

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

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

ICSI: DC: 172/2013

Order Reserved On: 27<sup>th</sup> June, 2019

Order Issued On: 20 AUG 2019

**M/s. James Hotel Limited**

**....Complainant**

**Vs**

**Shri Vikas Garg FCS-4777 (CP No. 4441).**

**....Respondent**

**CORAM:**

CS Ranjeet Pandey, Presiding Officer  
CS Nagendra D Rao, Member  
CS B Narasimhan, Member  
Shri Nalin Kohli, Member  
Mrs. Meenakshi Datta Ghosh, Member

**PRESENT**

Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Gaurav Tandon, Assistant Director

**ORDER**

1. A Complaint dated 5<sup>th</sup> January, 2013 in Form 'I' was filed by M/s. James Hotels Limited, through Shri Haravtar Singh Arora (hereinafter referred to as 'the Complainant') against Shri Vikas Garg, FCS-4777 (CP No. 4441) (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').

**COMPLAINT IN BRIEF**

2. The Complainant inter-alia stated that M/s. James Hotels Limited is running a prestigious hotel at Sector 17, Chandigarh in the name of 'Park Plaza'. The Complainant further stated that till 2006, the promoter of the Company was Shri S.S. Gulati. Further, new promoters i.e. S/ Shri Haravtar Singh Arora Shri Ajmair Singh Bhullar (NRIs and are residing in UK) took over the Company from Shri Surjit Singh Gulati after complying with SEBI (SAST) Regulations in the year 2006. This Company also came out with a public issue in the year 1994.
3. The Complainant inter-alia alleged that the Respondent started working as a Company Secretary of M/s. James Hotels Ltd., about 2 years even prior to obtaining the membership of the ICSI. The Complainant further alleged that the



*[Handwritten signature]* Ranjeet Pandey

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Respondent had submitted reports dated 9<sup>th</sup> July, 1996 and 16<sup>th</sup> August, 1996 to the Stock Exchanges after signing on them as Secretary of M/s. James Hotel Limited. It was further stated that the Respondent was also issuing the notices for the Board Meetings as a Company Secretary of M/s. James Hotels Limited.

4. The Complainant further alleged that the Respondent after obtaining the membership of the ICSI in June, 1998 took the Certificate of Practice of the ICSI but continued to represent himself as Company Secretary, Authorized Signatory and Compliance Officer of M/s. James Hotel Limited. The Complainant further alleged that the Respondent in connivance with his relatives, friends, associates, has committed forgery by creating false and fabricated Share Certificates. The Respondent has dishonestly misappropriated the shares of the Company in his own name and also in the names of his relatives, friends, associates and his companies which require thorough investigation. The Respondent himself was purchasing the shares and was signing the transfer on the back side of the share certificates as Company Secretary / authorized signatory. He has also been similarly corresponding with the then Registrar and Share Transfer Agent viz. M/s. Alankit Assignments Limited and the shareholders of the Company. The Complainant further alleged that the Respondent was assigned the responsibility of ensuring proper handing over of all the previous records of the Company not limited to the secretarial records, share records and books of accounts of the Company. However, he did not handover the complete records of the Company. The Respondent had promised and assured new promoters that he was gathering and compiling the previous records and would hand over the records shortly but he did not hand over the said records. Ultimately on the advice of the Respondent, the Complainant filed a D.D.R. with the Police at Chandigarh on 24<sup>th</sup> March, 2009. The Complainant further stated that the Company and the new promoters did not know that the Respondent has issued false, fabricated and forged share certificates. It subsequently came to their notice on 14<sup>th</sup> May, 2000 i.e. during the tenure when the Respondent was a Company Secretary of the Company, a number of false, fabricated and forged share certificates were issued, which was not possible without the active involvement of the Respondent who was the overall in-charge of the Secretarial Cum-Share department of the Company. Even though the Respondent was working as Company Secretary of this Company, he did not file his Form 32 with the ROC as required under Section 303 of the Companies Act, 1956. This was evident from the Annual Returns of this Company for the year 1997, 1998, 1999 & 2000.

