

**THE DISCIPLINARY COMMITTEE**  
**THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**  
**ICSI/DC: 138/2012**

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

Date of Decision: 25<sup>th</sup> November, 2013

The Institute of Company Secretaries of India ....Complainant

Vs

Shri Ravi Shankar Kumar Chauhan, ACS – 20624 ....Respondent

**ORDER**

1. A complaint in Form-I dated 18<sup>th</sup> May, 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 the Institute of Company Secretaries of India (hereinafter referred to as the 'Complainant') against Shri Ravi Shankar Kumar Chauhan, ACS – 20624)(hereinafter referred to as the 'Respondent').
2. The Complainant *inter-alia* stated that the Respondent is an associate member of the Institute of Company Secretaries of India (ICSI) and was elected as a member of the Managing Committee of the Gurgaon Chapter of the NIRC of the ICSI for a period of four years w.e.f. 19<sup>th</sup> January, 2011 and in the meeting of the Managing Committee of the Gurgaon Chapter held on 19<sup>th</sup> January, 2011 he was elected as the Treasurer for the period 19<sup>th</sup> January, 2011 to 18<sup>th</sup> January, 2012.



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3. The Complainant has alleged that during the tenure of the Respondent as treasurer, particularly during 19<sup>th</sup> January, 2011 to 23<sup>rd</sup> April, 2011 and 8<sup>th</sup> August, 2011 to 5<sup>th</sup> October, 2011, the following acts of commission and omission on the part of the Respondent of violation of the guidelines and instructions issued by the Head Office and Chapter Guidelines, 1983 of the ICSI have been detected:-

- The Respondent as a Treasurer was not required to collect any cash amount received from the sale of publications, fee received from students & members which was required to be collected by an employee of the Chapter and deposited in the ICSI's bank account and / or in the Chapter's bank account on the same day.
- That however, the Respondent not only took charge of the cash collected, deposited and disbursed from an employee of the Chapter but unauthorisedly collected cash payments and instead of depositing the same in the bank, kept the amount with himself and deposited some of the cash in the bank account after considerable delay or did not deposit the cash payment received by him in the account and some of the amounts were deposited by him at the advise of the appropriate authority or after the findings of the special audit report.
- That the day to day expenditure for the chapter's needs is to be borne from an imprest cash amount maintained by employee incharge of the chapter and the cash collections from sales of publications or from the members and student fees is not required to be spent on the day-to-day expenditure of the chapter.
- The Respondent utilised some cash amounts from sale publication and fees for the day-to-day expenditure incurred by the chapter without any authorisation from any competent authority.
- That in terms of Guideline No.27.4 of the Company Secretaries Chapter Guidelines, 1983, the Respondent as a Treasurer was



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required to cause maintenance of proper accounts of the assets and liabilities and also of the moneys received and expended of the chapter and to deal with the matters in respect of which such receipt and expenditure took place.

That however, the Respondent did not ensure that the proper process was followed at the Gurgaon Chapter while giving charge from one employee to another. He also did not ensure that work has been conducted by employee as per duties assigned by the Managing Committee and no timely review of work or staffs was undertaken and compliance status maintained.

- That cash received had not been deposited in the bank on regular basis and no proper recording of receipts of payments was entered in accounts and other system were also not ensured to be done on regular basis.
- Head office compliance to be reported was not ensured to be done by him and the Respondent also did not get the internal audit completed in time.

The Complainant further stated that the aforesaid acts of omission and commission on the part of the Respondent amount to professional misconduct as defined in Clause (1) of Part II of the Second Schedule read with Section 22 of the Company Secretaries Act, 1980.

