

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

DC: 64/2010

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

M/s Montreaux Resorts Pvt. Ltd. and another -The Complainant

Vs




Shri Hari Varanasi

-The Respondent

ORDER




1. The Institute had received a complaint dated the 19th February, 2010 in Form I filed by M/s. Montreaux Resorts Pvt. Ltd and another (hereinafter referred to as the 'Complainant') against Shri Hari Varanasi, FCS- 3552 (C.P NO.8244) (hereinafter referred to as the 'Respondent').

2. Pursuant to sub-rule (3) of rule 8 of the (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 08th March, 2010. The Respondent submitted the written statement dated the 22nd March, 2010. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was forwarded *vide* letter dated the 29th March, 2010 to the Complainant asking him to submit rejoinder to the same. The Complainant submitted rejoinder dated the 21st May, 2010. A letter dated the 12th July, 2010 was sent to the Respondent asking him to provide copies of all the documents he had relied upon while certifying two Form No. 32. The Respondent submitted his reply dated the 12th July, 2010.

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3. The Complainant in his complaint had alleged that the Respondent had failed to exercise due diligence and was grossly negligent in the conduct of his professional duties as he failed to report mis-statement of facts made by Ms. Sonia Khosla and on the basis of non existent and valid Board meeting has falsely certified two Form No. 32 (i) one pertaining to the appointment of Mr. Vini Jagat Singh Ahuja as Director of M/s Montreaux Resorts Pvt. Ltd., allegedly made on the 15th June, 2009; and (ii) the other pertaining to cessation of directorship of Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Parkash in M/s Montreaux Resorts Pvt. Ltd., allegedly from the 18th June, 2009. The Complainant submitted that Mr. Vini Jagat Singh Ahuja had resigned from the directorship of the company with effect from the 23rd March, 2006. Form No. 32 showing his cessation from the directorship of the company was filed on or around the 19th July, 2006. Thereafter, he had never consented to act as Director of the company. This fact was also confirmed by Mr. Vini Jagat Singh Ahuja on an affidavit dated the 25th January, 2008. The Complainant had further submitted that no Board resolution showing the appointment of Mr. Vini Jagat Singh Ahuja was passed by the company.

4. For cessation of directorship of Mr. Vikram Bakshi, Mr. Wadia Parkash and Mr. Vinod Surha as directors of the company, the Complainant had submitted that Mr. Wadia Parkash and Mr. Vinod Surha were appointed as directors of the company on the 23rd December, 2005 in accordance with the terms of Memorandum of Understanding (MOU) dated the 21st December, 2005 followed by an agreement dated the 31st March, 2006 executed by the company. Under the terms of the said MOU and the agreement, Mr. Wadia Parkash and Mr. Vinod Surha were appointed as directors of the company as nominees of Mr. Vikram Bakshi. Mr. Vikram Bakshi was

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also appointed as the director of the company on the 19th March 2007. Mr. Wadia Parkash and Mr. Vinod Surha were confirmed as regular directors in the Extra Ordinary General meeting of the company held on the 28th June, 2006. The Complainant also referred to an order dated the 31st January, 2008 passed by the Company Law Board (CLB) in the company petition (C.P) No. 114 of 2007, wherein *the* CLB has *inter-alia* directed maintenance of *status quo* of shareholding and directorship of the company as existed on the date of filing of company petition C.P No. 114 of 2007 i.e. on the 13th August 2007. The Complainant further submitted that the said order of Company Law Board dated the 31st January 2008 was also upheld by an order dated the 11th April, 2008 and the 22nd April, 2008 respectively, passed in the Company Appeal No. 07 and 06 of 2008.

