

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
ICSI/DC: 99/2011

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

Date of Decision: 30th July, 2013

Serious Fraud Investigation Office (SFIO)

....Complainant

Vs

Ms. Seema S malhotra

....Respondent

ORDER

1. A complaint dated 13th July, 2011 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 Shri N K Chaudhary, Asstt. Director, SFIO (hereinafter referred to as the 'Complainant') against Ms. Seema S Malhotra, ACS – 10531 (CP No. 7384) (hereinafter referred to as the 'Respondent').
2. The Complainant *inter-alia* stated that the Respondent had issued the Compliance Certificate dated 20th August, 2006 to M/s. PSG Developers and Engineers Ltd., for the financial year ending 31st March, 2006 *inter-alia* stating that the company was not required to obtain any approvals of the Central Government, Company Law Board, Regional Director, Registrar and / all such authorities prescribed under the various provisions of the Act during the financial year. The said Compliance Certificate issued by the Respondent was in contravention to Section 198 (4) read with Section 269 of the Companies Act, 1956 as the company had negative profit after tax for the financial year ended on 31st March, 2006 and since the effective capital of the company is less than 1 Crore, the company was required to seek the previous approval of the Central Government before paying any amount in excess of Rs. 75,000/- per month to Shri Y S Rana, the Managing Director of the company.
3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of complaint was sent to the Respondent *vide* letter dated 14th July, 2011 calling upon her to submit



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the written statement. The Respondent submitted her written statement dated 29th July, 2011. The Respondent has *inter-alia* stated that the company had complied with the provisions of Section 269 read with Schedule XIII of the Companies Act, 1956 wherein, in any financial year during the currency of tenure of the managerial persons, a company has no profits or its profits as inadequate, it may pay remuneration to a managerial person by way of salary, dearness allowance, prerequisites and any other allowances, not exceeding ceiling limit of Rs. 75,000/- where the effective capital of the company is less than 1 Crore. The Board of the company was constituted of three directors and Shri Y. S. Rana was the Managing Director of the company. Since the company was running into losses and did not have adequate profits, the company had given him remuneration of Rs. 75, 000/- per month. The company has filed the requisite return as per the provisions of Section 269 read with Schedule XIII of the Companies Act, 1956. The effective capital of the company was less than Rs.1Crore and the monthly remuneration payable to Shri Y. S. Rana, the Managing Director, never exceeded Rs. 75,000/- per month, the said payment is duly permissible remuneration as per the provisions of Section 269 read with Schedule XIII of the Companies Act, 1956. The Respondent further submitted that the management of the company vide its certificate dated 1st August 2006 stated that the total expenses incurred towards the payment to the directors of the company were around Rs. 11,41,322/- out of which Rs. 8,15,322/- was paid to Shri Y. S. Rana towards his remuneration/salary and the balance amount of Rs. 3,26,000/- was reimbursed as expenses incurred on various Board Meetings, EOGM and AGM of the company during the period of 12 months. The same can be verified from the books of Accounts of the company. The Respondent stated that she has given Compliance Certificate to the company after verifying the relevant records and also the management certificate pertaining to the said remunerations and based on the explanations furnished to her by the company. The Respondent further stated that the allegation of the SFIO is only based on the reply filed by Shri Y S Rana to the IT department and the deposition made by the Statutory Auditor. Both the submissions were made on the basis of the Balance Sheet and Profit & Loss Account of the company after 23 days of issuance of Respondent's Compliance Certificate. The Respondent further stated that the total amount of Rs. 11,41,322/- as mentioned by SFIO was only towards the Directors' remuneration under which head the expenses incurred by the other Directors were also booked. The company has a policy for reimbursement of expenses of the staff but has no such heading of reimbursement of expenses of the Directors. The Statutory Auditor had grouped all the expenses incurred by all the Directors (reimbursement as well as salary) under one head i.e. Work-in-Progress sub-head Directors' Remuneration. The Respondent further stated that while questioning the statutory Auditor, the SFIO (the Complainant) had failed to bifurcate the Director's remuneration and reimbursement and thereby drawn an inference



