

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
ICSI/DC: 164/2012

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

Date of Decision: 25th November, 2013

Shri Dibakar Chatterjee

....Complainant

Vs

Shri Prabhat Kumar Banerjee, FCS -1192

....Respondent

ORDER

1. A complaint dated 1st November, 2012 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 Mr. Dibakar Chatterjee (hereinafter referred to as the 'Complainant') against Mr. Prabhat Kumar Banerjee, FCS-1192 (CP No. 2591) (hereinafter referred to as the 'Respondent').
2. The Complainant *inter-alia* alleged that the Respondent while holding the Certificate of Practice of the Institute has accepted the position of Company Secretary with M/s. Snow Lion Foods Private Limited.
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 12th November, 2012 calling upon him to submit the written statement followed by a reminder dated 7th December, 2012 which was returned back undelivered on 24th December, 2012. An email and a letter dated 26th December, 2012 was



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sent to the Respondent calling upon him to submit the written statement. An e-mail dated 1st January, 2013 was received from the Respondent asking for additional time to submit the written statement. The reminder dated 26th December, 2012 sent to the Respondent was received back undelivered on 11th January, 2013. The Respondent submitted the written statement dated 27th January, 2013 wherein he *inter-alia* stated about the background of the case and admitted to have been working as a whole time Company Secretary while holding the certificate of practice. The Respondent also admitted to have been working with one Switz Group and also working in seven other companies as a Company Secretary. He also stated about his sharing of his emoluments with another person

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 5th February, 2013 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 19th February, 2013.
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 the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (1) Part II of the First Schedule of the Company Secretaries Act, 1980 as he has paid / agreed to pay part of his emoluments to another person. The Respondent is also *prima-facie* 'Guilty' of professional misconduct under clause (1) Part II of the Second Schedule of the Company Secretaries Act, 1980 as he has contravened the Resolution dated the 12th May, 1991 passed by the Council of the Institute prohibiting the members holding the Certificate of Practice to engage in any business or occupation other than Practising as Company Secretary without general or specific permission of the Council.



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6. The Disciplinary Committee at its meeting held on 22nd April, 2013 considered the *prima-facie* opinion dated 8th April, 2013 of the Director (Discipline); the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) dated 8th April, 2013 that the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (1) Part II of the First Schedule of the Company Secretaries Act, 1980 and clause (1) of the Part II of the Second Schedule of the Company Secretaries Act, 1980 as he has contravened the Resolution dated the 12th May, 1991 passed by the Council of the Institute prohibiting the members holding the Certificate of Practice to engage in any business or occupation other than Practising as Company Secretary without general or specific permission of the Council. The Disciplinary Committee 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, the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 25th April, 2013 asking them to submit the written statement and rejoinder respectively.
8. The Respondent *vide* e-mail dated 5th May, 2013 requested for extension of one week time for submitting the written statement, which was granted *vide* letter dated 6th May, 2013.
9. The Respondent *vide* letter dated 10th May, 2013 submitted the written statement, which was forwarded to the Complainant *vide* letter dated 14th May, 2013 asking him to submit the rejoinder. However, no rejoinder was received.
10. The Respondent and the Complainant were called upon to appear before the Disciplinary Committee on 30th July, 2013 *vide* letters dated 14th



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June, 2013. The envelope containing the said letter sent to the Respondent was received back undelivered. Thereafter, an e-mail dated 5th July, 2013 was sent to the Respondent calling upon him to appear before the Disciplinary Committee on 30th July, 2013. However, no response was received from the Respondent.

11. The parties did not appear before the Committee on 30th July, 2013. The Committee noted the same and decided to provide last and final opportunity to the parties to appear before the Committee.

12. The parties *vide* letter dated 9th October, 2013 were called upon to appear before the Disciplinary Committee on 1st November, 2013. The parties *vide* letter dated 14th October, 2013 were informed that the hearing of the Disciplinary Committee scheduled to be held on 1st November, 2013 has been postponed.

13. The parties *vide* letters dated 30th October, 2013 were accordingly called upon to appear before the Disciplinary Committee on 25th November, 2013.

14. The Disciplinary Committee at its meeting held on 25th November, 2013 noted that none of the parties have appeared before the Committee. The Committee further noted that the Complainant *vide* letter dated 1st November, 2013 (received on 25th November, 2013) *inter-alia* has requested the Committee to decide the matter on merits.

15. The Committee after detailed deliberations and considering the material on record; nature of issues involved and in totality of the circumstances of this case; concluded that the Respondent is 'Guilty' of professional misconduct under Clause (1) of Part II of the First Schedule and Cause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980 as



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the Respondent had paid / agreed to pay part of his emoluments to another person and has also contravened the Resolution dated the 12th May, 1991 passed by the Council of the Institute prohibiting the members holding the Certificate of Practice to engage in any business or occupation other than Practising as Company Secretary without general or specific permission of the Council.

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 an order under Section 21B(3) of the Company Secretaries Act, 1980.

S K Tuteja
S K Tuteja
Member

B Narasimhan
B Narasimhan
Member

S N Ananthasubramanian
S N Ananthasubramanian
Presiding Officer

Date: 13th January, 2014

