh
Member


Makarand Lele
Presiding Officer