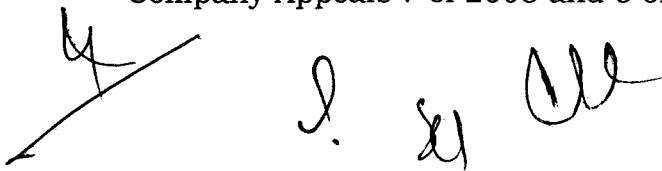


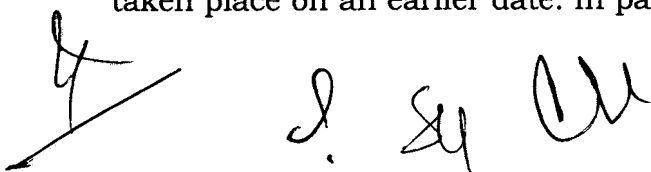
3. The Complainant had alleged that the Respondent had failed to exercise due diligence and was grossly negligent in the conduct of her professional duties as she failed to report mis-statement of facts made by Ms. Sonia Khosla and on the basis of an invalid Board meeting, she had falsely certified two Forms No. 2 both in February, 2008, pertaining to the allotment of equity shares of M/s. Montreaux Resorts Pvt. Ltd., allegedly made on the 18th December, 2007 to Ms. Sonia Khosla and ten others. The Complainant had alleged that the certificate was patently false as no valid Board meeting was held on the 18th December, 2007, wherein such alleged allotment of equity shares was made. It has been falsely stated in the said Forms signed by Ms. Sonia Khosla and certified by the Respondent, that a Board meeting of the company was held on the 18th December, 2007. The Complainant had also alleged that it has fraudulently been stated in the Form that the money was paid towards share application. However, in fact no money was received by the company. Despite this, the Respondent falsely certified and verified the above said particulars without verifying the receipt of money by the company from the books of accounts of the company and gave a false certificate. The Complainant had submitted that the Company Law Board (CLB) *vide* its order dated the 31st January, 2008 had already cancelled the said allotment. Even after the order of the Company Law Board canceling the allotment of equity shares and directing the Registrar of Companies not to take any Form on record filed after the 1st December, 2007, the Respondent certified the said Form No. 2 and caused them uploaded by Ms. Sonia Khosla on the portal of the Ministry of Corporate Affairs in gross violation of the order dated the 31st January, 2008 of the Company Law Board. The said order of the Company Law Board was upheld by the High Court of Delhi *vide* its order dated the 11th April, 2008 and the 22nd April, 2008 respectively in Company Appeals 7 of 2008 and 6 of 2008.

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4. The Respondent had submitted that M/s. Montreaux Resorts Pvt. Ltd., is being managed by two rival groups- one group led by Ms. Sonia Khosla and the other group by Shri Vikram Bakshi and others. Further, on perusal of the order dated the 31st January, 2008 and other documents, it appears that both groups are maintaining statutory records and the minutes of Board and General meetings separately. In respect of certification of two Form No.2, the Respondent had submitted that she relied on the list of allottees, as attached with the respective Form, duly certified by a director of the company, as well as the Board Minutes and Books of Accounts produced by the said director for verification. The status of the signatory director was further verified by the Respondent by viewing the signatory details of the purported Complainant Company available on the website of the Ministry of Corporate Affairs. Incidentally, the signatory details of M/s. Montreaux Resorts Pvt. Ltd., available on the website of the Ministry of Corporate Affairs as on the 12th April 2010, shows Ms. Sonia as a director of the company since incorporation, while the Complainant directors, particulars are not displayed. The Respondent had further submitted that there is no violation of order of the Company Law Board dated the 31st January, 2008 and she drew attention to the following lines of the order of the Company Law Board dated the 31st January, 2008:

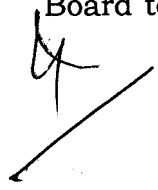
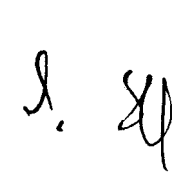
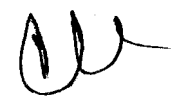
“When the matter was heard on this day, it transpired that not only the petitioner had co-opted a director on 11.12.2007, two more additional directors had been appointed on 18.12.2007 and the board thus constituted had also issued 6.58 lakh shares at Rs.100/- per share. In the application filed on 24.12.2008, these facts had been suppressed.”

