

**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/246/2014

Order reserved on : 30th November, 2018

Order issued on : 17 JAN 2019

Ms. Anuradha Gupta, FCS-5007

.....Complainant

Vs

Shri Ankur Shah, ACS-25779

..... Respondent

CORAM:

Shri Atul H Mehta, Presiding Officer
Shri C Ramasubramaniam, Member
Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Mrs. Anita Mehra, Assistant Director

FINAL ORDER

1. The Board of Discipline examined the Complaint, material on record and prima-facie opinion of the Director (Discipline).
2. The Board of Discipline considered the following: -
 - 2.1 A complaint dated 24th July, 2014, in Form-'1' 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 Ms. Anuradha Gupta (FCS-5007), ('the Complainant'), against Shri Ankur Shah, ACS-25779, (hereinafter referred to as 'the Respondent').
 - 2.2 The Complainant has *inter-alia* alleged the following against the Respondent: -



- 2.2.1 In his professional profile on the famous networking site LinkedIn, the Respondent practiced under the name of Ankur Shah and Associates till September, 2011. But he has been also working as Company Secretary in India Laminates since April, 2011. The said profile also flaunts the Respondent as Director and Chairman of a Company, namely, Guru Gold-24k Pvt. Ltd. He is also using the designation of Managing Trustee in Eduplus Foundation. The Respondent still holds the Certificate of Practice and, therefore, he is clearly misleading the general public by wrongly posting his actual profile and work just to expand his business.
- 2.2.2 The Respondent has leaked a complaint of the Complainant against the Respondent which was emailed to the concerned Council Members only and by acting in utmost disregard to the Rules, Regulations and Authorities and in contravention of societal norms too.
- 2.2.3 The Respondent had defamed the Institute by using provocative and subversive words.
- 2.2.4 In his complaint dated 05.07.2014 addressed to the Institute the Respondent has openly published on his facebook profile and has made baseless statements and allegations about the Complainant without sufficient information. His opinions and expressions are highly derogatory and built on the castle of his own imaginations. The language that has been used by the Respondent in this complaint may tarnish the image of the Institute.
- 2.2.5 The Respondent used highly derogatory comments regarding the Complainant and her conduct as well as a profession. The Respondent not only embarrassed the Complainant but also brought a bad name to the profession of the Institute by posting this material online. The Respondent is personally liable to the Complainant under Section 499 of IPC for defamation.
- 2.2.6 The Respondent's complaint dated 05.07.2014 against the Complainant which was openly published by him on his facebook profile contains baseless statements and allegations about the Complainant without sufficient information. The unscrupulous complaint of the Respondent



AS *C. R. Narain*

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against the Complainant is clearly with malafide intentions as the facts claimed by him are utterly false to his knowledge.

2.2.7 A Police Complaint has been made by the Complainant. Pusuant to the said complaint an FIR No 1719 dated 25.08.2014 has been registered under Section 354D of Indian Penal Code at PS Shakarpur, Delhi.

2.3 The Respondent has not filed any Written Statement to the complaint despite an opportunity having been given. Therefore, his defence or rebuttal, if any, to the allegations is not available.

2.4 Since the Respondent has not filed any Written Statement in his defence, the question of Rejoinder does not arise.

2.5 The Complainant has *inter-alia* stated following developments and happenings since the date of filing her complaint dated 8th August, 2014 against Shri Ankur Shah, the Respondent.

2.5.1 On 15th August, 2014, the Complainant has received an email from the Respondent which was again a highly defamatory mail. The said mail was written by the Respondent in response to legal notice sent by her advocate on 17th July, 2014, the Respondent cleverly posed that ~~notice~~ as notice drafted by her and spread negativity against her though he clearly knew that notice was sent by her advocate.

2.5.2 The Respondent in response to her notice has threatened to file a case of defamation against her and demanded a sum of Rs 5 Crores in said letter/Email.

2.5.3 In his above said letter which was sent to more than 40 e-mail IDs, the Respondent has mentioned that he is following the Complainant through Facebook/Internet and has openly said that he knows all her movements, though the Respondent has never been on friend list and her profile is closed for public viewing which is clearly a violation of Section 354D (ii) of IPC.

2.5.4 Again on 19th August, 2014, the Respondent sent her an email asking her to reveal the department on which he has lodged complaint against the Respondent which again amount to an offence.



 C. A. Manning


2.5.5 The Complainant further stated that in this way the Respondent is again and again annoying her by deliberately sending her email/ letters just in order to bring agony, pain and stress in her life.

