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

DC: 78/2010

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Shri Mohd. Kamran **-Complainant**

Vs

Ms. Khushboo Gupta, ACS-20243 **-Respondent**

ORDER

1 The Institute had received a complaint dated the 23rd August, 2010 in Form 'I' was filed by Shri Mohammad Kamran (hereinafter referred to as the 'Complainant') against Ms. Khushboo Gupta (hereinafter referred to as the 'Respondent').

2 Pursuant to sub-rule (3) of Rule 8 of the Company Secretaries (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 6th September, 2010 asking her to send her written statement, followed by a reminder *vide* letter dated the 12th October, 2010. The Respondent submitted her written statement dated the 19th November, 2010. 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 25th November, 2010 seeking his rejoinder. The Complainant submitted his rejoinder dated the 13th December, 2010. The Complainant *vide* his letter dated the 24th March, 2011 has also informed that a criminal case under section IPC 420/467 /468 /471 /504/ 352/506 has been registered against Ms. Khushboo Gupta and others at Police Station, Gomti Nagar on the 8th February, 2011. The Institute *vide* letter dated the 13th April, 2011 requested the Complainant to pro*vide* the status of the police complaint filed against the Respondent and also asked the Respondent to pro*vide* the copies of the documents relied upon by her while verifying the Form – 18, 32 & 5 of M/s. Innotech Infocom Solutions Pvt. Ltd. The reminders dated the 28th April, 2011 were also sent to the parties asking them to pro*vide* the information sought. The Complainant *vide* his letters

dated the 4th May & the 9th May, 2011 submitted his reply. The Respondent *vide* letter dated the 10th May, 2011 also submitted the copies of documents relied upon by her while certifying the said Forms.

3 The Complainant had alleged that the Respondent has failed to exercise due diligence and is grossly negligent in the conduct of her professional duties as she, without verifying the complete facts, has certified and filed e-Form 32,18 & 5 in relation to M/s. Innotech Infocom Solutions Pvt. Ltd., with the Registrar of Companies. He further alleged that the Respondent has not inspected the attendance sheet and the proof of dispatch of notices of the meetings of the Board held on the 30th March, 2010 & 1st April, 2010 and the Extra Ordinary General Meeting of the company held on the 23rd April, 2010. He further alleged that the Board meetings were not held at all. Shri Suresh Kumar Srivastava who has signed the said Forms -18, 32 & 5 was not authorised by the Board to sign the Forms.

4 The Director (Discipline) pursuant to rule 9 of the Rules examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that the Respondent is 'guilty' of Professional Misconduct under the clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980.

5 The *prima-facie* opinion of the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on the 13th June, 2011. The Director (Discipline) had stated that as per the Complainant, the Respondent has not inspected the attendance sheet and the proof of despatch of notices of the meetings of the Board of Directors of the company held on the 30th March, 2010 and the 1st April, 2010 and the Extra Ordinary General Meeting of the company held on the 23rd April, 2010. The Complainant had further alleged that the Board meetings were not held and Shri Suresh Kumar Srivastava who had signed Forms 18, 32 & 5 was not authorised by the Board of Directors to sign the Forms.

6 The Respondent had submitted that she had relied on the minutes of the meetings of the Board held on the 30th March, 2010 and the 1st April, 2010 and the minutes of the Extra Ordinary General Meeting held on the 23rd April, 2010. She further submitted that she has relied upon the documents based on the doctrine of Indoor Management.

7 On examining the Board Resolutions, it was observed that instead of authorising any particular Director, the Board of Directors had authorised itself to file the forms and to take necessary action. No specific Director in any of the resolutions was authorised to file the forms or take action. It was felt that the Respondent should have carefully examined the resolutions before certification of the forms and to that extent the Respondent is negligent.

8 The Committee while agreeing with the *prima-facie* opinion of the Director (Discipline) decided to proceed further in accordance with Chapter V of the Company Secretaries (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

9 Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent *vide* letter dated the 21st June, 2011 calling upon her to file written statement along with supporting documents and list of witnesses, if any, to the Director (Discipline) latest by the 1st July, 2011 with a copy to the Complainant.

