

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

ICSI/DC/ NI/2014

Date of hearing: 19th December, 2016

Order issued on: 16th January, 2017

Ministry of Corporate Affairs

..Informant

Vs.

Mr. Subrat Kumar Acharya, FCS-6013 (CP No. 5903)

....Respondent

Present:

Director (Discipline)
Respondent in person

FINAL-ORDER

1. The Institute had received a letter dated NIL from the MCA on 24th July, 2014 *inter-alias* stating that Mr. Subrat Kumar Acharya, FCS-6013(CP 5903) has certified form DIN 3 pertaining to appointment of directors on the board of M/s. Delhi Diocesan Trust Association w.e.f. 5th April, 2004 with false and misleading information.
2. 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 25th July, 2014 was sent to Mr. Sanjay Kumar Gupta, Deputy Director, MCA requesting him to file the complaint in Form-I. A letter dated 31st July, 2014 was received from Mr. Sanjay Kumar Gupta, Deputy Director, and MCA providing the copy of e-form DIN 3 certified by Mr. Subrat Kumar Acharya.
3. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the letters received from the MCA were sent to Mr. Subrat Kumar Acharya *vide* letter dated 8th August, 2014 calling upon him to submit his comments which he submitted *vide* letter dated 28th August, 2014 wherein he *inter-alia* denied the allegations levied against him relating to wrong certification of DIN 3 of M/s. Delhi Diocesan Trust Association and has stated that he is unaware about the company and its directors. The Respondent further stated that he is shocked to see that his Digital Signature has been affixed on the alleged e-Form DIN 3 of M/s. Delhi Diocesan Trust Association. The Respondent further stated that it is evident from the challan of corresponding DIN 3 that someone in the name of Mr. Mithun Sardar having the address of Canal Street, Kolkata - 700 048 has filed the same. He further stated that Mr. Mithun Sardar is a stranger to him. The Respondent further stated that he is fully confident that his PFX DSC has been hacked / misused on the alleged DIN 3 of M/s. Delhi Diocesan Trust Association without his knowledge.



[Handwritten signatures in blue ink]

4. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examination of the material on record, formed her *prima-facie* opinion dated 30th September, 2015 and placed the same before the Disciplinary Committee on 13th October, 2015. The Director (Discipline) in her *prima-facie* opinion held that the Respondent is *prima-facie* "Guilty" of Professional misconduct under Item (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 (the Act) as Respondent was responsible for safeguarding his DSC and plea of misuse by some other person is not tenable. The Disciplinary Committee agreed with the *prima-facie* opinion of the Director (Discipline) 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. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent *vide* letter dated 13th October, 2015 asking him to submit the written statement to the *Prima-facie* opinion of the Director (Discipline). The Respondent submitted his written statement dated 23rd October, 2015 in which he *inter- alia* once again stated that somebody has misused his digital signature as the forms were not signed from his computer.
6. The Respondent *vide* letter dated 24th June 2016 was called upon to appear before the Disciplinary Committee on 9th July 2016.
7. On 9th July, 2016, the Disciplinary Committee considered the oral submissions made by the Respondent and asked the Respondent to submit a report from the concerned agency as to whether the computer of the Respondent was used or not for affixing the digital signature of the Respondent for certification of e-form DIN 3 pertaining to appointment of directors on the board of M/s. Delhi Diocesan Trust Association w.e.f. 5th April, 2004 with false and misleading information and what was the location of the computer used for the said purpose. The Respondent sought time to file the aforesaid documents. Accordingly, the Committee granted the time and decided to list the matter for hearing on the date as may be decided by the Presiding Officer.
8. The Respondent *vide* letter dated 31st August, 2016 was again called to appear before the Disciplinary Committee on 19th September, 2016. The Respondent *vide* his email and letter dated 5th September, 2016 sought some more time to present his case. He also informed that he written to Deputy Director, MCA regarding the use of IP address from where the alleged e-forms DIN3 were signed.
9. On 19th September, 2016, the Disciplinary Committee considered the request of the Respondent and adjourned the matter. The Respondent *vide* letter dated 18th October, 2016 was called upon to appear before the Disciplinary Committee on 11th November, 2016.



