

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 256/2014

**In the complaint of professional or other misconduct filed by Mr. Sanjay Aggarwal against Ms. Vandana Pankaj, FCS-6404 (CP No. 6987).**

Date of decision: 16<sup>th</sup> June, 2015

**Coram:** Mr. Ahalada Rao V, Presiding Officer  
Mr. Vineet Chaudhary, Member  
Mr. Sutanu Sinha, Member

**ORDER**

1. A complaint dated 8<sup>th</sup> September, 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 Sanjay Aggarwal (hereinafter referred to as the 'Complainant') against Ms. Vandana Pankaj FCS-6404, (CP No. 6987) (hereinafter referred to as the 'Respondent').
2. The Complainant *inter-alia* alleged that the Respondent has certified Form 2 pertaining to the allotment of shares of M/s. Gitanshi Polychem Pvt. Ltd., to him without exercising due diligence and on the basis of fabricated documents in connivance with other officers, chartered accountant, directors and other shareholders of company. The Complainant further stated that there was no allotment of shares to him and in fact the company had borrowed a sum of Rs.97,50,000/- from him in the financial year 2010-11 on interest, the said loan amount was paid to the company by him through eleven cheques issued on various dates from his bank account maintained at IDBI Bank Ltd., and same was duly recorded in the books of accounts of the company and the company had also issued one TDS certificate to him for the financial year 2010-2011 wherein the company had deducted income tax at source under Section 194A of Income Tax Act, 1961 (under heading Interest other than Interest on Securities) on the amount of interest accrued on the said loan amount of Rs.97, 50,000/- (Rs. Ninety seven Lakh fifty thousand only). The Complainant further stated that the company had shown in Form 2 that the shares were allotted for cash while no cash was given by the Complainant to the company for such share allotment. Hence, the basic document of share allotment which was asserted by the company is invalid and illegal. However, as per the company, said amount was received



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towards 1/3 of the share of the company which is denied. The Complainant further stated that as per Section 75 of the Companies Act, 1956 in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, the company shall produce a contract in writing constituting the title of the allottee to the allotment together with any contract of sale of a contract for services or other consideration in respect of which that allotment was made for the inspection and examination of the Registrar. Such contracts should be duly stamped and filed with the Registrar and should be verified in the prescribed manner. Such contracts and a return should contain information stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. In the instant case the company had shown his name as allottee but there was no contract between the parties, which clearly reflects that said Form 2 is a fabricated piece of document and same was manufactured with an intention to grab the money of the Complainant. The company had intentionally not filed the Form 3 which would have been filed in case there was any proper share allotment. The company knowingly filed only Form 2 because there was no contract between the Complainant and the company regarding any share subscription and therefore the company is involved in criminal acts and omissions creating false, frivolous, illegal, incorrect, manufactured, unlawful documents in order to grab his money. The Complainant further stated that the company had admitted creditor's liability in Books of Accounts. The company had fraudulently shown him as shareholder and an amount of Rs.97,50,000/- was shown as adjusted towards the share capital. Had it been so, the fraud played by company is clearly visible from the fact that the balance amount which was standing in books of account surprisingly evaporated and no treatment was given to balance amount as it was never intimated or returned back to him and there was no further interest on the money borrowed by company from 31<sup>st</sup> March, 2011 till alleged date of allotment. It demonstrates that documents were fabricated and manufactured with *mala-fide* intention to grab his money and the company is unable to repay the money borrowed from him with interest.

3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 22<sup>nd</sup> September, 2014 calling upon her to submit the written statement. The Respondent submitted her written statement dated 13<sup>th</sup> October, 2014, wherein she denied all the allegations levied against her by the Complainant. She *inter-alia* stated that she has restricted her explanation only on the points for which her professional services was sought by the company and that is only with context to the certification and filing of Form 2 (Return of Allotment u/s 75 of the Companies Act 1956). She further stated that she had exercised due diligence before



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certifying the Return of Allotment. She further stated that she had received the following documents and information from the company:

- A request letter dated 30<sup>th</sup> May, 2012;
- Certified Copy of Board resolution dated 15<sup>th</sup> December, 2011;
- Certified copy of minutes dated 15<sup>th</sup> May, 2011;
- Bank statement evidencing the realization of amount against which the shares were issued and the respective Form was filed on 4<sup>th</sup> June, 2012;
- Confirmation from the company that the share valuation was Rs.45 per share.

The Respondent further stated that Form 3 is not required to be filed with Form 2, except if the shares are allotted otherwise in cash and no agreement is entered in this regard but the Form 2 filed at the instance of the company is specifically for shares allotted for cash (established with the copies of resolution; minutes and the request letter supported by the intent letter of the Complainant). The Respondent further stated that mere absence of the details of share subscription form in the explanation/ narration to the resolution passed by the Board of directors in their meetings does not render the proceedings of the meetings as invalid. It is presumed that the minutes of the proceedings of the meetings of the Board of Directors shall contain a fair and correct summary of the proceedings, until the contrary is proved. The meeting shall be deemed to have been duly called and held and all proceedings there at to have duly taken place. The Respondent further stated that she had discharged her duties with due diligence restricted only with that of certification of the Return of allotment and she is not a participating factor in the whole process of the management discussion while finalization of company's balance sheet and the treatment of various monetary transactions. Further, it seems that the motive behind the entire scenario is to create pressure on the management to accept the various allegations of the Complainant, rather she was just an independent professional hired for certification of Form 2 which was taken care of after considering documents and information provided specifically relevant for filing of return of allotment. The Respondent further stated that she has done nothing wrong in certifying & filing the Form 2 and she has certified the same in good faith after ensuring all the respective information vital for the certification.