**WRITTEN STATEMENT OF THE RESPONDENT IN BRIEF**

5. On the other hand, the Respondent in his written statement denied all the averments levelled against him and inter-alia stated that the Complainant has suppressed material facts and provided misleading information to the ICSI and had made intentionally and deliberately false Complaint. He further stated that he was rendering services to the Company occasionally and intermittently and not on regular basis. Further, no salary was drawn by him as Company Secretary from Company except payment of professional charges and reimbursement of out of pocket expenses made by the Company. The Respondent further stated that the alleged documents are more than 10 years old so the Company should produce all the statutory records of the Company including all the alleged documents in original to substantiate their version. The Respondent further stated that the Company had employed a whole time Company Secretary to look after its Secretarial professional services as Practising Company Secretary provided by Shri Assem Chhabra, C/o M/s. Assem Chhabra & Associates, Chandigarh. The



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Respondent further stated that S/Shri Haravatar Singh Arora, CMD, Ajit Pal Singh, Director, Neeraj Mohindroo, Director, in connivance with Shri Anil Aggarwal, Advocate (who is also a member of the ICSI) had lodged a false, malicious and frivolous D.D.R dated 24<sup>th</sup> March, 2009 with Chandigarh police authorities as a pre-planned part of conspiracy regarding alleged missing records of the Company to tamper with the statutory records of the Company so that they could easily manipulate and tamper the statutory records of the Company to achieve unlawfully gaining full control of the Company and to cheat the small public shareholders of the Company who are widely scattered all over India and had invested their hard earned money in the Company since long time and had not reaped any profits. The Respondent further stated that it is surprising to note that in spite of the Company filing a D.D.R dated 24<sup>th</sup> March, 2009 with Chandigarh police authorities, how could the present management continue to employ him (the Respondent) till 30<sup>th</sup> September, 2011 as alleged. The Respondent further stated that the new promoters including the Complainant, Shri Ajit Pal Singh, Director of the Company intended to allot further shares to themselves at a throw away price at the cost of small public shareholders of the Company so that they could easily sell the hotel of the Company i.e. the only immovable property of the Company by transfer of their entire share holding in the Company. He along with other minority shareholders of the Company filed Company Petition No. 132 of 2011 under the provisions of section 397,398,399,402 and 403 of the Companies Act, 1956 before the CLB, Delhi for minority oppression and mismanagement in the affairs of the Company against the new promoters including the Complainant, S/Shri Ajit Pal Singh, Director and Neeraj Mohindroo, Director of the Company and had got the interim order on dated 13<sup>th</sup> December, 2011 against the said allotment of further shares to the new promoters including the Complainant and Shri Ajit Pal Singh, Director of the Company. The Respondent further stated that the Complainant Shri Haravatar Singh Arora, CMD, Shri Ajit Pal Singh, Shri Neeraj Mohindroo, Directors of the Company, with dishonest intention and in connivance and conspiracy with Shri Anil Aggarwal, Advocate and scrutinizer for postal ballot result, had manipulated, forged and fabricated all the statutory records of the Company including the register of members, share transfer register, register of duplicate and consolidated shares and minutes books of the meetings of the Board of directors and share transfer committee meetings to achieve their ulterior motives and to defraud and oppress the small public shareholders of the Company.

**REJOINDER IN BRIEF**

6. The Complainant in its rejoinder mainly reiterated the submissions made in the Complaint and stated that the Respondent has only tried to digress from the professional misconduct which he has committed and which he has not denied in his reply. The Complainant further stated that it was wrong and denied that the Complainant along with his employees, friends and relatives had amassed a large number of shares in contravention of SEBI Rules and Regulations. The Complainant further stated that the statement of the Respondent that the Company is in possession of all statutory records including register members, index of members, register of duplicate and consolidated shares and minutes book of the meetings of Board of Directors of the Company and share transfer committee meetings, is misleading and false. It is wrong and denied that the D.D.R is false, malicious or frivolous or that it is a pre-planned part of conspiracy to tamper with the statutory records of the Company or to gain control over the Company or to cheat the small public shareholders. The Respondent is dragging the name of Shri Anil Aggarwal, Advocate unnecessarily because he is representing us before the



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CLB as Counsel. The Complainant further reiterated that the D.D.R dated 24<sup>th</sup> March, 2009 was not lodged against the Respondent, it was rather regarding non-traceability of the records, list of which was attached with the D.D.R. The D.D.R. was drafted and filed as per the advice of the Respondent.

