

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC: 151/2012

Date of Decision: 24th September, 2014

Mr. Sudeep Narendra Rawal

....Complainant

Vs.

Mr. Darshan Bharamanna Talikot, ACS-23733

....Respondent

ORDER

1. A complaint dated 7th August, 2012 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 Mr. Sudeep Narendra Rawal (hereinafter referred to as the 'Complainant') against Mr. Darshan Bharamanna Talikot, ACS-23733 (CP No. 8518) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that he was one of the three directors of M/s. Onkar Castings Pvt. Ltd., Nashik. Further, the other two directors of the company have taken anticipatory bail and are facing criminal proceedings in the Court of JMFC, Nashik Road, based on a criminal complaint (CR No. 176/2011) filed by him against them for fraudulent acts and illegally moving records of the company from the Registered office of the company with the intent of manipulation of the records. Also, the Common Seal of the company was also stolen and moved out of the Registered Office of the company. Further, a Petition CLP No. 64/2011 has also been filed by him before the Hon'ble CLB, Mumbai. He further alleged that the Respondent had filed a Form 8 for M/s. Onkar Casting Pvt. Ltd, mentioning that the Complainant has given personal guarantee for the additional loan to be given to the said company. He further stated that it can be observed from the Registered Mortgage document that he has not signed the said agreement and /or given consent to it. He further stated that the Respondent as well as the bank granting this additional loan is well aware of his objections to such loan. Still the bank is in support of the malicious acts of the other two directors of the above company against whom criminal proceedings are going on in the Court. The Complainant further stated that in Form 8 under the verification clause it is stated that the Respondent has been authorised by a Board Resolution dated 2nd July, 2011 to sign and submit the said form. However, as a



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director of the company he is not aware of any such appointment of the Respondent for signing and filing of such documents, neither there is a copy of such resolution attached while filing of Form 8 and nor was the Board meeting had been called for or convened for passing any such resolution.

2. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 16th August, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 31st August, 2012. The Respondent at the outset has denied the averments made by the Complainant and has *inter-alia* stated that the Form 8 for modification of additional loan referred in the complaint is not certified and filed by him. He further stated that the personal guarantee agreements were executed by the Complainant for various credit facilities. The Form 8 filed by him dated 2nd July, 2011 mentions the personal guarantee as information in the asset charged in point No. 15 (v). He further stated that the board resolution was submitted by the company to the bank. The Respondent stated that his scope of work while uploading the Form 8 was to refer the resolution number and date submitted with the bank and not to see whether the meeting was conducted properly or not. The Respondent further stated that the Form 8 dated 2nd July, 2011 was correct in all respect as the agreement attached to it was signed by two directors and under common seal of the company of the supplemental deed of hypothecation dated 2nd July, 2011. Further, the said Form 8 which was certified and filed by him does not contain the mortgage deed as 'referred in the complaint as attachment but only supplemental deed of hypothecation was attached. Further, no letter stating the objection as mentioned by the Complainant was ever received by him. He further stated that he has given his resignation on 11th July, 2011 to the company and is not connected with the company and the directors in any capacity after 11th July, 2011 so his contention of acting in interest of other directors is totally wrong and baseless. He further stated that there are disputes amongst the directors of the company. The complaint is an attempt to drag the professional in their dispute in defamatory manner without any base of documents. He further stated that the Form 8 in which the reference of personal guarantee is written in the point No. 15 (v) wherein it is not mentioned that the personal guarantee is attached to total exposure but only the property attached are listed. In the same Form 8 in the details of modification point No. 18, it is not mentioned that the personal guarantee is attached but mentioned that all the primary securities attached to earlier charge extended to total exposure. There is no mention of personal guarantee in the modification column. The properties listed in the point No. 15 (v) are as per the earlier charge dated 9th August, 2010 to which there was no requirement of certification by any professional person. The Respondent further stated that the Complainant is mixing two Form 8. The Form 8 dated 2nd