4. 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 15<sup>th</sup> October, 2014 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 30<sup>th</sup> October, 2014 wherein he reiterated his earlier submissions and made additional submissions.



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5. Pursuant to Rule 9 of the Rules, the Director (Discipline), on examination of the complaint, written statement, rejoinder and other material on record, observed that there is a dispute between the Complainant and the other directors of M/s. Gitanshi Polychem Pvt. Ltd., namely Mr. Ramnath Aggarwal and Mr. Jagan Aggarwal. As per the Complainant he had given a loan of Rs.97,50,000/- to the company in the FY 2010-11 on interest. However, as per the company, the said amount was received towards 1/3 of the share of the company. The allegation against the Respondent is that she had certified a Form 2 pertaining to the allotment of shares to the Complainant without exercising due diligence and on the basis of fabricated documents. The Director (Discipline) further observed that the Respondent had certified the alleged Form 2 on the basis of following documents and information from the company:

1. A request letter dated 30<sup>th</sup> May, 2012;
2. Certified copy of the Board resolution dated 15<sup>th</sup> December, 2011;
3. Certified copy of the Minutes dated 15<sup>th</sup> May, 2011;
4. Bank statement evidencing the realization of amount against which the shares were issued and the respective Form was filed on 4<sup>th</sup> June, 2012;
5. Confirmation from the company that the share valuation was Rs. 45 per share.
6. Copy of letter dated 9<sup>th</sup> November, 2011 of the Complainant addressed to Shri Jagan Agarwal, Director, M/s. Gitanshi Polychem Pvt. Ltd.

Further, in the instant case the letter dated 9<sup>th</sup> November, 2011 of the Complainant addressed to Shri Jagan Agarwal, Director, M/s. Gitanshi Polychem Pvt. Ltd., shows the intention of the Complainant to become a shareholder of the company. Further, a PCS has every reason to believe the authenticity of the documents produced before him/her for certification unless there is anything suspicious. Hence, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980 as it can be seen from the records that the Respondent had exercised due diligence while certifying the said Form 2. On 11<sup>th</sup> March, 2015, the Board of Discipline considered the *prima-facie* opinion dated 2<sup>nd</sup> February, 2015 of the Director (Discipline) and advised the Director (Discipline) to investigate the matter further. Accordingly, vide letters dated 30<sup>th</sup> March, 2015 the parties were called upon by the Director (Discipline) on 7<sup>th</sup> April, 2015. The Complainant along with his Advocate and the Respondent along with her authorised Representative appeared before the Director (Discipline) and made oral submissions. During the proceedings, the Complainant stated that there are cases filed at various forums related to this matter. The Complainant was asked to provide the copies/status of those cases, to which he agreed to submit within one month. On 8<sup>th</sup> May, 2015, the Board of Discipline considered



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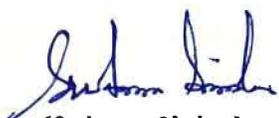
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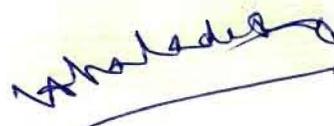
the matter and noted that the Complainant has not submitted the copies/status of the cases related to this matter as agreed by him during the submissions made before the Director (Discipline). The Board of Discipline after considering the material on record, advised the Directorate of Discipline to send a letter to the Complainant for submitting the documents as agreed by him during the proceedings.

6. On 16<sup>th</sup> June, 2015, the Board of Discipline noted that a letter dated 14<sup>th</sup> May, 2015 was issued to Complainant to submit the documents within 14 days of receipt of the letter but no response was received from the Complainant and the Director (Discipline) holds his *prima-facie* opinion dated 2<sup>nd</sup> February, 2015 intact. The Board of Discipline after considering the material on record and in totality of the circumstances of this case agreed with the *prima-facie* opinion dated 2<sup>nd</sup> February, 2015 of the Director (Discipline) and held that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980 as it is seen from the records that the Respondent had exercised due diligence while certifying the said Form 2 pertaining to the allotment of shares to the Complainant. The Board observed that the Respondent had received the requisite documents and information from the company for the certification of alleged Form 2. Further, a PCS has every reason to believe the authenticity of the documents produced before him/her for certification unless there is anything suspicious. The Board closed the matter.

Accordingly, the complaint stands disposed-off.

  
(Sutanu Sinha)  
Member

  
(Vineet Chaudhary)  
Member

  
(Ahalada Rao V)  
Presiding Officer

Date: 12/08/2015