**PRIMA-FACIE OPINION OF THE DIRECTOR (DISCIPLINE)**

7. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, was *prima-facie* of the opinion as under-

*"..... it is observed that there is a management dispute in the company and a Company Petition No. 132 of 2011 is pending before the CLB, Delhi which is filed against the new promoters of the company. It is also on record that an FIR has been filed before the Chandigarh police authorities about loss of certain company documents.*

*The Respondent had signed the documents of the company as authorized signatory /company secretary even prior to being the member of the ICSI and continued to do so after obtaining the membership and COP of the ICSI. The records of the ICSI show that the Respondent became member of the ICSI on 10<sup>th</sup> June, 1998 and acquired COP on 10<sup>th</sup> October, 2001. It is on the record that the Respondent has stated that no salary was drawn by him as Company Secretary from company except payment of professional charges and reimbursement of out of pocket expenses by the company. The Respondent has signed the documents as Company Secretary and not as a PCS. The Respondent therefore, has violated the resolution dated 12<sup>th</sup> May, 1991 passed by the Council of the ICSI prohibiting the members holding the Certificate of Practice to accept employment. In this case the Respondent has been ostensibly was in employment of M/s. James Hotels Limited as he was signing those documents which ought to have been signed by the Company Secretary in employment and therefore, the Respondent is prima facie 'Guilty' of Professional or other misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980.*

*Further, the act of the Respondent for using the designation of a Company Secretary attracts Section 24 of the Company Secretaries Act, 1980 as he has falsely claimed to be a member of the ICSI which he was not prior to 10<sup>th</sup> June, 1998, the date on which he became Associate Member of the ICSI."*

**CONSIDERATION OF PRIMA-FACIE OPINION OF THE DIRECTOR (DISCIPLINE) BY THE DISCIPLINARY COMMITTEE**

8. The Disciplinary Committee at its meeting held on 31<sup>st</sup> May, 2014, considered the *prima-facie* opinion dated 12<sup>th</sup> May, 2014 of the Director (Discipline) and the material on record. The Disciplinary Committee observed that Shri Vikas Garg, the Respondent in the matter had used the designation of 'Company Secretary' even prior to attaining the membership of ICSI and the same is prima-facie in violation of Section 24 of the Company Secretaries Act, 1980. The Committee sought a legal opinion as to whether (i) the matter has to be referred to the Council of ICSI; (ii) the Disciplinary Committee can take cognizance to proceed further in the matter on the allegations levied against such person subsequently after he became a member; (iii) the Director (Discipline) has taken cognizance of subsequent allegations after that person took the membership of the ICSI. (iv) Can the Director (Discipline) also take cognizance of violation of Section 24 of the



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Company Secretaries Act, 1980? And (v) any other opinion deemed fit in the matter.

9. Accordingly, a Legal Opinion was obtained wherein it was opined that the question of filing of Criminal Complaint for violation of the provision of Section 24 of the Act will require a reference to the Council for approval if the power in this regard has not been delegated to some other authority in the Institute. In addition it was also inter-alia opined that the Disciplinary Committee / Director(Discipline)cannot take cognizance of the allegation relating to violation of Section 24 of the Act against a person even if such a person subsequently becomes a member of the ICSI.

**THE DISCIPLINARY COMMITTEE REFERRED THE MATTER TO THE COUNCIL, ICSI**

10. The Disciplinary Committee in its meeting held on 28<sup>th</sup> August, 2014 considered the prima-facie opinion dated 12<sup>th</sup> May, 2014 of the Director (Discipline), legal opinion and the material on record. The Disciplinary Committee decided to refer the matter to the Council of the ICSI. Accordingly, the matter was referred to the Council of the ICSI.

**PROCEEDINGS BEFORE THE COUNCIL IN BRIEF**

11. The Council of the ICSI further after referring the matter to the Executive Committee and after examining the views of the Executive Committee and all the material on record, decided that since the Respondent is a member of the Institute now, the Disciplinary Committee may consider and proceed in accordance with the Act and Rules.

**PROCEEDINGS BEFORE THE DISCIPLINARY COMMITTEE**

12. On 12<sup>th</sup> November, 2016, the Disciplinary Committee considered the *prima-facie* opinion of the Director (Discipline); the material on record and agreed with the prima- facie- opinion of the Director (Discipline) dated 12<sup>th</sup> May, 2014 that the Respondent is prima facie 'Guilty' of Professional or other misconduct under Clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980 as the records of the ICSI show that the Respondent became member of the ICSI on 10<sup>th</sup> June, 1998 and acquired Certificate of Practice on 10<sup>th</sup> October, 2001. It is also on the record that the Respondent has stated that no salary was drawn by him as Company Secretary from Company except payment of professional charges and reimbursement of out of pocket expenses by M/s. James Hotels Limited. The Respondent has signed the documents as Company Secretary and not as a PCS. The Respondent, therefore, has violated the resolution dated 12<sup>th</sup> May, 1991 passed by the Council of the ICSI prohibiting the members holding the Certificate of Practice to accept employment. In this case, the Respondent ostensibly was in employment of M/s. James Hotels Limited as he was signing those documents which ought to have been signed by the Company Secretary in employment and, therefore, the Respondent is *prima facie* 'Guilty' of Professional or other misconduct under clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980. The Disciplinary Committee decided to proceed further in the matter in accordance with Chapter V of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.



