

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
ICSI/DC: 117/2012

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

Date of Decision: 13th January, 2014

The ROC, UP & Uttarakhand

....Complainant

Vs

Shri Gaurav Gupta, FCS 6359
Shri Manoj Kumar Agarwal, FCS 5940

....Respondent 1
....Respondent 2

ORDER

1. A complaint in Form 'I' dated 14th December, 2011 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 the ROC, UP & Uttarakhand (hereinafter referred to as 'the Complainant') against Shri Gaurav Gupta, FCS 6359 (CP No. 6944) & Shri Manoj Kumar Agarwal, FCS 5940 (CP No. 6070) (hereinafter referred to as 'Respondent 1 and Respondent 2', respectively).
2. The Complainant (ROC) *inter-alia* stated that one Shri Abid Hussain had filed a complaint with them wherein he had *inter-alia* stated that M/s. Himalayan Petro Products and Allied Works Pvt. Ltd., was incorporated on 25th February, 1985 as a Pvt. Ltd., having its Registered Office at Lama Chaur, Haldwani, Nainital-263 139, (Uttarakhand).
3. The Complainant further stated that Shri Abid Hussain in his complaint *inter-alia* alleged that the Respondent 1 had certified Form 32 dated 16th



February, 2009 (for the appointments of three directors, Ms. Swati Agrawal, Shri Pawan Kumar Agrawal and Shri Basant Singh) filed/ signed by Shri Jaspal Singh claiming himself to be the director of M/s. Himalayan Petro Products and Allied Works Pvt. Ltd., without exercising due diligence.

4. The Complainant further stated that the Respondent 2 had certified the following Forms signed by Shri Jaspal Singh claiming himself to be the director of M/s. Himalayan Petro Products and Allied Works Pvt. Ltd., whereas he had already resigned from the directorship of the said company and had submitted his resignation letter to the Regional Manager, UPFC, Haldwani on 10th September, 1992. The said resignation letter was accepted by the Board of the Directors of the company and accordingly, Form 32 was submitted on 10th September, 1992 and which was taken on record on 4th October, 2000.

Sl. No.	e-Forms	Company Secretary Certifying the e-Forms for uploading	Purpose of e-Forms filed
1	Form 32 dt. 23.02.2007	Shri Manoj Kumar Agrawal	Appointment of 2 directors.
2	Form 2 dt. 23.05.2007	-do-	Allotment of equity shares.
3	Form 5 dt. 09.02.2009	-do-	Increase in the Authorized Capital
4	Form 23 dt. 09.02.2009	-do-	Special Resolution passed for increase of capital in Article of Association of Company
5	Form 2 dt. 10.02.2009	-do-	Allotment of equity shares
6	Form 32 dt. 13.02.2009	-do-	Regarding removal of directors u/s. 284 of the Companies Act, 1956
7	Form 32 dt. 16.02.2009	-do-	Regarding appointment of directors.



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5. The Complainant further stated that a Show Cause notice was issued to the Respondent 1 and the reply dated 16th September, 2009 received from the Respondent 1 was not found to be satisfactory.
6. The Complainant further stated that Shri Jaspal Singh failed to produce any record before the ROC, the Complainant for verification of information mentioned in various forms despite reminders except for two replies both dated 17th July, 2009. The Complainant further stated that Shri Abid Hussain vide his letter dated 19th March, 2009 confirmed that all the documents, registers etc. are with them and they are ready to produce the same before the ROC.
7. The Complainant further stated that a letter dated 4th March, 2009 was issued to the Respondent 2 asking him to submit his reply along with the copies of supporting documents in respect of Form 32 dated 23rd February, 2007 etc. signed by Shri Jaspal Singh and certified and filed by him (Respondent 2).
8. The Complainant further stated that the Respondent 2 did not submit any reply to the aforesaid letter dated 4th March, 2009 and a reminder was issued to him on 21st May, 2009 which also remained un-replied. Consequently an Order dated 23rd June, 2009 under section 628 of the Companies Act, 1956 was issued to the Respondent 2 to show cause as to why action should not be initiated against him for certifying and filing of the said e-forms which are not correct and false information/statement have been given as alleged by Shri Abid Hussain Khan.
9. The Complainant further stated that the Respondent 2 furnished his reply dated nil which was scrutinized by the Complainant and it was found not convincing as the Respondent 2 failed to substantiate the same. The Complainant further stated that the Respondent 2 has certified all the said



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forms stating that he had verified the particulars from the Books of Accounts and records of M/s. Himalaya Petro Products and Allied Works Pvt. Ltd., and found them to be true and correct. However, Shri Jaspal Singh claiming himself to be the director of M/s. Himalaya Petro Products and Allied Works Pvt. Ltd., and signing the aforesaid e-forms as such, failed to produce any document/record before the ROC, UP & Uttarkhand for verification about the particulars mentioned in the e-forms.

10. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent 1 & 2 vide letters 31st January, 2012 asking them to submit their written statements. The Respondent 2 submitted the written statement dated 10th February, 2012. A reminder dated 29th February, 2012 sent to the Respondent 1 calling upon him to file the written statement. The Respondent 1 submitted the written statements dated 20th February, 2012.

11. The Respondent 1 in his written statement denied the averments made by the Complainant and *inter-alia* stated that he had checked the contents of the alleged Form 32 before certifying the same. He further stated that, due consideration was given to the provisions of the Companies Act, 1956, rules made there under and the books and records of the company. He further stated that he had also checked the enclosures attached with the said e-Form and also verified the signature of the person who had signed the said Form.

12. The Respondent 1 further stated he had certified Form 32 on the basis of the following evidences:-

- Consent of the directors who were appointed.
- Minutes of the meeting signed by all the directors present in the meeting as per the company record and the ROC's records.
- Signatory details at the MCA site showing Shri Jaspal Singh and



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others as directors.

- Certified copy of Form 32 regarding re-appointment of Shri Jaspal Singh as director.
- Act of the ROC regarding continuous approval of filed e-forms showing Shri Jaspal Singh as director.
- Copy of e-form 32 earlier filed by Shri Jaspal Singh and registered by the ROC, Kanpur viz. Form 32 dated 23.02.2007 and Form 32 dated 13.02.2009 both were signed by Shri Jaspal Singh as director and Registered by the ROC, Kanpur, pretentious him as director.

13.The Respondent 1 further stated that at the time of certification, Shri Jaspal Singh had shown him certified copy of the Form 32 filed with the ROC, Kanpur regarding his re-appointment as director w.e.f. 10th October, 1992. The said Form 32 was registered with ROC, Kanpur on 29th August 2001 and since then Shri Jaspal Singh was continuously shown as director in the records of the ROC. Further, since 29th August 2001, Form 2, Form 23, Form 5, Form 32 were signed by Shri Jaspal Singh as director and filed with the ROC office till 16th February, 2009 and every document was duly registered by the ROC Kanpur which shows that as per the ROC record, Shri Jaspal Singh is director of the company and duly authorized to file the document on behalf of the company. On 16th February, 2009, the official site of the MCA was showing Shri Jaspal Singh as the director of the company.

14.The Respondent 1 further stated that he had certified Form 32 as an independent person and in professional capacity. The minutes were signed by all the directors who were on the records of the company and the ROC. So no question arose about the *mala-fide* intention of the present directors and proposed director and Shri Abid Hussain was not the director on 16th February, 2009 as he was removed from the directorship on 13th February, 2009 and Form 32 regarding his removal

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Signature of the respondent

was registered by ROC, Kanpur. So certification of Form 32 after believing that Shri Jaspal Singh was director was obvious and under these circumstances every professional will certify the Form 32.

