

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 94/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 17th January, 2013

M/s. Indo Brine Industries Ltd

....Complainant

Vs

Shri Dhiren R Dave

....Respondent

ORDER

1. A complaint dated 6th May, 2011 in Form I 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 M/s. Indo Brine Industries Ltd., (hereinafter referred to as the 'Complainant') against Shri Dhiren R Dave (FCS- 4889) (CP No.2496) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent had certified DIN-3 of Shri Ram Nivas Hukamchand Gupta and Shri Neeraj Kumar Rajendra Agrawal as 'Directors' of M/s. Dandi Salt Pvt. Ltd., Surat based on a fake Form 32 without verifying the requisite records.
3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 11th May, 2011 calling upon him to submit the written statement followed by a reminder dated 9th June, 2011. The Respondent submitted the written statement dated 4th June, 2011 wherein he has *inter-alia* stated that the DIN-3 was certified on the basis of the records of directors as per the ROC records. Further, the complainant is in no way injured by the Respondent by certifying DIN-3 and hence, the Complainant has no *locus-standi* to file the complaint against such certification.
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 13th June, 2011. The Complainant *vide* letter dated 22nd July, 2011 requested for additional time to file the rejoinder which was granted *vide* letter dated 28th July, 2011. The Complainant filed the rejoinder dated 1st August, 2011 wherein the Complainant had reiterated the contents of the complaint stated in Form - I.



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5. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, the written statement, the rejoinder and the material available on record and observed that Shri Dhiren R Dave, FCS-4889 (CP No. 2496), the Respondent has certified DIN-3 of Shri Ram Nivas Hukumchand Gupta and Shri Neeraj Kumar Rajendra Agrawal as directors of M/s. Dandi Salt Pvt. Ltd., Surat (on 1st November, 2007 and 11th March, 2008). The Respondent has also certified and filed Form 20B on 29th May, 2008. The Director (Discipline) opined that it is evident from the letter dated 27th March, 2009 of ROC, Gujarat addressed to RD, Mumbai, the Respondent has been negligent while certifying DIN-3 and Form 20B of M/s. Dandi Salt Pvt. Ltd, without exercising due diligence and failing to report a material mis-statement known to him and therefore, the Respondent is *prima-facie* 'Guilty' of professional misconduct under Clause (6) and (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980.
6. The *prima-facie* opinion dated 31st July, 2012 of the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 16th August, 2012. The Committee agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is 'guilty' of Professional Misconduct under clause (7) Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties and decided to proceed further in the matter in accordance with Chapter V of the Rules.
7. Accordingly, *vide* letters dated 21st August, 2012, the *prima-facie* opinion of the Director (Discipline) dated 31st July, 2012 was sent to the Respondent and the Complainant to submit the written statement and the rejoinder respectively. The Complainant *vide* letter dated 24th August, 2012 informed that they are willing to submit their submissions on receipt of the rejoinder and also requested to inform them if the Respondent has been given time of extension to submit the rejoinder.
8. The Respondent *vide* letter dated 31st August, 2012 sought time till last week of December, 2012 to submit the written statement. The Respondent was granted time till 24th September, 2012 to submit the written statement with a copy to the Complainant *vide* letter dated 13th September, 2012. The Respondent *vide* letter dated 22nd September, 2012 further requested to grant time till 15th November, 2012. The Respondent *vide* letter dated 27th September, 2012 was given final opportunity to submit the written statement latest by 15th October, 2012 with a copy to the Complainant.
9. The Respondent *vide* letter dated 13th October, 2012 submitted the written statement. The Complainant *vide* letter dated 17th November, 2012 sought time up to 30th November, 2012 to submit their rejoinder. The



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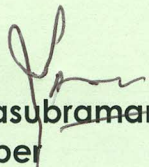
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Complainant vide letter dated 30th November, 2012 submitted the rejoinder.

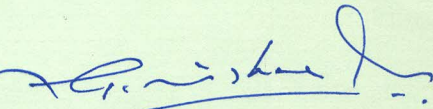
10. The parties vide letters dated 2nd January, 2013 were called upon to appear before the Disciplinary Committee on 17th January, 2013.
11. Mr. M M Jeswani, Manager, Administration of the Complainant company along with Shri Sushant Mahapatra, Advocate appeared before the Committee. The Respondent also appeared in person before the Committee. Both the parties made oral submissions.
12. The Committee considered the submissions advanced by the both parties; and the material on record; came to the conclusion that the Respondent had certified DIN 3 based on the Form 32 filed and registered with the ROC on 2nd February, 2006. The said Form 32 is a public document on which the Respondent has relied upon while certifying DIN 3 and therefore, the allegation made in the complaint regarding certification of DIN 3 based on the fake Form 32 is nullified. The Committee also noted that the allegation in Form-I are for falsely certifying the DIN-3 only and therefore, concluded that the Respondent is not guilty of Professional Misconduct under the Company Secretaries Act, 1980 and accordingly, closed the matter. 42

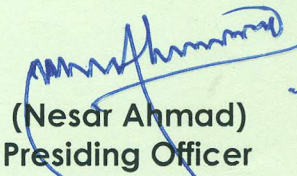
Accordingly, the complaint stands disposed off.


(S Balasubramanian)
Member


(S K Tureja)
Member


(B Narasimhan)
Member


Gopalakrishna egde)
Member


(Nesar Ahmad)
Presiding Officer

New Delhi

