

**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/229/ 2014

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Mr. Ambu Senan, Kottayam

.... Complainant

Vs.

Mr. R Harikrishnan, FCS-4915

Mr. Vimal S V, ACS-25061

Ms. V S Chitra, ACS-20901

....Respondent s


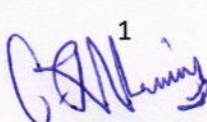
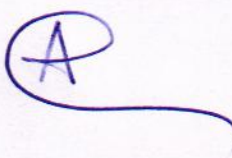
Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint dated 11th March, 2014 in Form I 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 Mr. Ambu Senan (hereinafter referred to as 'the Complainant') against Mr. R Harikrishnan Nair, FCS-4915, Mr. Vimal S V, ACS-25061 & Ms. V S Chitra, ACS-20901 (hereinafter referred to as 'the Respondents').
2. The Complainant has *inter-alia* alleged that :
 - (i) the Respondents are responsible for carry out the activities of Trivandrum Chapter of ICSI has been taking classes and programmes in an old building like cattle shed without out proper light and which is shaky with damaged stair case and also without toilet facilities, in spite of the approval from Head Quarters to shift the Chapter to Pattom Office about two years back.
 - (ii) The Complainant further alleged that the Respondents are collecting money from the students unauthorizedly without giving proper receipts and without properly remitting in Bank Accounts.



3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondents *vide* letters dated 22nd March, 2014 calling upon them to submit the written statement followed by a reminder dated 17th April, 2014 calling upon them to submit the written statement. Though email were received from Mr. R Harikrishnan, Respondent No. 1 and Mr. Vimal S V, Respondent No.2. However, no written statements have been received from the Respondents as on date.
4. The then Director (Discipline) *vide* his *prima-facie* opinion dated 4th July, 2014 *inter-alia* opined that that the Respondent is 'guilty' of professional misconduct for violation of Item (2) of Part III of the First Schedule to the Company Secretaries Act, 1980 (the Act) as the Respondents have not submitted their comments/ written statements despite reminder. The non-submission of the information called-for is a professional misconduct on the part of the Respondents.
5. On 14th July, 2014, the Board of Discipline after considering the material on record and in totality of the circumstances of this case, had agreed with the *prima-facie* opinion of the Director (Discipline) and decided to proceed further in accordance with the Act and the Rules.
6. The Respondents submitted their written statement to the *prima-facie* opinion of the Director (Discipline), received on 23rd September, 2014 contended that all the allegations of the Complainant are false and misleading. The Respondent further stated that:
 - (i) The Old Chapter building is also used to retain the same as a Seminar hall as its rent is very low.
 - (ii) All the funds are account for and the accounts of the Chapter are also audited.
 - (iii) It was further stated that the Complainant was very close to Ms. Soumya, the trainee staff of the Institute, appointed at Trivandrum chapter office previously. She was given punishment transfer and presently she is posted at Thrissur chapter. The Complainant has started creating nuisance against the Management Committee of the Trivandrum Chapter as he became very angry with them due to transfer of Ms. Soumya.
7. The Complainant *inter-alia* submitted his Rejoinder to the written statement of the Respondent to the *prima-facie* opinion of the Director (Discipline), *vide* his letter dated 3rd October, 2014 *inter-alia* stating that



since the Respondents have not filed their Written Statements on the complaint, the Director (Discipline) rightly took an inference that the Respondents have nothing to say and proceeded for framing prima facie opinion. The Respondents did not file their Written Statements on the prima facie opinion in time. He requested for maximum punishment to the Respondents in the matter. A copy of the Rejoinder received from the Complainant was sent to the Respondents vide letter dated 10th October, 2014.

8. On 6th January, 2016, the Board of Discipline had adjourned the matter at the request of the Respondents.
9. On 23rd December, 2016, the Board of Discipline considered the requests of the Respondents and decided to adjourn the matter and to provide last and final opportunity to the parties to appear before the Board of Discipline at the next date of hearing in the matter.
10. On 27th February, 2018, Mr. Harikrishnan R Nair, Respondent no 1 appeared before the Board of Discipline and submitted that he has been authorised by the other two Respondents in the matter to appear on their behalf and submitted their respective authorisations to appear on their behalf. Thereafter, Mr. Harikrishnan R Nair, Respondent gave a brief background of the matter and stated that neither of the Respondents or the office bearers have collected any alleged funds from any of the students rather it is the students themselves who had collected the alleged funds for their own activities and programs. He further stated when the fund got accumulated to about Rs. 14,570 (Rupees Fourteen Thousand Five Hundred Seventy), the leader of the said group of students who was also the student of final of our Institute requested the chapter office to keep the money in safe custody. However, after some time the said student who had deposited the money with the Chapter met with an accident and died. Further, after this complaint, the Respondents have written to the Head quarters of ICSI for getting the directions for dealing with the said fund. So far Rs 14,570 (Rupees Fourteen Thousand Five Hundred Seventy) has not been accounted in the chapter's books of account.
11. The Board of Discipline, after considering the material on record, and keeping all the facts and circumstances of the case, has observed as under:



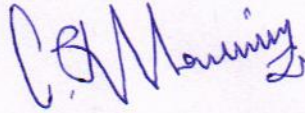
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[Handwritten Signature]

- (i) That the Complainant could not establish the allegations made in the complaint that the money was collected/used by the Respondents and is of the opinion is that the Respondents could not be held guilty of professional misconduct.
- (ii) The Board of Discipline further observed that as regards the carrying of activities of Trivandrum Chapter of ICSI i.e. taking classes and programmes in an old building, the same relates to the administrative functioning of a Chapter and, therefore, it does not come within the ambit of the professional misconduct. Accordingly, the complaint is dismissed.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Atul H Mehta
Presiding Officer

