

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

DC: 70/2010

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

M/s. Sakal Paper Limited

-The Complainant

Vs

Shri C H Joshi (ACS-7472)

-The Respondent

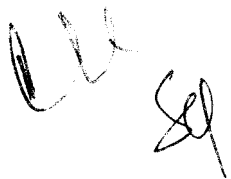
ORDER

1. The Institute had received a complaint dated the 15th May, 2010 filed in Form -I by M/s. Sakal Papers limited (hereinafter referred to as the 'Complainant ') against Shri C. H. Joshi, ACS-7472 (hereinafter referred to as the 'Respondent ').
2. Pursuant to sub-rule (3) of Rule 8 of the (Procedure of Investigations , of Professional and other Misconduct , and Conduct of Cases) Rules, 2007 (The Rules), a copy of the complaint was forwarded to the Respondent *vide* letter dated the 24th May, 2010 asking him to send his written statement. The Respondent submitted the written statement dated the 14th June, 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 18th June, 2010 asking him to submit the rejoinder to the same. The Complainant submitted the rejoinder dated the 3rd July, 2010.
3. The brief facts as stated by the Complainant are that the Complainant Company had contested a case in the Supreme

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Court against one Ms. C L Parulekar wherein the Respondent being the Company Secretary & Chief Accountant as well as Employee Director represented the Complainant Company. The said case was decided on the 18th March, 2005, wherein the Supreme Court directed the Complainant Company to abide by three conditions. One of the conditions was allotment of certain *pro-rata* shares to the defendant (i.e. Ms. C L Parulekar) on the basis of her prevailing shareholding. The Complainant has further submitted that Ms. C L Parulekar is also the beneficiary of one 'Lila Trust' created in her name and certain shares of M/s. Sakal Papers Ltd. (the Complainant) were transferred to the Lila trust for the sole Benefit of Ms. C L Parulekar. The Respondent is a sole Trustee of the said Lila Trust since 1995. Thus, since 1995, the Respondent was acting in dual capacity- Trustee of Lila Trust as well a responsible and senior employee of the Complainant Company. After the Judgment dated the 18th March, 2005 of the Supreme Court, *pro-rata* shares from existing members were transferred to Ms. C L Parulekar and she was also paid compensation. On the 22nd April, 2005, the Respondent, while still in employment of the Complainant company wrote a letter to the Managing Director of M/s. Sakal Papers Limited (the Complainant) on behalf of Lila Trust demanding *pro-rata* shares in M/s. Sakal Papers Limited (the Complainant) to 'Lila Trust' as well. It is pertinent to note that the Respondent till the Supreme Court Judgment, and afterwards, when the calculations for *pro-rata* shareholding was going on along with the lawyers of the Company, the Respondent never gave a hint of allotment of shares to the Lila trust. The Respondent while still in the employment of the Complainant Company, sought opinion of Mr. M P Bendre, Advocate as to whether Lila Trust was entitled to additional shares in M/s. Sakal Papers Limited (the Complainant). On the 20th August, 2005, the Respondent was removed from



employment with immediate effect and was also removed as a Director in Extra Ordinary General Meeting of the company held on the 1st October, 2005. On the 30th September, 2005, the Respondent, on behalf of Lila Trust and Ms. C L Parulekar filed 'Application for Directions' in the Supreme Court demanding shares to Lila Trust as well and asking the Supreme Court to direct the interpretation of its own judgment. However, while attaching proofs to support his case, he attached certain documents such as internal correspondence between the company and its lawyers in the aforesaid petition which as per the Complainant could not have been in his possession otherwise than as a custodian of the records of the company or by an unauthorized act. On the 17th February, 2010, the Respondent filed one more rejoinder to the 'Application for Directions' in which again he has annexed some records of the company viz. minutes of the Board Meeting and also office copies of the forms filed with the Registrar of Companies. The Complainant had stated that the Respondent being the Company Secretary of the Complainant Company it was his duty to protect the interest of the Complainant Company and, if there was conflict in the interest, he should have informed accordingly to the Complainant Company and thereafter would have refrained from acting as the Company Secretary and the member of the Board of directors of M/s. Sakal Papers Ltd. (the Complainant). The Complainant has further stated that the Respondent has misused the trust placed upon him for his own benefit, working methodically against the Complainant Company.

4. The Respondent has denied all the allegations and has *inter-alia* submitted that the complaint has been filed after a delay of five years and does not show any misconduct involving disclosing of any confidential information to outsiders. The Respondent has

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further submitted that real grievance of the Complainant company is that he has approached the Hon'ble Supreme Court and filed an application for directions. The present complaint is an attempt to harass and compel him to withdraw the proceedings before the Hon'ble Supreme Court. The Hon'ble Supreme Court had passed a judgment and order on the 18th March, 2005 giving following directions:

1). that the appellant should be compensated with an amount of Rs. 3 crores to be paid by the Company to the appellant

2). the company will also allot shares to the appellant out of the 17666 shares on par proportionate with the appellant's present shareholding."

5. The Respondent has further submitted that he is entitled in the capacity of Sole Trustee of Lila Trust for 3171 shares so that present shareholding of Lila Trust is maintained at 17.95%. The Complainant Company did not comply with this second direction of the Hon'ble Supreme Court, hence has filed an application for directions on the 30th September, 2005 wherein the Hon'ble Supreme Court was pleased to issue notice. In the said application for application for directions certain documents were attached which were alleged to be stolen. It is pertinent to note that the alleged documents are part of the records of the Hon'ble Supreme Court. The Respondent has further submitted that the Complainant Company itself gave the documents to him in the capacity of Trustee of Lila Trust.

