

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

ICSI/DC/326/2015

Order Reserved On: 20th February, 2019

Order Issued On: 23 APR 2019

Shri Devinder Kumar Jain, ACS-14674

..... Complainant

Vs.

Ms. Namita Bhatnagar, ACS-16967

..... Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Gaurav Tandon, Assistant Director

FINAL ORDER

1. A complaint dated 30th September, 2015 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (the Act) 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 Devinder Kumar Jain, ACS- 14674 (hereinafter referred to as the 'Complainant') against Ms. Namita Bhatnagar, ACS- 16967 (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* stated that he is the Company Secretary of M/s. Connaught Plaza Restaurants Pvt. Ltd. ("CPRPL" or the "Company") by virtue of a board resolution dated 29th September, 2008 and the Respondent is "Senior Manager- Legal" of the said company. The Complainant further stated that the Company is presently the subject matter of shareholders dispute. Further, the equity shareholding of the Company is divided equally (as it was a joint venture) between McDonalds India Pvt. Ltd., on one hand and Shri Vikram Bakshi, together with Bakshi Holdings Pvt. Ltd., on the other hand.
3. The Complainant further stated that in this background, this present Complaint is specifically directed at Ms. Namita Bhatnagar, the Respondent as she has acted in a fashion that is shockingly unprofessional, deceptive, mala-fide and is directly against the interest of the company, is deeply biased and serves to bring disrepute on the Complainant as a Company Secretary, and the office of Company Secretaries as a whole. The Complainant further stated that the Respondent is not the Company Secretary of the Company. There has never been any Board Resolution appointing her as Company Secretary of the Company. She was an employee of the Legal Team, and was a sub-ordinate of the Complainant,



and reporting to him. However, as the Complainant has been embroiled in the shareholders dispute by Shri Vikram Bakshi and Mrs. Madhurima Bakshi, they have sought to replace him with Ms. Namita Bhatnagar, the Respondent even without the approval of the Board.

4. The Complainant while giving certain instances has mainly *inter-alia* alleged against the Respondent as under:-

- a) For her insubordination by grossly violating the established legal position of her reporting;
- b) For conspiring against her immediate supervisor, who is also a senior member of the Institute, with an unethical intent of getting benefits from Bakshi's, as the removal of the Complainant would have opened ways for her to get the position of the Legal and Secretarial department;
- c) For falsely representing herself as the authorised representative of the Company, which she is not;
- d) For illegally acting under the instructions of some people in blatant violation of the legal position and against various orders of Hon'ble Company Law Board and Hon'ble Delhi High Court, violating the established legal positions; and
- e) Despite being a member of the Institute of Company Secretaries of India and a law graduate by profession, making blatant omission of material facts in providing the extracts of the JV agreement in response to letter issued by the Registrar of Companies, thereby concealing material facts, despite being aware of its implications and legal complications which may arise out of the missing extracts of the JV agreement.
- f) The Complainant further alleged that on numerous occasions the Respondent had represented of having worked with the companies like M/s. Era Constructions Limited and M/s. Amira Foods Limited. At present, she is working with M/s. Connaught Plaza Restaurants Pvt. Ltd., but she failed to change her professional address in the records of the Institute.

5. The Respondent in her written statement dated 30th October, 2015 denied the allegations and has inter-alia stated that the alleged ROC letter was not addressed to anyone in the Company; it was only addressed to the Company. The Complainant must understand that if the letter was not marked to whole time Director then it was not even marked to anyone else. The Respondent further stated that she had received the letter from Mrs Bakshi and she assumed that if any work is delegated then the Respondent pre-supposes that it has to be executed in appropriate manner.

6. The Respondent further stated that she is not the Company Secretary of M/s. Connaught Plaza Restaurants Pvt. Ltd. The Complainant had always been in the habit of demeaning and blaming his co-colleagues not within the organization but even before the outsiders. This is just another case. The Respondent further stated that the Complainant is hiding his own



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incompetency and inefficiencies by blaming his ex-subordinate i.e. the Respondent.

7. The Respondent further stated that she never misrepresented herself in the reply to ROC letter. She replied it in the capacity of "Senior Manager-Legal". She does not report on to the Complainant.
8. The Respondent has denied all the aforesaid allegations made against her and has stated that the Complaint is baseless and has been filed with mala-fide intent to pressurise and distress her. She further requested that action against the Complainant be also taken for filing such frivolous and baseless complaint and thereby causing mental agony to and defaming the Respondent.
9. The Complainant in his Rejoinder dated 9th December, 2015 *inter-alia* reiterated his earlier submissions in the complaint and while denying the allegations levied against him by the Respondent, the Complainant further stated that the Respondent has failed to cite any "relevant provision" of the Companies Act, under which a Whole Time Director is empowered to perform such functions without any authorization from the Board of Directors, and wherein she could instruct the Respondent herein to misrepresent before a regulatory authority and submit a factually incorrect response. The Respondent admittedly "misrepresented and concealed" material facts and deliberately reported "false and incorrect" statements under the instructions of a Whole Time Director, which in itself is an admission of misconduct on the part of the Respondent.
10. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record, formed her prima-facie opinion dated 1st August, 2017 wherein she *inter-alia* observed that most of the allegations made by the Complainant against the Respondent did not make her liable for any professional or other misconduct under the Company Secretaries Act, 1980 as it is related to the terms of the employment. It is pertinent to note that an employment agreement is a legal agreement between an employee and their employer regarding the terms of the agreement. More so, when an individual is employed in a certain job the employer will have control over that employee when they are at work, during working hours and on the particular premises where they undertake their job. Therefore in case, of breach of any of the terms of the employment such as in-subordinated the action may be taken as per the said agreement / the service rules of the organization. As far as submitting wrong information to ROC is concerned it is pertinent to note that the Respondent, while signing the said letter has nowhere disclosed that she is a member of the Institute. Her action of making a false representation in the letter as "Senior Manager- Legal" is unethical however; the same *prima-facie* does not constitute misconduct under any of the clauses of the schedules to the Act; or bringing disrepute to the profession or the Institute. It was further observed that as far as change of the Respondent's professional address in the records of the



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Institute is concerned it may be mentioned that, it is obligatory upon every member of the Institute to communicate the change of professional address to the Institute within one month of change. In the instant case, the change of professional address of the Respondent was done on 05/02/2016. i.e. after the receipt of copy of the instant complaint. Hence, the Respondent is prima-facie guilty of professional misconduct under Item (1) of Part II of the Second Schedule to the Act for contravention of Regulation 3 of the Company Secretaries Regulations, 1982.

11. The Disciplinary Committee at its meeting held on 5th August, 2017 considered the *prima-facie* opinion of the Director (Discipline) and the material on record. The Disciplinary Committee after considering the same and all the facts and circumstances of the matter, advised the Director (Discipline) to re investigate the matter in respect of the act of the Respondent making a mis-statement in her letter to the Registrar of Companies (ROC).
12. Accordingly, the matter was re-investigated by the Director (Discipline) and the further investigation report dated 16th April, 2018 was placed before the Disciplinary Committee for its consideration on 25th April, 2018 wherein the Director (Discipline) inter-alia stated that the Respondent, while signing the said letter has nowhere disclosed that she is a member of the Institute. Her action of making a false representation in the letter as "Senior Manager-Legal" is unethical and unbecoming of a member of the Institute. Therefore, the said allegation may be referred to the Council for dealing in terms of Item (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980.

Further, as far as change of the Respondent's professional address in the records of the Institute is concerned, the Respondent had communicated to the Institute, about the change of her professional address, after the lapse of about 9 months of change of her employment i.e. on 05/02/2016 and the same is in contravention of Regulation 3 of the Company Secretaries Regulations, 1982. Hence, the Respondent is *prima-facie* guilty of professional misconduct under Item (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 for contravention of Regulation 3 of the Regulations.

13. The Disciplinary Committee at its meeting held on 25th April, 2018 considered the Further Investigation Report dated 16th April, 2018 of the Director (Discipline) along with the material on record. The Disciplinary Committee after considering the same and all the facts and circumstances of the matter, felt that a legal opinion as to whether making a false representation in a letter written to ROC written in capacity as Senior Manager- Legal is unethical and unbecoming of a member of the Institute in terms of Item (2) of Part IV of the First Schedule of the Company Secretaries Act, 1980 more so when she has not written the letter indicating that she is a Company Secretary.



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14. Accordingly, a legal opinion was sought from Shri R D Makheeja, Advocate who in his legal opinion dated 15th July, 2018 *inter-alia* opined as under-

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15. In view of the aforesaid provisions the, ROC is competent to take action against the Respondent for making a false representation in her letter dated 05.05.2015 and institute criminal prosecution in the Court of appropriate jurisdiction. In case the respondent is found guilty and is awarded any punishment, the ICSI can initiate action against her in terms of Clause (1) of Part IV of the First Schedule of the Company Secretaries Act, 1980.

16. In the above discussion I am of the view that by making a false representation in the letter dated 05.05.2015 to the ROC, Delhi, signed as a Senior Manager-Legal without disclosing the fact that she is a member of the Institute does not amount to professional or other misconduct in terms of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007."

15. The matter was placed before the Disciplinary Committee at its meeting held on 12th September, 2018. The Disciplinary Committee after considering the material on record, nature of issues involved and given totality of circumstances of the case observed that the matter needs detailed deliberations and decided to adjourn the same.
16. On 20th February, 2019, the Disciplinary Committee considered the Further Investigation Report dated 16th April, 2018 of the Director (Discipline), legal opinion dated 15th July, 2018 of Shri R D Makheeja and all the material on record.
17. **After detailed deliberations, the Disciplinary Committee disagreed with the Further Investigation Report of the Director (Discipline) and held the Respondent as 'Not Guilty' of any Professional or Other Misconduct under the Company Secretaries Act, 1980 in this Complaint.**

The Disciplinary Committee is of view that the letter sent to the ROC signed by the Respondent in her capacity as a Senior Manager-Legal without disclosing the fact that she is a member of the Institute does not amount to professional or other misconduct in terms of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007."

Regarding the allegation of not communicating her professional address by the Respondent to the Institute within stipulated time provided under the



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Regulations, the Disciplinary Committee observed that the Respondent has communicated about the change in her professional address to the Institute, after the receipt of this complaint and the circumstantial evidence shows that there was no mala-fide intent of the Respondent and nothing has been found on record to show that it has caused any harm to anybody. In view of the same, the Disciplinary Committee has taken broader view in the matter and is of the opinion that the Respondent is "Not Guilty" of Professional misconduct.

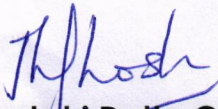
18. Accordingly, this Complaint is closed.



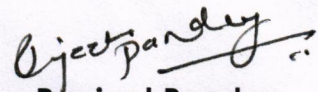
Nagendra D. Rao
Member



B Narasimhan
Member



Meenakshi Datta Ghosh
Member



Ranjeet Pandey
Presiding Officer