

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

DC: 86/2010

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

Shri Mahesh Sharma -- Complainant


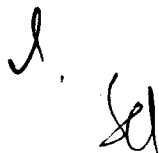

Vs

Shri K.K. Gupta -- Respondent

ORDER

1. The Institute had received a complaint dated the 22nd November, 2010 in Form - I filed by Shri Mahesh Sharma (hereinafter referred to as 'the Complainant') against Shri K. K Gupta, FCS-2371 (C.P.NO.3258) (hereinafter referred to as '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 complaint was sent to the Respondent *vide* letter dated the 24th November, 2010 asking him to submit the written statement and a reminder *vide* letter dated the 22nd December, 2010, asking him to submit the written statement. The Respondent submitted his written statement dated the 30th December, 2010, received in the Institute on the 12th January, 2011. Pursuant to sub-rule (4) of rule 8 of

the Rules, a copy of written statement was sent to the complainant *vide* letter dated the 13th January, 2011, asking him to submit the rejoinder. The Complainant submitted his rejoinder dated the 20th January, 2011.

3. The Complainant in his complaint had alleged that the Respondent while holding the Certificate of Practice of the Institute was also employed with M/s K A Securities Pvt. Ltd., from the 1st September, 2007.

4. The Respondent in his written statement while confirming his association M/s K A Securities Pvt. Ltd. had submitted that M/s K A Securities Pvt. Ltd. is a share broking firm having membership of multiple Stock Exchanges and his association with a stock broker is allowed under Clause (2) c (iv) of the Company Secretaries Act, 1980.

5. The Complainant in his rejoinder dated the 20th January, 2011, had *inter-alia* stated that a Company Secretary in practice can not work as an employee on salary basis. He further stated that it is evident from the salary slips that Shri Gupta is working as a Relationship Manager of M/s K A Securities with an employee code KADL059. He further mentioned that being working as an employee, while holding Certificate of Practice, Shri K K Gupta has been 'Guilty' of professional misconduct.

6. The Director (Discipline) pursuant to rule 9 of the Rules examined the complaint, written statement, rejoinder & additional information received in the matter. He was of the *prima facie* opinion that the Respondent was 'Guilty' of Professional Misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980 as he

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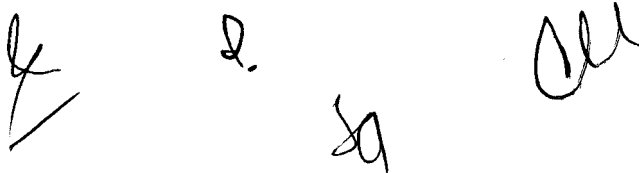
had violated the resolution dated the 12th May, 1991 passed by the Council prohibiting the members holding Certificate of Practice to accept the employment.

7. The *prima facie* opinion of the Director (Discipline) was placed before the Committee 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 accordance with the Rules.

8. A copy of the report of 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.





9. The Respondent submitted his written statement dated the 20th June, 2011, on the report of the Director (Discipline). He stated that he is associated with M/s K A Securities Pvt. Ltd., which is a share broker, having membership of multiple Stock Exchanges and his association with a stock broker is allowed as per clause 2(2) C (iv) of the Company Secretaries Act, 1980.

10. The Complainant and the Respondent *vide* letter dated the 22nd June, 2011 were asked to appear before the Disciplinary Committee on the 22nd July, 2011. The Complainant and the Respondent appeared in person

Handwritten signatures and initials in black ink, including a large stylized signature on the left, a small 'd.' in the middle, a 'sa' in the bottom center, and a large 'All' on the right.

before the Committee on the 22nd July, 2011. The Complainant submitted his rejoinder to the written statement submitted by the Respondent along with an authority letter in favour of Shri Alok Chandra Singh, PCS (CP 8976) to represent him on his behalf before the Committee. The Complainant further submitted that he did not receive the written statement from the Respondent and had collected the same on the 21st July, 2011. The Respondent on the other hand submitted that he had received the rejoinder today i.e. on the 22nd July, 2011 and requested for time to file his reply. Accordingly, the Committee adjourned the matter to the 5th August, 2011.

11. The Complainant and the Respondent appeared in person before the Committee on the 5th August, 2011. The Complainant submitted salary slips issued to the Respondent for the months of September, 2007, October, 2007, January, 2009 February, 2009, March, 2009. The Complainant also submitted a certificate dated the 26th July, 2010 issued by M/s K A & Securities Pvt. Ltd, Noida, UP, stating that Mr K K Gupta is working with company as Senior Relationship Manager from the 1st September, 2007 to till date. The Committee asked the Respondent to rebut the documents submitted by the Complainant. The Respondent could not give any valid explanation for the said documents. Then, the Committee asked him to submit any document immediately to the Committee to controvert the submissions of the Complainant. The Respondent even then showed his inability to provide the same.

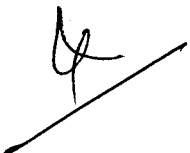



12. The Committee, thereafter, asked the Respondent to submit the following documents within next 3-4 days.

i) Income tax Returns for last three years.

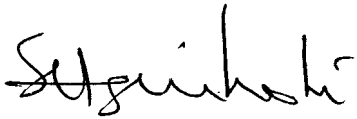
ii) Affidavit from the authorised signatory of M/s K & A Securities Pvt. Ltd., that the Respondent is not an employee of M/s K & A Securities Pvt. Ltd.

13. A letter dated the 16th August, 2011 was sent to the Respondent asking him to send the aforesaid documents and asked him to appear before the Committee in its meeting scheduled to be held on the 24th August, 2011. The Complainant was also asked to appear before the Committee. The Complainant appeared before the Committee on the 24th August, 2011, but the Respondent did not appear in spite of specifically being asked by the Committee to submit the documents, and appear in person as stated earlier. The Committee took serious view on non-appearance of the Respondent. The Committee further noted that the Respondent also did not submit any document as sought for by the Committee. The Committee, therefore, expressed that the conduct of the Respondent tantamounts to non-cooperation with the Disciplinary Committee.

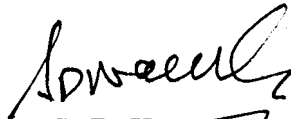
14. After considering the Report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances, the Disciplinary Committee came to the conclusion that the Respondent is 'Guilty' of professional misconduct under clause (1) of Part II of the Second

Schedule of the Company Secretaries Act, 1980, as he had violated the resolution dated the 12th May, 1991, passed by the Council prohibiting the members holding Certificate of Practice to accept any employment; and also is 'Guilty' of professional misconduct under clause (2) of Part III of the First Schedule of the Company Secretaries Act, 1980, as he did not supply the information sought by the Disciplinary Committee. Hence, the Disciplinary Committee decided to proceed *ex-parte* and decided to remove the name of Shri K K Gupta, FCS - 2371, the Respondent, from the Register of Members of the Institute for a period of 120 (One Hundred and Twenty) days. The said period of 120 (One Hundred and Twenty) 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