

THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: NI:01/2013

In the matter of information of Professional or other misconduct

Date of Decision: 17th January, 2013

Ministry of Corporate Affairs (MCA)

...Informant

Vs

Shri Astik Mani Tripathi

... Respondent

1. An information dated 17th December, 2012 was received from MCA (hereinafter referred to as 'the Informant') against Shri Astik Mani Tripathi (ACS27667)(CP No.10384)(hereinafter referred to as 'the Respondent').
2. Pursuant to sub-rule (3) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a letter dated 26th December, 2012 was sent to MCA asking them to confirm as to whether the complaint has been authorized by an officer holding a post equivalent to the post of Joint Secretary in the Government of India and has been signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central Government,
3. A copy of the information was sent to the Respondent *vide* letter dated 31st December, 2012 asking him to submit his comments. The Respondent submitted his comments *vide* letter dated nil received in the Institute on 7th January, 2013. A letter dated 8th January, 2013 received from MCA.
4. The informant has *inter-alia* stated that they have received a complaint from Shri Nishant Tanwar stating that someone has fraudulently submitted an application for allotting DIN No. 05356169. The Complainant observed that it was duly certified by the Respondent and he has certified the DIN Form stating as below-

1. It is hereby certified that the attached photograph and attached documents are of the applicant. It is further certified that all



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required attachments have been completely attached to this application

2. It is further certified that I have verified the above particulars of the applicant from the original documents of the applicant. I found them to be true and correct and are also in agreement with the attached document. Note: In case where the applicant is residing outside India, the particulars have to be verified from the documents duly attested by the attesting authority as mentioned in the instruction kit
3. It is further certified that the applicant has given verification in respect of the following and copy of verification by the applicant as per Annexure - 1 of the DIN Rules has been attached.
 - I. The applicant is not restrained/disqualified/removed of, for being appointed as director of a company under the provisions of Companies Act, 1956 including Sections 203,274,284 and 388 (E) of the said Act or for being appointed as a designated partner of a limited liability partnership under the provisions of the Limited Liability Partnership Act, 2008 including section 5 of the said Act.
 - II. The applicant has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.
 - III. The applicant has not been allotted a Director Identification Number (DIN) under section 266B of the Companies Act, 1956 or a Designated Partner Identification Number (DPIN) under section 7 of the Limited Liability Partnership Act, 2008.
4. I have been duly authorised by the applicant to sign and submit this application. "
5. The Informant has further stated that the MCA has conducted preliminary enquiry through Regional Director (NR) and the Respondent was found



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prima facie guilty of wrong certification of DIN 1 Form filed in the name of Shri Nishant Tanwar.

6. The Informant further stated that the said professional has been debarred to file any document/certifying documents on MCA portal till the enquiry is completed and report submitted by the Institute.

7. The Respondent has *inter-alia* stated that he was approached by Mr. Amit Kumar, who was planning to incorporate a company in association with Mr. Nishant Tanwar. Mr. Amit Kumar, carried the following documents with him.

- a) Original copy of PAN of Mr. Nishant Tanwar
- b) Original copy of Driving Licence of Mr. Nishant Tanwar
- c) Original copy of Annexure 1 of the DIN Rules
- d) Mail id of applicant

8. The Respondent has further stated that he verified the aforesaid documents for certifying the alleged Form DIN 1.

9. The Respondent has further stated that he had received a letter from the Ministry of Corporate Affairs dated 17th December, 2012 wherein it has been stated that he has been found *prima facie* guilty of wrong certification 'of DIN 1 Form, 'filed in the name of Mr. Nishant Tanwar and he has also been debarred to file any document/ certifying documents on MCA portal till the enquiry on the same matter.

10. Pursuant to sub-section (2) of the Section 21 of the Company Secretaries Act, 1980, the Director (Discipline) examined the information, the comments of the Respondent and observed that the Respondent had relied on the following documents –

1. Original copy of PAN of Mr. Nishant Tanwar
2. Original copy of Driving Licence of Mr. Nishant Tanwar
3. Original copy of Annexure 1 of the DIN Rules
4. Mail id of applicant

11. The Director (Discipline) also observed that the Respondent has also attached an Affidavit of Mr. Amit Kumar dated 31st December, 2012 wherein he has acknowledged that he had carried the aforesaid documents with him for certification of Form DIN-1 of Mr. Nishant Tanwar. It has been observed that the Company Secretary in Practice has every reason to believe the authenticity of the documents produced before him for certification and he may certify the form provided there is nothing



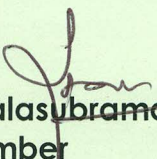
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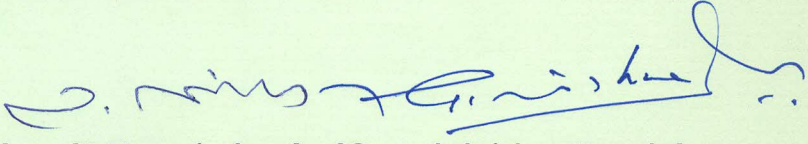
suspicious apparent on the record. Hence, the Respondent is *prima facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.

12. The Disciplinary Committee considered the *prima-facie* opinion dated 9th January, 2013 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion that the Respondent is not guilty of Professional or other misconduct under the Company Secretaries Act, 1980 and accordingly, closed the matter.

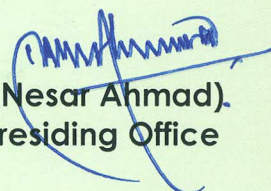
Accordingly, the complaint stands disposed off.


(S Balasubramanian)
Member


(S K Tuteja)
Member


(B Narasimhan)
Member

(GopalakrishnaHegde)
Member


(Nesar Ahmad).
Presiding Office

New Delhi