5. The Company Law Board had acknowledged that the allotment of shares had indeed taken place on the 18th December, 2007. The Company Law Board had subsequently cancelled the same due to the reason recorded therein viz. that the Petitioners had, on hearing held on the 31st January, 2008, suppressed the fact that allotments had already taken place on an earlier date. In para 9 of the said order dated the 31st

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January, 2008; the Company Law Board had issued directions to the Registrar of Companies for not taking any of the Form No. 2 regarding allotment of shares made by the Board of Directors of the Complainant company on the 18th December, 2007, on record. However, the Registrar of Companies could exercise its power only after these Forms were presented to it for taking on record. The process of filing of Form No. 2 with Registrar of Companies is only an intimation of allotment of shares to the said authority under section 75 of the Companies Act, 1956 and the Registrar of Companies could refuse to take the same on record after filing of the same by the company. The Respondent had alleged that the Complainant has concealed the fact, that subsequent to the interim directions issued by the High Court of Delhi on the 11th April, 2008 and the 22nd April, 2008 respectively, the High Court of Delhi has passed another order on the 15th February 2010, for enquiry into the allegations of fabrication of various statutory records of the company by Mr. Vinod Surha, Mr. Vikram Bakshi and others and submitting them to the authorities as genuine company records, under section 340 (2) of Cr. P.C. for action against the named respondents under section 340 (1) of Cr. P.C. read with sections 195 (1) (b) and 195(4) of Cr. P.C. for committing acts of perjury etc. in a petition under section 397/398 of the Companies Act, 1956 filed with the Company Law Board. Mr. Surha has incidentally signed this complaint also allegedly on behalf of M/s Montreaux Resorts Pvt. Ltd.

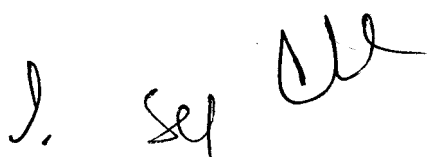
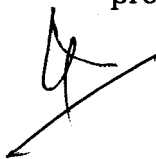
6. On the other hand, the Complainant in his rejoinder had submitted that the Respondent has failed to note the major discrepancy in said purported list of allottees. The total of the columns under the heading "Value" as well as the total "paid up value" are not matching. It is pertinent to note that no share application money was received in any bank account of the company and the Respondent failed to verify the said vital prerequisite before certifying the Form No. 2. The Complainant had submitted that the Respondent has failed to understand the rationale for issuing directions by the Company Law Board to the Registrar of Companies for not taking any Form on record

filed after the 1st December, 2007. The Complainant also referred to para 8 of the order dated the 31st January, 2008, passed by the Company Law Board. The Complainant had further stated that the meeting couldn't have been held without quorum. Further, the Respondent has failed to verify the records of the company in the possession of Ms. Sonia Khosla to check the validity of the Board meeting dated the 18th December, 2007. The list of signatories was also illegally and unauthorisedly altered by Ms. Sonia Khosla, for which she has already been issued a notice of contempt by the High Court of Delhi. Moreover, the list of signatories dated the 12th April, 2010 is not relevant for the present case. The Respondent, despite having knowledge of the said order of the Company Law Board, acted in gross violation of the said order and certified the Form No. 2 showing alleged allotment of shares made by Ms. Sonia Khosla. Therefore, she is equally liable for violation of order of the Company Law Board alongwith Ms. Sonia Khosla.

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 as the Respondent has not provided the copy of the Minutes of the Board meeting at which the shares were allotted and has also not ensured whether the consideration for the shares issued was received or not which the respondent is expected to see before certifying Form No. 2.

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



9. A copy of the report of the Director (Discipline) was sent to the Respondent asking her to file the 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, appeared on behalf of the Complainant and made oral submissions. The Respondent also appeared in person and made oral and written submissions.