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13. Accordingly, a copy of the prima-facie opinion of the Director (Discipline) was sent to the parties asking them to submit their written statement and the rejoinder, respectively.
14. The Respondent submitted his written statement dated 20<sup>th</sup> February, 2017 to the prima-facie opinion of the Director (Discipline) wherein he once again mainly reiterated his earlier submissions that he was rendering the services to M/s. James Hotels Limited occasionally and intermittently and not on regular basis , in support he attached his bills dated 20<sup>th</sup> November, 2007, 04<sup>th</sup> December, 2007 , 12<sup>th</sup> March, 2007, 18<sup>th</sup> October, 2008, 22<sup>nd</sup> October, 2008 and 6<sup>th</sup> November,2008 raised for payment of professional charges and reimbursement of out of pocket expenses to the Company. He further stated that no salary has been drawn by him as a Company Secretary and no Form 32 was filed by the Company for his appointment as a Company Secretary. He further stated that action was initiated against the Company for non appointment of Company Secretary and that the extract of Annual Report for FY 2014-15 evidences the receipt of notice for non-appointment of whole time Company Secretary under Section 383A of the Companies Act,1956. He also stated that the Company had filed an application for compounding of offence under Section 383A for non appointment of whole time Company Secretary from period 01<sup>st</sup> April, 1996 to 15<sup>th</sup> June, 2009 before the CLB, New Delhi.
15. The Respondent further stated that the management of the Company had authorized him to act as Authorized Signatory and that he never claimed as a Company Secretary of the Company. The Respondent stated that the police authorities have closed the Complaint filed against him by Shri H S Arora with remarks "no cognizable offence was made out " . The Respondent further stated that the Complainant has tampered the statutory records of the Company, his signatures and the signatures of the old promoters. The Respondent sought directions for the production of original records of the Company including the register of members, share transfer register and register of issue of duplicate and consolidated shares etc. The Respondent further stated that the DDR dated 24<sup>th</sup> March, 2009 is a pre planned conspiracy of the Complainant. The Respondent further stated that the old promoter has given an affidavit dated 24<sup>th</sup> June, 2016 in which he has specifically mentioned that statutory records and Books of accounts have been handed over to the new promoters of the Company in the Board Meeting .
16. The Respondent also stated that most of the letters , documents and certificates shown to have been signed by him were in fact never signed by him, this fact came to his knowledge during the compromise agreement dated 3<sup>rd</sup> October,2014 . It may also be mentioned that old promoter/ MD , Shri Surgit Singh Gulati has already filed a police Complaint for forging his signatures by the Complainant and his relatives. The Respondent concluded by saying he never acted as a Compliance Officer of the Company .
17. The parties vide letter dated 25th August, 2017 were called upon to appear before the Disciplinary Committee on 9th September, 2017. In the mean time, a letter dated 1st September, 2017 was received from the Complainant inter-alia stating that the Company is under moratorium period in accordance with the orders dated 27th April, 2017 and 8th May, 2017 of Hon'ble NCLT, Chandigarh Bench and



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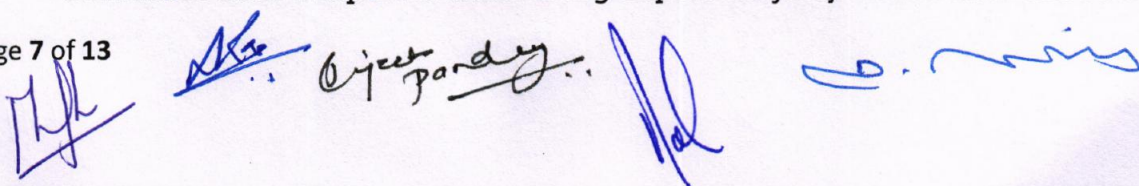
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the Board of Directors of the Company are under suspension. In such circumstances, it is not possible to appear for the hearing and requested to stay the proceedings in the case till the completion of moratorium period.

