

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: 146/2012

Order Reserved On: 12th August, 2019

Order Issued On: 29th August, 2019

**M/s. Sunrise Agriland
Development Research Pvt. Ltd.
Through: Shri Atul Gupta**

....Complainant

Vs

CS Shailendra Kumar Gupta, FCS 8209 (CP No. 7939)

....Respondent

CORAM:

Shri Deepak Kumar Khaitan, Presiding Officer

Shri Manish Gupta, Member

PRESENT

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Gaurav Tandon, Assistant Director

ORDER

1. A Complaint dated 20th June, 2012 in Form 'I' was filed by M/s. Sunrise Agriland Development Research Pvt. Ltd. (Thru: Shri Atul Gupta, hereinafter referred to as 'the Complainant') against Shri Shailendra Kumar Gupta, FCS 8209 (CP No. 7939) (hereinafter referred to as 'the Respondent') under Section 21 of the Company Secretaries Act, 1980 ('the Act') 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').
2. The Complainant inter-alia stated that he is a Director of M/s. Sunrise Agriland Development & Research Pvt. Ltd., Jaipur. He further stated that the Respondent was engaged in M/s. Sunrise Agriland Development & Research Pvt. Ltd., Jaipur as a PCS for last 6 years and the work related to the Annual Audit of the Company for the year 2009-10 was done in usual manner as it was done in the past. The Complainant also stated that the dispute arose when he was informed on 20th March, 2012 by Shri Mahendra Singh, Sub Inspector, Shipra Path Police Station, Jaipur regarding complaint filed by the Shri N.L. Soni, Chartered Accountant alleging that the audit of the Company for the year 2009-2010 was not done by him and the document was also not signed by him. The Complainant further stated that the Investigating Officer enquired from him about the same and also stated that at the time of investigation, the Respondent denied that he had audited the Company but it can be seen from the Audit Report of the Company



Manish Gupta

Shri Khaitan

that the audit of M/s. Sunrise Agriland Development & Research Pvt. Ltd., was done through the Respondent. The Complainant further stated that he is completely unaware as to under what circumstances the Respondent has got the audit done for the year 2009-2010 and why the signature of the auditor was falsely made by the Respondent. The Complainant further stated that the Respondent has raised the invoice for the audit fees for certifying the Balance Sheet.

3. The Respondent in his Written Statement dated 24th July, 2012 denied the allegations made against him and *inter-alia* stated that the Auditor was appointed in Annual General Meeting of the Company by the approval of shareholders of the Company. Shri Atul Gupta ('the Complainant') is shareholder as well as Director of the Company. M/s N K Soni & Co. Chartered Accountants has been duly appointed in AGM. Therefore, the allegations of the Complainant are not fair. The FIR has been reported against the Company by Shri N K Soni Proprietor N K Soni & Co., Chartered Accountants for the year 2009-2010 but the audit of 2008-2009 was also conducted by Shri N K Soni & Co., Chartered Accountants for the Company, as a Company Secretary in whole time practice. His role is only to advise about the Company Law matters which are brought to his knowledge by the directors and to file the Audited Balance Sheet and Annual Returns of the Company which are given to him for filing by the directors of the Company. In this case also the Respondent had filed the Balance Sheet with the MCA. The said form also had the digital signature of the director of the company (the Complainant, Shri Atul Gupta) for declaration that all the facts given in the e-form are true and correct. The Respondent further stated that a FIR has been filed by Shri N. L. Soni Proprietor N.K. Soni and Co. Chartered Accountants, against the Company and the same is pending before Hon'ble Court, Jaipur, Rajasthan. The FSL report for matching the signature is pending and the report will be submitted to the Institute as soon the decision of court will come. It is worth mentioning that the Audit for the previous year 2008-09 of the said company was also conducted by M/s. N. K. Soni & Co., Chartered Accountants.
4. The Complainant in his rejoinder dated 18th August, 2012 mainly reiterated his earlier submissions and made certain additional submissions.
5. The then Director (Discipline) in *prima-facie* opinion dated 24th May, 2013 after examination of the Complaint, Written Statement, Rejoinder and other material on record, observed that the allegations are with regard to a forgery case (allegations for forged signature of Shri N L Soni, CA on the Audit Report for the year 2009-10 of M/s. Sunrise Agriland Development Research Pvt. Ltd.) which is pending adjudication before the Chief Metropolitan Magistrate, (CMM) Jaipur and the same has been brought to the notice of the Institute. Therefore, the Complaint may be kept in abeyance, till the Chief Metropolitan Magistrate, Jaipur, decides this case of forgery and the concerned party(ies) file the copy of the order/judgement of the CMM in the Disciplinary Directorate of the Institute.
6. The Disciplinary Committee at its meeting held on 4th June, 2013 had considered the *prima-facie* opinion of the Director (Discipline) dated 24th May, 2013 and agreed with the observations of the Director (Discipline) that the Complaint be kept in abeyance, till the Chief Metropolitan Magistrate, Jaipur, decides the case of forgery; and the concerned party(ies) file a copy of the order/judgement of the CMM in the Disciplinary Directorate of the Institute.
7. The decision of the Disciplinary Committee was informed to both the parties and the Respondent was time to time asked to provide the status of petition bearing



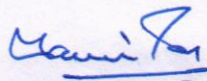
Mani Singh

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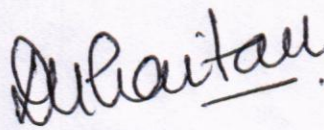
No. 436/12 pending adjudication before the Chief Metropolitan Magistrate, (CMM) Jaipur which he provided from time to time vide his communications dated 11th August, 2014, 22nd Jan., 2015, 25th May, 2015, 27th December, 2015, 8th April, 2016, 4th July, 2016, 11th July, 2017, 20th May, 2018, 1st October, 2018, 2nd February, 2019 wherein the Respondent apprised the status of petition before CMM, Jaipur that the charges /arguments are yet to be done. The Respondent vide email dated 26th June, 2019 in response to the Disciplinary Directorate's email dated 26th June, 2019 inter-alia informed that the petition bearing No. 436/12 filed before CMM, Jaipur is still pending for arguments and the next date of hearing in the matter is 12th July, 2019.

8. On 27th June, 2019, the Disciplinary Committee while considering the status of the case and after considering all the facts and circumstances of the case advised the Director (Discipline) to form the prima-facie opinion in the matter on merits as to whether the Respondent is Guilty of professional misconduct or not and place the *prima facie* opinion before the Board of Discipline / Disciplinary Committee as the case may be.
9. Accordingly, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and *vide prima-facie* opinion dated 31st July, 2019 observed that the forgery alleged against the Respondent is yet to be proved before CMM, Jaipur. The allegations of forgery against the Respondent has not yet been proved before the Competent Court, in these circumstances, the Respondent cannot be held Guilty of Professional or other Misconduct under the Company Secretaries Act, 1980 at this stage on the basis of material available on record. However, the Complainant may, if so, desire files a fresh complaint against the Respondent for Professional or other Misconduct, in case the alleged forgery against the Respondent is proved before the Competent Court of Law.
10. The Board of Discipline after considering the materials on record, *prima-facie* opinion of the Director (Discipline), all the facts and circumstances of the case, the nature of issues involved and given the totality of the circumstances of the case agreed with the *prima-facie* opinion dated 31st July, 2019 of the Director (Discipline), that the Respondent cannot be held Guilty of Professional or other Misconduct under the Company Secretaries Act, 1980 at this stage on the basis of materials available on record. However, the Complainant may, if so, desire file a fresh complaint against the Respondent for Professional or other Misconduct, in case the alleged forgery against the Respondent is proved before the Competent Court of Law.

Accordingly, the Complaint is closed and stands disposed off.


Member




Presiding Officer