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 30<sup>th</sup> May, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 16<sup>th</sup> June, 2012.
5. The Respondent denied the allegations levied against him and has stated that he had intervened the cash control procedure from 29<sup>th</sup> March, 2011



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to 14<sup>th</sup> April, 2011 and again from 8<sup>th</sup> August, 2011 to 5<sup>th</sup> October, 2011 during his tenure. The Respondent has referred the Guidance Note 16: Control Measures for Monitoring Cash/Bank Transactions of the Financial Guidelines of Company Secretaries Chapter Guidelines, 1983 which provides as follows:

*To avoid any chance of misappropriation of the Institute's funds due to lack of integrity on part of part time/full time staff engaged at the chapter offices.*

*3. Depending upon the volume of work, efforts may be made that the cash collections are verified with respect to the acknowledgements issued by the Treasurer apart from verifying the entries in the cash book while counter signing at regular intervals"*

*6. Payments may be made by way of crossed cheque except the petty cash payments, i.e. cartage freight conveyance, salary to staff, stationery, refreshments etc after obtaining the sanction from the competent authority (being treasurer here)*

The Respondent further stated that keeping in view the above guidance note he took precautionary measure to intervene in the matter of cash inflow and outflow, kept control over cash in good faith and interest of the chapter to avoid any kind of misappropriation as the staff were not depositing the surplus cash after due payments at regular interval more particularly for more than ten days. During the period 29<sup>th</sup> March, 2011 to 14<sup>th</sup> April, 2011 the cash surplus after petty expenses were deposited in the bank account at regular interval by him as he was forced to take charge for the time being only in the interest of chapter.

The Respondent further stated that during 8<sup>th</sup> August 2011 to 5<sup>th</sup> October, 2011, Shri Makhan Lal Raiger, Senior Assistant was not giving him any explanation about financial transactions and he was not carrying out his direction which he was giving on regular basis while visiting chapter premises and delayed all kind of book entries for more than four months.



*Shri Makhan Lal Raiger*

The Respondent further stated that on 8<sup>th</sup> August, 2011 Shri Makhan Lal Raiger, Senior Assistant refused to pay financial obligations despite huge amount of cash were lying with him as on aforesaid date, hence, he was forced to take charge from Shri Makhan Lal Raiger, Senior Assistant to maintain petty cash though Shri Makhan Lal Raiger, Senior Assistant was directed by him to continue to collect cash deposit, cash receipt on sale of publication and expend cash wherever necessary in his absence.

The Respondent further stated that on 18<sup>th</sup> August, 2011 Shri Animesh Srivastava assumed the office of Executive Officer of the Chapter. He requested Shri Animesh Srivastava to take charge from Shri Makhan Lal Raiger and keep control over the cash receipt and payments but he did not agree and was asking full explanation and charge of cash surplus which the Respondent was unable to give it to him as Shri Makhan Lal Raiger, Senior Assistant was not giving him explanation of cash lying with him and other records. Shri Makhan Lal Raiger, Senior Assistant continued the same status until the Finance Committee of the ICSI directed him to do so immediately on 2<sup>nd</sup> March, 2012.

The Respondent further stated that being the treasurer he was doing his statutory duty to keep control over cash surplus, maintain check and proper balance to curb any kind of misappropriation or mishandling by the staff if circumstances suggest. Keeping in view the interest of chapter and the Institute he maintained cash surplus whenever the circumstances (supra) compelled him to do so. In case of deposit made after special audit report and direction given by the Finance Committee of ICSI, he had deposited the cash surplus because at that time Shri Makhan Lal Raiger, Senior Assistant was cooperating to arrive at correct figure to be deposited. Due to his negligence he was not in a position to deposit the correct amount due to be deposited with the Chapter bank account.



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The Respondent further stated that as per practice being followed previously in the Chapter, there was no segregation of cash receipt of sale of publication etc. except registration and examination fee which were maintained separately. However, due care were being taken not to expend cash received from sale of publication which may be checked with ICICI account of the ICSI.

The Respondent has referred the Guideline No. 27.4 of the Company Secretaries Chapter Guidelines, 1983. As a Treasurer, he was required to cause maintenance of proper accounts of the assets and liabilities and also of the moneys received and expended of the chapter and to deal with the matters in respect of which such receipt and expenditure took place. He further stated that when he assumed the office of the Treasurer he was not handed over and given charge of any kind of records in writing from his predecessor. He started functioning as a Treasurer on 'as is where is' basis. There was no proper system in place so he first time proposed in the meeting of the Finance Committee headed by an "Internal Control Procedure" for the same amongst others. There was no system in place in the chapter to give and take charge in writing. It was deeming procedure. For this the Executive Committee first time took decision in its meeting held on 25<sup>th</sup> June, 2011 to allocate duties among the staff to ensure the proper compliance of the guideline.