18. On 9<sup>th</sup> September, 2017, the Respondent appeared before the Disciplinary Committee and gave a brief background of the case and stated that he has been harassed and his signatures have been forged at numerous records of the Company. However, no one appeared on behalf of the Complainant. The Disciplinary Committee considered the aforesaid letter; the submissions of the Respondent and the material on record, decided to call upon both the parties to appear before it at the next date of hearing in this case.
19. Accordingly, the parties were again called upon to appear before the Disciplinary Committee on 7<sup>th</sup> December, 2017. However, the said meeting was postponed.
20. The parties vide letter dated 26th February, 2018 were called upon to appear before the Disciplinary Committee on 18th March, 2018. However, the parties instead of appearing before the Committee requested for an adjournment on the pretext of hearing before Hon'ble NCLT on 13<sup>th</sup> March, 2018 and before Hon'ble High Court Chandigarh on 14<sup>th</sup> March, 2018. The Disciplinary Committee considered the request of the parties and the material on record, decided to call upon both the parties to appear before it at the next date of hearing in this case.
21. The parties vide letter dated 3rd July, 2018 were again called upon to appear before the Disciplinary Committee on 18th July, 2018.
22. On 18<sup>th</sup> July, 2018, Ms. Namita Malik, Advocate along with the Complainant appeared before the Committee and submitted that the Respondent had started working as a Company Secretary of M/s. James Hotels Ltd., even prior to obtaining the membership of the ICSI. The Complainant further alleged that the Respondent had also signed and submitted reports to the Stock Exchanges after signing on them as Secretary of the Company. The Complainant further alleged that the Respondent after obtaining the membership of the ICSI took the Certificate of Practice of the ICSI but continued to represent himself as Company Secretary, Authorized Signatory and Compliance Officer of M/s. James Hotels Ltd. The Complainant further alleged that the Respondent in connivance with his relatives, friends, associates and companies, has committed forgery by creating false and fabricated share certificates. Shri Prince Chadha, PCS appeared before the Committee on behalf of the Respondent and denied the allegation levied against his Client that his Client was rendering services to the Company occasionally and intermittently and not on regular basis. Further, no salary was drawn by his client as Company Secretary from Company except payment of professional charges and reimbursement of out of pocket expenses made by the Company. He further stated that his Client's signatures have been forged on the documents of the Company. The Disciplinary Committee heard the submissions made by the parties and advised the representative of the Respondent to file a forensic report indicating that his Clients signatures have been forged on several documents attached with the prima-facie booklet of the Director(Discipline) which he agreed to do. The Disciplinary Committee also gave liberty to Complainant to file written arguments, if any and thereafter decided to call upon both the parties to appear before it at the next date of hearing in this case.
23. The Respondent in compliance with the aforesaid decision of the Disciplinary Committee filed a report of handwriting Expert Dr. Jassy Anand inter-alia stating



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that the signatures of the Respondent have inter-alia have been forged at about 6 places. A copy of the report dated 18<sup>th</sup> September, 2018 of handwriting Expert Dr Jassy Anand was sent to the Complainant for his comments, if any on the same.

24. The parties vide letter dated 22<sup>nd</sup> February, 2019 were called upon to appear before the Disciplinary Committee on 12<sup>th</sup> March, 2019.
25. On 12th March, 2019, Ms. Namita Malik, Advocate along with Shri Haravtar Singh Arora before the Disciplinary Committee and submitted that the Respondent had started working as a Company Secretary of M/s. James Hotels Ltd., even prior to obtaining the membership of the ICSI. The Complainant further alleged that the Respondent after obtaining the membership of the ICSI took the Certificate of Practice of the ICSI but continued to represent himself as Company Secretary, Authorized Signatory and Compliance Officer of M/s. James Hotels Ltd. The Complainant further alleged that the Respondent in connivance with his relatives, friends, associates and Companies, has committed forgery by creating false and fabricated share certificates. The Complainant further submitted written submissions on the Forensic Report dated 18th September, 2018 of Dr. Jassy Anand indicating the discrepancies in the report. Mr Nitin Bansal, Advocate along with the Respondent also appeared before the Committee and stated that his Client was rendering services to the Company occasionally and intermittently and not on regular basis. Further, no salary was drawn by his client as Company Secretary from Company except payment of professional charges and reimbursement of out of pocket expenses made by the Company. He further stated that his Client' signatures have been forged on the documents of the Company. He further stated that pursuant to the directions of the Disciplinary Committee they have already filed forensic report dated 18th September, 2018 of Dr. Jassy Anand indicating that his Clients signatures have been forged on several documents attached with the prima-facie booklet of the Director (Discipline). The Disciplinary Committee after considering the material on record and after hearing both the parties in detail, advised both the parties to submit their brief written submissions in bullet points not exceeding 4 typed pages in normal text to summarise their main contentions, arguments and counter arguments. Additionally, the Committee advised the Complainant to provide the following documents -

- (a) All the documents pertaining to submission of information by the Company to the ROC/ Stock exchanges signed by the Respondent as a Company Secretary of the Company prior to 1998.
- (b) All the documents signed by the Respondent as a Company Secretary of the Company after 2001 i.e. after taking COP of the Institute.
- (c) All the documents related to forgery & fraudulent transfer of shares in the name of family members of the Respondent.

