

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 224/2014

In the complaint of professional or other misconduct filed by M/s. CD Equisearch Pvt. Ltd., against Mr. Shailendra Pathak, ACS-27386.

Date of decision: 26th September, 2014

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

ORDER

1. A complaint dated 18th February, 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 M/s. CD Equisearch Pvt. Ltd., (hereinafter referred to as the 'Complainant') against Mr. Shailendra Pathak, ACS-27386 (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent is working in two companies (i) M/s. Pushpanjali Tie-up Pvt. Ltd., as an officer and (ii) M/s Ajcon Global Services Ltd., as a Company Secretary in whole time employment simultaneously in violation of Section 383A of the Companies Act, 1956.
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 26th February, 2014 calling upon him to submit the written statement. The Respondent had submitted his written statement dated 19th March, 2014 wherein he has *inter-alia* stated that he is a whole time Company Secretary of M/s. Ajcon Global Services Ltd., which is in the business of providing Stock Broking Services, Depository Participant of CDSL and Financial & Corporate Advisory Services. His role and responsibility apart from regular secretarial works in the AGSL includes, *inter-alia*, handling legal & professional matters assigned to AGSL by its clients. The Respondent further stated that M/s. Pushpanjali Tie-up Pvt. Ltd., (hereinafter to be referred



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as "PTPL") is a client of AGSL and is currently availing services of Stock Broking, Depository, Financial, Legal & Professional and Corporate advisory. Further, PTPL has filed a Civil Suit against M/s. CD Equisearch Pvt. Ltd., and others before the Hon'ble Bombay High Court and the matter is *sub-judice*. Further, the Registered Office of M/s. Pushpanjali Tie-up Pvt. Ltd., is located in the city at Howrah (West Bengal) and it is difficult for the whole time employees of M/s. Pushpanjali Tie-up Pvt. Ltd., to be personally present on various dates before the Hon'ble High Court at Mumbai. The Respondent further stated that M/s. Ajcon Global Services Ltd., his employer company has authorized him to act as an Authorized Representative of PTPL. Hence, he is discharging his duty towards his employer company only.

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 26th March, 2014 asking the Complainant to submit the rejoinder followed by a reminder dated 21st April, 2014. The Complainant *vide* letter dated 29th April, 2014 requested for additional time to file the rejoinder which was granted *vide* letter dated 30th April, 2014. The Complainant submitted his rejoinder dated 5th May, 2014 wherein the Complainant has stated that none of the objects clauses of M/s. Ajcon Global Services Ltd., provide for advisory legal services to its clients (in the instant case investor/traders). In any event AGSL is not a legal firm which is competent to handle personal legal matters involving complicated questions of law. The Complainant further stated that the Respondent is only required to ensure compliance of all legal and regulatory requirements for the company of which he is the whole time Company Secretary. With respect to investors, the Respondent is required only to undertake the responsibility of managing relation with them and nothing more. The Respondent has become an officer/authorized representative of one M/s. Pushpanjali Tie-up Pvt. Ltd. (PTPL) while being in whole time employment as a whole time Company Secretary of M/s. Ajcon Global Services Pvt. Ltd. (AGSL).
4. Pursuant to rule 9 of the Rules, the Director (Discipline), after examination of the complaint, written statement, rejoinder and other material on record, *prima-facie* observed that the instant complaint has originated from the



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dispute between M/s. Pushpanjali Tie-up Pvt. Ltd., and M/s. CD Equisearch Pvt. Ltd. M/s. Pushpanjali Tie-up Pvt. Ltd., has filed a Civil suit against M/s. CD Equisearch Pvt. Ltd. & others before the Hon'ble Bombay High Court and the same is pending adjudication. He further observed that M/s. Pushpanjali Tie-up Pvt. Ltd., is a client of M/s. Ajcon Global Services Pvt. Ltd., of which the Respondent is a Company Secretary and Form 32 in that respect has been filed. Further, M/s. Ajcon Global Services Ltd., vide its letter dated 25th October, 2013 has authorized the Respondent to acts as an Authorized representative of M/s. Pushpanjali Tie-Up Pvt. Ltd., and represent M/s. Pushpanjali Tie-up Pvt. Ltd., before the Hon'ble Bombay High Court. M/s. Pushpanjali Tie-up Pvt. Ltd., has also authorized the Respondent to be its authorized representative before the Hon'ble Bombay High Court. Though, the Respondent is signing the documents such as plaint, affidavits on behalf of the company but the company is being represented by an Advocate before the High Court.

5. In this matter, M/s. Ajcon Global Services Ltd., the employer of the Respondent vide its letter dated 25th October, 2013 has authorized the Respondent to act as an authorized representative of M/s. Pushpanjali Tie-up Pvt. Ltd., to execute, sign and register various legal documents and affidavits on behalf of M/s. Pushpanjali Tie-up Pvt. Ltd., and represent this company before Hon'ble Bombay High Court from time to time. Since, the Respondent has acted under the authority of his employer; the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.


6. We considered the *prima-facie* opinion dated 16th September, 2014 of the Director (Discipline); the material on record and agree with the *prima-facie* opinion of the Director (Discipline) that the the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980 as M/s. Ajcon Global Services Ltd., the employer of the Respondent vide its letter dated 25th October, 2013 had authorized the Respondent to act as an authorized representative of M/s. Pushpanjali Tie-up Pvt. Ltd., to execute, sign and register various legal documents and affidavits on behalf of M/s. Pushpanjali Tie-up Pvt. Ltd., and represent this company before Hon'ble



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Bombay High Court from time to time and the Respondent has acted under the authority of his employer. We, therefore, conclude that no case is made out against the Respondent, and accordingly, close the matter and dispose-off the complaint.


(Sutanu Sinha)
Member


(P. K. Mittal)
Presiding Officer

Date: ^{18th} October, 2014

