

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

ICSI/DC/NI/2014

Order Reserved on: 3rd June, 2019

Order issued on: 12 7 JUN 2019

Registrar of Companies, Gujarat

.....Informant

Vs.

Shri Dhiren R Dave, FCS-4889

.....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)
Ms Anita Mehra, Assistant Director
Respondent in person

FINAL ORDER

1. An information vide letters dated 25th March, 2013, 11th March, 2014 and 8th August, 2014 under section 21 of the Company Secretaries Act, 1980 ("the Act") was received from Shri S. N. Misra, ROC, Gujarat (hereinafter referred as 'the Informant') against Shri Dhiren R. Dave, FCS-4889, CP No. 2496 (hereinafter referred as 'the Respondent'). During an inspection under section 209-A, the Inspecting Officer has noticed and observed various violations of the Companies Act, 1956 as well as other laws of the land, concerning irregularities committed by the Respondent. The Respondent has certified Form DIN 3 filed on 11th March, 2008 and e-forms 20B for Annual Return for the years 2006, 2007 and 2008 of M/s Dandi Salt Private Limited without going through the records maintained by the company and documents filed with the Registrar of Companies, Ahmedabad.
2. A letter dated 9th April, 2012 was issued also by Regional Director, North-Western Region, Ahmedabad to the Respondent. The Respondent replied vide letter dated 21st April, 2012 that: -
 - the Respondent has taken utmost care and exercised due diligence in certification of Form DIN3 and has verified (i) Audited Balance Sheet as on 31/03/2002, (ii) documents of Income Tax Department for sale of 200 shares to Shri Ramnivas Gupta and Shri Neeraj Gupta held by Shri Sureshchand Agarwal and Smt. Anju Aggarwal, (iii) Form 32 filed with



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ROC and registered by ROC regarding removal of Shri Sureshchand Agarwal and Smt. Anju Aggarwal under section 284 of the Companies Act, 1956 on 21/07/2005 and (iv) Form 32 filed with ROC and registered by ROC regarding appointment of Shri Ramnivas Gupta and Shri Neeraj Gupta as director of the company w.e.f. 01/07/2005.

- While certifying e-forms 20B the Respondent has verified (i) Shareholders List; (ii) Shares acquired from Income Tax Department; (iii) Form 2 filed with ROC; (iv) Form 5 filed with ROC showing Authorized Capital of the Company, particulars of Directors; (v) Form 18 filed with ROC; and Annual Return containing details which were duly signed by both directors of the company.
 - At the time of certification, the minutes of Board & General Meetings and other statutory Registers were not produced before the Respondent by the Company and the Annual accounts for relevant year were also not filed at the time of certification of e-form 20B.
 - Regarding not showing certain transfer of shares in Annual Return of 2005, the Respondent has contended that the shares were transferred on 14/06/2005, so such transfers should be included in the Annual Return of 2005 and he did not certified the Annual Return of that period (2005).
 - Regarding issues raised for attaching disclaimer with e-forms, the Respondent has inter alia stated that he has certified e-form 20B by attaching a certificate as regards disclaimer, if not, he could have fall within the ambit of professional misconduct under Clause (5) of Part I of the Second Schedule of the Company Secretaries Act, 1980.
3. The Respondent in his Written Statement dated 28th October, 2014 has inter alia stated that the Investigation Report provided by the Informant contains the fact that M/s. Indo Brine Industries Ltd. was the complainant because it has disputes with M/s Dandi Salt Pvt. Ltd. M/s. Indo Brine Industries Ltd. has also made a complaint before this forum bearing no. DC/94/2011, which was closed after giving opportunity to both parties. The Respondent requested to close the matter being the same complaint of same complainant. Since the matter is already adjudicated by the ICSI, it is liable to be rejected on the basic principle of Res judicata.
4. The Disciplinary Committee on 14th December, 2017 considered the prima-facie opinion dated 27th September, 2017 wherein the Director (Discipline) after considering the Complaint, Written Statement from Respondent, related material on record and all the facts and circumstances of this matter opined that the Respondent is prima facie 'Guilty' of professional misconduct under Items (7) and (8) of Part I of Second Schedule to the Act for certifying e-forms 20B of M/s Dandi Salt Private Limited without exercising due diligence and without gathering sufficient information and has inter alia observed as under :-