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that the total payment falls under the head of Directors' remuneration. The Respondent further stated that the allegation that the reimbursement of Directors' expenses to the tune of Rs. 3,26,000/- is an afterthought is baseless as the management certificate was given in the year 2006 and being the Practicing Company Secretary, she had relied on the records of the company and the statements of its officers and agents. The Respondent further stated that SFIO, while conducting the investigation and during her deposition had not raised a single query regarding the said Compliance Certificate issued by her.

4. 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 3rd August, 2011 asking him to submit the rejoinder which he submitted *vide* letter dated 30th August, 2011 in which he has stated that the complaint is based on the Report of the Inspector who was appointed by the Central Government in exercise of its power Section 235 of the Companies Act, 1956. The Central Government had directed the Serious Fraud Investigation Office (SFIO) to file the instant complaint. The Complainant has further stated that the remuneration paid to the Director was Rs. 11,41,322/- per annum i.e. more than Rs. 75,000/- per month as stated by the Respondent and therefore, for making any remuneration to Directors, permission of the Central Government was required as the company was running into losses and not having adequate profits during the financial year 2005-2006. The Complainant further stated that the amount of remuneration of Rs. 11,41,322/- paid to the Director in the year 2005-2006. The Complainant, for conducting the investigation, had relied on the documents submitted to the Income Tax department by Shri Y S Rana, Managing Director of the company and statement given by the Statutory Auditor of the company. The Complainant further stated that the expenses of the directors are booked under the expenditure expenses head than being clubbing with remuneration paid to the directors.
5. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and *prima-facie* opined that Ms. Seema S Malhotra (ACS - 10531) (CP No.7384), the Respondent had issued the Compliance Certificate dated 20th August, 2006 to M/s. PSG Developers and Engineers Ltd., for the financial year ending 31st March, 2006 *inter-alia* stating that the company was not required to obtain any approvals of the Central Government, Company Law Board, Regional Director, Registrar and / all such authorities prescribed under the various provisions of the Act during the financial year. The said Compliance Certificate issued by the Respondent was in contravention to Section 198 (4) read with Section 269 of the Companies Act, 1956 as the company had negative profit after tax for the financial year ended on 31st March, 2006 and since the effective capital of the company is less than 1 Crore, the company was required to seek the previous approval of the Central Government



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before paying any amount in excess of Rs. 75,000/- pm to Shri Y S Rana, the Managing Director of the company. It is pertinent to note that as per the Audit Report dated 13.9.2006 of M/s. Gupta Pramod & Associates, M/s. PSG Developers and Engineers Ltd., had negative profit after tax. 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 she did not exercise due diligence and was grossly negligent in the conduct of her professional duties in issuing the compliance certificate dated 20th August, 2006 to M/s. PSG Developers and Engineers Ltd., for the financial year ending 31st March, 2006.

6. The Disciplinary Committee on 16th August, 2012 considered the *prima-facie* opinion dated 3rd August, 2012 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion 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 she did not exercise due diligence and was grossly negligent 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.
7. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) dated 3rd August, 2012 was sent to the Respondent *vide* letter dated 21st August, 2012 asking her to file the written statement along with the supporting documents and list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant latest by 4th September, 2012. The *prima-facie* opinion of the Director (Discipline) was also forwarded to the Complainant *vide* letter dated 21st August, 2012 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 18th September, 2012.
8. The Respondent submitted the written statement dated 19th September, 2012 to the *prima-facie* opinion of the Director (Discipline). A copy of the written statement of the Respondent was sent *vide* letter dated 21st September, 2012 to the Complainant asking him to submit the rejoinder latest by 28th September, 2012.
9. The Complainant and the Respondent were called upon to appear before the Disciplinary Committee on 30th October, 2012 *vide* letter dated 17th October, 2012.
10. On behalf of the Serious Fraud Investigation Office (SFIO) Shri J K Teotia, and Shri N K Chaudhary appeared before the Committee on 30th October, 2012



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and made submissions. Ms. Seema S Malhotra, the Respondent appeared in person and made submissions.

