

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
ICSI/DC: 140/2012

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

Date of Decision: 30th July, 2013

M/s. Sankalp Buildwell Private Ltd.

....Complainant

Vs

Shri Debojyoti Das, ACS-21643.

.....Respondent

ORDER

1. A complaint dated 14th May, 2012 in Form 'I' was filed by M/s. Sankalp Buildwell Pvt. Ltd., thru Mr. Krishen Kumar Dhar, Managing Director (hereinafter referred to as the 'Complainant') against Mr. Debojyoti Das (ACS-21643) hereinafter referred to as the 'Respondent'. A letter dated 18th May, 2012 was sent to Mr. Krishen Kumar Dhar asking him to submit the copy of the resolution passed by the Board of directors of M/s. Sankalp Buildwell Pvt. Ltd., under which he was authorized to file the instant complaint, which he filed vide letter dated 29th May, 2012 .
2. The Complainant has *inter-alia* alleged that the Respondent has illegally and fraudulently filed two Forms 32 on 21st March, 2012 after his services were terminated as a Company Secretary of M/s. Sankalp Buildwell Pvt. Ltd. One of the Form 32 was filed for removal of the incumbent TC-16 nominee directors i.e. Mr. Praveen Babu Lal Rathod and Mr. Mahesh Manilal Gandhi and the other Form 32 for appointment of Mr. Aashish Kalra and Mr. Saurabh Killa as nominee directors on the Board of M/s. Sankalp Buildwell Pvt. Ltd. The Complainant further stated that there is no Resolution of the Board of the company authorising the cessation/ appointment of the directors for filing alleged two forms 32. The Complainant has also alleged that the Respondent has disclosed confidential information.
3. Pursuant to sub-rule (3) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a copy of the complaint was sent to the Respondent vide letter dated 31st May, 2012 calling upon him to send the written statement. The Respondent submitted the written statement dated 5th June, 2012 wherein he has denied the allegations levied against him and has *inter-alia* stated that the complaint does not reveal any



confidential information which is alleged to have been disclosed by him. He further stated he had relied on the relevant documents while affixing his digital signatures on the alleged Form 32.

4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 7th June, 2012 asking him to file the rejoinder. The letter sent to the complainant asking him to submit the rejoinder was returned undelivered on 11th June, 2012. Another letter dated 12th June, 2012 was sent to the Complainant asking him to submit the rejoinder; however the same was also received undelivered on 26th June, 2012.
5. A letter dated 9th March, 2013 received from the Complainant for the status of the case. The Complainant and the Respondent were asked to provide certain clarifications *vide* letter dated 4th April, 2013. The additional documents were received from the Respondent on 18th April, 2013. A letter dated 4th July, 2013 was sent to one Shri Sachin Arora calling upon him to submit the copies of all the documents relied by him while certifying the alleged two Form 32. A letter dated 11th July, 2013 received from Shri Sachin Arora attaching therewith the documents relied by him while certifying two Form 32.
6. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record *prima-facie* opined that there is a dispute amongst the management of the company and that the alleged two forms 32 were certified by Mr. Sachin Arora, PCS who was called upon *vide* letter dated 4th July, 2013 to submit the copies of all the documents he had relied upon while certifying the alleged two forms 32. Mr. Sachin Arora *vide* letter dated 11th July, 2013 submitted a facsimile of the minute book which states that Shri Debojyoti Das, the Respondent was authorised to sign and file various returns and forms of the company. The Complainant was also asked to clarify *vide* letter dated 4th April, 2013 about the details of the confidential information(s) which have been allegedly disclosed by the Respondent along with supporting evidence. However, the said letter was received back undelivered. The Director (Discipline) further *prima-facie* opined that a Form 32 for cessation of the Respondent was filed w.e.f 19th March, 2012 based on Board Resolution No.35.11 dated 6th October, 2010. However, it is also on record that a circular resolution dated 18th April, 2011 for appointment of the Respondent as Company Secretary w.e.f. 15th April, 2011 and the same has also been signed by the Complainant. The resolution for the cessation of the Respondent as the Company Secretary is much prior to the resolution for his appointment. Moreover, the Form for cessation has been filed after a gap of approximately two years and that too the Complainant herein has himself consented for the appointment of the Respondent w.e.f. 15th April, 2011. Hence, the Respondent is *prima-*



[Handwritten signatures]

facie not guilty of professional misconduct under the Company Secretaries Act, 1980.


7. The Disciplinary Committee at its meeting held on 30th July, 2013 considered the *prima-facie* opinion dated 16th July, 2013 of the Director (Discipline); material on record agreed with the *prima-facie* opinion of Director (Discipline). The Disciplinary Committee in view of the circumstances and totality of the issues involved in this matter held that the Respondent is 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 Tufeja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member


(S N Ananthasubramanian)
Presiding Officer

Date: 30/8/2013
New Delhi:

