

THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: NI/2011

IN THE INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 17th January, 2013

Ministry of Corporate Affairs (MCA)

...Informant

Vs

Ms. Priyanka

....Respondent -1

Shri Hridesh Agarwal

....Respondent -2

1. The Assistant ROC, Delhi & Haryana, vide his letter dated 17th November, 2011, forwarded a complaint received from one Mr. Pankaj Kumar, *inter-alia* alleging that M/s. Rosebud Constructions Private Limited has filed Compliance Certificate for the year of 2006-2007 and 2007-2008 signed by the fake Company Secretary. He had also submitted the copies of the Compliance Certificate issued by Ms. Priyanka, ACS-22074 for the FY 2008 and Mr. Hridesh Kumar Agarwal, ACS-17367 for FY 2007 with a request to examine the correctness of the allegations and take appropriate action, if allegations were found correct.
2. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Ms. Priyanka and Mr. Hridesh Kumar Agarwal respectively vide letters dated 29th November, 2011 calling upon them to submit their comments.
3. Ms. Priyanka vide letter dated 5th December, 2011 has *inter-alia* submitted that the Compliance Certificate attached with the Investor Complaint Form and filed by the company with the ROC, NCT of Delhi & Haryana is not the one which was issued by her to the company. She submitted a copy of the Compliance Certificate issued by her to M/s. Rosebud Constructions Pvt. Ltd.
4. Mr. Hridesh Kumar Agarwal vide letter dated 14th December, 2011 has *inter-alia* submitted that he had issued the Compliance Certificate to M/s. Rosebud Constructions Pvt. Ltd., for the year 2006-07 on 1st September, 2007 after he was duly appointed by the Board of Directors of the



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company and he was holding Certificate of Practice (CP. No. 7645) at that time. So, the Compliance Certificate for the year 2006-07 has not been issued by a fake Company Secretary as alleged in the complaint. He further stated that at the time of uploading of the Compliance Certificate for the year 2006-07 in Form 66, the scan size of signed Compliance Certificate was not within the permissible limit of MCA i.e. 2.5 MB, therefore, the company had decided to upload the Compliance Certificate having signed marked as Sd/- copy uploaded with the MCA and not the signed one. He further stated that while converting the soft copy of the Compliance Certificate issued by him, there was some typo error by which his membership number and CP number were written wrongly (M.N. 19737 & CP No. 7675) and the same has been uploaded with the MCA inadvertently. However, the Compliance Certificate issued by him physically contained the correct membership number and CP number and the same has been circulated along with the Director's Report to all the members of the company. He has also enclosed a copy of the Compliance Certificate issued by him to M/s. Rosebud Constructions Pvt. Ltd., for the said year 2006-2007.

5. The comments of Ms. Priyanka and Mr. Hridesh Kumar Agarwal were sent to the Assistant ROC, NCT of Delhi and Haryana, vide letter dated 27th December, 2011 respectively. However, no communication was received from them.
6. Further, some additional documents were received from Mr. Hridesh Kumar Agarwal. He attached his affidavit *inter- alia* stating that he was holding the Certificate of Practice No. 7645 issued by the ICSI in August, 2007 and was eligible to issue the Compliance Certificate. He further stated in affidavit that he was appointed by M/s. Rosebud Construction Pvt. Ltd. in pursuance of Section 383 of the Companies Act, 1956 to issue the Compliance Certificate for FY 2006-07 by the Board of the Company.
7. Pursuant to sub-section (2) of the Section 21 of the Company Secretaries Act, 1980, the Director (Discipline) examined the information, the comments of Ms. Priyanka and Mr. Hridesh Kumar Agarwal and the material on record and observed that the Compliance Certificates in respect of M/s. Rosebud Constructions Pvt. Ltd., for the 2006-2007 and 2007-2008 have been issued by Mr. Hridesh Kumar Agarwal, ACS-17367 (CP No. 7675) and Ms. Priyanka, ACS-22074 (CP No. 7990) respectively who have been the Company Secretaries in practice. The Director (Discipline) opined that there is no complaint on the contents of the Compliance Certificates issued by Ms. Priyanka and Mr. Hridesh Kumar

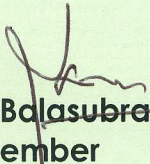


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Agarwal for the said years and in view of the same, no case is made out against Ms. Priyanka and Mr. Hridesh Kumar Agarwal and therefore, they are not guilty of professional misconduct under the Company Secretaries Act, 1980.

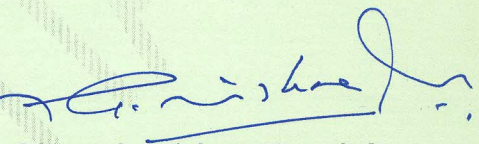
8. The Disciplinary Committee at its meeting held on 17th January, 2013 considered the *prima-facie* opinion dated 3rd January, 2013 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that Ms. Priyanka and Mr. Hridesh Kumar Agarwal are not guilty of professional or other misconduct under the Company Secretaries Act, 1980 and closed the matter.

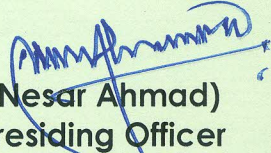
Accordingly, the complaint stands disposed off.


(S Balasubramanian)
Member


(S K Tuteja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member


(Nesar Ahmad)
Presiding Officer

New Delhi