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- The Disciplinary Committee vide Final Order dated 17th January, 2013 in complaint number DC/94/2011 did not take cognizance of the issues regarding certification of e-form 20B of Annual Return of M/s Dandi Salt Private Limited for the year 2008 by the Respondent. The plea of the Respondent to close or reject the case on the basic principle of Res judicata, cannot be considered for issues related to certification of e-forms 20B by the Respondent.
 - Issue related to certification of Form DIN 3 filed on 11th March 2008, by the Respondent has already been dealt by the Disciplinary Committee vide Final Order dated 17th January, 2013 in complaint number DC/94/2011. Accordingly, this issue cannot be considered in the instant case on the principle of Res Judicata.
 - RD, North –Western Region, Ahmedabad vide its letter dated 9th April, 2012 issued to the Respondent raised issue of not showing certain transfer of shares in Annual Return of 2005. The said transfer of shares was done due to sale of shares of promoters of M/s Dandi Salt Private Limited, in an auction by Office of Tax Recovery Office, Surat, authorised by the Income Tax Authorities. This transfer of shares occurred on 14.06.2005 has not been shown by the Company in its Annual Return for the year 2005 as the event. RD, North –Western Region, Ahmedabad asked reasons for the same from the Respondent as he has filed e-forms 20B for Annual Returns of the Company for the years 2006, 2007 and 2008 on 29.05.2008. The Respondent contended that such transfers should be included in the Annual Return of 2005 which was not certified by the Respondent. The contention of the Respondent that he has not certified Annual Return for 2005 cannot be considered because as a Company Secretary he is supposed to check details of shareholders of the Company given in five immediately preceding Annual Returns and to report accordingly in the Annual Return. The relevant provision is Section 159(1) of the Companies Act, 1956 (the earlier Act).
 - The Respondent in his reply dated 21st April, 2012 addressed to RD, North –Western Region, Ahmedabad has admitted the fact that '*Minutes of Board Meetings and General Meetings and other statutory Registers were not produced before us by the Company at the time of Certification*'. Undoubtedly, the Respondent has certified e-Form 20B without verifying the Statutory Registers (including Register of Members) of the Company and Minutes of board and general meetings of the Company.
5. The Disciplinary Committee vide its Interim Order reserved on 14th December, 2017 and issued on 18th January, 2018 directed the Director (Discipline) to ~~take~~ re-examine the matter specifically in light of the issues related to applicability of principle of Res Judicata or Constructive Res judicata in the instant case and advised the Director (Discipline) to take a legal opinion in the matter, based upon which, the Disciplinary Committee shall decide further course of action in this case.



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6. On 12th September, 2018, the Disciplinary Committee again considered the prima-facie opinion of the Director (Discipline) dated 27th September, 2017, legal opinion dated 18th May, 2018 and material on record in the matter. The Disciplinary Committee observed that the issue related to certification of Form DIN 3 filed on 11th March, 2008, by the Respondent has already been dealt by the Disciplinary Committee vide its Final Order dated 17th January, 2013 in complaint number DC/94/2011 as 'Not Guilty'. Accordingly, the Disciplinary Committee decided that the issue related to certification of the said Form DIN 3 by the Respondent, not be dealt by it afresh. The Disciplinary Committee thereafter agreed with the prima-facie of opinion of the Director (Discipline) dated 27th September, 2017 vide its Interim Order reserved on 12th September, 2018 issued on 13th October, 2018 that the Respondent is 'Guilty' of professional misconduct under Items (7) and (8) of Part I of Second Schedule to the Act for certifying e-forms 20B of M/s Dandi Salt Private Limited without exercising due diligence and without gathering sufficient information; and decided to adjudicate the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 ("the Rule") read with the Act, to finally conclude as to whether the Respondent is guilty or not under Items (7) and (8) of Part I of Second Schedule to the Act.
7. No Written Statement on prima-facie opinion of the Director (Discipline) dated 27th September, 2017 is received from the Respondent.
8. The Respondent was called upon to appear before the Disciplinary Committee on 12th March, 2019 vide letter dated 22nd February, 2019.
9. The Respondent appeared on 12th March, 2019 before the Disciplinary Committee and denied the allegations levied against him. The Disciplinary Committee has ordered to provide copies of Annual Return for the years 2005, 2006, 2007 and 2008 of M/s Dandi Salt Private Limited by the Respondent and thereafter the Disciplinary Committee vide Interim Order reserved on 12th March, 2019 issued on 25th April, 2019 adjourned the matter.
10. On 12th March, 2019, the Respondent has submitted copy of Annual Returns for the years 2006, 2007 and 2008. Thereafter, the Respondent vide email dated 12th March, 2019 submitted Annual Return for the year 2005 of M/s Dandi Salt Pvt. Ltd. as obtained from public documents of Ministry of Corporate Affairs.
11. The Respondent has been called upon to appear before the Disciplinary Committee on 3rd June, 2019 vide letter dated 16th May, 2019.
12. No one appeared for the Respondent on 3rd June, 2019. The Disciplinary Committee decided to proceed ex-parte in the matter. The Disciplinary Committee after considering the copy of Annual Returns of M/s Dandi



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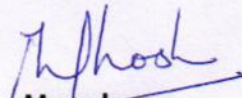
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Salt Pvt. Ltd. submitted by the Respondent and in totality of the facts and circumstances of the case held that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980 as the Respondent has not signed the Annual Return for the year 2005 of M/s Dandi Salt Pvt. Ltd.

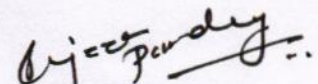
13. Accordingly, the case is disposed off.


Member


Member




Member


Presiding Officer