

**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/349/2016

**Order reserved on: 27<sup>th</sup> February, 2018**

**Order issued on : 22<sup>nd</sup> March, 2018**

**Shri Pramod Khosla**

**.... Complainant**

**Vs.**

**Shri Sanjay Kumar Gupta  
(FCS 2574, CP No. 1490)**

**.... Respondent 1**

**Shri Deepak Kumar Khaitan  
(FCS 5615, CP No. 5207)**

**.... Respondent 2**

**Present:**

**Mrs. Meenakshi Gupta, Director (Discipline)**

**ORDER**

1. A Complaint dated 11<sup>th</sup> March, 2016 in Form I under section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as 'the Act') read with Rule 3(1) of the Company Secretaries (Procedure for Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as 'the Rules'), filed by Shri Pramod Khosla (hereinafter referred to as 'the Complainant') against Shri Sanjay Kumar Gupta (FCS 2574, CP No. 1490) (hereinafter referred to as 'the Respondent 1') and Shri Deepak Kumar Khaitan (FCS 5615, CP No. 5207) (hereinafter referred to as 'the Respondent 2').

2. The Complainant inter-alia alleged that-

- (i) The Respondents connived with their clients (Respondents in CP No 216/2012) and filed Form 7B (Share Transfer Form pursuant to Section 108 (1A) of the Companies Act, 1956) with forged signature of the Complainant's brother, Shri Kishore Khosla, and his Wife, Ms. Veena Khosla, to prejudice and defraud not only the Complainant and his family members but also the Hon'ble Company Law Board.
- (ii) After completion of hearing of C P. No. 216/2012 the Hon'ble Company Law Board sought the professional's appearance from the both side to file their respective 'Notes on Arguments'. While complying with the Hon'ble Company Law Board, the Respondents in connivance with their Clients, and with mala fide intention included, Form 7B (Share Transfer Form pursuant to Section 108 (1A) of the Companies Act, 1956) (Pg. 151-157) with forged signatures as evidence on behalf of their Clients with their 'Notes on Arguments' to defraud



*C. Manning*



the Hon'ble Company Law Board, to procure a favourable order for their Clients to the detriment of the original shareholders of M/s Khosla Steel Industries Pvt. Ltd.

- (iii) In their Written Statement to the Petition the Respondent had not filed Form 7 B purportedly signed by Shri Kishore Khosla or his wife Ms. Veena Khosla. (A copy of the CP No. 216/2012 has not been placed on record.).
- (iv) On receipt of a copy of the Written Notes on Arguments filed by the Respondent on behalf of their clients, the Complainant immediately filed the Affidavits of both Shri Kishore Khosla and his Wife Ms. Veena Khosla affirming that they had not transferred any shares of M/s Khosla Steel Industries Pvt. Ltd., to anyone nor had they entered into any Agreement with anyone to transfer of shares and they had not received any consideration for any proposed transfer of the share to anyone.
- (v) The Respondent CS Sanjay Kumar Gupta represented CS Sital Prasad Swain's case bearing No. DC/156/2012 who continues to defraud not only the Complainant's family members but also the Hon'ble High Court of Delhi, Hon'ble High Court of Ranchi, Civil Court at Jamshedpur and also the Appellate Authority.
3. In his Written Statement dated 19.07.2016, Shri Deepak Kumar Khaitan, the Respondent No. 2 denied the allegations of professional and other misconduct against him and has stated as under:
- (i) The Respondent 2 has raised a Preliminary Objection that the complaint made by the Complainant is not maintainable because one complaint against two (2) different members in one Form "I" is not maintainable. The Respondent 2 has also pointed out certain other technical irregularities in Form I for filing the complaint.
- (ii) The Complainant has started targeting the professionals who represented/ worked with the other side in the legal proceedings.
- (iii) It is clear from the final order dated 20.03.2014 of the Company Law Board, Kolkata Bench, in CP No, 216/2012 that the Complainant allotted shares worth Rs. 14,00,000/- (Rs. Fourteen Lakh only) to himself for cash at par.
- (iv) The Company Law Board, Kolkata Bench, in its order dated 20.03.2014 in C. P. No. 216/2012 has upheld the transfer of shares by Shri Pramod Khosla and his wife (the Respondent No. 7 & 8 in the CP) to the Respondent No. 4 (Shri Bishender Singh).
- (v) There is also a very fine line of difference between the 'Representational Services rendered before Quasi Judicial Bodies' and the 'Certification/Audit Services' in terms of the Statutory Requirements'. The Representation on behalf of his Client before any Court of Law/Tribunal/Adjudicating Authority is made on the basis of good faith and on the basis of the Affidavit filed by the Client and the Authorised Representative cannot be held liable for the Affidavit/ documents of his Client.



*C.S. Khaitan*



- (vi) In the case of Certification/Audit, it is the duty of certifying member to do necessary due diligence. In the instant case, the Respondents were engaged in representational services and not in Certification/Audit services.
- (vii) On merits, it has been stated that transfer of subject shares has already been upheld by the Company Law Board in the final order and that too after detailed examination.
- (viii) The Respondent no. 2 has denied the submissions of the Complainant that the Written Notes on Arguments should at best have copies of Judicial Orders of the Hon'ble Courts referred by the Lawyer/Professional during the course of arguments/submissions made and no other.
- (ix) The final order passed by the CLB does not anywhere observe that the Respondent in connivance with their Clients (the Respondents in CP No. 216/2012) with mala fide intentions included 7B with forged signatures as evidence with the 'Notes on Arguments' to defraud the Hon'ble Bench to procure a favourable order to the detriment of the original shareholders of M/s Khosla Steel Industries Private Limited.
- (x) Any Reply/Written Statement to the Petition was always given in the context of the Petition or allegation made therein and not otherwise. Para No. 52 of the Reply filed on behalf of Respondent No. 4 in C. P. No. 216/2012, was in response to the Para 6 (v) of the Petition. (Not available on record). This has been dealt with in detail in the final order of the CLB. The CLB has upheld the transfer of shares by Respondent Nos. 7 & 8 to Respondent No. 4.
4. Despite sufficient opportunity having been given, the Respondent No. 1, Shri Sanjay Kumar Gupta, has not filed his Written Statement.
5. The Complainant submitted his Rejoinder dated 26.08.2016 to the written statement of Respondent 2 wherein he reiterated and re-stated the contents of his complaint. He stated that the Respondent connived with their clients i.e Respondents in C. P. No. 216/2012 before the Company Law Board to include forged documents in their 'Notes on Arguments' with sinister design and mala fide intention to procure a favourable order in favour of their Clients despite the fact that 'Notes on Arguments' is merely a precise summary of the arguments made during the course of hearing before the Courts and or Tribunals/Forums by the Advocates/Professionals for their respective clients and the same is not supposed to contain anything much less a purported vital piece of evidence like Form 7B which have a serious bearing on the outcome of the adjudication.
6. The Director (Discipline) vide her prima-facie opinion dated 13.01.2018 inter-alia opined that that the following issues arise for consideration:
- Whether the complaint is not maintainable by the reasons of the objections taken by the Respondent No. 1 in his Written Statement.
  - Whether the Respondent Nos. 1 and 2 are **prima facie** guilty of professional and other misconduct as alleged by the Complainant.

6.1 As far as the issue relating to the maintainability of the complaint is concerned, the Respondent has stated that the complaint is not maintainable because there is no provision in the Rules, for filing a joint Complaint, that is, a single complaint against two (2) different members. There should be two (2) complaints against two (2)





different members. The Respondent No. 2 has raised further objections regarding the manner of filling the various items of Form I. It has also been stated that the complaint is addressed to the Secretary, the Institute of Company Secretaries of India and not the Director (Discipline).

- 6.2 As far as the objections of the Respondent No. 2 regarding filing the joint complaint is concerned, it is stated that there is no provision in the Company Secretaries (Procedure for Investigation of Professional and other misconduct and Conduct of Cases) Rules, 2007, which prohibits a person from making a joint complaint. On the contrary Sub-Rule (4) of Rule 5 of the Rules, provides that if the subject matter of the complaint is, in the opinion of Director (Discipline) is the same, or has been covered by any previous complaint or information received and is under process or has already been dealt with, the Director (Discipline) shall club the new complaint with the previous complaint if the same is under examination. In so far as a firm of Practicing Company Secretary is concerned, a complaint made against a firm is to be treated as complaint against all the partners of the firm. In the instant case a joint complaint has been made against two (2) individual members of the Institute. Having regard to the fact that such joint complaints are not prohibited under the Procedure for Investigation of Professional and other misconduct and Conduct of Rules, the objections raised by the Respondent No. 2 regarding maintainability of the present complaint is not sustainable.
- 6.3 The other objection of Respondent No. 2 relates to the manner of filling the various items of Form I. It is observed that these objections are of technical nature and have no material infirmity in the maintainability of the complaint. In the **prima facie** view of Director (Discipline), the complaint as made by the Complainant is maintainable.
- 6.4 The next issue relates to the question whether the Respondents have committed any act of professional and other misconduct in terms of the First Schedule or the Second Schedule to the Act. In his complaint, the Complainant has alleged that the Respondents connived with their Clients with a view to defraud the Complainant and his family and the Company Law Board, Kolkata Bench, to obtain a favourable order for their Clients. The gravamen of the complaint is that the Respondents, pursuant to the directions of the Hon'ble Company Law Board, Kolkata Bench, filed Written 'Notes on Arguments' on behalf of their Clients. It has been alleged that the Written 'Notes on Arguments' filed by the Respondents were beyond the oral Arguments made during the course of hearing and also annexed there with a forged Form 7B (Share Transfer Form) for transfer of shares of Shri Kishore Khosla and his wife.

On receipt of copy of Written 'Notes on Arguments' of the Respondent in CP No. 216/201, Shri Kishore Khosla and his wife filed Affidavits affirming that they had not transferred any shares of M/s Khosla Steel Industries Pvt. Ltd. to anyone nor had they entered into any Agreement with anyone for transfer of their shares and they had not received any consideration for any alleged transfer of the shares from anyone.

- 6.5 Ordinarily, it is correct to say that the Written 'Notes on Arguments' should be confined to the oral submissions advanced during the course of hearing and that it should not refer to or annex with it a new document which is not already on record. However, the Court/Tribunal may in its discretion, discard in whole or in part, written submissions which travel beyond the Arguments advanced during the course of hearing. The Court/Tribunal may also ignore or not take into account any new submissions or the document which is not part of the Court records. However, in the present case the CLB has in its discretion chosen to take into account the Written Arguments and also the Share Transfer Form. In Para 4 (e) of its order dated



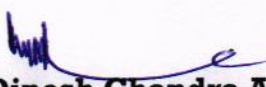



20.03.2014 the Company Law Board, Kolkata Bench, has observed that "the Respondents have produced the Share Transfer Form executed by the Transferor Shri Kishore Khosla (Respondent No. 7) in respect of 4,755 shares for a consideration in cash of 20,29,375/- (Rs. Twenty Lakhs Twenty Nine Thousand Three Hundred and Seventy Five only) in favour of the Transferee Shri Bishender Singh (Respondent No. 4)." It has also been observed that similarly "Ms. Veena Khosla (Respondent No. 8) executed Share Transfer Form in respect of 3,534 shares for a consideration in cash of Rs. 15,01,950/- (Rs. Fifteen Lakhs One Thousand Nine Hundred and Fifty only) in favour of Shri Bishender Singh." The Ld. Company Law Board, Kolkata Bench has upheld the aforesaid transfer of shares by Shri Kishore Khosla and his wife Ms. Veena Khosla. If at all the Complainant had any grievance against the order of the Company Law Board, he could have made an Application for review of the order or file an appeal in the High Court. In any case, the Complainant has already filed an Appeal before the High Court and the matter is **sub-judice**.

- 6.6 Since the Respondent have not verified and certified any document in their capacity as Practising Company Secretary, prima facie no case of professional and/or other misconduct is made out against them for acting as Authorised Representative of their Clients before the Company Law Board, Kolkata Bench, and acting under their instructions. If they were provided with a copy of Form 7B (Share Transfer Form) by their clients for being filed in the Company Law Board, they had no option but to file it with their Written notes of Arguments. It was not their duty to verify and/or check the veracity or authenticity of the said Forms, the respondents cannot be said to guilty of professional or other misconduct. It may also be stated that the Representation on behalf of his Client before any Court of Law/ Tribunal/Adjudicating Authority is made on the basis of good faith and on the basis of the Affidavit filed by the Client and the authorised Representative cannot be held liable for the Affidavit/documents of his Client.

In view of the aforesaid and keeping in view all the facts and circumstances of the matter, the Director (Discipline) was prima-facie of the opinion that no case of professional and other misconduct is made out against Respondent No. 1 and 2 under the Company Secretaries Act, 1980. The complaint deserves to be dismissed.

7. The Board of Discipline, after considering the material on record, and keeping all the facts and circumstances of the case, agreed with the prima-face opinion of the Director(Discipline) and held the Respondents '**not guilty**' under the Company Secretaries Act,1980 .Accordingly, the complaint is dismissed.

  
CS Dinesh Chandra Arora  
Member

  
CS C Ramasubramaniam  
Member

  
CS Atul H Mehta  
Presiding Officer

