

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC/152/2012

In the matter of complaint of professional or other misconduct filed by Ms. Bishakha Chakraborty, ACS-30453 against Shri Ashish Omprakash Lalpuria, ACS-30649 and Ms. Jayshree Ashish Lalpuria ACS-17629 (CP No. 7109).

Date of decision: 5th September, 2014

Coram: Mr. P K Mittal, Presiding Officer
Mr. Anil Murarka, Member
Mr. Sutanu Sinha, Member

ORDER

1. A complaint in Form I dated 27th August, 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 Ms. Bishakha Chakraborty, ACS-30453 (hereinafter referred to as the 'Complainant') against Shri Ashish Omprakash Lalpuria, ACS-30649 and Ms. Jayshree Ashish Lalpuria ACS - 17629 (CP No. 7109) (hereinafter referred to as the 'Respondent 1' and 'Respondent 2' respectively).
2. The Complainant has *inter-alia* stated that she was associated with a firm named M/s. Jayshree Lalpuria and Co., wherein the Respondent 1 is also working and he happens to be the husband of the Respondent 2 (Proprietor of the aforesaid Firm). She further stated that she got acquainted with the Respondent 1 during 19th MSOP organized by the WIRC, ICSI held from 11th April 2012 to 27th April, 2012 at Borivali, Mumbai. After the MSOP, she had joined a law firm. The Complainant further stated that she had received a call from the Respondent 1 asking her to meet him as he could help her getting some job. She further stated that she met the Respondent 1 at his home where Respondent 2 had a talk with her and said that since she was going on maternity leave, she wanted somebody to take care of the business along with the Respondent 1. The Complainant has further stated that as she was not associated with CS related work and as the Respondent 1 was known to her, she readily agreed upon to help out Respondent 1 for some time. The



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Complainant has further stated that it was a mutual oral commitment based on goodwill, not an official assignment and or bona fide employment as such. The Complainant further stated that after she got the membership from the Institute and since she was not in employment anywhere, she applied for COP of the Institute so as to enable her to practice in future. She further stated that when it came to the knowledge of the Respondent 1 that she had applied for COP of the Institute, he got infuriated that she had applied for the membership and had sent her three mails in a row blaming her for professional/ethical/moral misconduct and threatening to report to the institute unless she surrendered the CP number. She further stated that she had replied to him stating that she had not betrayed his trust and was not guilty of any misconduct as she was not 'employed', neither at his wife's firm (Respondent 2) nor anywhere else. But the Respondent 1 insulted her and fired her from his office.

3. The Complainant has further stated that the Respondent 1 emailed her on 7th August, 2012 at 10.23 PM with subject line 'SHAME ON YOU BISHAKHA' questioning not only her act of taking COP but also her dignity and morality, dragging even her family into it. The Respondent 1 described her as impostor, cheat, liar, unfit for the profession, fraudster etc. and circulated the same email amongst unknown number of peoples all marked in 'bcc'. She started receiving calls from her friends/acquaintances regarding the mail. She further stated that the Respondent 1 has damaged her image and prospects entirely as she is a new member, starting out in the profession where the brand image, advertisement, good name are the biggest assets. She further stated that no one except the Institute has right to question her application for COP number. This act of the Respondent 1 is motivated more by jealousy and spite than any professional reason, only to malign her name as she is his professional competitor. The Complainant has further stated that she has valid and legal right to obtain her COP number from ICSI. To write 'SHAME ON YOU BISHAKHA' and circulate it just to satisfy his revengeful tendency founded on the vagaries of his whim, amount to serious abrogation of ethics and professional values and amounts to defamation. As a professional, he must know how to conduct himself:



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[Signature]

4. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent 1 & 2 vide letter dated 31st August, 2012 calling upon them to submit the written statements. A letter dated 3rd September, 2012 received from the Respondent. The Respondents filed their written statement dated 15th September, 2012.
5. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement of the Respondents was sent to the Complainant vide letter dated 18th September, 2012 asking her to submit the rejoinder. The Complainant submitted the rejoinder dated 5th October, 2012. An e-mail dated 14th November, 2012 was received from the Respondent 1 enquiring about the status of the complaint. The Respondent was provided the status of the complaint vide email dated 14th November, 2012.
6. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and the material on record and observed that the alleged emails has been sent by Respondent 1 Shri Ashish Omprakash Lalpuria, and hence the Respondent 1 is guilty of professional misconduct under Clause (2) of Part-IV the First Schedule of the Company Secretaries Act, 1980. Further, the Respondent 2 has not circulated the alleged emails hence; Respondent 2 is *prima facie* not 'Guilty' of professional or other misconduct. As far as the allegation of bringing disrepute to the profession or the Institute by circulating the alleged email by Shri Ashish Omprakash Lalpuria, the Respondent 1, is concerned, the matter may be referred to the Council for forming its opinion as to whether the alleged e-mail circulated by him has brought disrepute to the profession or the Institute.
7. The Board of Discipline at its meeting held on 13th August, 2013 had considered the *prima-facie* opinion dated 12th August, 2013 of the Director (Discipline); material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent 2 is *prima facie* not guilty of professional or other misconduct under the Company Secretaries Act, 1980; and closed the matter against Respondent No. 2. The Board also decided to refer the matter to the Council of the Institute against the Respondent 1 for



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forming its opinion as to whether the alleged email circulated by him has brought disrepute to the profession or the Institute.

8. Accordingly, the matter was placed before the Council at its meeting held on 23rd- 24th August, 2013. The Council considered the complaint and advised that the complaint may be dealt by the Director (Discipline) in accordance with the Company Secretaries Act, 1980. The matter was investigated and it was found that the alleged email sent by Shri Ashish Omprakash Lalpuria, ACS-30649 was not appropriate to be circulated by a professional like Company Secretary. Hence, the action on his part has deemed to have brought disrepute to the profession of Company Secretaries and therefore is misconduct.
9. The Board of Discipline at its meeting held on 9th January, 2014 had considered the *prima-facie* opinion dated 12th August, 2013 of the Director (Discipline); material on record and advised the Director (Discipline) to investigate the matter further as to see whether the alleged act of the Respondents have violated the Guidance note on the Code of Conduct for Company Secretaries. The Director (Discipline) reinvestigated the matter and continued to hold his *prima-facie* opinion intact. The Board at its meeting on 4th May, 2014 considered the *prima-facie* opinion of the Director (Discipline) and the material on record and decided to seek the following information from the Respondents-
- (i) Appointment letter issued by the Respondents to the Complainant.
 - (ii) Designation of the Complainant in M/s. Jayshree Lalpuria & Co.
 - (iii) Details of the salary paid by the Respondents to the Complainant.
10. The Board of Discipline also decided to seek from the Complainant as to whether she was employee of the Respondents? In case she was, the details of remuneration / salary received from the Respondents to be provided by her, which they submitted *vide* letter dated 17th May, 2014. Accordingly, *vide* letter dated 9th May, 2014 the Respondents were asked to confirm the requisite information, which they submitted *vide* letter dated 17th May, 2014.



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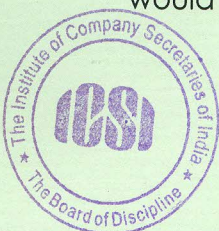
11. The Complainant vide letter dated 9th May, 2014 was also asked to provide the details of remuneration / salary received from the Respondents. The envelope containing the said letter was returned undelivered on 26th May, 2014. The Complainant vide letter dated 27th May, 2014 was again asked to provide the details of remuneration / salary received from the Respondents. The Complainant vide e-mail dated 12th June, 2014 requested for extension of time to reply and vide letter dated 16th June, 2014, she submitted the information.
12. The parties vide letter dated 22nd July, 2014 were called upon to appear before the Board on 11th August, 2014. The parties were further informed vide letter dated 25th July, 2014 that the hearing of the Board of Discipline scheduled to be held on 11th August, 2014 has been postponed to 14th August, 2014. The Respondents vide letter dated 31st July, 2014 were requested to reschedule the date of hearing.
13. The Board of Discipline, on 14th August, 2014 noted that the Respondents vide letter dated 31st July, 2014 have requested for rescheduling of the hearing as their Delhi based counsel had informed them that the roads at several parts of the city would be blocked on the 14th August, 2014 especially in the second half considering the Independence Day celebrations on 15th August, 2014. The Board noted that Complainant has also not appeared before it. The Board, after considering the request of the Respondent, the material on record; adjourned the matter. Accordingly, vide letter dated 25th August, 2014 the parties were again called upon to appear before the Board on 5th September, 2014 at New Delhi.
14. The Board of Discipline, on 5th September, 2014 noted the letter dated 30th August, 2014 and e-mail dated 4th September, 2014 received from the Respondents. Mr. Lokesh Shah, CA appeared before the Board for the Respondents and made oral submissions. The Complainant did not appear before it.



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Sudhakar Singh

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15. The Board of Discipline heard the submissions made by Mr. Lokesh Shah. The Board felt that the e-mail dated 7th August, 2012 at 10.23 PM of the Respondent 1 with the subject line 'Shame on you Bishakha' was indeed bad and uncalled for. The Board was of the view that in case the Respondent 1 had any grievance he should have taken up the matter with appropriate authorities rather than circulating the e-mail to others. Mr. Lokesh Shah gave a brief background of the case and stated that though the e-mail circulated by the Respondent 1 was not in good taste, the Board may take a lenient view in the matter. The Board considered the submissions made by Mr. Lokesh Shah; material on record and agreed with the *prima-facie* opinion dated 12th August, 2013 of the Director (Discipline) that the Respondent 1 is 'Guilty' of professional misconduct under Clause (2) of Part-IV of the First Schedule of the Company Secretaries Act, 1980 for circulating the alleged e-mail and the Respondent 2 is not guilty as the alleged e-mails have not been sent by the Respondent 2.
16. The Board of Discipline then referred the provisions contained in Rule 14 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. It after due deliberations resolved that having been admitted by Mr. Lokesh Shah that there is mistake on the part of Respondent 1, there is no difficulty in concluding the matter. It accordingly, communicated the same to Mr. Lokesh Shah in the meeting itself. Mr. Lokesh Shah thereafter sought time to speak to the Respondents over phone which was granted by the Board. Mr. Lokesh Shah, the Learned Chartered Accountant has confirmed that he has talked to the Respondents and has informed them that the Board has held Respondent 1 'guilty' and the Respondent 2 not guilty of misconduct and it is accepted by them.
17. The Board of Discipline took note of the submissions of Mr. Lokesh Shah and decided to afford an opportunity of being heard to the Respondent 1 before passing any order under Section 21A (3) of the Company Secretaries Act, 1980 read with Rule 15 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, the Board asked Mr. Lokesh Shah as to whether he would like to avail the opportunity of being heard before the Board passes



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any order as per the above provisions. Mr. Lokesh Shah requested the Board to dispose-off the matter and once again requested for a lenient view in the matter.

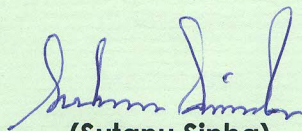
18. We, after considering the material on record; facts of the case and in totality of the issues involved in the matter pass the following order against the Respondent 1.

'Reprimand'

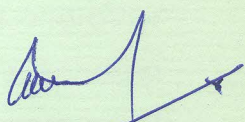
19. We close the matter against the Respondent 2.

Accordingly, the complaint stands disposed-off.

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


(Sutanu Sinha)
Member


(Anil Murarka)
Member


(P. K. Mittal)
Presiding Officer

Date: 19th Dec, 2014