

**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/368/2016

Order reserved on : 31st July, 2018

Order issued on : 25th August 2018

Shri Jitendra M. Tolia

...Complainant

Vs

Shri Ashesh C. Chandarana (FCS-5485)

...Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion of the Director (Discipline).

2. The Board of Discipline noted the following: -

2.1 A complaint dated 4th November, 2016, in Form-'I' 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 Jitendra M. Tolia (hereinafter referred to as 'the Complainant'), against Shri Ashesh C. Chandarana, FCS-5485, Company Secretary and President -Legal & Admin, M/s Global Offshore Services Ltd, (hereinafter referred to as 'the Respondent').

2.2 The Complainant alleged that the Respondent has contravened Item (8) of Part I of the First Schedule and Item (7) of Part I of the Second Schedule to the Act, as given below: -

2.2.1 The Statutory Auditors of M/s Global Offshore Services Ltd. ("GOSL") gave a false certificate that the allotment of shares proposed to M/s India Star Mauritius Ltd. is in accordance with the Companies Act, 1956, & SEBI (DIP) Guidelines, 2000. This certificate was attached to EGM Notice of GOLS dated 14th February, 2006, under Section 173 (2) and Section 81 (1A) of the Companies Act, 1956.

2.2.2 The Relevant dates are as below: -

2.2.2.1 Notice for Meeting of Board of Directors was sent to BSE on 7th February, 2006



[Handwritten signature]

[Handwritten signature: C. Chandarana]

[Handwritten mark: A]

- 2.2.2.2 Board Meeting was held on 14th February, 2006
- 2.2.2.3 EGM Notice was dated 14th February, 2006
- 2.2.2.4 The allottee namely; M/s India Star Mauritius Ltd. was incorporated in Republic of Mauritius on 17th February, 2006.
- 2.2.3 Thus, there was an act of fraud whereby statutory auditors collided with Promoters of GOSL and proposed allotment to M/s India Star Mauritius Ltd. much before its incorporation is in violation of SEBI (DIP) Guidelines, 2006, the Companies Act, particularly of Section 173 (2) for the Explanatory Statement to the Notice of EGM dated 14th February, 2006. Also violating provisions of Income Tax Act, 1949 which prohibits acceptance of application of shares in excess of Rs. 1 lakh without 10 digits PAN.
- 2.2.4 The Auditors, CFO and the Respondent inspite of knowing that as on 14th February, 2006 M/s India Star Mauritius Ltd was not in existence, had issued a false certificate to enable shareholders of the Company to accord approval to the proposed fresh issue of shares to the said M/s India Star Mauritius Ltd.
- 2.2.5 Therefore, the shares were acquired by Promoters & Persons acting in Concert (PACs) in contravention of SEBI (SAST) Regulations, 1997 particularly Regulations 11 & 12. The shareholders of GOSL were deceived and were deprived of their statutory right to receive Open Offer under the said Regulations.
- 2.2.6 The Auditors, CFO and the Respondent has helped M/s India Star Mauritius Ltd. to subscribe to the shares of the GOSL and later Fully Convertible Debentures (FCDs) through another AGM approval dated 10th May, 2006, while the PAN Card was issued on 31st May, 2006 by the IT Department.
- 2.2.7 The Auditors, CFO and the Respondent have also issued fraudulent and wrong certificates/with attached statements and explanations and Resolutions u/s 80(1A) read with Section 173 (2) of the Companies Act, 1956. Issued fraudulent and wrong certificates to BSE and NSE under SEBI (DIP) Guidelines, 2006, and, therefore, mislead the Exchange to that extent and also violated the provisions of Listing Agreements.
- 2.2.8 There were foreign inward remittances from the said M/s India Star Mauritius Ltd. to the tune of Rs. 40 Crores to the said subscription of shares and FCDs. Therefore, the Auditors, CFO and the Respondent had violated the FEMA Regulations and also PMLA Guidelines issued by the Govt. of India through various Regulatory and Enforcement Agencies of the Country.
- 2.2.9 The Listing Applications certified by these Chartered Accountants, CFO, the Respondent did not state the



C. D. Manning

[Signature]

correct facts and were defective and were issued with the intend to defraud the Stock Exchanges and the public shareholders of GOSL and to give major advantage to Promoters of GOSL to increase their collective holding with PACs. Through wrong certification, the public shareholders were cheated as the promoter group along with PACs increased their collective holdings and control over the Company far in excess of permissible limits under SEBI (SAST) Regulations.

