

BEFORE THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF COMPANY

SECRETARIES OF INDIA

DC: 84/2010

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

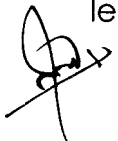
Shri Arun Kumar Sharma - **Complainant**

Vs

Shri Debendra Raut - **Respondent**



ORDER

1. The Institute had received a complaint dated 23rd August, 2010 in Form 'I' from Shri Arun Kumar Sharma (hereinafter referred to as the 'Complainant') against Shri Debendra Raut (ACS -16626) (hereinafter referred to as the 'Respondent').
2. The Complainant had alleged that the Respondent has not exercised due diligence and was grossly negligent in conducting of his professional duties as he with the help of the promoter of the company named M/s. Thirdwave Financial Intermediaries Ltd., had forged his signatures and uploaded his resignation on the portal of the MCA. The Complainant had also submitted that he has filed a Police complaint on 23rd August, 2010 in this regard at Surat.
3. The Respondent had denied all the allegations and had submitted that the complaint is false and frivolous and there has been no forgery or any knowledge thereof in any manner whatsoever and has submitted that the complaint relates to appointment and resignation of the Complainant as director on the Board of M/s. Thirdwave Financial Intermediaries Ltd., where he had certified Form 32 as required under the Companies Act, 1956. The said Form was prepared by the director of M/s. Thirdwave Financial Intermediaries Ltd., and the said director had put his digital signatures on it. Further, before certifying the said Form, he had verified the records of the company and found that the said director had given his consent letter dated 10th May, 2010 and the Board of directors of the



company have passed a resolution for his appointment as additional director in the capacity of Independent and Non-Executive.

4. As far the certification of Form 32 for resignation of the Complainant from the Board of Director of M/s. Thirdwave Financial Intermediaries Ltd., is concerned, the Respondent has submitted that the said form was prepared by the director and the said director signed it digitally. Further, before certifying the said form, he had verified the records of the company and found that the said director has given his resignation letter dated 8th July, 2010 which was accepted by the director of the company. The Board of Directors of the company has also passed the Resolution for acceptance of the resignation of the Complainant from the Board of the company.
5. As regards the allegations of forging the signatures of the Complainant on the resignation letter, the Respondent had submitted that the Complainant had visited his office in Kolkata on 7th-8th July, 2010. On 8th July, 2010, the Complainant had submitted papers and documents along with the resignation letter and had taken back his dues. During submission of the documents one of his professional colleague Shri Manoj Prasad Shaw, PCS was also present. In the said resignation letter which is presumed to be signed by him, the date was missing. Since, the resignation letter was already signed by Shri Arun Kumar Sharma on good faith, he accepted the same. However, after noting the undated letter, the Respondent asked the Complainant to put the date by his own handwriting. The Complainant kept the resignation letter on good faith and there was no reason on his part to suspect the Complainant, who happens to be a Chartered Accountant.
6. The Respondent further stated that the Complainant had made several calls on 7th-8th July, 2010 from his Mobile Nos. 9327399230/9898034500 during his stay in Kolkata and also had called the Respondent after returning from Kolkata, asking why his name is still showing on the portal of the MCA in the list of directors of the company. The Respondent told that the name of the Complainant will be removed only after the approval of Form 32 by the ROC. After the approval of Form 32 from the ROC, the company had intimated to the Complainant and to the Stock Exchange on 13th July, 2010. Surprisingly, the Complainant with a conspiracy motive started sending mails to him denying his resignation on 14th July, 2010. The Complainant had received the

mail from the Respondent on 7th July, 2010 and from the company on 13th July, 2010 confirming the approval of resignation by the ROC. However, the Complainant mailed him on 14th July, 2010 stating that he is not going to resign in order to harass him and not referring anything about the mails of the company, regarding his approval of resignation. Deliberately on 17th July, 2010, the Complainant mailed to the company with a copy marked to the Respondent stating frivolous and false facts moreover to blackmail and to harass him. Also, in the e-mail dated 17th July, 2010 the Complainant was threatening and blackmailing the company and him for coming into a settlement.