6. The Complainant Company in its rejoinder dated the 3rd July, 2010 has stated that the entire written statement filed by the Respondent is an instrument of overlooking facts and is merely a method to buy time to answer the specific queries on acquiring documents illegally by making wrong use of his employment. The



Complainant Company has further stated that the Respondent has not once answered as to how he got the possession of documents. The Complainant Company has further alleged that the Respondent used his position as a Company Secretary of the Complainant Company unfairly and obtained confidential papers and documents as well as insider information of the Complainant Company and used it and is still using it against the Complainant Company for his own benefit.

7. The Director (Discipline) pursuant to rule 9 of the Rules examined the complaint, written statement, rejoinder and additional information received and was of the *prima facie* opinion that the Respondent is 'guilty' of professional misconduct under clause (2) of Part II of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent has submitted the office copies of the forms before the Supreme Court for which he has not given any explanation. By submitting the office copies of the Forms , filed with the Registrar of Companies, indicates that the Respondent has unauthorizedly taken the Forms from the Complainant company .
8. The *prima facie* opinion of the Director (Discipline) was placed before the Committee in its meeting held on the 7th January, 2011. The Committee considered and agreed with the *prima facie* opinion of the Director (Discipline) and directed him to proceed further in accordance with the Rules.
9. The Complainant Company vide dated the 4th July, 2011 has requested for permitting the withdrawal of the Complaint filed against Shri C H Joshi, the Respondent.



10. The provisions for withdrawal of the complaint contained in Section 21 (5) of the Company Secretaries Act, 1980 provide as under-

(5) Where a Complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.]

11. Further, Rule 6 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 also provide as under –

"6. Withdrawal of a Complaint

The Director, on receipt of a letter of withdrawal of a complaint by the Complainant shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the Complaint

Provided that in case the Director has not yet formed his *prima facie* opinion on such a complaint, he shall place the same before the Board of Discipline, and the Board of Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal."



12. The Committee at its meeting held on the 22nd July, 2011 considered the application for withdrawal of complaint dated the 4th July, 2011 received from the Complainant company, desired that the Director (Discipline) to seek clarification from the Complainant company to provide the circumstances under which he intended to withdraw the complaint. Accordingly, a letter dated the 25th July, 2011 was sent to the Complainant Company asking him to provide the circumstances under which it intended to withdraw the complaint.

13. The Complainant company *vide* letter dated the 23rd July, 2011 (received in the Institute on the 1st August, 2011) stated as under:

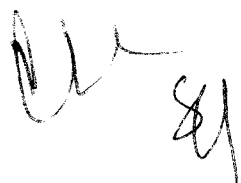
"1. We have already informed you by our aforesaid letter on dated 4th July, 2011 that we wish to withdraw the aforesaid complaint of professional misconduct filed against Shri Chandrasekhar H Joshi.

2. Further considering the clarification by Shri C H Joshi, for being in Possession of document and obtaining opinion of Shri M P Bendre (Advocate), we have withdrawn all allegations and averments made against him in our complaint. And we therefore further request you to drop the proceedings against him, as the complaint stands withdrawn."

14. The Complainant company *vide* letter dated the 8th July, 2011 (received in the Institute on the 16th August, 2011) has also stated as under:

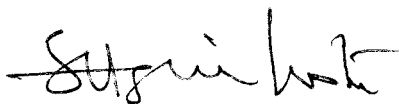
"This has reference to your letter dated the 25th July, 2011. We have already informed you by our aforesaid letter dated the 23rd July, 2011 the clarification and reason behind the withdrawal of the Complaint. Copy of the said letter is attached herewith."

15. The letters dated the 23rd July, 2011 and 3th July, 2011 received from M/s. Sakal Papers Ltd., (Complainant) were placed before the Committee at its meeting held on the 19th September, 2011.



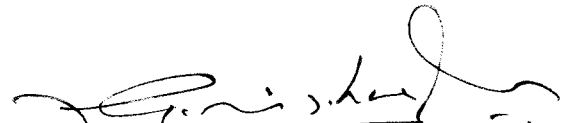
The Committee at its meeting held on the 19th September, 2011 after considering the said letters, decided to seek detailed / elaborated circumstances under which the Complainant company intended to withdraw the complaint. The Committee also decided to seek confirmation from the Respondent on the same.

16. Accordingly, a letter dated the 20th September, 2011 was sent to the Complainant asking him to elaborate the circumstances under which he had decided to withdraw the complaint. A copy of the same was also sent to the Respondent for his confirmation. However, no reply has been received from both the parties.
17. The Committee at its meeting held on 9th December, 2011 noted that no reply has been received in response to the letter dated 20th September, 2011 *supra* from both the parties. In view of the foregoing, the Committee permitted the withdrawal of the complaint and closed the matter.



S. K. Agnihotri, IAS (Retd.)
Member

Dr. S. P. Narang
Member



Gopalakrishna Hegde
Member

P K Mittal
Member



Anil Murarka
Presiding Officer

Date: 05th January 2012