15. The Respondent 1 further stated that he was completely unaware about the complaints with the ROC, Kanpur. He further stated that he is not the Secretary of the company and is not aware about the mismanagement of the company. The Respondent further stated that he had examined the produced documents carefully and there was no question of doubting the directorship of Shri Jaspal Singh because as per the doctrine of indoor management, no outsider can be aware of about the irregularity of the company unless it is publicized. Moreover ROC, Kanpur was continuously showing Shri Jaspal Singh as a director and document provided to him also states that he is a director. If Shri Jaspal Singh was not the director, then why this question was not raised since 29 August 2001 on which Form 32 showing his re-appointment w.e.f 10th October 1992 was filed with ROC. After that Form 2, Form 23, Form 5, Form 32 signed by Shri Jaspal Singh as director were filed with the ROC till 16th February, 2009 and every document was duly registered by the ROC, Kanpur which shows that as per ROC record, Shri Jaspal Singh is the director of company and authorized to file documents on behalf of the company. So, under these circumstances every professional would believe that Shri Jaspal Singh is a director and if he was not the director then why opposite party did not challenge his directorship since 29th August 2001 till 16th February 2009.

16. The Respondent 1 further stated that Shri Jaspal Singh had shown him relevant documents. Hence, it is completely denied that he had nothing to show. Shri Jaspal Singh had all the papers and has also filed the same in the Company Law Board. So, it is completely wrong to say that Shri Jaspal Singh was not having any paper because if he had no papers



then how these have been submitted by him before the Company Law Board.

17. The Respondent 1 further stated that he had certified only one Form for this company i.e. Form 32 dated 16.02.2009. The Respondent 1 further stated that he did not omit any material fact. He further stated that did his best while certifying e-Form 32 dated 16.02.2009. He further stated that all the documents and Form were certified in good faith without any fraudulent and malicious intention to cause harm or injury to any person, whatsoever. He further stated that while certifying Form 32 dated 16.02.2009, he was performing only his professional duties and had not gained anything except his routine professional remuneration.

18. The Respondent 2 also denied the averments made by the Complainant and *inter-alia* stated that Shri Jaspal Singh although resigned from the directorship of company on 10.09.1992, was reappointed as director once again on 10.10.1992 for which Form 32 was accepted and registered by the ROC, Kanpur and taken on record on 29.08.2001. Further, he denied to have received any letters dated 04.03.2009 & 21.05.2009 from the ROC, Kanpur. Only an order u/s 628 of the Companies Act, 1956 was sent and duly accepted by him. Consequently, he submitted his reply to ROC, Kanpur along with all proofs and documents in answer to the order made as said above and a receiving from the ROC, Kanpur was taken by him. Further, certain Forms viz. Form 32 dated 23.02.2007, Form 2 dated 23.05.2007, Form 5 dated 09.02.2009, Form 23 dated 09.2.2009, Form 2 dated 10.02.2009, Form 32 dated 13.02.2009 were certified and filed by him in good faith without any *mala-fide* intention but Form 32 dated 16.02.2009 was not certified by him. The Respondent 2 further stated that the ROC, Kanpur totally ignored the documents and clarifications submitted by him.



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19. The Respondent 2 further stated that sanction to file prosecution against him was received from the RD, North wrongly without providing him the exact information and full details of facts of the case. Certain important facts like re-appointment of Shri Jaspal Singh along with two other directors on 10.10.1992 were concealed and not brought to the knowledge of the RD, North. Shri Jaspal Singh never resigned from the directorship of the company after 10.10.1992 and continued to be a director from the date as stated above. Simply give the resignation letter to UPFC is not sufficient to prove that Shri Jaspal Singh is not a director unless and until Form 32 for resignation is not filed at the ROC office.

