

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/161/2012

Order Reserved On: 16th January, 2017

Mr. Ramesh Kumar Srinivas
& Mr. Naresh Kumar Bhardwaj

.....Complainant No 1
.....Complainant No 2

Vs.

Mr. S Viswanathan, ACS-5284 (CP No. 5284)

.....Respondent

Present:

Director (Discipline)

Mr. Ramesh Kumar Srinivas, the Complainant No.1

Mr. S Vishwanathan, the Respondent

FINAL ORDER

1. A complaint dated 22nd October, 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 Shri Ramesh Kumar Srinivasa and Shri Naresh Kumar Bhardwaj (hereinafter referred to as the 'Complainant 1 & Complainant 2 respectively') against Shri Viswanathan S, ACS-5284 (CP No. 5284) (hereinafter referred to as the 'Respondent'). The Complainants have *inter-alia* stated that the Complainant 1 is the Managing Director of M/s. Ascent Software Solutions (India) Pvt. Ltd., and the Complainant 2 is a director of the said company. The Complainant further stated about some disputes in the company.

The Complainants have *inter-alia* alleged that the Respondent has not exercised due diligence while certifying Form 32 (Pursuant to sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956), Form 18 (Pursuant to section 146 of the Companies Act, 1956) and Form 23 (Pursuant to section 192 of the Companies Act, 1956) pertaining to M/s. Ascent Software Solutions (India) Pvt. Ltd., and fraudulently issued the Compliance Certificates for the year ending 31st March, 2009 without taking signature of the MD on the books of accounts of the company. The Complainants have



[Handwritten signature]

[Handwritten initials]

[Handwritten signature]

further alleged that the company has not issued any appointment letter to the Respondent for certifying the Compliance Certificate or for any other professional work, nor has he taken a NOC from the previous incumbent.

2. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent. The Respondent in his written statement dated 21st January, 2013 *inter-alia* denied the allegations levied against him and stated that there are disputes amongst the Directors of the company and there are several complaints filed before different legal forums such as CLB, High Court etc.
3. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainants 1 and 2 *vide* letter dated 24th January, 2013 asking them to submit the Rejoinder followed by a reminder dated 15th February, 2013. The rejoinder dated 20th February, 2013 was received from the Complainants in which they reiterated primarily their earlier submissions with some additional certain other submissions.
4. The Respondent was specifically asked to provide the copies of all the documents relied upon by him for certification of alleged Form 32. He was also asked to specify as to whether he had communicated to the previous incumbent before issuing the Compliance Certificate to M/s. Ascent Software Solutions (India) Pvt. Ltd., for the year ending 31st March, 2009. The Respondent, in reply to certification of alleged Form 32 *inter-alia* stated that he does not have copies of any documents relied upon by him except a copy of Form 32 filed by him. He further stated that he is a senior citizen of 71 years with heart ailment. The Respondent further stated that he is not well versed in day-to-day computer operation or affixing his digital signature and therefore he engaged the services of qualified and younger company secretaries and management trainees from time to time to assist him in his day to day work. The Respondent further stated that at the relevant time, his associate Ms. Gauri Balankhe, ACS-16113 along with a management trainee was handling the work relating to certification and affixing his digital signature on Form 32 in question and he was informed that certification with his digital signature on the said Form 32 was done at the request of Mr. S Subramanyam and was done after the same was certified by him as a director. The Respondent further stated that Mr. S Subramanyam besides being a Director was also a qualified Company Secretary and past Chairman of Bangalore chapter of ICSI. The Respondent did not provide copies of any of the documents relied by him for certification of the alleged Form 32. The Respondent also did not state as to whether he had communicated to the previous incumbent before issuing the Compliance



[Handwritten signature]

[Handwritten initials]

2

[Handwritten signature]

Certificate to M/s. Ascent Software Solutions (India) Pvt. Ltd., for the year ending 31st March, 2009.