The Respondent further stated that all cash received and surplus has been deposited in the bank on regular basis after maintaining requisite petty cash. However, after 24<sup>th</sup> April, 2011 onwards Shri Makhan Lal Raiger, Senior Assistant was directed to maintain and record all receipt and payments in the book of accounts of chapter but intentionally and negligently on provocation of some senior Management Committee Members, he delayed the entry making process despite several reminders



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and allocation of duties to him to malign, harm his image and defame him.

The Respondent further stated that he was tortured by the Management Committee members many times with intention to oust him from the Executive Committee and the Management Committee of the Gurgaon Chapter. Further the ICSI had deputed a person (Shri Makhan Lal Raiger) without giving him proper training which paralysed the whole process of compliance management of the Chapter.

The Respondent further stated that as far as the internal audit is concerned, after assuming the office of Treasurer, he took proper initiative to complete the Internal Audit in time for three quarters namely September, 2010, December, 2010 and March, 2011 within thirty days each time. So far as June, 2011 quarter Internal Audit is concerned it was intentionally delayed by Shri Makhan Lal Raiger, Senior Assistant.

The Respondent further stated that an office bearer can not be held responsible if the support *staff* do not function properly or function irresponsibly ,negligently and indisciplin manner more particularly a permanent *staff* appointed by HQ of the ICSI. Moreover, the Chairman who is the CEO and overall In charge of the chapter and the Secretary of the chapter who is also an Administrative In-charge of the chapter both did not take corrective measures timely and situation became so precarious and uncontrollable, He alone could not control the whole staff more particularly the permanent *staff* of the chapter who was defiant.

The Respondent has further stated that he has not committed any kind of professional misconduct rather he had given his valuable time to the chapter to carry out his duties and responsibility efficiently and effectively. Further he was not an employee to see the day -to -day affairs of the



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Chapter but his role was limited to supervisory and controlling level which he did in good faith and interest of the Chapter.

The Respondent further stated that the complaint is absolutely frivolous, vexacious, malicious, tortuous, defamatory and politically motivated and it should be quashed.

6. 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 26<sup>th</sup> June, 2012 asking to submit the rejoinder followed by a reminder dated 24<sup>th</sup> July, 2012. The Complainant submitted the rejoinder dated 13<sup>th</sup> August, 2012.
7. The Complainant has *inter-alia* stated that the entire contents of the written statement are wrong and are specifically denied. The Complainant has reiterated the contents made in the complaint.

The Complainant further stated that the Respondent has admitted that the cash collected in the Gurgaon Chapter of the NIRC of the ICSI (hereinafter referred to as the "Chapter") was not being deposited on the following day in the bank on regular basis and that only the amount left after paying expenses was being deposited in the bank. This practice was wrong and against the accounting procedure according to which, the cash collected by the Chapter was required to be deposited in the bank on the following day and any amount required for meeting expenses of the Chapter was required to be withdrawn from the bank as and when required, which the Respondent should have ensured. It is also stated that, the plea of the Respondent that the staff of the Chapter was not following his instructions from time to time, is not tenable and is clearly by way of an afterthought in as much as he never brought this fact to the notice of the Chairman / Secretary of the Chapter and / or to the Institute for taking any remedial measures. The Respondent cannot, therefore, disown his



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responsibility for not acting to safeguard the interest of the Chapter and the Institute.

The Complainant further stated that it was the duty of the Respondent after taking assignment of the Treasurer in the Chapter, to ensure that the charge was handed over to him in writing by the previous incumbent. In case, the charge was not handed over, he should have brought this fact to the notice of the Chairman / Secretary of the Chapter and / or to the Institute for taking appropriate remedial action. But this was not done by the Respondent. It is also wrongly stated by the Respondent that there was no proper system of handling cash in the Chapter. In fact, the Company Secretaries Chapter Guidelines, 1983 read with the Financial Guidelines of the Institute clearly prescribes the detailed procedure to be followed in managing the affairs of the Chapter.