[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

10. On 11th November, 2016, the Respondent appeared before the Disciplinary Committee and submitted a letter dated 11th November, 2016 enlightening the status of a case filed before the District court at Saket along with a copy of written statement submitted before the Hon'ble High Court at New Delhi and a certificate by his Advocate Manohar Lal. The Disciplinary Committee once again drew the attention of the Respondent to its Interim Order dated 29th July, 2016 wherein the Respondent had agreed to submit a report from the concerned agency as to whether the computer of the Respondent was used or not for affixing the digital signature of the Respondent for certification of form DIN 3 pertaining to appointment of directors on the board of M/s. Delhi Diocesan Trust Association w.e.f. 5th April, 2004 with false and misleading information and what was the location of the computer used for the said purpose. The Respondent sought additional time to file the aforesaid documents. Accordingly, the Committee granted three weeks time and decided to list the matter for hearing on the date as may be decided by the Presiding Officer.
11. The Respondent *vide* letter dated 5th December, 2016 was called upon to appear before the Disciplinary Committee on 19th December, 2016 at Kolkata.
12. On 19th December, 2016 the Disciplinary Committee once again drew the attention of the Respondent to its Order dated 29th July, 2016 wherein the Respondent had agreed to submit a report from the concerned agency as to whether the computer of the Respondent was used or not for affixing the digital signature of the Respondent for certification of form DIN 3 pertaining to appointment of directors on the board of M/s. Delhi Diocesan Trust Association w.e.f. 5th April, 2004 with false and misleading information and what was the location of the computer used for the said purpose. The Respondent submitted that he is unable to provide proof on record of the aforesaid due to prohibitive cost involved. He further stated that since he is a Practicing Company Secretary and the responsibility for due diligence lies on him and since he is unable to bring the said proof on record he pleads guilty in terms of Rule 18(8) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and requested the Committee for taking a lenient view.
13. The Disciplinary Committee inquired from the Respondent about the status of Directors of M/s. Delhi Diocesan Trust Association appointed on the board of M/s. Delhi Diocesan Trust Association w.e.f. 5th April, 2004 due to his certification of alleged DIN 3 to which the Respondent informed that the original Directors of the company have been reinstated and therefore the company has not suffered any eventual loss.
14. The Disciplinary Committee recorded the plea of the Respondent of being pleaded guilty and decided to take action as per the provisions under Rule 19 of the Rules. Further, on the request of the Respondent, the Disciplinary Committee decided to provide him an opportunity of being heard before it under Rule 19 (1)



Handwritten signature in blue ink.

Handwritten initials in blue ink.

Handwritten signature in blue ink.

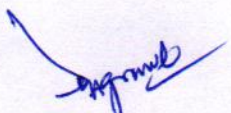
Handwritten signature in blue ink.

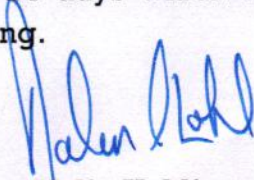
of the Rules on the same day i.e. 19th December, 2016 itself before passing any order by the Disciplinary Committee which the Respondent consented too.

15. The Disciplinary Committee after considering the oral submissions made by the Respondent before it; the material on record and the nature of issues involved and in totality of the circumstances of this case passes the following order under Section 21B(3) of the Company Secretaries Act, 1980 read with under Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007-

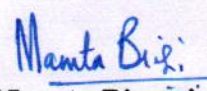
1. Fine of Rs 10,000/- payable with 30 days from the date of the issue of this order.

In the event of the Respondent not depositing the aforesaid fine within the stipulated period the Committee is entitled to proceed ex-parte and take a view of removal of the name of the Respondent from the Register of members for a period of 24 days which was also agreed by the Respondent during the hearing.


Santosh Kumar Agrawala
Member


Nalin Kohli
Member


Meenakshi Datta Ghosh
Member


Mamta Binani
Presiding Officer