5. Pursuant to Rule 9 of the Rules, the Director (Discipline) after considering the complaint, written statement other documents on record was of the opinion that the Respondent is *prima-facie* 'Guilty' of Professional Misconduct under Item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 (hereinafter refer to as 'the Act') as he did not exercise due diligence (a) while certifying alleged Form 32 as he merely relied on the certification done by others. (b) As far as certification of Form 18 and 23 is concerned, the Respondent has deemed to have admitted the allegations levied by the Complainant by not advancing any rebuttal to the said allegations. Further, the Respondent apparently did not see the signature of the Managing Director of the company on the Balance Sheet and Annual Return of the company, where in terms of Section 215 of the Companies Act, 1956, the Balance Sheet of the company should be signed by the Manager or the Secretary if any, and by not less than two Directors of the company one of whom shall be a Managing Director where there is one. Also, in terms of Section 161(1) of the Companies Act, 1956, an Annual Return is required to be signed by the Managing Director of the company, where there is one.
6. The Disciplinary Committee at its meeting held on 9th June, 2015 had considered the *prima-facie* opinion dated 6th February, 2015 of the Director (Discipline) and the material on record. The Disciplinary Committee agreed with the *prima-facie* opinion of the Director (Discipline) 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 (the Rules).
7. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) dated 6th February, 2015, was sent to the Respondent and the Complainant *vide* letters dated 10th June, 2015 asking them to submit their written statement and the rejoinder, respectively.
8. The Respondent submitted his written statement dated 17th August, 2015 wherein he requested for a personal hearing and also gave a brief background of the case. The parties *vide* letter dated 16th February, 2016 were called upon to be appear before the Disciplinary Committee on 3rd March, 2016. The parties were informed *vide* letter dated 22nd February, 2016 that the meeting of the Disciplinary Committee has been postponed and the Disciplinary Directorate will revert back in due course.



AN
K. S. Srinivasan

MB

3

J. S. Srinivasan

9. The parties *vide* letter dated 24th June, 2016 were called upon to appear before the Disciplinary Committee on 8th July, 2016. The Respondent *vide* his letter dated 1st July, 2016 requested to hold personal hearing in Bangalore on any date convenient to all the concerned parties, including Ms. Gauri Balankha (FCS-7786) and Mr. Srinivasiah Subramaniam, a qualified Company Secretary. The Respondent had further requested to hold personal hearing in Bangalore and include the presence of Ms. Gauri Bakankhe (FCS- 7786) and Mr. Srinivasiah Subramaniam. Mr. Ramesh Kumar Srinivas, Complainant No. 1, appeared in person and gave background of his case and explained the Committee the allegations against the Respondent
10. The Disciplinary Committee at its Meeting held on 8th July, 2016 considered letter dated 1st July, 2016 received from the Respondent and decided to adjourn the matter.
11. The parties *vide* letter dated 5th August, 2016 were called to appear before the Disciplinary Committee on 27th August, 2016. On 27th August, 2016, the Disciplinary Committee considered the oral submissions made by Mr. Ramesh Kumar Srinivas, the Complainant No.1 and the authority letter dated 25th August, 2016 submitted by him whereby Mr. Naresh Kumar Bhardwaj, the Complainant No. 2 has authorised him to appear before the Disciplinary Committee on his behalf. The Disciplinary Committee asked the Complainant to resubmit a proper letter of authority from Mr. Naresh Kumar Bhardwaj on a proper letterhead, with address and also any proof of identity that confirms his signature on the letter of authority. Thereafter, Mr. Ramesh Kumar Srinivas, the Complainant No 1 stated before the Disciplinary Committee that prior to August, 2011, he was not aware who Mr. S Vishwanathan, the Respondent is and how he was concerned with his company, M/s. Ascent Software Solutions (India) Private Limited (Formerly M/s. Cosmo Shakthi Software Solutions Private Limited). He further stated that the other directors of the company in dispute themselves signed the alleged form for their re-appointment and as per the records of the Company, no fee was paid to Mr. S Vishwanathan, the Respondent.