Neeraj

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July, 2011 certified by him does not contain any 'Mortgage Deed' but contains only "Supplemental Deed of Hypothecation". In the point No. 15 (iv) the list of properties are mentioned as per earlier form but there is no mentioning about the mortgage was made in the point No. 18 i.e. In particulars of present modification, only reference of primary securities is made. The mortgage deed was attached to Form 8 dated 28th September, 2011 which is not certified by him. The fact is to be considered that the Form 8 which is filed by the Respondent contain only the Supplemental Deed of hypothecation and not the mortgage deed, no reference of mortgage is done in that particular Form 8. The mortgage deed is attached to another form not certified by him. He further stated that the Form which the Complainant is referring is dated 28th September, 2011 which is not certified by him but by CS Ashok Javarilal Surana, FCS 6233. He further stated that he has forwarded his resignation to the company dated 11th July, 2011 and hence no question arises for intimating him for the matter that he is against obtaining of loan facility. He further stated that there is no requirement to attach the board resolution with Form 8 while uploading the same. Hence, only supplemental deed of Hypothecation was attached with the Form 8 dated 2nd July 2011. He further stated that he had orally confirmed the date of board meeting and resolution number from the bank and accordingly, the date and resolution number was given by the bank from the copy of board resolution with the bank. The lookout while filing the Form 8 is to see, the deed properly signed by the directors of the company as per the resolution submitted to the bank or not and contents of the agreement. There is no guideline to check whether the meeting was properly conducted or not. There is no DCA circular for attaching the board resolution to the Form 8 while filing the Form. The Respondent further stated that Pursuant to the Section 46, 47, 48, 292 (1) (e) and its proviso of the Companies Act, 1956, the board of directors of the company can authorize any director / person to execute the deed or contract and there is no need that the contract is to be signed by all the directors of the company. Accordingly, the supplemental deed of hypothecation was signed by two directors based on resolution passed and submitted with the bank. The resolution can be back dated giving authority to particular director to sign the form. The relevant Form 8 is digitally signed by the bank also. The board resolution copy was submitted with the bank based on which the bank has given the loan and the date of meeting or number of resolution is not baseless. He further stated that for Form 8 dated 28-09-2011 contains the mortgage deed referred in the complaint and to which his sign was not there is certified by another PCS and not by him. He further stated that the Complainant has mentioned that he has filed a criminal complaint against the other two directors of the company and proceedings are pending before the JMFC, Nashik Road, and Nashik to pressurize all connected with the company. He further stated that the Complainant is not connected with the company as he could not produce the board resolution in support of his complaint. Thus, it shows that the


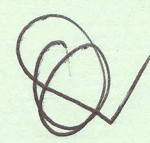
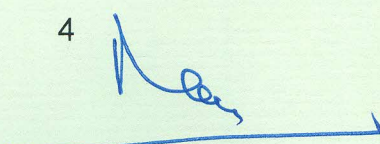


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company "Onkar Castings Pvt. Ltd." is not involved and connected with this complaint. He further stated that the information mentioned in the Form 8 certified by him was based on the documents pertaining to charge given to him by the bank. Further, the Form 8 certified by him does not mention in modification details that his personnel guarantee is attached to additional loan. Further, no mortgage deed was attached to Form 8 dated 02-07-2011 filed by him for whom complaint is made. The Form 8 which is subject matter was certified and filed by another Company Secretary.

3. 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 September, 2012 asking him to submit the rejoinder followed by a reminder dated 1st October, 2012. The Complainant submitted the rejoinder dated 30th September, 2012 wherein he, *inter-alia* reiterated his earlier submissions and made few additional submissions. A letter dated 12th October, 2012 received from the Complainant. The Respondent *vide* letter dated 23rd July, 2013 was asked to submit certain documents. The Respondent submitted certain documents *vide* letter dated 8th August, 2013.
4. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, formed his *prima-facie* opinion dated 16th May, 2014 wherein the Director (Discipline) observed that there is a dispute in the management of the company and the two Form 8 have been certified. The one Form 8 has been certified by the Respondent and other by Mr. Ashok Surana, another PCS. It is further observed that the complaint has been filed for wrong certification of Form 8 by the Respondent pertaining to modification of the charge and subsequently other allegations were levied against the Respondent in the Rejoinder. Hence, the opinion is limited to certification of Form 8 by the Respondent. The scope of work of the Respondent while uploading the Form 8 was to verify the resolution and other relevant documents from the records of the company. The Respondent *vide* letter dated 23rd July, 2013 was called upon to submit all the documents relied upon him while certifying/filing Form 8 pertaining M/s. Onkar Casting Pvt. Ltd., and also the Minutes of the Board meeting held on 2nd July, 2011 of the said company. However, the Respondent has admitted *vide* letter dated 8th August, 2013, he had orally confirmed from the bank about the date of Board meeting and resolution number. The Respondent should have verified the Board resolution from the records of the company rather than merely relying on the oral confirmation of the bank that to when the registered mortgage deed for additional loan has not been signed by the Complainant. Hence, the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not





exercise necessary due diligence while certifying Form 8 dated 2nd July, 2011 which is required from a professional.

