THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 185/2013

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 25th November, 2013

M/s. Sokhi Engineering Co. (P) Ltd. **....Complainant**

Vs

Shri Akhilesh Kumar Shrivastava, FCS-6464 **....Respondent**

ORDER

1. A complaint dated 9th May, 2013 in Form-I 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 M/s. Sokhi Engineering Co. (P) Ltd., thru Shri Prem Narain Garg (hereinafter referred to as the 'Complainant') against Shri Akhilesh Kumar Shrivastava, FCS-6464(CP No.6447) (hereinafter referred to as the 'Respondent'). Shri Prem Narain Garg was *vide* letter dated 16th May, 2013 asked to submit a copy of the resolution of M/s. Sokhi Engineering Co. (P) Ltd., authorizing him to file the instant complaint on behalf of the company. The Complainant *vide* letter dated 22nd May, 2013 submitted the copy of the resolution of the company authorizing him to file the instant complaint.

2. The Complainant has *inter-alia* alleged that the Respondent has disclosed the information acquired by him in the course of his professional engagement. He further alleged that the Respondent is engaged in illegal practices and has been disclosing the secret matters and relevant

documents which he got during his appointment as an Arbitrator for settlement of dispute of the Sokhi family. The Complainant further alleged that he has asked the Respondent several times to hand over the documents related to the CESTAT case and not to appear in the Excise appeal on behalf of the company but the Respondent did not do so.

3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 27th May, 2013 calling upon him to submit the written statement which he submitted *vide* dated 4th June, 2013 wherein he denied the allegations levied against him and *inter-alia* stated that there is a dispute in the Sokhi family. The Respondent further stated that there was no agreement between him and the Complainant, therefore, question of any breach of trust does not arise and the Complainant(Shri Prem Narain Garg) has not stated the kind of loss or damage by reason of his misconduct or otherwise

4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement of the Respondent was sent to the Complainant *vide* letter dated 7th June, 2013 asking him to submit the rejoinder. The Complainant submitted a letter dated 10th May, 2013 addressed to the Respondent seeking certain documents with a copy to the Institute. The Complainant submitted the rejoinder dated 24th June, 2013 wherein he submitted that the reply submitted by the Respondent is baseless and misconceived and the Respondent has suppressed the material facts willfully with oblique motive to mislead the Institute, he further reiterated the contents of the complaint and made few additional submissions.

5. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that there is a dispute in the Sokhi family and to settle the said dispute the Respondent was appointed as an

Arbitrator. It is also observed that the Respondent was appointed to represent M/s. Sokhi Engineering Company in the CESTAT case much prior to the acquiring of the shares of the company by Shri Prem Narain Garg and his family. It also appears that the selling of the stake of the company by Shri Gurucharan Singh Sokhi is being contested by his brother Shri Baldev Singh before the CLB, Kolkatta wherein the Respondent is appearing on behalf of Shri Baldev Singh. As regards the allegation of not returning the documents of the company by the Respondent, it is observed that the there is no privity of contract between the Respondent and the Complainant. It would not be out of place to mention that the Complainant has failed to disclose as to what secret matters have been disclosed by the Respondent. Moreover, the Complainant could have raised the said issue before the CLB, Kolkatta and got the arbitration record summoned. Hence, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980,

6. The Disciplinary Committee considered the *prima-facie* opinion dated 19th July, 2013 of the Director (Discipline); material on record and agreed with the *prima-facie* opinion of the Director (Discipline) The Disciplinary Committee in view of the circumstances and totality of the issues involved in this matter held that the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980; and closed the matter.

Accordingly, the complaint stands disposed-off.

S K Tuteja	B Narasimhan	S N Ananthasubramanian
Member	**Member**	**Presiding Officer**

Date: 13th January, 2014.

The Institute of Company Secretaries of India ★ Disciplinary Committee ★ ICSI