

**BEFORE THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF COMPANY  
SECRETARIES OF INDIA**

**DC: 85/2010**

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

**Shri V P Abdul Kareem**

**-Complainant**

**Vs**

**Shri T P Sivadas**

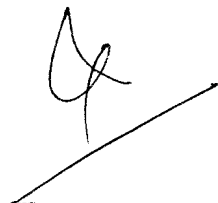

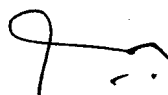
**-Respondent**

**ORDER**

1. The Institute had received a complaint dated the 4<sup>th</sup> November, 2010 in Form -I filed by Shri V P Abdul Kareem (hereinafter referred to as the 'Complainant') against Shri T P Sivadas, FCS-4791 (C.P.No.6449) (hereinafter referred to as the 'Respondent').

2. 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 forwarded to the Respondent *vide* letter dated the 11<sup>th</sup> November, 2010 asking him to submit the written statement. The Respondent submitted the written statement dated the 4<sup>th</sup> December, 2010. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was forwarded *vide* letter dated the 22<sup>nd</sup> December, 2010 to the Complainant asking him to submit rejoinder to the same. The Complainant submitted the rejoinder dated the 7<sup>th</sup> January, 2011. Pursuant to sub-rule (5) of rule (8) of the Rules, additional information

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was sought from the Respondent vide letter dated the 21<sup>st</sup> March, 2011. The Respondent vide letter dated the 28<sup>th</sup> March, 2011 requested for extension of time up to 20<sup>th</sup> April, 2011 which was considered. The Respondent vide his letter dated Nil submitted the copies of the documents relied upon by him on 14<sup>th</sup> April, 2011.

3. The Complainant in his Complaint had alleged that the Respondent had colluded with Shri Mehroof Manalodi, the Managing Director of M/s. Glosoft Technologies Pvt. Ltd., and without exercising due diligence had certified (i) Form No.32 regarding appointment of Mrs. Vaheeda Kizhakke Peerathil as the Director on the Board of M/s Glosoft Technologies Pvt. Ltd. (ii) Form No. 2 regarding allotment of shares of M/s. Glosoft Technologies Pvt. Ltd., to Mrs. Vaheeda Kizhakke Peerathil (iii) Form No.23 AC regarding Balance Sheet of the company for the year ended the 31<sup>st</sup> March, 2008; (iv) Form No.20B regarding Annual General Meeting of the company held on the 30<sup>th</sup> September,2009 at Chennai.

The Complainant in support of his allegations had *inter-alia* submitted that:

(a) Form No. 23AC for the year ended on 31<sup>st</sup> March, 2008 was shown as approved at a Board Meeting held on 25<sup>th</sup> March, 2010.

The Complainant had submitted that he did not attend the Board Meeting of the company held on 25<sup>th</sup> March, 2010 and the Respondent had certified the Form No. 23AC without making any enquiry as to its genuineness especially when the date of the Annual General Meeting was shown as 30<sup>th</sup> September, 2008 and the accounts were approved on the 25<sup>th</sup> March, 2010. Though the Notice calling the Annual

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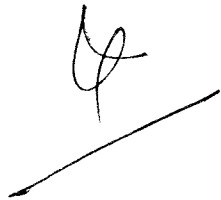
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General Meeting was attached with the Form No. 23AC, no Notice of the adjourned Annual General Meeting in which the accounts should have been approved by the shareholders was attached with Form No. 23AC.