20. The Respondent 2 further stated that all the documents and papers were certified and verified by him only on the basis of books and documents of the company produced by Shri Jaspal Singh. He further stated that he had proper evidences (certified copy of Form 32 etc.) to prove that on the date of certification done by him, Shri Jaspal Singh was director in the said company. All the documents as alleged were first signed by Shri Jaspal Singh through his digital signatures and thereafter, he certified the documents. Furthermore, before certifying the documents; he had taken one declaration from Shri Jaspal Singh, director that all the documents and papers produced before him at the time of certification are true. The Respondent further stated that all the documents and forms were certified in good faith without any fraudulent and malicious intention to cause harm or injury to any person whatsoever.

21. The Respondent 2 further stated that Shri Abid Hussain claiming to be the Managing Director of M/s. Himalayan Petro Products and Allied Works Pvt. Ltd., had filed a complaint at ROC office on 19.12.2008. In response to the complaint made by Shri Abid Hussain, ROC, Kanpur filed a complaint on 26.08.2009 in the court of CJM, Nainital. Against such complaint, he obtained stay order from the High Court, Nainital u/s 482 of Criminal



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Procedure Code. The stay order was vacated on 3.08.2011 due to dismissal of default with the advisory of the High Court to go to the lower court and present the evidences before that court. Now proceedings are pending at the lower court and he has filed a petition u/s 245 of Criminal Procedure Code. In that case, ROC, Kanpur did not file any objection against such petition till the date of submitting this written statement and the entire matter is still going under judicial proceedings and final decision is awaited from Chief Judicial Magistrate, Nainital.

22. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statements of the Respondent 1 & 2 was sent to the Complainant vide letter dated 9th March, 2012 and 22nd February, 2012 asking to file the rejoinders. The Complainant filed the rejoinder dated 3rd April, 2012 to the written statement of the Respondent 1. A reminder letter dated 4th April, 2012 sent to the Complainant asking him to submit the rejoinder to the written statement of the Respondent 2. The letter dated 13th April, 2012 received from the Complainant asking to send the written statement of the Respondent 2 again in order to file the rejoinder. A reminder dated 23rd April, 2012 sent to the Complainant asking him to submit his rejoinder in respect of the written statement of the Respondent 2. The Complainant filed the rejoinder dated 21st May, 2012 (to the written statement of the Respondent 2).

23. The Complainant denied the statements given by the Respondents in their written statements and while retreated the earlier submissions in the complaint and stated that Shri Jaspal Singh had resigned from the said company as director w.e.f 10.09.1992. The company had filed Form 32 in respect of resignation of Shri Jaspal Singh and Shri Gurvinder Singh. The Complainant further stated that the ROC's prime duty is to register various Forms/documents filed by the companies. Onus is on the professional certifying the form on the basis of records of the company.



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The Complainant further stated that an order under section 234 of the Companies Act, 1956 issued to the company, Shri Jaspal Singh and Shri Abid Hussain Khan on 06.03.2009 to produce certain documents/papers. Shri Jaspal Singh has not produced/submitted the documents/papers called for. It is not known once Shri Jaspal Singh does not have documents/papers, then how he has shown to the Respondent 1. The Complainant further stated that this office has filed following complaints under various provisions of the Companies Act, 1956 against the following persons and are pending before Hon'ble Courts:

1. Criminal Misc. Application No. 18 of 2010-u/s 482 of Cr P C -the Respondent 1 vs. ROC (against case No. 2408/09) u/s 628 of the Companies Act, 1956 filed in the Court of CJM, Nainital.
2. Criminal Misc. Application No. 20 of 2010-u/s 482 of Cr P C -The Respondent 2 vs. ROC (against case No. 2118/09) u/s 628 of the Companies Act, 1956 filed in the Court of CJM, Nainital.
3. Criminal Misc. Application No. 88 of 2010-u/s 482 of Cr P C – Shri Jaspal Singh vs. ROC (against case No. 2264/09) u/s 234(4) of the Companies Act, 1956 filed in the Court of CJM, Nainital.
4. Criminal Misc. Application No. 817 of 2009-u/s 482 of Cr P C - Shri Jaspal Singh vs. ROC (Against case No. 2117/09) u/s 628 of the Companies Act, 1956 filed in the Court of CJM, Nainital.

