

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

DC: 80/2010

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

Shri Vikram Bakshi

-The Complainant

Vs

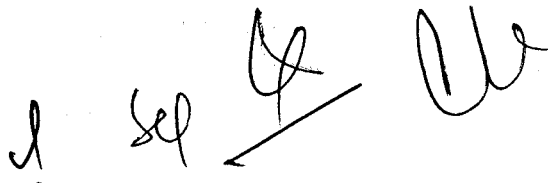
Shri Praveen Kumar Tiwary

-The Respondent

ORDER

1. The Institute had received a complaint dated the 18th September, 2010 in Form I filed by Shri Vikram Bakshi (hereinafter referred to as the 'Complainant') against Shri Praveen Kumar Tiwary, ACS-21443 (C.P.NO.8084) (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 sent to the Respondent *vide* letter dated the 22nd September, 2010. The Respondent submitted the written statement dated the 11th October, 2010. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was sent *vide* letter dated the 12th October, 2010, to the Complainant asking him to submit rejoinder to the same. The Complainant submitted rejoinder dated the 9th December, 2010. A letter dated the 4th January, 2011, was sent to the Respondent asking him to provide a copy of all the documents he had relied upon

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while certifying Form 18. The Respondent submitted his reply dated the 17th January, 2011.

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 while certifying Form No. 18 pertaining to the change of registered office of M/s. Montreaux Resorts Pvt. Ltd. In support of his allegation, the Complainant had submitted that the certification by the Respondent was patently false due to the following reasons:

- a. No valid Board meeting of the company was held on the 11th December, 2007-

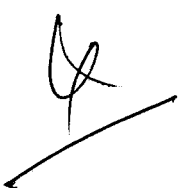

It has been falsely stated in the said form, signed by Ms. Sonia Khosla and certified by the Respondent, that the address of the registered office of the company was shifted to 102, Maharani Plaza, New Delhi *w.e.f.* the 18th June, 2009. However, in fact no valid Board meeting was held on that date. Ms. Sonia Khosla had acted illegally and in an unauthorized manner with a view to grabbing the control of the company M/s Montreaux Resorts Pvt. Ltd. This unauthorized and illegal act of Ms. Sonia Khosla was supported by the Respondent.

- b. Violation of the order of the Company Law Board dated the 31st January, 2008-

The Company Law Board *vide* order dated the 31st January, 2008, in C.P. No. 114 of 2007 *inter-alia* directed the Registrar of Companies not to take any document on record filed on or after the 1st December, 2007.

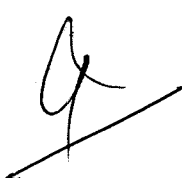

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4. The Respondent, on the other hand, submitted that he had certified Form No. 18 pertaining to M/s. Montreaux Resorts Pvt. Ltd., in good faith and with bona-fide intention, relying upon written representations received from Ms. Sonia Khosla, who was one of the Directors of the company on the date of certification of the said form and the information obtained from the documents and records produced before him by the Company and after carefully verifying all the necessary facts and after exercising reasonable and adequate care and skill which was required and expected of a professional in such cases. The Respondent submitted that while certifying the above forms, he also relied upon the order dated January 31, 2008, passed by the Company Law Board and the written explanation to the Registrar of Companies submitted by Ms. Sonia Khosla *vide* her letter dated June 18, 2009. He further stated that the said letter was also attached to the subject Form No. 18 filed with the Registrar of Companies (ROC). The Respondent also referred paras 2 & 5 of the Company Law Board's order dated the 26th August, 2009 wherein the Company Law Board has clarified that the order dated 31.1.2008 was for maintenance of *status quo* in regard to the composition of the Board and the shareholding as existed on the date of filing of the petition and had also directed the ROC not to take on record any document filed by the company on or after 1.12.2007. The Company Law Board also held that as far as the ROC is concerned the said Order was only in relation to the documents that had been filed/to be filed before the ROC from 1.12.2007 in relation to shares issued on 18.12.2007 and appointment of additional directors on 11.12.2007 and 18.12.2007 respectively. The said order did not mean to operate in regard to the documents filed after the date of that Order. Therefore, ROC cannot be held to have acted against the Order of this Board for taking on record the documents filed for events occurring after 31.1.2008.