The Respondent also appeared before the Disciplinary Committee and stated that at the relevant time, his associates Ms. Gauri Balankhe, ACS-16113 along with management trainees was handling the work relating to certification and affixing his digital signature on e-Form(s) in question and he was informed that certification with his digital signature on the said Form 32 was done at the request of Mr. S Subramanyam and was done after the same was certified by him as a director. The Respondent further stated that



[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

Mr. Subramanyam Sreenivasaiah besides being a director was also a qualified Company Secretary and Past Chairman of Bangalore chapter of ICSI.

The Disciplinary Committee after considering the material on record decided to call upon Mr. Subramanyam Sreenivasaiah, FCS-5429, Mr. Anil Rao Paila, Chartered Accountant, Membership No. 101971 and Ms. Gauri Balankhe, FCS-7786, in person to appear before it as and when the matter is listed before the Disciplinary Committee next. The Disciplinary Committee further decided that before pronouncement of final order in this case, an opportunity of being heard which the Respondent is entitled to be given 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.

12. The parties vide letter dated 24th September, 2016 have been called upon to appear before the Disciplinary Committee on 7th October, 2016. Mr. Subramanyam Sreenivasaiah, FCS-5429, Mr. Anil Rao Paila, Chartered Accountant, Membership No. 101971, and Ms. Gauri Balankhe, FCS-7786 were also called to appear before the Disciplinary Committee on 7th October, 2016 at Hyderabad vide letter(s) dated 24th September, 2016. The same was sent again to Mr. Anil Rao Paila at his another address on 3rd October, 2016 as the earlier letter was returned as undelivered. The Complainant No. 1, Mr. Ramesh Kumar Srinivas vide email dated 6th October, 2016 informed that they were not able to attend the hearing due. The Respondent vide email dated 28th September, 2016 informed that he will not be able to attend personal hearing on 7th October, 2016 at Hyderabad as he has left for USA on 4th September, 2016, as already communicated by him before attending personal hearing on 27th August, 2016. He will return in first week of November. He has also mentioned to ask the Complainant to inform the status of various cases filed by them in difference forums against professional.
13. On 7th October, 2016, Mr. Subramanyam Sreenivasaiah, FCS-5429 and Ms. Gauri Balankhe, FCS-7786 appeared before the Committee at Hyderabad and orally presented their submissions. However, Mr. Anil Rao Paila did not appear before the Committee. The Disciplinary Committee after considering the submission(s) made by the witnesses asked Ms. Gauri Balankha and Mr. Srinivasiah Subramaniam to submit an affidavit to bring on record their contentions with regard to the Complaint filed by Mr. Ramesh Kumar Srinivas & Mr. Naresh Kumar Bhardwaj against Mr. S Viswanathan, ACS-5284. Ms. Gauri Balankhe, FCS-7786 specifically may also bring on record her involvement during the period she worked with the Respondent in particular



MAA

MAA

MAA

S

MAA

to the appointment of Mr. Subramanyam Sreenivasaiah as the Managing Director of the Company, Mr. Subramanyam Sreenivasaiah. Mr. Subramanyam Sreenivasaiah may also present his version of sequence of events and contentions related to the dispute between him and the Complainants which is the genesis of this complaint against the Respondent. Both the witnesses at their discretion have liberty to file a joint statement, if they so desire along with Mr. S Viswanathan, the Respondent on whose instance they have been summoned before the Disciplinary Committee. The affidavit and the documents to be filed within 3 weeks. These were called for by the Disciplinary Committee since the Respondent had brought on record as a part of his defence emails etc showing a live link and involvement of Ms. Gauri Balankha and Mr. Subramanyam Sreenivasaiah with regard to the said Form 32 in question.