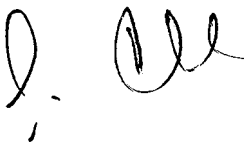
5. The Respondent, on the other hand, had submitted that he certified two Form No. 32 on the basis of information obtained from the books, papers, documents, records, information and explanations obtained from the officers and agents of the company. In addition, he had also relied upon the order dated the 31st January, 2008, passed by the Company Law Board (CLB) in this regard. The Respondent had further submitted that the Complainant had alleged before the Company Law Board in the petition filed in August 2009, as well as before the office of the Registrar of Companies (ROC), that since Company Law Board had directed the Registrar of Companies *vide* its order dated the 31st January 2008 not to take on record the forms, filed after the 1st December, 2007, hence, it also included the Form No. 32 pertaining to the cessation of a director, which is the subject matter of this complaint. The Respondent referred the order dated the 26th August, 2009, passed by the Company Law Board *inter-alia* clarifying the order dated the 31st January, 2008 and holding that the said order was only in relation to the documents that had been filed/ to be filed before the Registrar of Companies from the 1st December, 2007 in relation to shares issued on the 18th

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December,2007 and appointment of additional directors on the 11th December,2007 and the 18th December,2007 respectively. Therefore, the Registrar of Companies cannot be held to have acted against the order of this CLB for taking on record the documents filed for events occurring after the 31st January, 2008.

6. The Complainant in his rejoinder referred to the order dated the 31st January, 2008 passed by the Company Law Board, *inter-alia* restoring the *status quo* with regard to the composition of the Board and the shareholding as existed on the day of filing the petition C.P No. 114 of 2007 and directed the Registrar of Companies not to take on record any document filed by the Company on or after the 1st December,-2007. The share issued on the 18th December, 2007 stand cancelled and the additional directors appointed on the 11th December, 2007 and the 18th December, 2007 respectively will cease to be additional directors with immediate effect. The company/ board of directors/ respondents shall maintain *status quo* with regard to shareholding and fixed assets of the company as it stood at the time of filing of the petition and the Board shall not take any substantive decision on the finances of the company. The Complainant had further submitted that in terms of the order dated the 31st January 2008, passed by the Company Law Board, the Registrar of Companies was restrained to take any document on record filed by the company on or after the 1st December, 2007. It is therefore, apparent that filing of the above said forms was also not recognized by the Company Law Board. Accordingly, as per the said order, Mr. Vinod Surha, Mr. Vikram Bakshi and Mr. Wadia Parkash continued to act as directors of the company. The Complainant submitted that Mr. Vini Jagat Singh Ahuja had already resigned from the directorship of the company on the 23rd March 2006. The Form No. 32 showing his resignation as director of the company was also filed before the Registrar of Companies, which is available for inspection at the portal of the Ministry of Corporate Affairs . Without verifying these facts and

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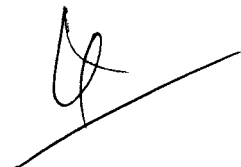

records of the company, the Respondent had certified Form No. 32 showing cessation of the directorship of Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Parkash, The Complainant referred to orders dated the 04th September, 2009 and the 15th October, 2009 respectively of the Company Law Board clarifying para 2 & 5 of the order dated the 26th August, 2009.

7. 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 the Respondent was 'Guilty' of Professional Misconduct under clause (7) of part I of the Second Schedule of the Company Secretaries Act, 1980.

8. The *prima facie* opinion of the Director (Discipline) was placed before the Committee in its meeting held on the 20th October, 2010. The Committee considered and agreed with the *prima facie* opinion of the Director (Discipline) and directed him to proceed further in accordance with the Rules.

9. A copy of the report of the Director (Discipline) was forwarded to the Respondent asking him to file written statement on the report of the Director (Discipline) along with supporting documents and the list of witnesses, if any; to the Director (Discipline) with a copy to the Complainant.

10. The matter was considered by the Disciplinary Committee at its meeting held on the 19th November, 2010. Shri Rajesh Taneja, authorised representative of Shri Vikram Bakshi, the Complainant appeared on his behalf and made oral submissions. The Respondent also appeared in person and made oral and written submissions. The Committee after considering the submissions made by Shri Rajesh Taneja, authorised representative of the Complainant and the

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Respondent, directed that the Complainant to appear in person before the Committee in its meeting scheduled to be held on the 14th December, 2010 along with the supporting documents, if any.