The Complainant further stated that all cash collected by the Chapter under various heads is required to be deposited on the following day in the bank. The expenditure, if any, of the Chapter is to be met by withdrawing the cash from the bank as and when required. The Respondent did not stop a wrong practice of deducting the petty cash for meeting expenses of the Chapter from the collection made by the Chapter and depositing balance amount in the bank. Instead of stopping the aforesaid wrong practice he himself followed it and is guilty of professional misconduct.

The Complainant further stated that in view of the aforesaid, the allegations of the Respondent that the complaint is absolutely frivolous, vexatious, malicious, tortuous, defamatory and politically motivated and should be quashed immediately are wrong and denied. All the contents made in the complaint are reiterated.



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8. 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-

*"On examination of the complaint, written statement, rejoinder and other material on record, it is observed that the complaint relates to the misappropriation of funds of the Gurgaon Chapter.*

*A settlement note dated 2<sup>nd</sup> March, 2012 of Gurgaon Chapter states that an amount of Rs. 6,532/-has been recovered from the Respondent through cash vide Gurgaon Chapter Acknowledgement No. 5419 dated 2<sup>nd</sup> March, 2012.*

*The Respondent has admitted that the cash collected in the Gurgaon Chapter of the NIRC of the ICSI was not being deposited on the following day in the bank on regular basis and that only the amount left after paying expenses was being deposited in the bank.*

*The practice adopted by the Respondent was against the accounting procedure according to which, the cash collected by the Chapter was required to be deposited in the bank on the following day and any amount required for meeting the expenses of the Chapter was required to be withdrawn from the bank as and when required, which the Respondent should have ensured as a Treasurer of the Chapter which was not done. The duty cast upon the Treasurer of the Chapter was out rightly marginalized by the Respondent and he cannot take shelter of wrong surmises which he has detailed in his defence. This is clear cut case of circumventing the established guidelines.*

*In view of the foregoing, the Respondent is prima-facie 'Guilty' of professional misconduct under Clause (1) of the Part II of the Second Schedule of the Company Secretaries Act, 1980 as he contravened the*



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*Company Secretaries Chapter Guidelines, 1983 and the Financial Guidelines issued by the Council of the ICSI."*

9. The Disciplinary Committee at its meeting held on 19<sup>th</sup> February, 2013 had considered the *prima-facie* opinion dated 8<sup>th</sup> February, 2013 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) 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.
10. Accordingly, copy of the *prima-facie* opinion of the Director (Discipline) dated 8<sup>th</sup> February, 2013 was forwarded to the Respondent *vide* letter dated 20<sup>th</sup> February, 2013 asking him to file the written statement along with the supporting documents and list of witnesses, if any, to the Disciplinary Directorate with a copy to the Complainant by 6<sup>th</sup> March, 2013. A copy of the *prima-facie* opinion of the Director (Discipline) dated 8<sup>th</sup> February, 2013 was also forwarded to the Complainant *vide* letter dated 20<sup>th</sup> February, 2013 asking to file the rejoinder to the written statement along with supporting documents and list of witnesses, if any, to the Disciplinary Directorate by 20<sup>th</sup> March, 2013.
11. The letter sent to the Respondent forwarding therewith the *prima-facie* opinion of the Director (Discipline) was returned undelivered and hence, *vide* letter dated 25<sup>th</sup> February, 2013 the *prima-facie* opinion of the Director (Discipline) was again sent to the Respondent asking him to submit the written statement by 11<sup>th</sup> March, 2013. Further, *vide* letter dated 25<sup>th</sup> February, 2013 the Complainant was also given time to submit the rejoinder to the written statement by 25<sup>th</sup> March, 2013.
12. The Respondent *vide* letter dated 8<sup>th</sup> March, 2013 requested for extension of time up to 10<sup>th</sup> April, 2013 for submission of the written statement; which



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was granted up to 25<sup>th</sup> March, 2013 *vide* letter dated 11<sup>th</sup> March, 2013. A copy of the letter was also sent to the Complainant asking to submit the rejoinder by 8<sup>th</sup> April, 2013. The Respondent *vide* letter dated 25<sup>th</sup> March, 2013 has once again requested for extension of time up to 24<sup>th</sup> April, 2013.