11. The Disciplinary Committee heard the parties and directed the Complainant to review the complaint in view of the submissions made by the Respondent wherein she had submitted that the managerial remuneration paid to Mr. Y S Rana as the Managing Director of the company was Rs. 8,15,322/- and the balance amount of Rs. 3,26,000/- was the re-imbusement of the expenses incurred by various directors of the company. She further submitted that the SFIO has erred in calculating the managerial remuneration paid to Mr. Y S Rana. The Complainant submitted that the complaint will be reviewed after discussing the matter with the Auditors of the company.
12. The Disciplinary Committee on 10th December, 2012 noted that no communication has been received from SFIO. The Directorate vide e-mail dated 2nd January, 2013 sought the status from the SFIO.
13. The Disciplinary Committee on 17th January, 2013 had noted that the SFIO vide e-mail dated 2nd January, 2013 confirmed that the matter is under examination and they would submit their final reply by the end of January, 2013. Further, vide letter dated 23rd January, 2013, SFIO, MCA has confirmed that they have appointed Shri K S Kaushik, Deputy Director (Forensic Audit), SFIO in place of Shri N K Chaudhary, Assistant Director, SFIO, the authorised Complainant in the aforesaid complaint.
14. Shri K S Kaushik, Deputy Director, Forensic Audit, SFIO, MCA vide letter dated 20th February 2013 was requested to confirm the status of the matter. He vide letter dated 18th March, 2013 informed that the relevant vouchers have not been received from the Statutory Auditors so far and are likely to be received within a month and therefore, sought one month extension for filing the reply.
15. The Disciplinary Committee on 22nd April, 2013 had noted that no communication has been received from the Complainant though the time requested by the SFIO has already elapsed. The Committee after considering the material on record, decided to call the parties to appear before the Committee at its next meeting.
16. Accordingly, vide letters dated 6th May, 2013 the parties were called upon to appear before the Committee on 4th June, 2013. Shri K S Kaushik, Deputy Director (FA), SFIO, vide letter dated 29th May, 2013 requested for adjournment as he was undergoing training. The Respondent appeared in person and submitted that the Complainant had agreed before the Disciplinary Committee on 30th October, 2012 to submit their reply after discussing with the Auditors of the company with regard to managerial



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remunerations paid to Mr. Y S Rana, which is the subject matter of the complaint.

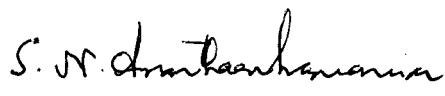
17. The Disciplinary Committee on 4th June, 2013 noted that the Complainant has not filed its reply. After deliberations, it is decided to provide a last and final opportunity to the Complainant to file their reply regarding calculation of the managerial remuneration paid to Mr. Y S Rana, after discussing with the Auditors of the company. Accordingly, a letter dated 11th June, 2013 was sent to SFIO, MCA asking them to submit the reply within 15 days of the receipt of the letter. However, no reply was received from SFIO, MCA.
18. The Disciplinary Committee noted that despite repeated reminders, the SFIO did not submit any reply on the clarifications sought with regard to the managerial remuneration paid to Mr. Y S Rana which is the subject matter of the complaint. The Committee also noted that a last and final opportunity was also provided to the SFIO to file their reply but no reply was received from them.
19. The Disciplinary Committee, in view of the totality of the circumstances and the issues involved in the matter decided to close the matter.

Accordingly, the complaint stands disposed-off.


(S K Tuteja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member


(S N Ananthasubramanian)
Presiding Officer

Date: 25th Sep, 2013
New Delhi:

