

**THE BOARD OF DISCIPLINE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT  
UNDER THE COMPANY SECRETARIES ACT, 1980**

ICSI/DC/103/2011

Order reserved on : 18<sup>th</sup> January, 2018

Order issued on : 18<sup>th</sup> January, 2018

Shri M R Das, Deputy Director, MCA (ER)

.... Complainant

Vs.

Shri Taposh Roy, FCS - 4544.

....Respondent

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

**ORDER**

1. A complaint dated 12th August, 2011 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 Shri M R Das Deputy Director(ER), MCA (hereinafter referred to as the 'Complainant') against Shri Taposh Roy, FCS - 4544 (hereinafter referred to as the 'Respondent').
2. The Complainant in its complaint inter-alia stated that the MCA had carried out an inspection of the books of accounts and other records of the M/s. Vesuvius India Limited of which the Respondent is the Company Secretary. As per the inspection report of the MCA there have been non-compliances of the provisions of Section 217(1) (e) and 217(2A) of the Companies Act, 1956.
3. The Complainant further stated it is the duty of the Company Secretary/ Company Secretaries in practice who is signing the document to bring to the knowledge of the management about the non-compliance of the provisions of the Act, if any, in the said document. In the instant case there has been a whole time Company Secretary who was required to intimate the management about the non-compliance of the provisions of Section 217 of the Act in the Directors' Report.
4. The Respondent denied the allegation levied against him and *inter-alia* stated that he is the Company Secretary of M/s. Vesuvius India Limited. The Respondent *inter-alia* stated that the four instances of non-compliance of the



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provisions of the Companies Act, 1956 are alleged violations as observed by the Complainant and for which Show Cause Notices and subsequently criminal proceedings have been initiated by Shri A K Sethi, Assistant ROC, West Bengal against the directors only, but not against the company Secretary or the company. The Respondent further stated that the directors have initiated legal proceedings against the alleged violations before the Hon'ble Calcutta High Court. The proceedings against three of the directors have been withdrawn in all these four instances of non-compliance. The Respondent has further stated that earlier, separate proceedings were initiated by the directors, the Company Secretary and the company under Section 633 of the Act in the Hon'ble Calcutta High Court where also an injunction order has been passed. The Respondent further stated that if the alleged non-compliance has not yet been finally adjudicated/confirmed, so how the Complainant can arrive at a finding that the company / Board of Directors have not complied with the provisions of the Act and also as per the allegations, he as a Company Secretary had not intimated to the Board about the non-compliance. Also, the Complainant is not in a position to say whether he has intimated or not to the Board, as it is his mere assumption.

5. The then Director(Discipline) *vide* his *prima-facie* opinion dated 9<sup>th</sup> April, 2013 had *inter-alia* opined that the subject matter is sub-judice before the Hon'ble Kolkata High Court and therefore, the matter be kept in abeyance till it is decided by the Hon'ble Kolkata High Court. Further, the then Disciplinary Committee on 22<sup>nd</sup> April, 2013 had agreed with the *prima-facie* opinion of the Director (Discipline) and had *inter-alia* kept the matter in abeyance till it is decided by the Hon'ble Kolkata High Court.
6. Accordingly , the status of the aforesaid case was sought for the Respondent on regular basis to which the Respondent *vide* his letter(s) dated 5th August, 2014, 12th January, 2015, 19th May, 2015, 4th January, 2016, 11th April, 2016, 27th June, 2016 and 3rd July, 2017 has provided that all the matters relating to this compliant are awaiting hearing and final order from Hon'ble High Court at Kolkata pursuant to application u/s 482 of Criminal Procedure Code made by the Directors of M/s Vesuvius India Limited. The High Court granted stay and cases have been listed for hearing.
7. The matter was placed before the Disciplinary Committee on 5<sup>th</sup> August, 2017 for its consideration . The Committee was further briefed that that there is no order of the Hon'ble High Court of Kolkata put on record by any of the parties wherein there is a stay of the disciplinary proceedings before the Institute. The Disciplinary Committee advised the Director (Discipline) to proceed with the formation of *Prima facie* opinion on merits.



*C. S. Manjunath*  
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*CS*

8. Accordingly, the Director(Discipline) formed her further Investigation Report dated 23<sup>rd</sup> September,2017, wherein she inter-alia observed that pursuant to the order of the MCA an inspection of the books of accounts and other records of M/s. Vesuvius India Limited under Section 209A of the Companies Act,1956 (Act) was conducted and certain discrepancies were found as narrated in the complaint. Further, the Respondent is the Company Secretary of M/s. Vesuvius India Limited., and that as per the Respondent 10 Show Cause notices consisting of 20 counts (including the four non-compliances referred to in the complaint) of alleged violation of various provisions of the Companies Act, 1956 had been issued to the company, its directors and the Company Secretary (as applicable).The Respondent while giving a brief reply to the discrepancies raised by the Complainant has stated that this matter pertaining to discrepancies raise in the inspection is also pending before Hon'ble Calcutta High Court on a petition filed by the Directors for quashing of the proceedings under section 482 of the Code of Criminal Procedure, 1973 and an injunction has been obtained from the Hon'ble Court.
9. Further as per a Circular No.7/72 Dated 12th May, 1972 issued by the Ministry of Law Justice & Company Affairs (now MCA), Company Secretary cannot be held responsible for errors etc. in the balance sheet/books of accounts of the company just because they have signed the Balance Sheet of the company in their professional capacities as 'Company Secretary'. Therefore, it can be seen that the allegations in the complaint are against the company of which the Respondent is a company secretary .
10. Further, since, the subject matter of the this complaint is *sub-judice* before the Hon'ble Calcutta High Court and the alleged violation has not yet been proved against the Company/ Company Secretary. Therefore, the Respondent is prima-facie 'Not Guilty' of Professional misconduct or other misconduct under the Company Secretaries Act, 1980. The Complainant if so desire, is at liberty to file the complaint against the concerned Company Secretary in case there is any finding against the Company Secretary by the High Court of Calcutta and same is within the realm of the Company Secretaries Act,1980.
11. The Board of Discipline on 18<sup>th</sup> January, 2018, after considering the aforesaid observations, material on record, prima-facie opinion of the Director (Discipline) and the further investigation report of the Director(Discipline) and keeping all the facts and circumstances of the case, agreed to the further investigation report of the Director(Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries



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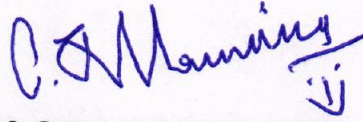
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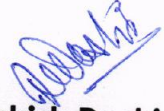
Act, 1980. The Board further granted liberty to the Complainant to file a fresh complaint in case there are any finding against the Respondent by the High Court of Calcutta and same is within the realm of the Company Secretaries Act,1980



**CS Dinesh Chandra Arora  
Member**



**CS C Ramasubramaniam  
Member**



**CS Ashish Doshi  
Presiding Officer**