10 The Complainant *vide* letter dated the 22nd June, 2011 was also called upon to submit the rejoinder to the written statement with a copy to the Respondent along with supporting documents and list of witnesses, if any, to the Director (Discipline) latest by 11th July, 2011.

11 The Committee at its meeting held on the 22nd July, 2011 noted that the Complainant and the Respondent were asked to appear before it on 22nd July, 2011. The Committee also noted the e-mail dated the 20th July, 2011 from the Respondent expressing her inability to appear before the Committee as she was in the family way. The Complainant appeared before the Committee as he could not be informed about the e-mail of the Respondent expressing her inability to appear before the Committee on the 22nd July, 2011. The Committee expressed its displeasure over the act of the Respondent due to which the Complainant and the members of the Committee were put to inconvenience and decided that medical certificate be asked from the Respondent to that effect. The Complainant requested the Committee to fix the next date of hearing after August, 2011 as he would be on fast during Ramzan which was noted.

12 The Respondent *vide* letter dated the 23rd July, 2011 was called upon to submit medical certificate which was submitted by the

Respondent *vide* letter dated the 1st August, 2011. The medical certificate was placed before the Committee at its meeting held on the 5th August, 2011.

13 The Committee at its meeting held on 19th September, 2011 took note of the letter dated 9th September, 2011 received from Shri Mohammad Kamran raising certain queries. The Committee after discussion decided to seek comments on the same from the Respondent. The comments were received from the Respondent vide letter dated the 27th September, 2011 wherein she had requested to provide her an opportunity of hearing after 2-3 months to substantiate her position in the matter as she was blessed with a daughter. The Committee at its meeting held on the 3rd October, 2011 taken note of the said letter and granted her three months' time. The parties were accordingly informed *vide* letter dated the 14th October, 2011.

14 The letter dated the 15th November, 2011 received from the Complainant was placed before the Committee at its meeting held on 9th December, 2011 wherein he had stated as under:

> "1. That Khushboo Gupta has requested for the hearing after 2-3 months and the Institute has granted three months time to Khushboo Gupta.
>
> 2. That I hereby request your good office for early hearing as the matter is already delayed and Khushboo Gupta herself is convenient after 2 months.
>
> 3. That I have already communicated that the justice is already delayed in this matter and doctrine of documents is going on to save the culprits.
>
> 4. That Why appointment letter of Khushboo Gupta dated the 23rd April, 2010 has not been submitted to the Institute (ICSI) even before 27th September 2011.
>
> 5. That I have requested your good office that the authenticity of letter dated the 23rd April 2010 should be verified from Suresh Kumar Srivastava, Director, 2/442, Vishwas Khand, Gomti Nagar, Lucknow – 226010.
>
> 6. That whether Khushboo Gupta has submitted copies of bill for rendering her services and thereafter the proof of

payment received by her from Suresh Kumar Srivastava. If yes provide me the relevant copies."

15 The Committee took note of the said letter and decided to provide last and final opportunity to the Respondent to appear before the Committee at its next meeting on the 5th January, 2012, failing which the Committee shall proceed *ex-parte*. The Committee also decided to call upon the Complainant.

16 A letter dated 9th December, 2011 was received from the Complainant wherein he had stated—

> " This has reference to earlier letter dated 15.11.2011 in which I have requested for an early hearing in this matter and raised some queries. I am getting threatening calls to withdraw the case against Khushboo Gupta and the people backing Khushboo Gupta is the most corrupt Senior Bureaucrat in UP Government and brother in law of Mr. Suresh Kumar Srivastava. I have already sent a complaint letter to DIG Police but afraid that I may be in trouble for defying their dictate. If only untoward incidents happens to me I believe that the Institute will take appropriate action against Khushboo Gupta after going through various evidences submitted by me.
>
> I therefore request your good office to kindly consider my request of early hearing and fix a date of hearing and inform me accordingly."

17 Shri Suresh Kumar Srivastava, Director of M/s. Innotech Infocom Solutions Pvt. Ltd., *vide* letter dated the 13th December, 2011 was asked to verify the copy of the appointment letter dated 23rd April, 2010 issued to Ms. Khusboo Gupta. The said letter was returned undelivered on the 27th December, 2011.

