

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

ICSI/DC/320/2015

Order Reserved on: 23rd April, 2019

Order issued on: 24 APR 2019

Central Bureau of Investigation, New Delhi

.....Complainant

Vs.

Shri Rajiv Bajaj, FCS-5739, CP No. 5747 New Delhi

.....Respondent

CORAM:

Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra D Rao, Member
Shri B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

PRESENT:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Gaurav Tandon, Assistant Director, Disciplinary Directorate
None for the Complainant
The Respondent along with Shri Nitin Kumar, Company Secretary

FINAL-ORDER

1. A complaint dated 18th June, 2015 in Form 'I' by CBI (hereinafter referred to as the 'Complainant') against Shri Rajiv Bajaj, FCS-5739 (CP No. 5747) (hereinafter referred to as the 'Respondent'). was filed under Section 21 of the Company Secretaries Act, 1980 ('the Act') 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').
2. The Complainant inter-alia stated that the Respondent through his firm M/s. Rajiv Bajaj and Associates, Company Secretaries had filed e-filed Form 8 of M/s. HRM Exports Pvt. Ltd., on 16th November, 2010 for creation of charge in favour of SBI Global Factors Ltd., for Rs. 7 crore on MCA 21 site. On 14th December, 2010, a Search Report was given by Shri Rajiv Bajaj, the Respondent in which there was no mention of Creation of Charge of above stated Rs.7 crore. This report was submitted to M/s. HRM Exports Pvt. Ltd., which in turn shared it with Dena Bank, Rohtak Branch.
3. As per the Complainant, if Shri Rajiv Bajaj, the Respondent would have mentioned the creation of charge of Rs. 7 Crore in favour of SBI Global Factors Ltd., in his Search Report dated 14th December, 2010, Dena Bank, Rohtak branch would have taken into consideration this loan taken by M/s. HRM Exports Pvt. Ltd., and would have cut the limit of Rs. 30 Crore sanctioned to M/s. HRM Exports Pvt. Ltd.

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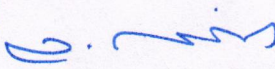
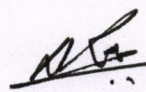
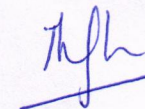
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4. The Respondent in his defence has *inter-alia* stated that he was approached by Shri Pankaj Aggarwal, Accountant of M/s. HRM Exports Pvt. Ltd., in the month of November, 2010 to file Form-8 with the Registrar of Companies, NCT of Delhi & Haryana for M/s. SBI Global Factors Ltd., for a sum of Rs. 7,00,00,000/- (Rupees Seven Crores). The Respondent further stated that said Form-8 was filed by his office with the Registrar of Companies, NCT of Delhi & Haryana on 16th November, 2010. The Respondent further stated that it is pertinent to mention that the Form-8 so filed by his office with the Registrar of Companies on 16th November, 2010 was not pre-certified by his office (At that time pre-certification was not a requisite on Form-8 and the Director's DSC and Banker's DSC were sufficient to file the Form).
5. The Respondent further stated that in second week of December, 2010, Shri Pankaj Aggarwal, Accountant of M/s. HRM Exports Pvt. Ltd., approached him to provide a Search and Status Report of Index of charges of M/s. HRM Exports Pvt. Ltd. The Respondent further stated that he provided a copy of the Search Report dated 14th December, 2010 along with Index of Charges to Shri Pankaj Aggarwal through e-mail. The Respondent further stated that in the month of February, 2011 Shri Pankaj Aggarwal, Accountant of the company again approached to us seeking a new Search Report of M/s. HRM Exports Pvt. Ltd.
6. The Respondent further stated that during the course of time and while reconciling their work after the end of the relevant quarter, it came to their knowledge that Form-8 as stated in point number 2 above is not yet approved in the ROC records. The Respondent further stated that in their subsequent Search Report dated 3rd February, 2011 at point number 8 they have given complete disclosure of charge of M/s. SBI Global Factors Ltd. in addition to it and as a good practice, they have also given Special Foot Note in their Search Report read as:

"Form-8 for Rs. 700,00,000/- (Seven Crores) has been filed with Delhi ROC with SRN No. A98238405 dated 16th November, 2010 challan attached but still it is not approved"

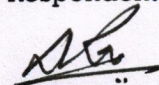
7. The Respondent further stated in the complaint filed by Shri Rajbir Singh on behalf of CBI, it is clearly mentioned that the Search Report dated 3rd February, 2011 i.e. *subsequent Search Report was submitted to the bank by the borrower. Further, on 15th March, 2011 M/s. Dena Bank has entered into Loan Agreement with borrower i.e. after a span of 40 days from the subsequent Search Report dated 3rd February, 2011 given by him and which was made available to M/s. Dena Bank by the borrower.*
8. The Respondent further stated that the Dena Bank officials should have considered the revised Search Report dated 3rd February, 2011 while extending any facility to the borrower and should have exercised due diligence which they have failed to discharge despite of having knowledge of all material facts.
9. The Director (Discipline) in her *prima-facie* opinion dated 10th December, 2016 after examination of the complaint, written statement, rejoinder and other material on record, has observed that the Respondent was negligent in issuing the Search Report dated 14th December, 2010 to M/s. HRM Exports Pvt. Ltd., where he has omitted to the disclosure of Filing of Form 8 of M/s. HRM Exports Pvt. Ltd., on 16th November, 2010 for creation of charge in favour of SBI Global Factors Ltd. for Rs. 7

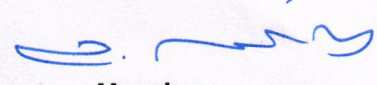


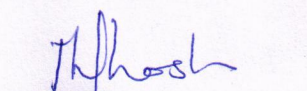




Creore on MCA 21 site, more so since the Respondent has himself filed the said Form 8 on MCA 21 site. It may be mentioned that the Respondent had subsequently issued another Search Report dated 3rd February, 2011, wherein he has stated about the said creation of charge at Point 8. Therefore, the Respondent is 'Guilty' of professional misconduct under item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 for being careless in issuing the Search Report dated 14th December, 2010 to M/s. HRM Exports Pvt. Ltd.

10. The Disciplinary Committee, after considering the submissions made by the parties on 29th June, 2018; material on record raised clarification from Complainant CBI such as to whether a.) the Search Report dated 14th December, 2010; b) the subsequent Search Report dated 3rd February, 2011; c) Register of Charges was considered before execution of the loan Agreement by the Dena bank from the representative of the Complainant. However, no clarifications were received from the Complainant despite providing numerous opportunities.
11. The parties vide letter dated 3rd April, 2019 were once again called upon to appear before the Disciplinary Committee on 23rd April, 2019 at New Delhi.
12. On 23rd April, 2019 the Respondent along with Shri Nitin Kumar, Practising Company Secretary appeared before the Committee and made his submissions. None appeared for the Complainant and as per records the necessary clarifications have also not been provided by the Complainant inspite of providing several opportunities.
13. The Disciplinary Committee, after considering the *prima-facie* opinion of the Director (Discipline); the material on record, the written and oral submissions of both parties; and after examining the totality of facts and circumstances in this matter, held that the Complainant has failed to establish the circumstances under which the Dena bank overlooked the Search Report dated 3rd February, 2011 while extending the facility that too over 40 days after the submission of the revised Search Report. Moreover, the Respondent had not given the Search Report to the Dena bank and that there is nothing on record to show that the Respondent was aware that M/s. HRM Exports Pvt. Ltd., has approached Dena bank for enhancement of credit facility.
14. The Disciplinary Committee further observed that the Second Search report of the Respondent includes for creation of charge in favour of SBI Global Factors Ltd. for Rs. 7 Crore. Further, a copy of the said report was also sent to M/s. SBI Global Factors Ltd.
15. In view of the above, the Disciplinary Committee is of the opinion that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980. However, the Disciplinary Committee advises the Respondent to be more diligent in future.


Member


Member


Member




Presiding Officer