

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 214/2014

In the matter of complaint of professional or other misconduct filed by Mr. Harish Khurana, FCS-4835 against Ms. Nandani Walia, ACS No. 17840 (CP No. 7677).

Date of decision: 14<sup>th</sup> August, 2014

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

**ORDER**

1. A complaint dated 4<sup>th</sup> January, 2014 in Form-I was filed 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) by Shri Harish Khurana, FCS-4835(hereinafter referred to as the 'Complainant') against Ms. Nandani Walia, ACS-17840 (CP No. 7677) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that the Respondent has issued Compliance Certificates to M/s. M S J Resources India Pvt. Ltd., and M/s. Printman Associates Pvt. Ltd., for the year ended 31<sup>st</sup> March, 2013 without first communicating him as he was carrying out the assignment of issuing the Compliance Certificates to these companies since inception i.e. 2001. The Complainant further stated that both the aforesaid companies have not cleared his dues and the companies might have approached the Respondent for issuing the Compliance Certificates as he had been asking these companies to clear his dues. The Complainant further stated that the Respondent had done all the work pertaining to the said companies in the month of December, 2013 without following the procedure prescribed in the Guidance Note on Code of Conduct for Company Secretaries. The Complainant further stated that the Respondent has wrongly attached the scanned copy of the Compliance Certificate issued to M/s. MSJ Resources Pvt. Ltd., along with the Form 66 filed for M/s. Printman Associates Pvt. Ltd.
2. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 7<sup>th</sup> January, 2014 calling upon her to submit the written statement. However, the same was received back in the Institute on 13<sup>th</sup> January, 2014 undelivered. A copy of the complaint was again sent to the Respondent *vide* letter dated 15<sup>th</sup> January, 2014 calling upon her to file the written statement which she submitted *vide* letter dated 30<sup>th</sup> January, 2014. The Respondent has admitted her mistake of issuing the Compliance Certificates to M/s. Printman Associates Pvt. Ltd. and M/s. M S J Resources India Pvt. Ltd., without first communicating with the previous incumbent i.e. the Complainant. She further stated that the company had approached her



*Sutanu Sinha*

1

*PK Mittal*



for completing the annual filing at the earliest. In order to complete the assignment within the time and to save the client's additional fee, she forgot to communicate to the Complainant. She further stated that her mistake was not intentional but an oversight due to urgent work. The Respondent further stated that she is not aware of any outstanding payment to the Complainant and has apologized to the Complainant over phone. The Respondent further requested for a lenient view in the matter.

3. 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 31<sup>st</sup> January, 2014 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 4<sup>th</sup> February, 2014. He *inter-alia* stated that the Respondent in her written statement has admitted her mistake. Hence, she has violated the provisions of para 4.9.4 of the Guidance Note on Code of Conduct for Company Secretaries and helped the client directly that their work can be executed without payment for years. The Complainant further stated that if she had asked for NOC or had communicated with him before taking the assignment, probably this situation would not have arisen. The Complainant further stated that the client had approached the Respondent in the month of December, 2013 and she had issued the Compliance Certificate dated 31<sup>st</sup> August, 2013 which is ethically wrong and unprofessional. The Complainant further stated that the Respondent forgot everything except her fees that she might have got from the client. The Complainant further stated that the client had approached her with *mala-fide* intention, as they have booked few of the Complainant's invoices and deducted TDS on the same but refused to pay the payment which is clear evidence that the client has no intention to pay the professional fees to him and wants to get their work done and the Respondent helped them in completing their pending work amounting to the financial loss of more than Rs. one lakh to him.
4. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and material on record, observed that the Respondent had issued Compliance Certificates to M/s. Printman Associates Pvt. Ltd. and M/s. M S J Resources India Pvt. Ltd., without first communicating to the Complainant in writing as he was carrying out professional assignment previously for issuing the Compliance Certificates to these companies. More so, the Respondent has admitted the mistake on her part. The Respondent has not addressed to the allegation levied against her for attaching the scanned copy of the Compliance Certificate issued to M/s. MSJ Resources Pvt. Ltd., along with the Form 66 filed for M/s. Printman Associates Pvt. Ltd. Therefore, the Respondent is *prima-facie* 'Guilty' of professional misconduct under Clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980.
5. The Board of Discipline at its meeting on 4<sup>th</sup> May, 2014 had considered the *prima-facie* opinion dated 12<sup>th</sup> March, 2014 of the Director (Discipline) and the material on record and agreed with the *prima-facie* opinion and



*Sudam Singh*

2

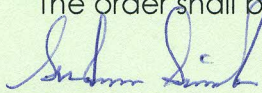
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decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 7<sup>th</sup> May, 2014 asking them to submit their written statement and rejoinder, respectively. The Respondent *vide* letter dated 20<sup>th</sup> May, 2014 admitted her mistake.

6. The parties *vide* letter dated 25<sup>th</sup> July, 2014 were called upon to appear before the Board on 14<sup>th</sup> August, 2014. On 14<sup>th</sup> August, 2014, the Complainant did not appear before the Board. The Respondent appeared in person and admitted her mistake and requested the Board for a lenient view in the matter. She further stated that the mistake was not intentional but due to an oversight and mental pressures due to her matrimonial dispute. The Board after considering the material on record; nature of issues involved and in totality of the circumstances of this case; concluded that the Respondent is 'Guilty' of professional misconduct under clause (8) of Part 1 of the First Schedule of the Company Secretaries Act, 1980 as she had issued the Compliance Certificates to M/s. Printman Associates Pvt. Ltd., and M/s. M S J Resources India Pvt. Ltd., without first communicating to the previous incumbent i.e. the Complainant. The Board communicated the same to the Respondent in the meeting itself and decided to afford an opportunity of being heard to the Respondent before passing any order under Section 21A (3) of the Company Secretaries Act, 1980. The Board asked the Respondent that to wait for some time and she will be called again.
7. We deliberated the matter and thereafter called the Respondent again and apprised her about the provisions contained in Section 21A of the Company Secretaries Act, 1980 and Rule 15 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Respondent noted the same and once again requested us for a lenient view in the matter. We keeping in view of the facts of the case and that the Respondent has very fairly and honestly admitted her mistake and that she was mentally upset because of matrimonial dispute and having a small child we, on the humanitarian ground order imposition of a token fine of Rs. 500/- on Ms. Nandani Walia, ACS-17840 (CP No.7677), the Respondent.

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

  
(Sutanu Sinha)  
Member

  
(P. K. Mittal)  
Presiding Officer

Date: 5<sup>th</sup> September, 2014