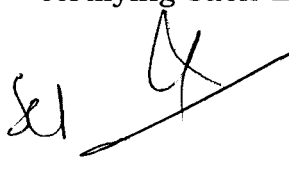

11. On the request of Shri Vikram Bakshi, the meeting of the Committee was postponed to the 7th January, 2011. On that date Shri Vikram Bakshi, the Complainant appeared in person and submitted as under:

“Further to my Complaint dated 19th February, 2010 and my rejoinder dated 21st May, 2010, I have nothing to add to my above stated Complaint and rejoinder as they are fairly comprehensive”

12. Shri Hari Varanasi, the Respondent also appeared in person and submitted as under:

“I would like to state that I Signed and Certified the Said e-forms 32 for a nominal fee in Good Faith and with a bona-fide intention and after exercising reasonable and adequate care and skill which is required and expected of a professional in such cases and on the basis of the Documents/Attachments attached to the said E-Forms and information produced before me and obtained from the Company and the Officers of the Company. I would like to further state that these E-Forms came to me in the course of my practice for routine certification and at that time I was not aware of any such serious dispute relating to the management of the Company and when I came to know of such a dispute, I refused to sign and certify any other Forms and / or Document for and on behalf of the Company to be filed with ‘ROC’ and / or any other Authority.

I would further like to assure you that I have absolutely no vested interest in the above dispute and signed and certified the said E-Forms purely as an independent professional. If the Disciplinary Committee of the Institute still feels that a bona-fide, genuine and avoidable mistake has been committed on my part and more and extra care and caution should have been taken / exercised while certifying such E-Forms, I would like to assure the Committee that I shall be extra and over cautious and careful while signing and certifying such E-Forms and dealing with such situations in

future and even refuse such assignments when their authenticity and accuracy is in doubt.


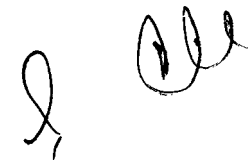
In view of the above, I humbly request the Disciplinary Committee of the Institute to take a very lenient view in the matter and oblige.

The aforesaid submissions may please be placed before the Disciplinary Committee of the Institute for its kind consideration and perusal.”

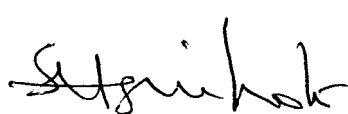
13. In the mean time, the constitution of the Disciplinary Committee got changed and the newly constituted committee in its meeting held on the 04th April, 2011 decided to conduct *de-novo inquiry* in the matter and to give an opportunity to the Complainant and the Respondent to appear before the Committee and make additional submissions, if any. Accordingly, the Complainant and the Respondent were informed to appear before the Disciplinary Committee on the 22nd July, 2011, wherein the Complainant and the Respondent appeared in person and re-affirmed their submissions and statements made on the 7th January, 2011.

14. The matter was again taken up by the Disciplinary Committee on the 5th August, 2011, wherein the Respondent appeared in person. The Committee after consideration of all the records and oral submissions made before it, informed the Respondent that he has been found 'Guilty' of professional misconduct and decided to provide an opportunity of hearing to him. Accordingly, an opportunity of hearing was provided to the Respondent on the 24th August, 2011, wherein the Respondent appeared in person before the Committee.

15. The Disciplinary Committee considered the report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances 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

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Act, 1980 as the Respondent had certified two Form No. 32, one pertaining to the appointment of Mr. Vini Jagat Singh Ahuja as Director of M/s Montreaux Resorts Pvt. Ltd., and the other Form No. 32 pertaining to cessation of directorship of Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Parkash on M/s Montreaux Resorts Pvt. Ltd., without exercising due diligence as he did not rely on the resolution passed by the Board of Directors at the duly convened meeting and after ensuring that the Director who has signed the Form No. 32 was duly authorized by the Board of Directors to file the said Form No. 32. The Disciplinary Committee decided to remove the name of Shri Hari Varanasi, FCS-3552, the Respondent, from the Register of Members of the Institute, for a period of 60 (sixty) days. The said period of 60 (sixty) days will be effective after the expiry of the 7th day of issue of this order.



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



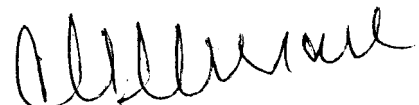
Dr. S. P. Narang
Member

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Gopalakrishna Hegde
Member



P K Mittal
Member



Anil Murarka
Presiding Officer

Date: 03rd October, 2011