7. The Respondent further stated that the Complainant is repeatedly making representation, threatening the company and its directors/officers for coming to a settlement with him or else he would lodge a complaint on the ground of forgery. Failing in his attempts to blackmail in such manner, the Complainant lodged the instant complaint.
8. The Complainant in his rejoinder had submitted that the Respondent has miserably failed to negate the allegations levelled by him and what is not denied is accepted in law. The Complainant had further submitted that the Respondent has mischievously tried to co-relate the appointment with the resignation in his reply, but in fact, the complaint is only in respect of the forged resignation of the Complainant and Form 32 filed thereafter certified as correct by the Respondent in conspiracy with the directors of the company. The Respondent has merely relied upon the statutory provisions of the Company Law or the procedural aspects for uploading a form under the MCA 21. The Respondent has not only failed to counter the allegations raised but also made many contradictory statements in the reply and before the police.
9. He further stated that the Respondent had claimed before the police at Surat that the resignation of the Complainant was accepted by the company, whereas by his own letter dated 27th September, 2010 addressed to the Head Constable, Piplod Police Chowky under Umra Police Station, Surat, he had claimed that resignation was accepted by him in the presence of one Shri Manoj Prasad Shaw, PCS at Kolkata and on the other hand the Respondent in his reply herein had stated-




"that the Form 32 relating to resignation of the Complainant was prepared by the director of the company and submitted to the Respondent for pre-certification."

10. The Complainant had further stated that the Respondent had cleverly tried to say that he had not received any resignation from the Complainant but it was received by the director of the company who's Form 32 was pre-certified by the Respondent. Again looking at the contents of his reply, it is stated that resignation letter was submitted to the Respondent in the presence of Shri Manoj Prasad Shaw and further admits that the resignation letter was presumed to be signed by the Complainant but the date was missing and the date was inserted in his own handwriting by the Complainant. This proves beyond doubt that the resignation letter was produced by the Respondent and he got it dated from the Complainant. There is no mention whether the same was signed by him or not and in what condition the resignation letter was at the time. Hence, the complaint is genuine and supported by the own confession of the Respondent and his conduct and misconduct.
11. The Complainant had further submitted that; it is pertinent to note that (1) If the Complainant has brought the resignation with him why would not he sign in presence of the Respondent (2) Why was the Complainant asked to fill in the date of the alleged forged and fabricated resignation? Why he was not asked to even sign in his presence? (3) Why would a person appointed as director of a company would submit his so called resignation to a consultant of the company? Any letter sent to the company is unconditional and deemed to be accepted by the company without actually accepting it but if the same is not sent to the company what is the legal value of the resignation? The position in law is clear that any resignation tendered by a director and sent to the registered office of the company only becomes effective and if the letter is sent to any other office, person or address becomes unfruitful and *void ab-initio*. It is also pertinent to note that the Respondent has claimed in his letter dated 27th September, 2010 addressed to the police that the Complainant was not to be appointed as director at the ensuing Annual General Meeting of the company scheduled to be held on 17th August, 2010. This shows further proof of his conspiring with the management of the company.
12. That the Respondent is grossly negligent in the conduct of his professional duties as he did not verify the signature on the resignation letter despite the fact that he was aware about the



disputes with the management by the director who resigned and signed Form 32 without any verification and allowed uploading of the Form 32 with forged copy of resignation of the director.

13. *Prima-facie* opinion of the Director (Discipline)

"The allegation of the Complainant is that the Respondent with the help of the promoter of the company, M/s. Thirdwave Financial Intermediaries Ltd., has forged his signature and uploaded his resignation on the MCA portal.

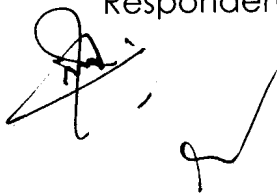
The Respondent in his defence has submitted that the said Form was prepared by the director and the said director had put his digital signature on it. The preparation of the Form by the director and putting his seal cannot be a defence. The Respondent is expected to satisfy himself with the help of documents that the Form is correctly being certified.