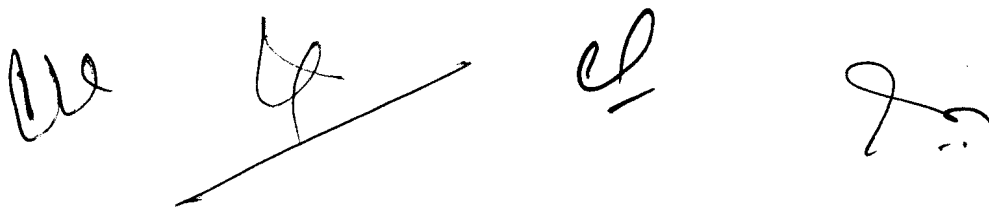
(b) Shri Mehroof Manalodi, the Managing Director of the company with the connivance of the Respondent had filed Form No. 32 on the 31<sup>st</sup> July, 2010 purporting to show that Mrs. Vaheeda Kizhakke Peerathil (wife of Shri Mehroof Manalodi) had been appointed as an additional director of the company on the 30<sup>th</sup> September, 2009. He further stated that on the 30<sup>th</sup> September, 2009 there were only two directors namely Shri Mehroof Manalodi, the Managing Director of the company and the Complainant himself (as Chairman). The extract of the resolution shows that the meeting was held at 10.30 AM at Calicut on the 30<sup>th</sup> September, 2009. The Complainant had further alleged that he was neither aware of any such meeting nor such meeting was held. There were no minutes of the said meeting signed by him as the Chairman of the company. This Form was also certified by the Respondent and filed on the 31<sup>st</sup> July, 2010 after a lapse of more than eight months from the date of the purported appointment of Mrs. Vaheeda Kizhakke Peerathil as an additional director. On the 30<sup>th</sup> September, 2009 Mrs. Vaheeda Kizhakke Peerathil was not holding a Director Identification Number (DIN). She obtained the DIN only on the 30<sup>th</sup> July, 2010 and immediately thereafter the Form No. 32 was filed on the 31<sup>st</sup> July, 2010. This clearly shows that the entire document pertaining to the appointment of Mrs. Vaheeda Kizhakke Peerathil as the Director of the company was fabricated.



(c) Form No.2 was filed showing allotment of 50 equity shares to Mrs. Vaheeda Kizhakke Peerathil, w/o Shri Mehroof Manalodi, the Managing Director on the 30th September, 2009. As stated earlier there was no such meeting on the 30th September, 2009 and the documents pertaining to the allotment of shares were fabricated with the connivance with the Respondent.

(d) The company had filed Form No. 20 B regarding the Annual General Meeting held on the 30th September, 2009. The registered office of the company is situated at Chennai. Therefore, the Annual General Meeting should have been held at Chennai on the 30th September, 2009. The Board Meeting of the company was shown to be held on the 30th September, 2009 at 10.30 AM at Calicut appointing Mrs. Vaheeda Kizhakke Peerathil as additional director and allotting 50 shares of the company to her. While the Company had only two Directors and two Shareholders (who are the same persons), it was humanly impossible to have two meetings on the same day at two different locations having a distance of about 600 Kms.

4. The Respondent, on the other hand, had denied all the allegations and had submitted that the Complainant was a Petitioner in Company Petition No. 68 of 2010, wherein M/s. Glosoft Technologies Pvt. Ltd., Shri Mehroof Manalody and Mrs. Vaheeda Kizhakke Peerathil were the Respondents. The Respondent had further submitted that the Company Petition No. 68 of 2010 had been filed under Section 397 & 398 read with Sections 402,403 and 406 read with Section 539 to 544 and Schedule XI of the Companies Act, 1956 and he had been

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authorized by Shri Mehroof Manalody and Mrs. Vaheeda Kizhakke Peerathil to appear before the Company Law Board, Chennai Bench and to defend them in the matter which had been filed by the Complainant. He further stated that, since the documents which the Complainant had enclosed along with the complaint were also filed by him as a Petitioner in Company Petition No. 68 of 2010, which being prior to filing of the present complaint, hence, the matter is *sub-judice*. Therefore, he had refrained himself from commenting on the same. The present complaint has been filed by the Complainant as he was on the record before the Company Law Board, Chennai Bench, in Company Petition No. 68 of 2010 in the matter of M/s. Glosoft Technologies Pvt. Ltd.

5. The Complainant in his rejoinder dated the 7<sup>th</sup> January, 2011 had submitted that the Respondent had not replied to any of the serious allegations of professional misconduct and falsification of records/documents. Some of the instances where the Respondent had compromised his professional ethics were:

(a) Filing of false Form No. 23AC for the year ended on 31<sup>st</sup> March, 2008 was with out getting the same approved by the Board.

(b) Falsely showing dates of Board Meetings, when the Board Meetings were never held.

(c) Certifying and filing of Form No. 32 in respect of appointment of Mrs. Vaheeda Kizhakke Peerathil (wife of Shri Mehroof Manalodi, Managing Director of the company) whereas she was never appointed as a Director on the board of the company. It is pertinent to note that said appointment was done on a previous day in which date no board meeting

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was held and the appointee had not acquired the DIN which is mandatory for such appointment.