2.5.6 The Complainant has taken up the matter with Police and an FIR has been lodged by Delhi police on 25th August, 2014 vide FIR No.1719.

3. The Board of Discipline at its meeting held on 30th November, 2018 considered the prima facie opinion of the Director (Discipline) dated 21st November, 2018 along with the material on record, that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.

4. The Board of Discipline further considered the following observations of the Director (Discipline) in this matter:

4.1.1 That the Respondent has not filed any Written Statement to this complaint filed against him. However, the Respondent has wrote an email dated 15th August, 2014 addressed to President, Vice President, Council Members and Office Bearers of ICSI indicating that the complainant has made tons of false accusations against him.

4.1.2 That Shri Ankur Shah, the Respondent has also filed an information dated 5th July, 2014, against the Complainant, leveling allegations of professional and other misconduct falling under Item (5) of Part I of the Second Schedule to the Company Secretaries Act, 1980, and Item (1) of Part II to the Second Schedule of the Company Secretaries Act, 1980 which was disposed off by the Board of Discipline holding the Respondents as 'Not Guilty' for any Professional or Other Misconduct under the Company Secretaries Act, 1980.

4.1.3 That the Respondent is a Director of Guru Gold 24K Pvt. Ltd. since 26th July, 2011 and DSC registered with MCA was expired on 13th March, 2014.

4.1.4 That the Respondent described himself in LinkedIn profile as Chairman-Guru Gold-24Kt Private Limited, Company Secretary-India Laminates Manufacturers' Association, Managing Trustee - Eduplus Foundation, Proprietor of Ankur Shah and Associates (2009-2011 - Two years).



AS *C. A. Sharma*

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- 4.1.5 That the Respondent had used his expressions/interpretations about the activities of the Past President, Vice President and other members of the Council and Director (Discipline) in his Blog dated 14th May, 2014.
- 4.1.6 That the Respondent had sent letters, legal notice to the Complainant; and written emails to the Council Members about the complainant.
- 4.1.7 It has been observed that as per the records of the Institute, the Respondent is holding a COP no. 9221 from 5th July, 2010 to 23rd September, 2015 and COP No. 19041 from 31st July, 2017 to till date.
- 4.1.8 Further, it is a matter of fact that no guideline or advisory was issued by the Council of the Institute to its members at the relevant point of time, about the usage of social media platform/websites/blogs. Accordingly, the benefit of doubt goes in favour of the Respondent. Moreover, the Complainant has failed to prove violations done by the Respondent. Nothing adverse has been proved for the allegations with regard to the LinkedIn profile of the Respondent.
- 4.1.9 The Complainant has filed a complaint to the Delhi Police and FIR No. 01/2017 under Section 354D IPC (Stalking) has been registered in the Police Station Shakarpur, Delhi. The Complainant in an Information case filed against her by the Respondent vide letter dated 11th April, 2018 has submitted the following status of the aforesaid Police complaint made by her: -

- Police is in receipt of reply from Google for leakage of email and contents and important documents from ICSI house by official or any other person.
- Police yet to receive information from Facebook office USA regarding the complaint pertaining to section 354-D/506/500 of IPC and Section 66A of I.T. Act 2000 filed by Respondent No. 2 on 12th July, 2014.
- Statement u/s 164 had been made by her before duty Magistrate.
- Complaints have also been made to National Women Commission and Delhi Commission of Women. Detailed enquiry ordered by both the Commissions.



[Handwritten signatures in blue ink]

- Police is in process to file charge sheet in court, once the pending information is received.
- Complaint has been made in Cyber Cell u/s 66A of IT Act 2000 and investigation has been done, police may file its charge sheet after getting some information pending from Facebook office.

4.1.10 The matter primarily related to personal disputes between the Complainant and the Respondent.

4.1.11 In view of the above observations and considering all the facts and circumstances of the matter, the Director (Discipline) is prima facie of opinion that the Respondent cannot be held guilty of professional or other misconduct under the First and/or Second Schedule to the Company Secretaries Act, 1980 due to lack of any cogent evidence to substantiate the allegations made against him by the Complainant. This Complaint is nothing but an outcome of some personal dispute between the complainant and the Respondent. Moreover, the benefit of doubt goes in favour of the Respondent as there were no guidelines in vogue at the relevant point of time, about the usage of social media platform/websites/blogs by the members of the Institute.

4.1.12 Accordingly, Director Discipline is prima facie of the opinion that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.

5. The Board of Discipline at its meeting held on 30th November, 2018, after considering the material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Complainant. Accordingly, the complaint is closed.



Member



Member



Presiding Officer