5. The Disciplinary Committee on 24th July, 2014 considered the *prima-facie* opinion dated 16th May, 2014 of the Director (Discipline); and the material on record. The Disciplinary Committee agreed with the *prima-facie* opinion and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 25th July, 2014 asking them to submit the written statement and the rejoinder, respectively.
6. The Respondent *vide* letter dated 5th August, 2014 submitted his written statement to the *prima-facie* opinion of the Director (Discipline). The Complainant *vide* letter dated 16th August, 2014 had *inter-alia* informed that he had not received any written statement from the Respondent. The Complainant submitted his rejoinder dated 26th August, 2014 to the written statement of the Respondent on the *prima-facie* opinion of the Director (Discipline). The Respondent *vide* letter dated 28th August, 2014 has *inter-alia* stated that he had sent the written statement to the Complainant.
7. The parties *vide* letter dated 2nd September, 2014 were called upon to appear before the Disciplinary Committee on 24th September, 2014. Mr. Sudeep Narendra Rawal, the Complainant and Mr. Darshan Bharamanna Talikot, the Respondent appeared before the Disciplinary Committee on 24th September, 2014, and made oral submissions.
8. The Complainant submitted that the Respondent had certified and filed Form 8 for M/s. Onkar Casting Pvt. Ltd., mentioning that the Complainant has given personal guarantee for the additional loan to be given to the said company. However, he has not signed the said agreement and/or given consent to it. The Complainant further stated that the Respondent in the said Form 8 under the verification clause has mentioned that he has been authorised by a Board Resolution dated 2nd July, 2011 to sign and submit the said Form but no such Board meeting was convened/held for passing any such resolution.
9. The Respondent submitted that Form 8 for modification of additional loan referred in the complaint is not certified and filed by him and the Form 8 certified and filed by him on 2nd July, 2011 was based on the documents pertaining to the charge, provided to him by the management. He further stated that Form 8 does not mention in modification details i.e. the



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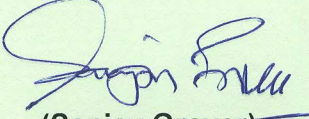
Complainant's personal guarantee is attached to additional loan and no mortgage deed was attached to the said form. He further stated that the referred Board resolution was submitted by the company to the bank and he has not seen the Board resolution but it was confirmed by the Bank.

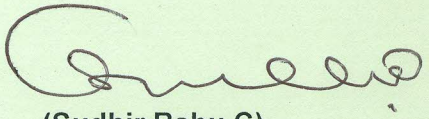
10. The Disciplinary Committee after considering the submissions made by the parties and the material on record held the Respondent 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980, as he did not exercise due diligence while performing his Professional duties as he did not verified the Board resolution passed and merely relied on the oral confirmation of the bank before certifying and filing the said Form 8. The Committee apprised the Respondent about the provisions 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 and decided to give an opportunity of being heard to the Respondent before passing any order under Section 21B(3) of the Company Secretaries Act, 1980. The Respondent stated that he has nothing further to say. Thereafter, the Committee gave an opportunity of being heard to the Respondent before passing any order under Section 21B(3) of the Company Secretaries Act, 1980. The Respondent accepted the decision of the Disciplinary Committee and requested for a lenient view.
11. We, after considering the material on record and in the totality of the issues involved in the matter pass the following order:

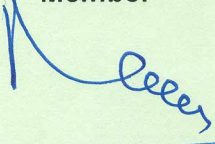
'Reprimand'

Accordingly, the complaint stands disposed-off.


(S Balasubramanian)
Member


(Sanjay Grover)
Member


(Sudhir Babu C)
Member


(R Sridharan)
Presiding Officer

Date: 07th November, 2014