14. An authority letter of Mr. Naresh Kumar Bhardwaj authorising Mr. Ramesh Kumar S to appear on his behalf in this case, an affidavit from Mr. Naresh Kumar Bhardwaj, a copy of his PAN card was received from Mr. Naresh Kumar Bhardwaj, the Complainant on 10th October, 2016, as directed by the Disciplinary Committee vide its Interim Order issued on 19th September, 2016 for hearing on 27th August, 2016.
15. Ms. Gauri Balankhe, FCS-7786 submitted an Affidavit dated 25th October, 2016 stating that she worked with the Respondent from 1st May, 2007 to 30th September, 2013 and she does not have access to the notes made by her or the files since she left his office in September, 2013. However, she gathered certain information/documents from website of MCA and stated on that basis the same that from 2005 to 2009, Mr. Ramesh Kumar Srinivas was not the Managing Director of the Company. As such the allegation, if any, that signature of Managing Director has not been obtained on the books of accounts, do not even arise, since, from the records and documents available, he was not Managing Director. She further stated that the allegation, if any, regarding not exercising due diligence while certifying Form 18 and Form 23 are not correct.
16. Mr. Subramanyam Sreenivasaiah, FCS-5429 submitted an Affidavit dated 27th October, 2016 and stated that the majority shareholding aggregating to 51% of Company Cosmo Shakthi Software Solutions Private Limited was acquired by Ascent Consulting Services Private Limited during March 2008. He also stated various corporate actions taken by both the companies. He further stated that the appointments made as Additional Director or that of a Director consequently were made fully observing all corporate actions and the same was advised to the professional Company Secretary in Practice. Hence there was no inadequacy of diligence on part of the



[Handwritten signature]

[Handwritten initials]

6
[Handwritten signature]

Respondent in filing or certifying such forms. He further stated that the complainant takes contradictory positions and in not presenting facts and is attempting to harass a professional in practice in a simple case of a business dispute.

17. The parties *vide* letters dated 30th December, 2016 were called to appear before the Disciplinary Committee on 16th January, 2017. On the said date, the Respondent and Mr. Ramesh Kumar Srinivas, Complainant No. 1 appeared before the Disciplinary Committee. The Respondent pleaded himself 'Guilty' under sub-rule (8) of the Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules). The Disciplinary Committee recorded his plea of being Guilty. The Respondent requested the Disciplinary Committee to take a lenient view with regard to the quantum of punishment in view of his advanced age and the fact that he is almost at the end of his career.
18. At the request of the Respondent, the Disciplinary Committee decided to provide the Respondent an opportunity of being heard before it under Rule 19 (1) of the Rules on the same day i.e. 16th January, 2017 itself, before passing its Final order in the matter.
19. The Disciplinary Committee apprised Mr. Ramesh Kumar Srinivas, Complainant No. 1 about the Respondent pleaded himself as Guilty. The Disciplinary Committee also considered his oral submissions and his request to not to take any lenient view towards the quantum of punishment to the Respondent in the matter. The Disciplinary Committee also considered the submissions of the Director (Discipline) in the matter.
20. **The Disciplinary Committee after providing an opportunity of being heard to the Respondent on 16th January, 2017 and oral submissions made by parties before it; the material/documents on record; and the nature of issues involved and in totality of the circumstances of this case, decided to take following action against the Respondent under Section 21B(3) of the Company Secretaries Act, 1980 read with under Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007-**

i) Reprimand

At the same time, the Disciplinary Committee cautions Ms. Gauri Bakankhe, FCS-7786 that as a member of Institute she cannot wash her hands off, from the entire episode. Since no formal complaint has been brought against her



[Handwritten signature]

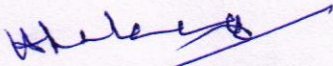
[Handwritten signature]

[Handwritten initials]

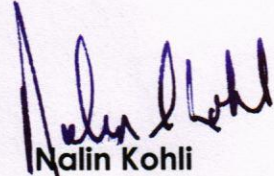
7

[Handwritten signature]

the Disciplinary Committee will not proceed in any manner further and restricts its comment to a note of caution which should be maintained in the Register, should any complaint other than this case ever comes against Ms. Gauri Bakankhe. The Disciplinary Committee also will not accept any further complaint being filed by the complainant or his associates against any of the parties as an afterthought and pursuant to this order.



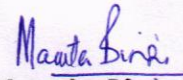
Ahalada Rao V
Member



Nalin Kohli
Member



Meenakshi Datta Ghosh
Member



Mamta Binani
Presiding Officer