

BEFORE THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 139/2012

In the matter of complaint of professional or other misconduct filed by Shri Abbas Lakdawalla, FCS-2988 (CP No. 4052) against Shri Punit Kumar Goyal, ACS-26378 (CP No. 9503).

Date of Decision: 30th November, 2013

Coram: Sudhir Babu C, Presiding Officer
Umesh H Ved, Member
Sutanu Sinha, Member

ORDER

1. A complaint in Form I dated 21st 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 Shri Abbas Lakdawalla, FCS -2988 (CP No. 4052) (hereinafter referred to as the 'Complainant') against Shri Punit Kumar Goyal, ACS – 26378 (CP No. 9503)(hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* stated that the Respondent had undergone training with him as a Management Trainee in the year 2009-10 and he had not only trained the Respondent but also financially supported him as he was away from his family. The Complainant has *inter-alia* alleged that during the course of the training the Respondent had the opportunity to interact with lots of his clients and on the basis of the privileged information, the Respondent has indirectly contacting his clients to procure the



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professional work by undercutting fees. He also alleged that the Respondent has undertaken assignments with his clients without his NOC and started working with his clients who have not paid him professional fees till date. He further stated that the said clients were more than happy to save on pending fees payable to him and at the same time got the job done at reduced fees from the Respondent. The Complainant further submitted that he is a senior fellow member and in practice for last 15 years and was diagnosed for cancer and currently recuperating from treatment and this act of the Respondent is not conducive to his health and mental frame of mind. He has requested to take disciplinary action and to stop the Respondent from (i) indulging in such practice to secure the professional assignment by unfair means, (ii) soliciting his clients or professional work without his NOC and (iii) providing Compliance Certificates to his clients by quoting lower rates and restrain the Respondent to charge lower fees / undercutting fees to attract the clients.

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 28th May, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 8th June, 2012 wherein the Respondent has admitted to have joined the Complainant as a Management Trainee and stated that during the course of training, he had worked sincerely and had the opportunity to interact with the clients of the Complainant which was one of the indispensable parts of training; the Complainant and the clients also praised him for his hard work and devotion during his training. He further stated that after completing the



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training period he had requested the Complainant to retain him on some basis but the Complainant didn't agree and he was left with no option but to find his own way in this professional world. He further stated that his progress was slow but steady and at the end it was the satisfaction of the clients through timely delivery of service and professionally acceptable behaviour which helped him to establish and stand in practice. He further stated that it was the outcome of his hard work and sincere efforts towards providing professional service which lead the clients to approach him. The Respondent further stated that he has never contacted any of the Complainant's clients with the intention of procuring professional work but had accepted work of the clients who had approached him after fair verification that there is no dispute with the previous PCS and the professional fee was mutually agreed between him and the Client. He also stated that every PCS decides his professional fee on his own and it may vary from client to client and from work to work. The factors affecting are nature and quality of work, relationship with the client and quantum of work, likely man-hour requirement, complexity of work and any prescription by the ICSI, seniority of the client or of the PCS etc. Thus, there is no question of undercutting fees. He further stated that he had taken utmost care before accepting any new client irrespective of who the previous PCS was and he always observed high professional ethics. He further stated that any such client who is indebted to the Complainant for the professional work done by him he is ready to use his professional influence to clear the legitimate dues of the Complainant on providing the names of the clients and the bill-wise due detail. He also stated that if required he would also try to bring the client before the Institute or the Disciplinary Committee. The



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Respondent further stated that the Complainant was suffering from cancer and had undergone a treatment for such a fatal disease; this itself proves that he was not able to render proper professional services. This might be the cause that his clients were diverted.

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 12th June, 2012 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 26th June, 2012 wherein the Complainant *inter-alia* stated that he totally disagrees with the Respondent that he never contacted his clients. He further stated that the Respondent had telephoned all his contacts and clients to inform them that he had started his practice with an object that some work should be allotted to him. The Complainant admitted that there is no proof of such action but his well-wishers had called him to report this action of the Respondent.

5. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record observed that the Respondent has accepted the assignment from the Complainant's clients without first communicating with him in writing which contravenes clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980. Moreover, when the Respondent happens to be the Complainant's trainee and knowing fully that the clients with whom he is dealing, are of the Complainant's. The Respondent is, therefore *prima-facie* 'Guilty' of Professional Misconduct for contravening clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980.



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6. The Board of Discipline at its meeting held on 18th March, 2013 had considered the *prima-facie* opinion of the Director (Discipline) dated 4th March, 2013; other material on record and thereafter advised the Director (Discipline) to inquire from the Complainant about the name of his clients who have been approached by the Respondent and the Respondent has undertaken the assignment of those clients without first communicating with the Complainant in writing.

7. Accordingly, the Complainant was asked to provide the requisite information *vide* letter dated 22nd March, 2013. The Complainant *vide* letter dated 6th April, 2013 submitted the list of companies approached by the Respondent. Further, *vide* letter dated 25th April, 2013 the Complainant was asked to specify the work / particulars of the work of each of the companies mentioned in his letter dated 6th April, 2013 under taken by the Respondent.