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5. The Respondent had alleged that the Complainant has filed this Complaint after a period of 13 months from the date of signing and certifying Form No. 18 by him. Moreover, the Complainant had also intentionally concealed the fact from the Disciplinary Committee, that the above referred application *vide* CA No. 405 of 2009, was filed in this regard before the Company Law Board because the Order dated the 26th August, 2009, passed by the Company Law Board on that application was not in favour of the Complainant. The Respondent had further alleged that the Complainant had referred himself as a Director of the Company as on the date of filing of this complaint. However, his name is not appearing as one of the Directors of the company on the Ministry of Corporate Affairs (MCA) portal.

6. The Complainant, in his rejoinder, had submitted that the Respondent has claimed that while certifying the said Form No. 18 he had relied upon the Order dated the 31st January, 2008, passed by the Company law Board. However, in fact, the Respondent had certified the said Form No. 18 contrary to the said order. The Complainant had submitted that the Respondent had made a reference to paras 2 and 5 of the Order dated the 26th August, 2009, but had failed to refer subsequent orders of the Company Law Board dated the 4th September, 2009 and the 15th October, 2009 respectively, whereby the Company Law Board had clarified paras 2 & 3 of the Order dated the 26th August, 2009. The Complainant further stated that the Respondent had attempted to take shelter under the Order dated the 26th August, 2009 passed in CA No. 405 of 2009 in CP No. 114 of 2007, seeking initiation of contempt proceedings against the Respondent for acting in violation of the Order dated January 31, 2008. The said application was dismissed by the Company Law Board *vide* order dated the 26th August, 2009.

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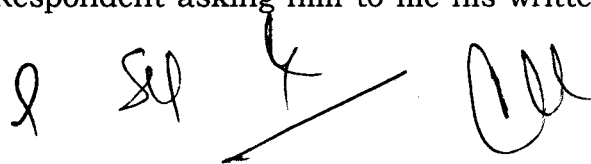
7. The Respondent referred to the list of authorized signatories downloaded from the portal of the MCA after June 2010, which as per him, were not relevant for said certification.

8. The Respondent was asked to provide copies of the documents on the basis of which Form No. 18 was certified. However, he could not provide requisite information. The Respondent informed that he had certified Form No. 18 on the basis of order of the Company Law Board dated the 31st January, 2008 and the aforesaid order of the Company Law Board did not mention about the registered office of the company and hence the same was not relevant.

9. The Director (Discipline) considered the matter pursuant to rule 9 of the Rules examined the complaint, written statement; rejoinder and additional information received in the matter 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 had informed that he had certified Form No. 18 on the basis of the order of the Company Law Board dated the 31st January, 2008. The said order of the Company Law Board did not mention about the registered office of the Company and hence the same was not relevant. Moreover the Respondent has failed to supply the copies of the document(s) on which he had relied before certifying the Form.

10. The *prima facie* opinion of the Director (Discipline) was placed before the Committee in its meeting held on the 6th June, 2011. 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 in accordance with the rules.

11. A copy of the report of Director (Discipline) was forwarded to the Respondent asking him to file his written statement on the said

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report along with supporting documents and the list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant.

12. The Respondent submitted the written statement dated the 15th June, 2011 on the Report of Director (Discipline). However, no rejoinder was received from the Complainant.

13. The matter was considered by the Disciplinary Committee in its meeting held on the 22nd July, 2011 wherein the Complainant and the Respondent appeared in person. The Complainant submitted that he has nothing further to add to the submissions already made.

14. The Respondent submitted as under

“In the circumstances and based on the submissions already made I agree that I should not have certified the Form 18 as referred to in the complaint. I have no further submissions to be made other than those already made.”

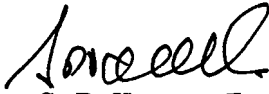
15. The Disciplinary Committee considered the oral and written submissions made by the parties in the matter and other material available on record and has come to the conclusion that the Respondent is 'Guilty' of Professional Misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he has certified Form No. 18 pertaining to the change of the registered office of M/s Montreaux Resorts Pvt. Ltd., without exercising due diligence as the Respondent had informed that he had certified Form No. 18 on the basis of the order of the Company Law Board dated the 31st January, 2008. The said order of the Company Law Board did not mention about the registered office of the Company and hence the same was not relevant. Moreover the Respondent has failed to supply the copies of the document(s) on which he had relied before certifying the Form No. 18. The

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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 Shri Praveen Kumar Tiwary, ACS-21443, 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



Gopalakrishna Hegde
Member



P K Mittal
Member



Anil Murarka
Presiding Officer

Date: 03rd October, 2011