24. Letters dated 1st March, 2013 were sent to the Respondents seeking documents they had relied on for certification of the alleged forms. A letter dated 7th March, 2013 received from the Respondent 2. A letter dated 7th March, 2013 received from the Respondent 1.

25. 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 Respondent 1 and 2 have relied



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on the documents provided by Shri Jaspal Singh who informed him that he is a director of M/s. Himalayan Petro Products and Allied Works Pvt. Ltd. Further, the Respondent 1 and 2 have claimed that the name of Shri Jaspal Singh was appearing as director of M/s. Himalayan Petro Products and Allied works Pvt. Ltd., on the MCA portal at the time of certification. It is also observed that the case of the Complainant is based on the fact that an Order under Section 234 of the Companies Act, 1956 was issued to the company, Shri Jaspal Singh and Shri Abid Hussain on 06.03.2009 to produce certain documents/papers. Shri Jaspal Singh had not produced/submitted the documents/papers called for, then how he has shown them to the Respondent 1 and 2. The Respondent 1 and 2 were asked to submit the copies of the documents they had relied on while certifying the alleged Forms. The Respondent 1 and 2 submitted the documents they had relied on while certifying the alleged forms. The Company Secretary in Practice has every reason to believe the authenticity of the documents produced before him for certification. He may certify the Form provided there is nothing suspicious apparently on the record. Hence, the Respondent 1 and 2 are *prima facie* not 'guilty' of professional or other misconduct under the Company Secretaries Act, 1980.

26. The *prima-facie* opinion dated 9th September, 2013 of the Director (Discipline) was placed before the Disciplinary Committee at its meeting held on 3rd October, 2013 for its consideration. The Committee had adjourned the matter.

27. The *prima-facie* opinion dated 9th September, 2013 of the Director (Discipline) was again placed before the Disciplinary Committee.

28. The Committee considered the *prima-facie* opinion dated 9th September, 2013 of the Director (Discipline); the material on record and advised the Secretariat to send the copies of the documents submitted by the



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Respondents while certifying the alleged e-Forms to the Complainant, seeking comments, if any on them. The Committee further advised Director (Discipline) to investigate the matter further on receipt of the comments, if any from the Complainant.


29. Accordingly, the copies of the documents submitted by the Respondents while certifying the alleged e-Forms were sent to the Complainant vide letter dated 2nd December, 2013 seeking comments, if any on the same.

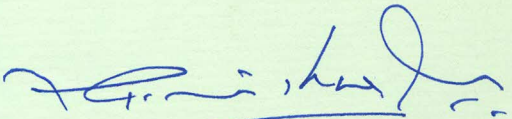
30. The Committee observed that there was no response from the Complainant till 6th January, 2014 on the documents relied by the Respondent while certifying the alleged e-Forms. It also observed that the Director (Discipline) continued to hold his *prima-facie* opinion dated 9th September, 2013 intact. A Letter dated 7th January, 2014 of the Complainant was placed before the Committee wherein the Complainant primarily reiterated its earlier submissions.

31. The Committee considered the *prima-facie* opinion dated 9th September, 2013 of the Director (Discipline); the material on record and in view of the circumstances and totality of the issues involved in this matter agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondents herein are not guilty of professional or other misconduct under the Company Secretaries Act, 1980; and closed the matter.

Accordingly, the complaint stands disposed-off.

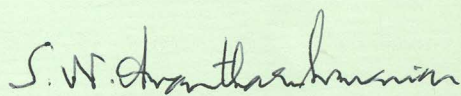

(S K Tuteja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member



Date: 07/02/2014


(S N Ananthasubramanian)
Presiding Officer