8. The Complainant *vide* letter dated 6th April, 2013 submitted the copies of the challans and e-Forms filed by the Respondent. The copy of the letter dated 6th April, 2013 of the Complainant along with the annexure was forwarded to the Respondent *vide* letter dated 7th May, 2013 asking him to submit his comments on the same. However, the said letter was received back in the Institute as undelivered. The copy of the said letter dated 6th April, 2013 of the Complainant was again sent to the Respondent *vide* letter dated 22nd May, 2013. However, it also returned undelivered.



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9. The Board of Discipline took note of the above and after considering the material on record, decided that once again the clarifications be sought from the Respondent on the documents supplied by the Complainant and the letter to be sent to his residential and professional addresses as available with the Directorate of Membership of the Institute.
10. Accordingly, vide letter dated 20th June, 2013 the documents received from the Complainant were again sent to the Respondent at his address as per the records of the Institute asking him to submit his clarifications on the same. The Respondent vide letter dated 27th June, 2013 submitted his comments on the same wherein he *inter-alia* stated that he had communicated via e-mail to the former Company Secretary (Complainant) before accepting any professional work and also attached the copies of the emails.
11. On careful examination of the complaint, written statement, rejoinder and other material on record, the Director (Discipline) observed that the Respondent had sent an email dated 6th May, 2012 to the Complainant seeking his no objection for taking up the assignment from CA Gautam Parekh. Further, the Respondent has attached the NOC given by the Complainant to Shri Mukesh Kumar Saraswat. It was also observed that the Respondent has failed to submit/file any communication sent by him to the Complainant before accepting the assignments from the Complainant's clients without first communicating with him in writing which contravenes clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980. Moreover, when the Respondent happens to be the Complainant's trainee and knowing fully that the clients with whom



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he is dealing are of the Complainant's. Hence, the Director (Discipline) continued to hold his *prima-facie* opinion dated 4th March, 2013 intact; and placed the same before the Board on 13th August, 2013 for its consideration.

12. The Board of Discipline at its meeting on 13th August, 2013 had considered the *prima-facie* opinion dated 4th March, 2013 of the Director (Discipline). The Board also took note of the letter dated 27th June, 2013 of the Respondent. The Board after considering the material on records, agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is 'Guilty' of professional misconduct for contravening clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980 and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
13. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 14th August, 2013 calling upon them to submit the written statement and the rejoinder respectively. However, the said letter addressed to the Respondent was received back in the Institute as undelivered. A letter dated 30th August, 2013 along with a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent to submit the written statement; a copy of the same was also addressed to the Complainant giving him additional time to submit the rejoinder.



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14. The Respondent *vide* his letter dated 2nd September, 2013 submitted the written statement to the *prima-facie* opinion of the Director (Discipline). Copy of the written statement received from the Respondent was sent to the Complainant *vide* letter dated 6th September, 2013 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 19th September, 2013.
15. The parties were called upon to be appear before the Board of Discipline on 30th November, 2013 *vide* letters dated 12th November, 2013.
16. The Complainant *vide* letter dated 19th November, 2013 *inter-alia* expressed his inability to attend the hearing on medical grounds. He further requested the Board to consider all his previous submissions before passing any order in the case and to ask the Respondent as to how many other PCSs work the Respondent has procured on his merits and what percentage of clients include his clients whom he has pinched by unfair means.
17. On 30th November, 2013 the Board of Discipline was appraised about the aforesaid letter received from the Complainant. The Respondent appeared in person before the Board and made oral and written submissions. The Respondent further admitted that it was morally wrong on his part to accept the work from the clients of the Complainant without his consent
18. The Board of Discipline considered the letter dated 19th November, 2013 of the Complainant; oral submissions made by the Respondent; the material on record; concluded that the



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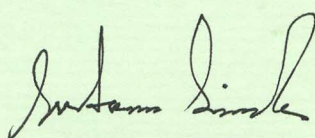
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Respondent is 'Guilty' of Professional Misconduct for contravening Clause (8) of Part 1 of the First Schedule of the Company Secretaries Act, 1980. More so, when the Respondent happens to be the Complainant's trainee and knowing fully that the clients with whom he is dealing are of the Complainant's and decided to afford an opportunity of being heard to Mr. Punit Kumar Goyal, ACS – 26378 (CP No.9503), the Respondent before passing any order under Section 21A (3) of the Company Secretaries Act, 1980.

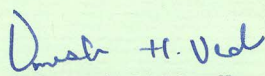
20. The Board conveyed its decision to Mr. Punit Kumar Goyal, ACS – 26378 (CP No. 9503), the Respondent. Thereafter, the Respondent admitted in writing that he was morally wrong and requested the Board to take a lenient view in the matter.
21. The Board took note of the written request of the Respondent; material on record; and in the totality of the issues involved in the matter, passed the following order:

“Reprimand”


The order shall be effective after the expiry of 30 days of issue of this order.



(Sutanu Sinha)
Member



(Umesh H Ved)
Member



(Sudhir Babu C)
Presiding Officer

Date: November 30, 2013

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