

**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/354/2016

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

**M/s Overseas Mobiles Private Limited
Through Shri Subhash Chandra Sharma**

.... Complainant

Vs.

Shri Vishal Madhukant Shah, FCS-7438

.... Respondent


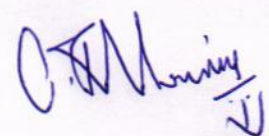

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 24th May, 2016 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as '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 (hereinafter referred to as 'the Rules') by M/s Overseas Mobiles Private Limited through Shri Subhash Chandra Sharma, Director (hereinafter referred to as 'the Complainant') against Company Secretary Shri Vishal Madhukant Shah, Membership No. FCS-7438 (hereinafter referred to as 'the Respondent').
2. The Complainant in his Complaint dated 24th May 2016 and letters of the Complainant dated 13th June 2016 and 20th June 2016 has inter-alia alleged:
 - (i) That M/s Drive India Enterprises Solutions Ltd. (herein after referred as 'DIESL') has committed various criminal offences with the Complainant by falsifying the accounts and forgeries in collusion with the Respondent and he has committed professional misconduct by manipulating the accounts of DIESL.
 - (ii) That the Respondent is the permanent employee of DIESL and looking after the day to day affairs of DIESL and he is also a practising



company secretary which is clearly misconduct as per the provisions of the Company Secretaries Act, 1980.

(iii) That Respondent has failed to disclose material facts known to him in his report or settlement as he had not disclosed the contingent liability of DIESL and criminal prosecution pending against DIESL and its Directors/officers in their annual report/balance sheet and he is concerned with such report or settlement in a professional capacity whereas Company Secretary is bound to disclose the same.

(iv) That the Complainant, as per the direction of the Hon'ble Metropolitan Magistrate got the FIR No. 239/2010, PS Madhu Vihar registered against the DIESL. During the course of the investigation of the case, the Respondent as Company Secretary has replied to the questionnaire put by the Investigation officer on behalf of the Directors/ CEO/CFO of DIESL wherein he has clarified the forgery/falsification of account committed by them which clearly proves the connivance of the Respondent.

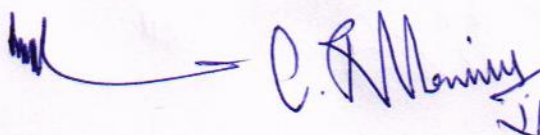
3. The Respondent has submitted his written statement dated 15th July 2016 which was on the letter head of DIESL and verified and signed on the behalf of DIESL. A letter dated 21st July 2016 and reminder dated 2nd September was sent to the Respondent to submit a duly verified written statement in his individual capacity. However, written statement in his individual capacity has not been received from the Respondent. The Respondent in his written statement dated 15th July 2016 has inter-alia rebutted the allegations and *inter-alia* stated :-

(i) That his name did not even appear in the original FIR/complaint. Neither was he investigated as an accused person by the EOW nor was his name mentioned in the list of accused in the closure report filed by the Investigation Officer (IO). The Respondent has further stated that he was not even working with the company at the relevant time and that he joined the company as its Head Legal and Company Secretary much after the transactions or FIR was filed.

(ii) As regards the alleged forgery in the statement of accounts/signing of balance sheet by the Directors/Respondent, the Respondent has stated that the complainant's accusations are without any substance and the IO had filed closure report against FIR No. 239/2010. The closure report indicates that no evidence has been found against the company or its employees which could corroborate the complainant's allegations.

(iii) As regards allegation that the Respondent is also a practicing Company Secretary, the Respondent has stated that he is only a

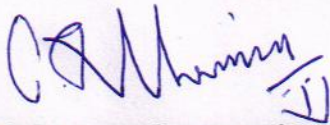


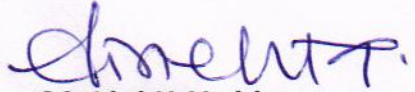
 C. R. Menon

fellow member of the Institute of Company Secretaries of India in full time employment and he never held Certificate of practice.

4. The Director (Discipline) in her is prima-facie opinion dated 21st December, 2017 opined that of the opinion that the Respondent is **"Not Guilty"** of professional misconduct under any of the items of the First and Second Schedule to the Company Secretaries Act, 1980. The Board of Discipline observed that:-
- (i) The Respondent is the Head Legal and Company Secretary of DIESL. He never held a certificate of practice of the Institute and he never applied for issue of the same and the Respondent has signed the Balance Sheet as the Company Secretary of the Company (DIESL) and not as the Practising Company Secretary in terms of Section 215 Clause (1) sub-clause (i) & (ii) of the Companies Act, 1956.
 - (ii) The Complainant has failed to substantiate the allegation of falsification/forgery of the accounts of DIESL in collusion with the Company in which he is employed as Head Legal and Company Secretary. name of the Respondent does not appear as an accused in the Order dated 24.02.2016 of Ld. Chief Metropolitan Magistrate; Karkardooma Court, New Delhi
 - (iii) The Respondent used to interact with the Investigation Officer in the FIR filed by the Complainant and has made several representations on behalf of the company to the investigating agency. The Complainant has failed to point out whether any false statement has been made by the Respondent. Merely because the Respondent has signed some documents on behalf of the company, it does not lead to the conclusion that Respondent is guilty of professional misconduct. The Respondent is holding the position of Head Legal in the Company and it is duty to defend the company and submit representations with the Investigating Officer.
5. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case and in view of observations made in para 4 above agreed to 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 as alleged by the Complainant and accordingly decided to close the complaint.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