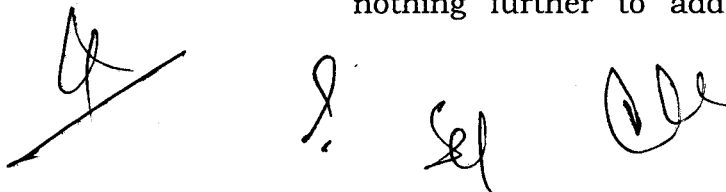
11. The Committee considered the submissions made by Shri Rajesh Taneja, authorised representative of the Complainant and the Respondent and directed that the Complainant should appear in person before the Committee in its meeting scheduled to be held on the 14th December, 2010, along with supporting documents, if any.

12. On the request of Shri Vikram Bakshi, the meeting of the Committee was postponed to the 7th January, 2011.

13. The Director (Discipline) received an application from Ms. Sonia Khosla, Shareholder & Director, M/s Montreaux Resorts (P) Ltd., under order 1 Rule 10 of the CPC and other enabling provisions of law, seeking impleadment in the complaint.

14. The matter along with the aforesaid application was taken up by the Disciplinary Committee in its meeting held on the 7th January, 2011. Shri Vikram Bakshi, the Complainant appeared in person and submitted as under:

“Further to my complaint dated 3rd March, 2010 and my rejoinder dated 22nd May, 2010, I have nothing further to add to my above stated

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complaint and rejoinder as they are fairly comprehensive.”

15. The Respondent also appeared in person on the 7th January, 2011 and made the following submissions:

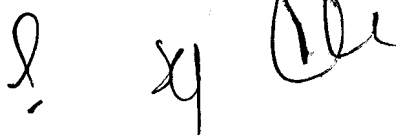
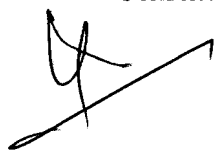
“I failed to see the Board Resolution and Books of Account before certifying Forms 2 of M/s. Montreaux Resorts Pvt. Ltd. I admit that I had committed a mistake unintentionally. I would like to assure the Hon’ble Disciplinary Committee that I shall be extra cautious and careful while certifying all the forms and documents in future.

I humbly request the Hon’ble Disciplinary Committee of the Institute to take a lenient view.”

16. The Committee dismissed the application filed by Ms. Sonia Khosla, shareholder & director, M/s Montreaux Resorts (P) Ltd., under order 1 Rule 10 of the CPC and other enabling provisions of the Law, seeking impleadment in the case, since, the present complaint was filed against a professional for alleged misconduct for falsely certifying Form No. 2 and the role of the Committee is to see whether the Respondent has exercised due diligence while certifying the said Form.

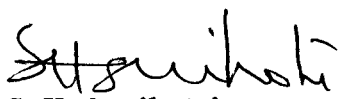
17. In the mean time, the constitution of the Disciplinary Committee got changed and the newly constituted Committee, at its meeting held on the 4th April, 2011, decided to conduct *de-novo* inquiry in the matter and to give an opportunity to the Complainant and the Respondent to appear before the Committee and make additional submissions, if any.

18. 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 before the Disciplinary Committee.



19. The matter was again taken up by the Committee on the 5th August, 2011, wherein the Respondent appeared in person before the Committee. The Committee informed the Respondent that she is 'Guilty' of professional misconduct and has decided to pronounce quantum of punishment for the same on the 24th August, 2011.

20. On the 24th August, 2011, the Disciplinary Committee considered the report of the Director (Discipline) , oral and written submissions made by the parties, other material available on record and the admission of the Respondent 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 has certified the Form No. 2 without verifying the receipt of money by the company from the books of accounts of the company and without verifying the relevant Board resolution of M/s. Montreaux Resorts Pvt. Ltd. The Committee had informed the Respondent about its findings on the 5th August, 2011. After providing an opportunity of hearing on the 24th August, 2011 to the Respondent, the Committee decided to remove the name of Ms. Sunita Khandelwal, ACS - 20444, 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.

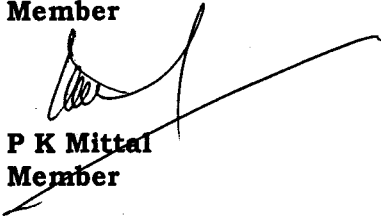


S. K. Agnihotri
Member



Dr. S. P. Narang
Member

Gopalakrishna Hegde
Member



P K Mittal
Member



Anil Murarka
Presiding Officer

Date: 03rd October, 2011