(d) Certifying Form No. 2 for allotment of shares to Mrs. Vaheeda Kizhakke Peerathil (wife of Shri Mehroof Manalodi, Managing Director of the company), whereas no such allotment was made by the Board.

(e) Certifying false Annual Returns and Form No. 20 B knowing the same to be false and incorrect.

The Complainant had further stated that instead of giving any satisfactory reply on the allegations, the Respondent had made a false statement that he was authorized by Shri Mehroof Manalodi and Mrs. Vaheeda Kizhakke Peerathil to appear on their behalf before the Company Law Board. His statement that he was authorized by Shri Mehroof Manalodi and Mrs. Vaheeda Kizhakke Peerathil to represent them before the Company Law Board was also a false statement. An interim order passed by the Hon'ble Company Law Board, Chennai Bench on Company Petition No. 68/2010 filed by the Complainant against M/s. Glosoft Technologies Pvt. Ltd., Shri Mehroof Manalodi and Mrs. Vaheeda Kizhakke Peerathil, shows that Shri S Eshwar, Practising Company Secretary had appeared as the representative for Shri Mehroof Manalodi and Mrs. Vaheeda Kizhakke Peerathil in the above case and not Shri T P Sivadas, the Respondent.

The Respondent was only authorized to appear before the ROC, Chennai and not before the Company Law Board as per the Power of Authority submitted by him.

6. The Director (Discipline) pursuant to rule 9 of the Rules examined the complaint; written statement; rejoinder and additional information received and was of the *prima facie* opinion that since the

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Respondent has not provided the reply on the ground that the matter is sub-judice before the Company Law Board in Company Petition. No.68 of 2010 and he has been appointed as an authorised representative to defend the other Director and his wife. This statement of the Respondent has been contradicted by the Complainant on the ground that as per the interim order passed by the Hon'ble Company Law Board, Shri S Eshwar, Practising Company Secretary has represented the other Director and his wife and not the Respondent. Accordingly, the Respondent is *prima facie* 'Guilty' of Professional or other misconduct under clause (7) of part I of the Second Schedule of the Company Secretaries Act, 1980.

7. The *prima facie* opinion of the Director (Discipline) was placed before the Disciplinary Committee at its meeting held on the 13<sup>th</sup> June, 2011. The Committee considered and agreed with the *prima facie* opinion of the Director (Discipline) and directed the Director (Discipline) to proceed further in accordance with the Rules.


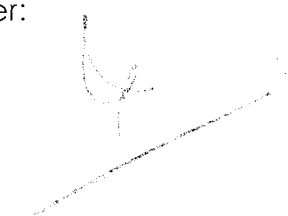


8. A copy of the *prima facie* opinion of Director (Discipline) was forwarded to the Respondent asking him to file his written statement on the *prima facie* opinion of Director (Discipline) along with supporting documents and list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant. The Complainant *vide* his letter dated the 7<sup>th</sup> July, 2011 was also asked to submit the rejoinder to the written statement with a copy to the Respondent along with supporting documents and list of witnesses, if any, latest by the 27<sup>th</sup> July, 2011.

9. The Respondent *vide* his letter dated the 11<sup>th</sup> July, 2011 had requested for extension of 30 days to file the written statement to the *prima facie* opinion of the Director (Discipline) which was allowed and

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he was permitted to file the written statement by the 25<sup>th</sup> July, 2011. However, no rejoinder was received from the Complainant.

10. The Complainant and the Respondent vide letter dated the 5<sup>th</sup> and 6<sup>th</sup> August, 2011 respectively were asked to appear before the Committee on the 20<sup>th</sup> August, 2011 at Chennai. The Complainant and Shri S Eshwar, FCS-6097 (CP-5280) the authorised representative of the Respondent appeared before the Committee. Shri S Eshwar, informed the Committee that the Respondent had met with an accident and had sought time to file the written statement. The Committee asked Shri S Eshwar, as to why Shri T P Sivadas did not inform about the accident he met on the 12<sup>th</sup> June, 2011 and instead of submitting the written statement, he resorted to send letter dated the 13<sup>th</sup> August, 2011 received in the Institute on the 18<sup>th</sup> August, 2011 informing about the accident and requesting for adjournment of the matter by three weeks for submission of his written statement and appearance. The Committee expressed its serious view that one day prior to the date of hearing i.e. on the 20<sup>th</sup> August, 2011 the Respondent has sought an adjournment; hence the other party could not be informed in time. This had brought a lot of inconvenience to the Members of the Committee and the Complainant as they had come all the way to Chennai for the meeting. The Committee thereafter considered the request of the Respondent and decided that the Respondent should file his written statement before its next meeting scheduled to be held on the 8<sup>th</sup> September, 2011 at 2.00 PM at New Delhi. The Committee ordered that the Respondent should bear (i) the cost of travel and (ii) to pay Rs.10,000/- for a day to the Complainant, towards boarding and lodging expenses for his appearance before the Committee at its meeting scheduled to be held at Delhi on the 8<sup>th</sup> September, 2011. The Representative of the Respondent stated in writing to the Committee as under:



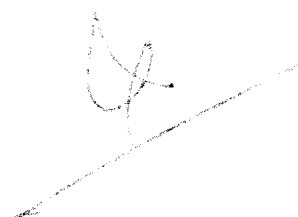
"My client is willing to bear the cost of air ticket of the Complainant and Rs. 10,000/- for a day's staying (boarding & lodging expenses) for attending the next hearing at Delhi. My client shall buy the air travel ticket and send to the Complainant."

11. The meeting of the Disciplinary Committee originally scheduled on the 8<sup>th</sup> September, 2011 was rescheduled to the 19<sup>th</sup> September, 2011, which was communicated to the parties vide letter dated the 25<sup>th</sup> August, 2011.

12. The Respondent submitted his written statement dated the 25<sup>th</sup> August, 2011 (received in the Institute on the 6<sup>th</sup> September, 2011) and was placed before the Committee on 19<sup>th</sup> September, 2011.

13. The Complainant appeared before the Committee on the 19<sup>th</sup> September, 2011 and while making oral submissions before the Committee, he also submitted his rejoinder dated the 19<sup>th</sup> September, 2011 to the written statement dated the 25<sup>th</sup> August, 2011 of the Respondent. Dr. S Chandrasekaran, FCS-1644 (CP-715) appeared before the Committee as authorised representative of the Respondent and submitted authorization letter dated the 1<sup>st</sup> September, 2011 issued to him by the Respondent in this regard. He made oral submissions and also submitted written arguments dated the 19<sup>th</sup> September, 2011. The Committee took on record the rejoinder of the Complainant and the written arguments of the Respondent. The Committee asked both the parties to appear before it on the 3<sup>rd</sup> October, 2011.

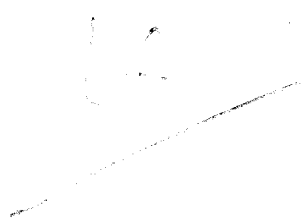
16. On the 3<sup>rd</sup> October, 2011, the Director (Discipline) placed before the Committee an additional rejoinder dated 29<sup>th</sup> September, 2011



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received from Shri V P Abdul Kareem, the Complainant and the letter dated the 27<sup>th</sup> September, 2011 of Shri T P Sivadas, the Respondent. Shri V P Abdul Kareem, the Complainant and Dr. S Chandrasekaran, FCS-1644, the authorised representative of the Respondent, appeared before the Committee and made oral submissions. The Committee heard both the parties and asked the Complainant as to whether he had entered into any Memorandum of Understanding (MOU) with the Respondent. The Complainant submitted that he had entered into a MOU with Shri Mehroof Manalody, the Managing Director of M/s. Glosoft Technologies Pvt. Ltd. on 11<sup>th</sup> May, 2011, under which the Complainant had agreed to transfer his 60 equity shares in M/s. Glosoft Technologies Pvt. Ltd. to Shri Mehroof Manalody or his nominee for a mutually agreed consideration of Rs.2.40 Crores payable in instalments, schedule of which was given in the MOU. The Committee asked Shri Kareem as to why he did not disclose about the said MOU to the Committee to which he submitted that the said MOU was entered into between him and Shri Mehroof Manalody and not with Shri T P Sivadas. Moreover, the conditions of MOU have not been honoured as the date for making the payment of the last instalment on or before 30<sup>th</sup> September, 2011 had already expired. The Committee further asked Shri Kareem whether he can substantiate the allegations of the Respondent that you were willing to opt yourself out of the company on the advise of the Statutory Auditors of the company. He submitted that he had invested the money in the company and this very fact can not be diluted. He further stated that the officials of M/s. Glosoft Technologies Pvt. Ltd. were not giving any of the information of the Company to him in spite of him being a Director in the company. Shri Kareem further stated that his complaint was against Shri T P Sivadas for his certification falsely the (i) Form No.32 regarding appointment of Mrs. Vaheeda Kizhakke Peerathil, as Director on the Board of M/s. Glosoft Technologies Pvt. Ltd. (ii) Form No. 2