The Respondent *vide* his e-mail dated 7th July, 2010 asked the Complainant to send him the share certificate and transfer deed and signed copy of the resignation letter by the 12.00 noon of next day. The Respondent filed the Form 32 on the 8th July, 2010 on the basis of a resignation letter dated 8th July 2010 itself. The Complainant *vide* his e-mail dated 14th July, 2010 questioned the authority of the Respondent to ask for the resignation letter. The Respondent did not provide the satisfactory reply to the Complainant. The appointment letter and the resignation letters have been filed within an interval of two month by the Respondent himself. The signature on the consent letter and the resignation letter differ materially.

In view of the foregoing, the Respondent is *prima-facie* 'Guilty' of professional misconduct."

14. The *prima-facie* opinion of the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 6th June, 2011. The Disciplinary Committee while agreeing with the *prima-facie* opinion of the Director (Discipline) decided to proceed further in accordance with Chapter V of the Company Secretaries (Procedure of Investigation of professional and other misconduct and conduct of cases) Rules, 2007.

15. The *prima-facie* opinion of the Director (Discipline) was sent to the Respondent *vide* letter dated 9th June, 2011 asking him to submit



the written statement to the *prima-facie* opinion of the Director (Discipline) along with the supporting documents and list of witnesses, if any latest by 16th June, 2011 with a copy to the Complainant. The *prima-facie* opinion of the Director (Discipline) was also sent to the Complainant *vide* letter dated 9th June, 2011 asking him to submit the rejoinder to the written statement along with the supporting documents and list of witnesses, if any latest by 23rd June, 2011 with a copy to the Respondent.

16. The Respondent *vide* his letter dated 15th June, 2011 requested time up to 30th June, 2011. The Complainant *vide* letter dated 24th June, 2011 has *inter-alia* stated that the Respondent has not replied or submitted his written statement despite the expiry of deadline.

17. The Respondent *vide* e-mail dated 29th June, 2011 had requested extension of time till 10th July, 2011 which was considered and the Respondent was asked to file his written statement latest by 5th July, 2011. The Complainant was also asked to file his rejoinder to the written statement by 15th July, 2011.

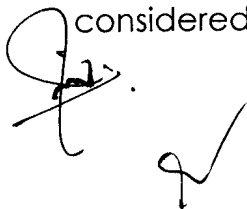
18. The Respondent *vide* letter dated 4th July, 2011 submitted his written statement in which he *inter-alia* stated that—

"At the outset, I repeat and reiterate whatever was mentioned in my reply dated 01.11.2010.

I also deny and dispute all the allegations contained in Form I dated 23.8.2010 filed by the Complainant and also his rejoinder dated 29.12.2010"



19. The Complainant *vide* letter dated 14th July, 2011 confirmed that he had received a reply dated 4th July, 2011 from the Respondent and stated that all the evidences sought to be relied upon by the Respondent are false and does not support him at all and are not even worth a grain. Hence, he requested to give him an opportunity of personal hearing.

20. The parties were called upon to appear before the Disciplinary Committee at its 28th meeting held on 9th December, 2011. The Respondent *vide* e-mail dated 6th December, 2011 had informed that his mother had expired on 8th November, 2011 and he has to attend the ritual function of his late mother at native place in Orissa and requested to adjourn the hearing. The Disciplinary Committee considered his request. The Complainant had put in appearance.

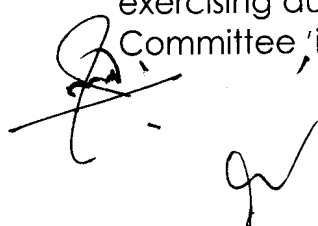


The Disciplinary Committee informed the Complainant about the reason of non-appearance of the Respondent and thereafter, the Disciplinary Committee adjourned the matter and decided to call upon both the parties to appear before the Disciplinary Committee at its next meeting, failing which the Disciplinary Committee to proceed *ex-parte*. Accordingly, the parties were called upon to appear before the Disciplinary Committee at its 29th meeting on 5th January, 2012.

