

DC/338/2015
THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/ DC/338/2015

Order reserved on: 4th June 2018

Order issued on: 29th June, 2018

Shri L V N Muralidhar

...Complainant

Vs

Shri Vikash Chandra Sharma, FCS-8272

.... Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Complainant and Respondent in person
Shri J Krishna Dev on behalf of the Complainant

ORDER

1. A Complaint dated 17th December, 2015 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 L V N Muralidhar (hereinafter referred to as 'the Complainant') against Shri Vikash Chandra Sharma, FCS-8272 (hereinafter referred to as 'the Respondent').
2. The Complainant has *inter-alia* stated that he is a shareholder of M/s. Vestal Education Services Private Ltd. and was also Director of the company from December 2006 to October 2011. In the year 2009, the Company had taken loan of Rs. 10 Crores from the State Bank of India for which the Complainant stood as one of the guarantors. The said term loan became a Non Performing Asset (NPA) in the books of the State Bank of India in the year 2013 because of irregular/ non-payment of the instalments. M/s. Vestal Education Services Private Ltd. and the State Bank of India entered into One Time Settlement and Rs.5.5 cr. was to be paid by the company in five instalments. The Complainant, at the request of directors of M/s. Vestal Educational Services Private Limited had lent Rs. 1,54,00,000/- (Rupees one crore and fifty four lakh only) to the Company. However, instead of repayment, allocated shares to a tune of Rs. 1,54,00,000/- (One crores fifty four lakhs only) in his name without any authorization from the Complainant for such allotment.



3. The Complainant has further stated that he had not made any request to allot the said shares nor made any application for issuance of shares and the company had illegally, with an intention to avoid payment of legitimate amounts due to him and defraud him. However, the Respondent had certified and filed the Form PAS-3 on 3rd July, 2015 for allotment of shares.
4. It has been alleged that Company did not want to refund the amount of loan, they had allotted shares of Rs 1,54,00,000/- (One crores fifty four lakhs only) through Right Issue offer in two lots. Shares of Rs 13, 95,410/- (Thirteen lakh ninety five thousand and four hundred ten only) on 24th January, 2015 and shares of 1,40,04,590/- (One crore fourty lakh four thousand and five hundeed ninety only) were allotted on 31st March, 2015.
5. The Complainant has further stated that the Respondent has certified back dated documents such as board resolution and list of allottees without any scrutiny or verification only to benefit his client M/s Vestal Educational Services Private Limited to defraud the Complainant herein, thereby committed professional misconduct under Section 21 read with Clause (6)&(7) of Second Schedule II to the Company Secretaries Act, 1980.
6. The Respondent in his written staement dated 22nd January, 2016 has *inter-alia* contended that the allegations levied against him are false and the Complainant had maliciously dragged him into controversy between him and the company by filling this false complaint, which should be summarily rejected. The Respondent further stated that he has verified the required documents i.e. Rights issue Offer Letter to all the Shareholders, willing and interested shareholders including the Complainant and has acted there upon and remitted the Share Application Money through banking channels to the company and the company has allotted shares within prescribed period, well within the prescribed applicable provisions of the Companies Act, 2013 and the rules made there under.
7. The Complainant in his rejoinder dated 12th February, 2016 has reiterated his submissions and *inter-alia* stated that the Respondent has not followed due process as provided in Section 62 (1)(a)(i) of the Companies Act, 2013. It is further stated that the Respoendent should have scrutinized the existence of following documents before certification of documents:

- a. Whether there was Letter of offer issued to all the shareholders of the company.



- b. Whether there was compliance of Section 62(2) of the Companies Act, 2013 by the company which mandates that the notice referred under Section 62 (1)(a)(i) shall be dispatched through registered post or speed post or through electronic post to all the existing shareholders.
- c. Whether there was a share application forms attached to the letter of offer.
- d. Whether there was the share application forms which were signed by the shareholders received by the company and to what extent that the shareholders had applied for the shares.
- e. Whether there are consent letter issued by the interested shareholders of the company for the allotment.
- f. Whether the specific amounts as per the letter of offer were deposited by the shareholders of the company into the account of the company within the period of issue opening date and issue closing date.
- g. Whether there were any excess amounts being deposited by the shareholders of the company and if there are any then, whether the company had refunded the same or not.
- h. Whether there are any letters of renunciation by the shareholders of the company.
- i. If some of the shareholders had sent the letter of renunciation to the company, then whether there was another letter of offer to the remaining shareholders who are interested for allotment of shares by the company.
- j. Whether there is compliance of all the provisions of the Companies Act, 2013 for the allotment by the company.

8. The Complainant in the Rejoinder has further stated that there are following discrepancies in Form PAS-3 certified by the Respondent :-

- i. that in the Resolution for Allotment of Equity Shares under Rights Issue Offer dated 31st March, 2015 of M/s.Vestal Educational Services Private Limited which was attached to the form PAS-3 there is no date given in the resolution stating that on which date the offer for the issuance was made and when was the issue opening date and issue closing date.