26. The Disciplinary Committee additionally also granted permission to the Respondent to counter any allegations made in the Complaint. Further, both the parties were advised to submit their written submissions along with documents with a copy to the other side and there after any response may be submitted to the said written submissions by the other party .The Committee provided the stipulated time to do the same and clarified that thereafter; no opportunity will be provided what so ever may be the circumstances. Thereafter, this Disciplinary Committee shall pass its order on the merits of the case.



27. The Complainant filed his written submissions dated 17<sup>th</sup> April, 19 and attached an annexure indicating a list of duplicate / false share certificates and a tentative list of shares amassed by the Respondent in his own name and in the name of his relatives. The Complainant further alleged that the Respondent had sent letters dated 9<sup>th</sup> July, 1996, 16<sup>th</sup> August, 1996, 10<sup>th</sup> November, 1997 & 11<sup>th</sup> May, 1998 as annexed with the Complaint duly signed as Company Secretary prior to being enrolled as a member of ICSI. Thereafter, letters dated 11<sup>th</sup> January, 2000 and 20<sup>th</sup> October, 2000 were sent to the Stock Exchange by the Respondent after qualifying as a Company Secretary on behalf of M/s. James Hotels Limited. The Complainant further stated that the Respondent took COP of the ICSI in December, 2001 but continued to represent himself as a Company Secretary and Compliance Officer of M/s. James Hotels Limited which is evident from Secretarial Audit Reports for the quarter ended 31<sup>st</sup> March, 2005 and 31<sup>st</sup> December, 2005. The Complainant further stated that the Respondent in connivance with the previous promoters issued a number of false and fabricated share certificates. Further, in year 2008 the Respondent filed Annual return of the Company and attached a list of shareholders (which he got signed from the new promoters) which included his name as well as the names of his relatives and associates with the number of shares acquired by him fraudulently. The Complainant concluded by submitting that the Respondent has procured a Forensic Report merely to blanket the truth but has failed to appreciate the authentication of the report in the absence of any alleged original documents and no clarification as to what specimen is forged and why, which shows the malafide intention.

28. The Respondent submitted his written submissions reiterating his earlier submissions that he was rendering services to the Company occasionally and intermittently and not on regular basis. Further, no salary was drawn by him as Company Secretary from Company except payment of professional charges and reimbursement of out of pocket expenses made by the Company. He further stated that his Form 32 was not filed by the Company and that his signatures have been forged on the documents of the Company. He further stated that he has not signed the Annual Returns for FY 31<sup>st</sup> March, 1997, 31<sup>st</sup> March, 1998, 31<sup>st</sup> March, 1999 & 31<sup>st</sup> March, 2000 as the Company Secretary of the Company. He further stated he has never given his consent to act as a Compliance officer of the Company rather he had signed documents as an authorized signatory as he was authorized to sign documents vide Board resolution dated 30<sup>th</sup> April, 2015. The Complainant has failed to provide (1) original documents claimed to be signed by him (2) Form 32 for his appointment as Company Secretary of the Company (3) His consent letter to work as Compliance officer after 10<sup>th</sup> October, 2001 (4) Original documents including (a) the Minute book of the Company to prove his stand regarding fraudulent transfer of Shares (b) share transfer register (c) register of duplicate and consolidated Share Certificates. The Respondent concluded by submitting that no Complaint has been filed against him by Shri Surjit Singh Gulati or any public shareholder.



**ISSUES & FINDINGS**

29 On 27<sup>th</sup> July, 2019, the Disciplinary Committee considered the material on record and was of the considered opinion that the following issue are required to be examined -

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- (1) Whether the Respondent started working as a Whole time Company Secretary of M/s. James Hotels Ltd., prior to obtaining the membership of the ICSI in June, 1998 ?
- (2) Whether the Respondent after obtaining the membership of the ICSI and Certificate of Practice of the ICSI continued to represent himself as Company Secretary, Authorized Signatory and Compliance Officer of M/s James Hotel Limited ?
- (3) Whether the Respondent in connivance with his relatives, friends, associates and companies, has committed forgery by creating false and fabricated share certificates ?

**30. ISSUE NO 1: Whether the Respondent started working as a Whole time Company Secretary of M/s. James Hotels Ltd., prior to obtaining the membership of the ICSI in June, 1998 ?**

The Disciplinary Committee observed that as per the annexed records with the Complaint, the Respondent had sent letters dated 9<sup>th</sup> July, 1996, 16<sup>th</sup> August, 1996, 10<sup>th</sup> November, 1997 & 11<sup>th</sup> May, 1998 duly signed as Company Secretary prior to being enrolled as a member of ICSI.

The Disciplinary Committee further observed that the Respondent had sent letters on behalf of the Company. Therefore, it is evident from the submitted records that the Respondent was ostensibly working as a Company Secretary of M/s. James Hotels Ltd., even prior to obtaining the membership of the ICSI. Hence, the Respondent by impersonating as a Member of the ICSI has not only violated Section 24 of the Company Secretaries Act, 1980 but has also committed cheating, criminal breach of trust and conspired with others to defraud the Company and its stakeholders.

The Respondent on the other hand has denied that signatures on the aforesaid letters and has submitted a Forensic Report. However, the document on records clearly establish that the Respondent was projecting himself as a Company Secretary of M/s. James Hotels Ltd. and the Forensic report referred by the Respondent indicating the signatures of the aforesaid letter are forged cannot be taken into consideration as the Expert has not given indication of what is the reference or reliance placed on what original documents to make the said comparison.

Section 24 of the Company Secretaries Act, 1980 inter-alia provides that any person who not being a member of the Institute, represents that he is a member of the Institute, he/ she shall be punishable on first conviction with fine which may extend to one thousand rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both. It is further observed that the Disciplinary Committee does not have jurisdiction to try such offences and award punishment of fine or imprisonment after conviction.

Therefore, the Disciplinary Committee once again recommends that the matter be referred to the Council once again for its consideration for filing a criminal Complaint against the Respondent for alleged violation of the Section 24 of the Company Secretaries Act, 1980.

As is evident from the statute, that the legislature intended that such situations / actions of the fraud and impersonation be firmly dealt with and the Institute is



empowered under Section 24 of the Company Secretaries Act, 1980 to do so. Beyond the Institute and the Council's decision, should the matter reach any Court of law, then such Court in its wisdom may invoke other relevant provisions of IPC and Companies Act, 1956, if it so desires.

However, this case cannot be adjudicated by this forum. Therefore, the Complainant may if so, desire files a Criminal Complaint against the Respondent before the Appropriate Court/ authorities for the aforesaid act of the Respondent

**31. SECOND ISSUE: Whether the Respondent after obtaining the membership of the ICSI and Certificate of Practice of the ICSI continued to represent himself as Company Secretary, Authorized Signatory and Compliance Officer of M/s James Hotel Limited ?**

In this regard, the Disciplinary Committee observes that as per the records of the ICSI the Respondent became member of the ICSI on 10<sup>th</sup> June, 1998 and acquired Certificate of Practice on 10<sup>th</sup> October, 2001.

The defence taken is that Form 32 for appointment of the Respondent as a Company Secretary in the Company has not been filed by the Company. Further, none of the Annual Returns bear the name of the Respondent as a Company Secretary of M/s James Hotel Limited. In addition, no document has been brought on record to show that the salary was paid to the Respondent or his consent was obtained to act as a Company Secretary of the Company. On the contrary penalty has been also imposed on the Company for not appointing a Company Secretary during the alleged period.

The Disciplinary Committee however observes that letters dated 11<sup>th</sup> January, 2000 and 20<sup>th</sup> October, 2000 were sent to the Stock Exchange by the Respondent as a Company Secretary on behalf of M/s. James Hotels Limited. Further, the Respondent took COP of the ICSI in 2001 but continued to represent himself as a Company Secretary and Compliance Officer of M/s. James Hotels Limited which is evident from Secretarial Audit Reports(s) Quarterly Reconciliation of Capital) for the quarter ended 31<sup>st</sup> March, 2005 and 31<sup>st</sup> December, 2005, where M/s. Singhal Manish & Co. Chartered Accountants who have done the certification, specifically mentioned the name of Shri Vikas Garg as a Compliance Officer of the Company. He has also been corresponding with the then Registrar and Share Transfer Agent viz. M/s. Alankit Assignments Limited and the shareholders of the Company. It is seen that the data of the shares issued by the Company continued to be maintained in the hands of Shri Vikas Garg as is evident from the letter dated 18<sup>th</sup> February, 2008 issued by Shri Vikas Garg to Shri Y K Singhal (Sr. Vice-President, M/s. Alankit Assignments Limited New Delhi). It is apparent from this communication that they have appointed M/s. Alankit Assignments Limited only for maintaining connectivity with the two depositories for confirming the Demat request. In the quarterly half yearly certification, it is however, wrongly mentioned that M/s. Alankit Assignments Limited is the common agency appointed by the Company for share registry work. This is in clear contravention of the circular issued by SEBI No. D & CC/FITTC/CIR-15/2002 dated 27<sup>th</sup> December, 2002 where it is mandated all listed Companies to appoint one agency for handling both the physical and electronic records. The operation on this circular was extended from 1<sup>st</sup> February, 2003 to 31<sup>st</sup> March, 2003. All this apparently has been done by Shri Vikas Garg to deliberately cover the mischief played by him while acting as a Company Secretary to forge and fabricate the



*[Handwritten signature]*

*[Handwritten signature: Vijay Pandey]*

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*[Handwritten signature]*

records including the physical share certificates as well as the master data. It is clear that even though the Respondent was working as Company Secretary of this Company, he did not file his Form 32 with the ROC as required under Section 303 of the Companies Act, 1956 as he was aware of Criminal and other liabilities attributed for impersonating as the Company Secretary of the Company. In this case, the Respondent was signing those documents which ought to have been signed by the Company Secretary in employment. The Respondent therefore, has violated the resolution dated 12<sup>th</sup> May, 1991 passed by the Council of the ICSI prohibiting the members holding the Certificate of Practice to engage in employment.

**32. THIRD ISSUE: Whether the Respondent in connivance with his relatives, friends, associates and companies, has committed forgery by creating false and fabricated share certificates?**

The Disciplinary Committee observes that the Respondent was dealing with M/s. Alankit Assignments Limited and the shareholders of the Company and it is seen that a large number of shares have been allotted to different individuals with the same folio number. The Complainant has stated that as per the Shareholder list provided by the previous management the Respondent was holding only 11,000 shares as on 17<sup>th</sup> March, 2006 but within a year i.e. the Respondent was able to acquire 1,19,700 shares in his name without any proof of purchase of shares.

However, this case cannot be adjudicated by this forum. Therefore, the Complainant may if so, desire files a Criminal Complaint against the Respondent before the Appropriate Court/ authorities for the aforesaid act of the Respondent.

**33. CONCLUSION**

In view of the findings and decisions on the issues and observations made above and after examining the totality of facts and circumstances in this matter, the Disciplinary Committee observes that the Respondent in the instant case has impersonated as a Company Secretary of M/s. James Hotels Limited even prior to seeking the membership of the Institute and continued to represent himself as a Company Secretary of M/s. James Hotels Limited after obtaining the membership and COP of the Institute. In addition to this, the Respondent also has been involved in a conspiracy with others to defraud the Company and its stakeholders. The Respondent therefore, has violated the resolution dated 12<sup>th</sup> May, 1991 passed by the Council of the ICSI prohibiting the members holding the Certificate of Practice to accept employment. In this case, the Respondent was signing those documents which ought to have been signed by the Company Secretary in employment and therefore, the Disciplinary Committee holds that the Respondent is 'Guilty' of Professional or other misconduct under Clause (1) of Part II to the Second Schedule to the Company Secretaries Act, 1980 which provides as under-

*'A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—*

*(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;'*



*[Handwritten signatures]*

*[Handwritten initials]*

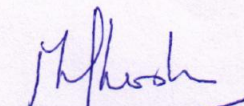
Further, the act of the Respondent for using the designation of a Company Secretary attracts Section 24 of the Company Secretaries Act, 1980 as he has falsely claimed to be a member of the ICSI for which the Institute and the Complainant may take the recourse as stated above. The Forensic report referred by the Respondent cannot be taken into consideration in the absence of any original documents.

In light of the above, the Disciplinary Committee decides to provide an opportunity of being heard to the Respondent pursuant to sub- rule (1) of Rule 19 of the Rules. The Disciplinary Committee further decides to call upon the Respondent to appear before it at the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee. In case, the Respondent for reason is unable to attend the hearing as may be decided; the Respondent may enter an appearance through an authorized representative along with a duly signed and attested letter of authority addressed to the Disciplinary Committee seeking exemption from personal appearance failing which, the matter will be heard *ex-parte*.

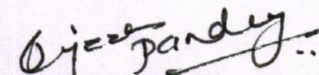
  
**Member**

  
**Member**

  
**Member**

  
**Member**



  
**Presiding Officer**