21. The Complainant along with his Advocate Shri S Suryanarayana appeared before the Disciplinary Committee at its 29th meeting held on 5th January, 2012. The Disciplinary Committee noted that the Respondent *vide* e-mail dated 4th January, 2012 had requested for adjournment of hearing on 5th January, 2012 as his doctor had advised him not to travel as he was sick. He had also sent the copy of the air tickets for his journey and the medical certificate.
22. The Disciplinary Committee took a serious view as the Respondent had sought time for performing the rituals of his late mother which was granted in the previous meeting held on 9th December, 2011 and this time also he sought time under the pretext of being sick. The Disciplinary Committee noted that the Respondent had resorted to send an e-mail on 4th January, 2012, just one day prior to the meeting hence, the same could not be communicated to the Complainant and the Complainant and his Advocate came to Delhi from Gujarat which had put in inconvenience to them and at the substantial cost incurred by them towards the travel and stay at Delhi.
23. The Disciplinary Committee, in view of the above, had decided that the Respondent should bear ₹20, 000/- (Rupees Twenty Thousand) towards (i) the cost of travel and (ii) boarding and lodging expenses of the Complainant for his appearance before the Disciplinary Committee at its 29th meeting on 5th January, 2012 and directed the Secretariat to communicate the same to the Respondent. The Disciplinary Committee further decided to call upon the parties to appear before its next meeting, failing which the Disciplinary Committee to proceed *ex-parte* and thereafter adjourned the matter.
24. Accordingly, the parties *vide* letters dated 27th March, 2012 were called upon to appear before the Disciplinary Committee at its 30th meeting held on 20th April, 2012.

25. The Advocate for the Complainant Shri S Suryanarayan along with the Complainant appeared before the Disciplinary Committee. The Respondent also appeared in person. Both the parties made their oral submissions. The Complainant submitted that the Respondent has not paid the cost of ₹20000/- to him so far as imposed by the Disciplinary Committee at its 29th meeting held on 5th January, 2012. The Disciplinary Committee thereafter asked the Respondent to make his submissions. The Respondent made oral submissions and also filed his written submissions dated 19th April, 2012 which were taken on record.
26. The Disciplinary Committee noted the submissions advanced by both the parties and revisited its earlier direction imposing a cost of ₹20,000/- on the Respondent towards (i) the cost of travel and (ii) boarding and lodging expenses of the Complainant for his appearance before the Disciplinary Committee on 5th January, 2012. The Disciplinary Committee after discussions decided to quell its earlier direction in view of the genuine difficulties explained by the Respondent to appear before the Committee on 5th January, 2012.
27. The Disciplinary Committee thereafter directed the Complainant to file his written submissions within two weeks with an advance copy to the Respondent. The Disciplinary Committee further decided that the Respondent may file the reply to those written submissions within 10 days of the receipt of the same. With this direction, the Disciplinary Committee closed the hearing and reserved its Order.
28. Shri S Suryanarayana, the Advocate of the Complainant had submitted the written submissions on behalf of the Complainant vide letter dated 3rd May, 2012 with an advance copy to the Respondent wherein he had *inter-alia* prayed that the cost ₹20000/- imposed by the Disciplinary Committee be paid to him. The Respondent did not submit his reply to the written submissions of the Complainant.
29. The Disciplinary Committee at its 32nd meeting held on 1st June, 2012 considered the submissions made by the parties and other material available on record, came to the conclusion that the Respondent is 'Guilty' of Professional Misconduct under *Clause (7)* the Second Schedule of the Company Secretaries Act, 1980 as he had certified Form 32 pertaining to the resignation of the Complainant without exercising due diligence which is expected from a professional. The Committee, in terms of sub-rule (1) of Rule 19 of the Company



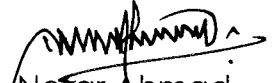
Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, hereby affords an opportunity of being heard to the Respondent on Monday, the 9th July, 2012 before passing order under Section 21B of the Company Secretaries Act, 1980.



B Narasimhan
Member



S K Tuteja
Member



Nesar Ahmad
Presiding Officer

Date: 1st June, 2012