- ii. that the Complainant has deposited the amounts into the account of company on various dates between December, 2014 to March 2015 which includes the amounts deposited on the dates of earlier alleged offer letter dated 18th December 2014 to the alleged resolution dated 24th January, 2015. As per the provisions of the Companies Act, it is specifically stated that the deposit of amounts shall be made only from the issue opening date to the issue closing date. Any amounts received after such issue closing date could not be accepted by the company.
 - iii. that the Respondent had never verified the required documents for the rights issue letter and the amounts so deposited by the Complainant were not in compliance with the same.
 - iv. that as per Section 62 of the Companies Act, 2013, it is mandatory for any interested shareholder to fill the share application form and also give a consent letter from the shareholder, the company can allocate shares in the name of the shareholder.
9. Pursuant to Sub-rule (5) of Rule (8) of the Rules, the Complainant vide letter dated 19th July 2016 was asked to submit the copy of agreement containing terms and conditions for lending Rs.1.54 crores to M/s. Vestal Educational Services Private Ltd and the Respondent was asked to provide a copy of each of the documents which he had relied upon for certification and filing of Form PAS-3 for M/s. Vestal Educational Services Private Ltd.
10. The Complainant vide letter dated 1st August, 2016 has reiterated the submissions and *inter-alia* stated that that there is no formal agreement between him and the Company for the deposit of amounts and the Company has simply diverted the amounts provided by him in to the loan account for payment to Bank.
11. The Respondent vide his letter dated 29th August, 2016 submitted further particulars and has stated that he had been engaged for the purpose of certification of Form PAS-3 "Return of allotment" required to be filed under section 39(4) of the Companies Act, 2013 for allotment of Equity Shares by M/s. Vestal Educational Services Private Limited (VESPL) and he had certified 2 No.(s) Form PAS-3 for allotment of 46,69,222 & 37,56,011 Equity Shares on 24th January 2015 and 31st March 2015 respectively of the company issued at Rs.10 each as per the provisions of the Companies Act, 2013 and the rules made there under for the allotment of said no.(s) of equity shares. The Respondent had certified the alleged Forms PAS-3 on the basis of the following documents/ information :-



- i. Right Issue Offer letter dated 18th December, 2014 detailing the terms of issue.
 - ii. Extracts of Minutes of Board Meeting dated 24th January, 2015;
 - iii. Extracts of Minutes of Board Meeting dated 31st January, 2015;
 - iv. Ledger of Parties to whom equity shares were issued.
 - v. Bank statement evidencing the realization of amount fully paid-up.
12. The Disciplinary Committee in its meeting held on 19th December, 2016 considered the *prima-facie* opinion dated 1st December, 2016 of the Director (Discipline) wherein she is *prima-facie* of the opinion that the Respondent is "GUILTY" of Professional or other misconduct under Item (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 as the Respondent has not exercised due diligence while certifying the alleged Forms PAS 3, and he failed to verify the following documents before certification of form PAS-3 the following documents/ records :-
- (i) Share Application Form of the Complainant
 - (ii) Letter of acceptance /renunciation/decline received from the applicants
 - (iii) Specific amounts as per the letter of offer were deposited by the shareholders of the company into the account of the company within the period of issue opening date and issue closing date.
13. The Respondent in the written statement dated 8th March, 2017 to *prima-facie* opinion of the Director(Discipline) has reiterated his submissions made in written statement dated 22nd January 2016 and 29th July, 2016 and *inter-alia* stated that the Complainant has failed to provide specific loan documents/agreement executed with the Company or any other document which proves that that the management of the Company had ever approached the Complainant for borrowing of funds.
14. The Complainant in his rejoinder dated 27th March 2017 to the written statement to the *prima-facie* opinion of Director(Discipline) has *inter-alia* stated that excess amount which the Complainant has deposited till 24th January, 2015 in the account of the company, the Respondent failed to provide any explanation why the company had received excess amount and re-issue of shares on 31st March 2015 is in contravention of the provisions of the Companies Act, 2013.
15. The Respondent vide letter dated 24th May 2018 has submitted copy of Order dated 1st January 2018 in the C.P No



08//59/HDB/2017 in which NCLT, Hyderabad Bench had declared the allotment of shares on 24th January 2015 and 31st March 2015 of M/s Vestal Educational Services Pvt Ltd to the Complainant as null and void and directed that the amount of Rs 1,500,00,000/- (One crore and fifty lakh only) be repaid by the company with Interest @ 12% P.A calculated from 1st April 2015 till date of actual payment to the Complainant.

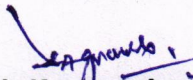
16. The Complainant and Respondent both appeared in person before the Disciplinary Committee on 4th June 2017. Shri J Krishna Dev appeared on behalf of the Complainant and made his submissions. The Respondent reiterated his submissions already made in his written statement. However, he could not provide any justifiable reasoning on how has he has certified Form PAS 3 without verification of (i) Share Application Form of the Complainant; (ii) Letter of acceptance/renunciation/decline received from the applicants. (iii) Specific amounts as per the letter of offer were deposited by the shareholders of the company into the account of the company within the period of issue opening date and issue closing date.
17. The Disciplinary Committee after considering the submissions made by the Respondent; the material on record and the nature of issues involved in this matter and in the totality of the circumstances related to this case is of the opinion that the Respondent as 'Guilty' of professional misconduct under Item (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 as the Respondent while certifying PAS-3 had failed to verify the documents as stated in para 16 above and failed to ensure that the observance of process as provided in Section 62 of the Companies Act, 2013. Item (7) of Part-I of the Second Schedule to the Company Secretaries Act reads as under:-

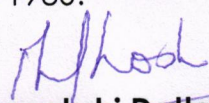
"A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he-

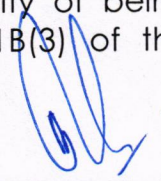
(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."

18. The Disciplinary Committee 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, decided to afford to the Respondent an opportunity of being heard before passing final order under Section 21B(3) of the Company Secretaries Act, 1980.




Santosh Kumar Agrawala
Member


Meenakshi Datta Ghosh
Member


Makarand Lele
Presiding Officer