

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 145/2012

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 4th June, 2013

Shri Alok Goyal

...Complainant

Vs

Ms. Tripti Jain (ACS-22394)

....Respondent

ORDER

1. A complaint in Form- I dated 11th June, 2012 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 Alok Goel (hereinafter referred to as the 'Complainant') against Ms. Tripti Jain, ACS – 22394 (CP No. 9176 (15.06.2010 to 03.01.2011))(hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* stated that his firm M/s. Goel Gupta Maheshwari & Associates, Chartered Accountants was approached by the Respondent requesting for the professional assignments. He also stated that to begin with, his Firm assigned her the work related to filing of Form 2 on allotment of shares by M/s. Navsemi Technologies Private Limited to the foreign subscribers and doing compliance in this connection, post compliance and issuance of the certificate under the FDI scheme as per the notification of the RBI. The Complainant further stated that the Respondent had issued a certificate under the FDI scheme as per the notification of the RBI. The Complainant further stated that as per the Respondent's communication, the same was duly complied with and she issued the certificate in this connection. He further stated that all documents were filed by them relying on the Respondent's certificate and confirmation to the Reserve Bank of India; however, on checking of master data by another Company Secretary of CS S.R. Infotech, Faridabad, they came to know the following wrong doings by the Respondent in the assignment.



[Handwritten signature]

[Handwritten signature]

- a) The Respondent had not filed Form 2 properly and completely, therefore treated by the MCA as never filed by the company and the company has been penalized for the same. The reputation of the company was affected adversely together with bad name to their firm due to her misconduct.
 - b) The Respondent had charged for the services wrongly without doing the work.
 - c) The Respondent had issued wrong certificate on this in favour of Exchange Control Department, based on which the Complainant informed the Reserve Bank of India that company had complied with all the required provisions.
3. The Complainant further stated that the aforesaid acts of the Respondent shows gross negligence in discharging her professional duties.
 4. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent vide letter dated 21st June, 2012 calling upon her to submit the written statement. The Respondent submitted the written statement dated 16th July, 2012.
 5. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant vide letter dated 17th July, 2012 asking him to submit the rejoinder followed by a reminder dated 13th August, 2012. The Complainant submitted the rejoinder dated 11th August, 2012.
 6. The Director (Discipline), pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and opined that the Respondent has issued a certificate of compliance under the FDI Scheme on assumptions and presumptions rather than issuing the same after verifying the facts and hence, the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent did not exercise due diligence in the conduct of her professional duties.



[Handwritten signature]

[Handwritten initials]

7. The Disciplinary Committee on 22nd April, 2013 considered the *prima-facie* opinion of the Director (Discipline) dated 8th April, 2013, the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (7) of Part-I of the Second Schedule of the Company Secretaries Act, 1980 as she did not exercise due diligence in the conduct of her professional duties; and decided to proceed further in the matter in accordance with Chapter V of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.
8. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) dated 8th April, 2013 was sent to the Respondent *vide* letter dated 25th April, 2013 asking her to file the written statement along with supporting documents and list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant latest by 9th May, 2013. The *prima-facie* opinion of the Director (Discipline) was also sent to the Complainant *vide* letter dated 25th April, 2013 asking him to submit the Rejoinder to the written statement of the Respondent along with the supporting documents and list of witnesses, if any, latest by 23rd May, 2013.
9. A letter dated 9th May, 2013 was received from M/s. Goel, Gupta, Maheswari & Associates duly signed by Mr. Alok Goel, the Complainant, Ms. Namita Goel of the firm and Ms. Tripti Jain, the Respondent informing that they have resolved the matter by mutual understanding in the month of February, 2013 and that they don't want to proceed further in the matter and requested to close the same.
10. Section 21 (5) of the Company Secretaries Act, 1980 provides as under –
"Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."



[Handwritten signatures]

11. Further, Rule 6 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 provides as under –

“The Director, on receipt of a letter of withdrawal of a complaint by the complainant shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint.

Provided that in case the Director has not yet formed his *prima-facie* opinion on such a complaint, he shall place the same before the Board of Discipline, and the Board of Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal”.

12. The letter dated 9th May, 2013 received from the Complainant and the Respondent requesting for closure of the complaint was placed before the Disciplinary Committee on 4th June, 2013. The Disciplinary Committee took note that the Director (Discipline) had formed his *prima-facie* opinion in the matter.
13. The Disciplinary Committee at its meeting held on 4th June, 2013 considered the letter dated 9th May, 2013 received from the parties; material on record; the nature of issues involved and in totality of the circumstances of this case *vis-a-vis* the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 governing withdrawal of a complaint; permitted withdrawal of the complaint and closed the matter.

Accordingly, the complaint stands disposed-off.


(S Balasubramanian)
Member


(B Narasimhan)
Member


(S N Ananthasubramanian)
Presiding Officer

New Delhi