regarding allotment of shares of M/s. Glosoft Technologies Pvt. Ltd., to Mrs. Vaheeda Kizhakke Peerathil. (iii) Form No.23 AC regarding Balance Sheet of the company for the year ended 31<sup>st</sup> March, 2008; (iv) Form No.20 B regarding Annual General Meeting held on the 30<sup>th</sup> September, 2009 at Chennai and (v) DIN-2 of Mrs. Vaheeda Kizhakke Peerathil. He further stated that Shri T P Sivadas being a Member of the ICSI should have exercised full due diligence while certifying these forms. He further stated that the Company Law Board vide its order dated the 11<sup>th</sup> March, 2011 in the Company Petition No.68/2010 had held *that prima facie* Shri V P Abdul Kareem is a share holder (50 %) - cum- Director of M/s. Glosoft Technologies Pvt. Ltd., from 2004 and there are only two Directors in the Board of the said company. He further stated that even the Registrar of Companies, Chennai vide their letter dated the 15<sup>th</sup> September, 2011 had confirmed that there are only two Directors in the Company namely Shri Mehroof Manalody and Shri V P Abdul Kareem. The Committee heard the submissions and took on record these two documents mentioned by the Complainant.

17. The Respondent, *inter-alia*, was asked whether he could produce a copy of the Notice issued to the Shareholders pursuant to Section 166 of the Companies Act, 1956 calling the Annual General Meeting of M/s. Glosoft Technologies Pvt. Ltd, on the 30<sup>th</sup> September, 2009 at Chennai. He was further asked to produce the copy of the FIR lodged by Shri Mehroof Manalody on the 30<sup>th</sup> March, 2011 at Calicut containing the details of the items alleged to have been taken away by the Complainant unauthorizedly from the Administrative Office of the said company. The Respondent expressed his inability to produce the same, excepting the copy of acknowledgement of FIR. The Representative of the Respondent sought further time in this regard. The Committee decided that since

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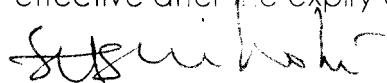
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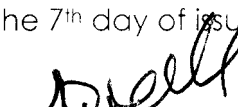
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sufficient opportunities had been provided to the parties to submit the documents in support of their case, no further time should be given and closed the pleadings and communicated the same to the parties during the hearing.

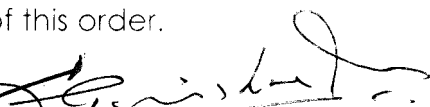
18. The Disciplinary Committee considered the *prima facie* opinion of the Director (Discipline), oral and written submissions made by the parties, other material on record and have come to the conclusion, that the Respondent is 'Guilty' of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent had certified (i) Form No. 32 regarding appointment of Mrs. Vaheeda Kizhakke Peerathil, as Director on the Board of M/s. Glosoft Technologies Pvt. Ltd. (ii) Form No. 2 regarding allotment of shares of M/s. Glosoft Technologies Pvt. Ltd., to Mrs. Vaheeda Kizhakke Peerathil, (iii) Form No. 23AC regarding Balance Sheet of the company for the year ended 31<sup>st</sup> March 2008; (iv) Form No.20B regarding Annual General Meeting held on the 30<sup>th</sup> September, 2009 at Chennai, without exercising due diligence which is required from a professional on whom duties are vested by virtue of being a part of the credible and plausible profession of the society. After providing an opportunity of hearing on the 5<sup>th</sup> January, 2012 to the Respondent, the Committee decided to remove the name of Shri T P Shivdas, (FCS – 4791), the Respondent, from the Register of Members of the Institute, for a period of 270 (two hundred seventy) days. The said period of 270 (two hundred seventy) days will be effective after the expiry of the 7<sup>th</sup> day of issue of this order.



**S. K. Agnihotri, IAS (Retd.)  
Member**



**Dr. S. P. Narang  
Member**



**Gopalakrishna Hegde  
Member**

  
**P K Mittal  
Member**  
**Anil Murarka  
Presiding Officer**

Date: 05/01/12