13. The provision *inter-alia* governing the grant of additional time for filing the written statement to the *prima-facie* opinion of the Director (Discipline) is as under:

**"18. Procedure to be followed by the Committee**

(1) .....

(2) .....

(3) The Committee shall inform the Respondent, as the case may be to file a written statement, within such time as may be specified:

Provided that the Committee may give him additional time for submitting his written statement, on application by the Respondent on his adducing sufficient reasons to the satisfaction of the Committee for seeking additional time.

Provided further that such additional time *shall not be given more than once* and if the Respondent still does not submit a written statement, the Committee shall presume that he has no further submissions to make and shall proceed to decide the case on merits."

14. The written statement dated 16<sup>th</sup> April, 2013 to the *prima-facie* opinion of the Director (Discipline) was received from the Respondent *vide* e-mail dated 18<sup>th</sup> April, 2013. The Committee after considering the material on record decided that a copy of the written statement to the *prima-facie* opinion of the Director (Discipline) received from the Respondent be sent to the Complainant asking to file the rejoinder to the written statement of the Respondent along with the list of witnesses, if any. The Committee further decided to call the parties to appear before the Committee at its next meeting.



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15. Accordingly, *vide* letter dated 26<sup>th</sup> April, 2013, the Complainant was asked to submit the rejoinder to the written statement along with supporting documents and list of witnesses, if any, to the Disciplinary Directorate.
16. Further, *vide* letters dated 6<sup>th</sup> May, 2013 the parties were called upon to appear before the Committee at its meeting on 4<sup>th</sup> June, 2013.
17. The Complainant *vide* letter dated 31<sup>st</sup> May, 2013 submitted the rejoinder. Further, *vide* letter dated 4<sup>th</sup> June, 2013, the Complainant requested to adjourn the matter. Shri Ravi Shankar Chauhan, the Respondent appeared in person and submitted the written submissions dated 4<sup>th</sup> June, 2013 and sought adjournment. He also requested for a copy of the rejoinder submitted by the Complainant which was given to him forthwith. The Disciplinary Committee took note of the above and after considering the request of the parties, adjourned the matter.
18. The Respondent and the Complainant *vide* letters dated 9<sup>th</sup> July, 2013 were called upon to appear before the Disciplinary Committee on 30<sup>th</sup> July, 2013.
19. Shri Ravishankar Chauhan, the Respondent appeared before the Committee. The Committee noted that the Complainant *vide* e-mail dated 29<sup>th</sup> July, 2013 expressed inability to appear before the Committee on medical grounds. The Committee considered the same and communicated to the Respondent about the same and thereafter adjourned the hearing.
20. The parties *vide* letter dated 9<sup>th</sup> October, 2013 were called upon to appear before the Disciplinary Committee on 1<sup>st</sup> November, 2013. The parties *vide* letter dated 14<sup>th</sup> October, 2013 were informed that the



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hearing of the Disciplinary Committee scheduled to be held on 1<sup>st</sup> November, 2013 has been postponed.

21. The parties vide letters dated 30<sup>th</sup> October, 2013 were called upon to appear before the Disciplinary Committee on 25<sup>th</sup> November, 2013.
22. Ms. Meenakshi Gupta, Joint Director, ICSI along with Mr. G R Wadhawa, Assistant Director, ICSI-NIRC and Mr. Animesh Srivastava, Executive Officer, Gurgaon Chapter appeared on behalf of the Complainant before the Committee and made oral submissions.
23. Shri Ravishankar Chauhan, the Respondent appeared in person before the Committee and made oral submissions.
24. The Committee heard the parties. After considering the material on record, the Committee concluded that the Respondent is *prima-facie* 'Guilty' of professional misconduct under Clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980 as he contravened the Company Secretaries Chapter Guidelines, 1983 and the Financial Guidelines issued by the Council of the ICSI.
25. The Committee in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 decided to afford an opportunity of being heard to the Respondent before passing any order under Section 21B(3) of the Company Secretaries Act, 1980.

  
**S K Tuteja**  
Member

  
**B Narasimhan**  
Member

  
**S N Ananthasubramanian**  
Presiding Officer

Date: 13<sup>th</sup> January, 2014.

