

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

**DC: 88/2010**

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

**M/s. Kalabhavan Studios Ltd.**

**-Complainant**

**Vs**

**Shri Zibi Jose P P**

**-Respondent**

**ORDER**

1. The Institute, had received a complaint dated the 20<sup>th</sup> November, 2010 in Form -I filed by M/s. Kalabhavan Studios Ltd. (hereinafter referred to as the 'Complainant') against Shri Zibi Jose P P, FCS-3205 (CP No. 1222) (hereinafter referred to as the 'Respondent').

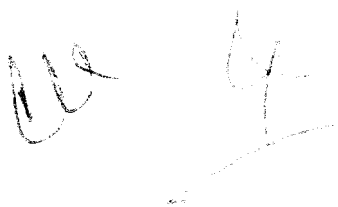
2. Pursuant to sub-rule (3) of rule 8 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a copy of the complaint was forwarded to the Respondent vide letter dated the 20<sup>th</sup> December, 2010 asking him to submit his written statement. A reminder was sent to the Respondent vide letter dated the 22<sup>nd</sup> January, 2011 to submit his written statement. The Respondent submitted his written statement dated the 2<sup>nd</sup> February, 2011. Pursuant to sub-rule (4) of rule 8 of the



Rules, a copy of the written statement was forwarded *vide* letter dated the 10<sup>th</sup> February, 2011 to the Complainant asking him to submit rejoinder to the same. The Complainant submitted its rejoinder dated the 24<sup>th</sup> March, 2011.

3. The Director (Discipline,) pursuant to rule 9 of the Rules, examined the complaint, written statement, rejoinder and additional information received and *prima facie* opined that the Respondent was not engaged as a company secretary in practice (PCS) but was a director of the company. Even, if he was appointed as an advisor, it was the choice of the company and company must have been fully convinced about his capabilities and competence. So long as the Respondent is not rendering the advice in the capacity of a PCS, he cannot be held liable for the professional or other misconduct. If he has defaulted in the capacity of a director, the remedy lies under the Companies Act, 1956 and the Complainant should take up the matter with the appropriate authorities under the said Act. As regards the allegation under Regulation 168 of the Company Secretaries Regulations, 1982, the Complainant has not provided adequate material to substantiate his allegations. In view of the forgoing, the Director (Discipline) was of the *prima facie* opinion that the Respondent was 'not Guilty' of Professional Misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980.

4. The *prima facie* opinion of the Director (Discipline) was placed before the Committee at its 22<sup>nd</sup> meeting held on the 22<sup>nd</sup> July, 2011. The Committee considered the opinion and directed the Director (Discipline) that a letter be sent to the Complainant asking him to provide documentary evidence to substantiate the allegation that the Respondent was appointed as an advisor to the Company.

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Accordingly, letter dated the 27<sup>th</sup> July, 2011 was sent to the Complainant to send the documentary evidence regarding appointment of the Respondent as an advisor to the company.

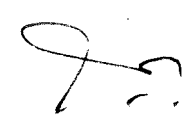
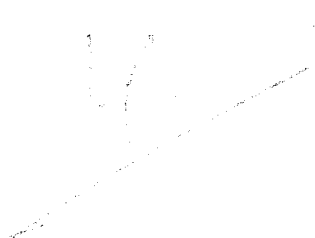
5. M/s. Kala Bhavan Studios Ltd, the Complainant, vide letter dated 06.08.2011 confirmed that—

"The board of directors have in their board meeting dated 11.01.2005 have appointed the Respondent as advisor for secretarial work. He has since been attending the board meeting in his capacity as advisor, till such time he became a director of the company."

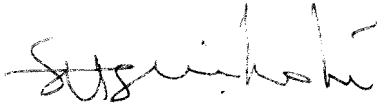
They had also submitted copies of the minutes of the Board meetings held on dated 11.01.2005, 08.09.2005, 11.06.2006, 15.07.2006, and 10.03.2007 respectively.

6. The Committee took note of the aforesaid letter and the minutes of the meetings of the Board of Directors of the Complainant company. The Committee, after considering the evidence provided by M/s. Kala Bhavan Studios Ltd., the Complainant company, came to the conclusion that Mr. Zibi Jose P P , the Respondent, was attending the meetings of the Board of Directors of the Complainant company as an advisor to advise on the secretarial work as and when invited. This was purely an arrangement between the Complainant company and the Respondent.

7. The Committee considered the *prima facie* opinion of the Director (Discipline) dated the 14<sup>th</sup> July, 2011 and the material on record, and came to the conclusion that no case of Professional or other Misconduct as alleged by the Complainant Company under Clause – 2 of Part-IV of the First Schedule and Clauses - 6, 7 and 10 of Part-I and Clauses – 1 and 4 of Part -II of Second Schedule of the



Company Secretaries Act, 1980 could be made out against the Respondent and accordingly, the Committee agreed with the *prima facie* opinion of the Director (Discipline), and concluded that the Respondent is not 'Guilty' of professional or other misconduct and filed the matter.

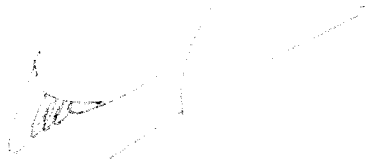


**S. K. Agnihotri,**  
**Member**



**Dr. S. P. Narang**  
**Member**

**Gopalakrishna Hegde**  
**Member**



**P K Mittal**  
**Member**



**Anil Murarka**  
**Presiding Officer**

Date: 