18 The Respondent *vide* letter dated the 16th December, 2011 was asked to submit the bills for the services rendered towards filing of the Form -18, 32 and 5 of M/s. Innotech Infocom Solutions Pvt. Ltd., and proof of payment receipts and was called upon to appear before the Disciplinary Committee on the 5th January, 2012. The Complainant was also called upon to appear before the Committee.

19 The Respondent *vide* letter dated the 20th December, 2011 had submitted one bill No.014/2010 dated the 27th May, 2010 for filing of

Form – 18, 32 and 5 of M/s. Innotech Infocom Solutions Pvt. Ltd., and requested to fix the hearing in the end of February, 2012 due to the heavy cold and fog and her baby being just three months old. The Institute *vide* e-mail dated 27th December, 2011 had communicated that the matter is listed on the 5th January, 2012 and she should appear before the Committee.

20 The Complainant and the Respondent put in appearance before the Committee on 5th January, 2012. The Complainant submitted a letter dated the 5th December, 2011 (read the 5th January, 2012) before the Committee which was taken on record.

21 The Committee asked the Complainant about his stake in the company post filing of Form 32, 18 & 5. He stated that he has invested Rs.50000/- in the company and by increasing the authorised capital of the company he might become a minority shareholder. He further stated that the registered office of the company was changed without his knowledge and information.

22 The Committee asked the Respondent about the documents seen by her while certifying Form No.32, 18 & 5 of the above company. She was also asked as to whether she had obtained no objection certificate from the previous Company Secretary who was rendering the services to the company and whether she had seen the attendance register and also whether she had seen the original minutes of the company. She stated that (i) she had certified the said forms on the basis of extracts of the Resolution passed by the board of directors at their meeting held on the 30th March, 2010 and the 1st April, 2010, the amended copy of a Memorandum and Article of Association, Resolution passed by the shareholders in their EOGM held on the 23rd April, 2010, extracts of the minutes of the meeting of the board of directors held on the 30th March, 2010 and the 1st April, 2010 and the extracts of the minutes of the meeting of shareholders held on the 23rd April, 2010; (ii) that she had not seen the attendance register of the said meetings; (iii) that she did not verify the extracts of the minutes and the resolutions from the original minutes' book and (iv) that she did not obtain No Objection Certificate from the previous Company Secretary.

23 The Committee considered the matter, the *prima-facie* opinion of the Director (Discipline), oral and written submissions made by the parties and other material on record came to the conclusion that the Respondent is 'guilty' under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as she did not exercise due diligence while certifying the e-Forms 32, 18 & 5 of M/s. Innotech Infocom Solutions Ltd., and also failed (i) to obtain no objection certificate from the previous Company Secretary who

was rendering the services to the company; (ii) to see the attendance registers of the company; (iii) to see the original minutes' book of the company.

24 The Committee decided that an opportunity of hearing be provided to the Respondent pursuant to sub-section (3) of section 21B of the Company Secretaries Act, 1980 and accordingly the Respondent to appear before the Committee at its next meeting.

25 Accordingly, the parties *vide* letters dated the 27th March, 2012 were called upon to appear before the Committee at its meeting on 20th April, 2012.

26 Shri Mohammad Kamran, complainant appeared in person. An adjournment application has been received on behalf of the Respondent.

27 The Committee noted that several adjournments have been taken by the Respondent on several occasions and accordingly decided to decide the matter ex-parte.

28 The Committee after considering material on record came to the conclusion that the Respondent is 'guilty' under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as she did not exercise due diligence while certifying the e-Forms 32, 18 & 5 of M/s. Innotech Infocom Solutions Ltd., and also failed (i) to obtain no objection certificate from the previous Company Secretary who was rendering the services to the company; (ii) to see the attendance registers of the company; (iii) to see the original minutes' book of the company. The Committee passed the following order:

"Reprimand"

The Committee also imposed a fine of Rs. 5,000/- (Rupees five thousand only) on the Respondent payable within 15 days of the expiry of the 30 days of issuance of this order.

The order shall be effective after the expiry of 30 days of issue of this order.

B Narasimhan
Member

S K Tuteja
Member

Gopalakrishna Hegde
Member

S Balasubramanian
Member

Nesar Ahmad
Presiding Officer

Date: 20th April, 2012