- 2.2.10 Non-disclosure of related party disclosures mandated by SEBI (LODR) Regulations, 2015, Listing Agreement signed with the Stock Exchanges and violation of SEBI Rules and Regulations, which was issued as a mandatory compliance by the Companies and a greater responsibility was imposed on the Chartered Accountant and the Respondent issuing such statements/certificates/undertakings for the listed Companies.
- 2.2.11 The Approval of shareholders was not taken in AGM/EGM for the related party disclosures for heavy Consultancy Fees paid to the Vice-Chairman of GOSL in violation of the provisions of Companies Act, 1956/2013.
- 2.2.12 The Related Party Transactions with M/s Arena Ship Management Services Pte. Ltd. owned by the Promoters of GOSL with the Subsidiary Company (Global Offshore Services B. V. Netherlands) was not even reflected in the Audited Accounts and statements; the approval mandatorily required for the same was not proposed and obtained in the EGM/AGM from the shareholders. To hide such disclosures, repeated Foreign Trips at the expense of shareholders and heavy Fees was charged by these Professionals (Chartered Accountants and the Company Secretaries)
- 2.2.13 They were involved with GOSL, habitually, issued false certificates/statements year after year to cheat poor investors and shareholders of GOSL which has a shareholder base of more than 20000, including 12 Banks and Financial Institutions and many others.
- 2.2.14 The promoters of GOSL the Garware family is exposed in Panama Paper Leaks and many SPV were formed repeatedly by them on various occasions with the aid and support of Chartered Accountants and Company Secretary associated with them.
- 2.2.15 Two Foreign Entities shown as PACs in shareholding pattern:
- M/s Randor Overseas Ltd.
 - M/s Clearwell Enterprises Ltd.
- Both holding more than 5% are under investigation in Panama Paper Leaks and are shielded by statements and certificates issued by the said professionals.



Handwritten signature in blue ink, possibly reading 'M. Mani'.

Handwritten initials or mark in blue ink.

2.3 The Respondent *vide* written statement dated 10th January, 2017, *inter-alia* stated that: -

- 2.3.1 The Complainant is one of the shareholders of GOSL, a public limited company whose shares are listed in BSE and NSE.
- 2.3.2 The Respondent is employed and designated as Company Secretary-President Legal and Admin. of GOSL.
- 2.3.3 The Complainant and other shareholders are harassing the Promoters and Management of GOSL. Some of the issues raised by the Complainant were already put forward to GOSL from time to time and GOSL had adequately replied to these queries. The same issues were raised before the SEBI, Registrar of Companies (ROC), BSE and NSE. The Company even replied to those queries to their satisfaction. Having not succeeded, the Complainant has now made the present complaint. The Complainant on one hand makes profit by dealing in the shares of the Company while on the other hand he complains about the working of the Company. If he is really not satisfied with the GOSL's working, then he could sell his shares and quit. His objective is nothing but to harass GOSL. The Respondent suspects that he is doing at the instance of another shareholder of the Company.
- 2.3.4 The Respondent was appointed as Company Secretary in GOSL (previously known as M/s Garware Offshore Services Ltd. and Garware Shipping Corporation) w.e.f. 1st July, 2009. He has provided details on MCA website in support of the same.
- 2.3.5 As per records, the Complainant holds equity shares of GOSL in two (2) Demat Accounts. However, in the both these Accounts he acquired equity shares on 30th September, 2008, and 08th January, 2010, while he is making allegations/raising queries pertains to the year 2006. Further the open offer referred by him was made in March, 2008, which is 6 months prior from becoming a shareholder of the Company. When he was not a shareholder, then how did he know about the issues raised by him?
- 2.3.6 On perusal of the allegations made by the Complainant, there is an impression that the allegations made by him are more towards the Statutory Auditors of the Company.
- 2.3.7 That the Respondent was appointed as Company Secretary in GOSL w. e. f. 01st July, 2009. During the relevant period, Shri C. V. Ramachandran (now deceased) was the Company Secretary and President-Legal and Admin of GOSL. Therefore, there is no question of any professional misconduct being done by the



[Handwritten signature]

[Handwritten signature]

[Handwritten mark]

Respondent, as he was not working with GOSL at the relevant point of time.

- 2.3.8 The Respondent has clarified that the Statutory Auditor's certificate was not attached to the Explanatory Statement under Section 173 (2) of the Companies Act, 1956, to the EGM Notice. Instead it was written that the same is available for inspection to any members between 2.00 PM to 4.00 PM on any working day.
- 2.3.9 As per the Listing Agreement requirements, the intimation for convening the Board meeting on 14th February, 2014 to consider the preferential allotment of equity shares was given to the Stock Exchange on 7th February, 2006. The Board meeting was convened on 14th February, 2006, and the Draft Notice EGM was approved on 14th February, 2006.
- 2.3.10 As per the SEBI (DIP) Guidelines, 2000, the identity of the proposed Allottee was required to be given in the Explanatory Statement. The Board of Directors of GOSL before considering the allotment to M/s India Star Mauritius Ltd. had obtained a consent letter dated 11th February, 2006 (prior to the Board meeting) signed by a Director of M/s India Star Mauritius Ltd. The Board of Directors relied on the contents of the aforesaid letter and there was no reason for the Board of Directors to believe that M/s India Star Mauritius Ltd. was not incorporated. In any case, prior to the allotment of shares in March, 2006, M/s India Star Mauritius Ltd. was incorporated in 17th February, 2006. Therefore, the question of committing fraud either by the Respondent, the Statutory Auditors and the Company does not arise.
- 2.3.11 There is no violation of the provisions of Income Tax Act as the submission of PAN Card of India Star (issued on 31st May, 2006), was in terms of clause (g) of the NSDL Handbook.
- 2.3.12 As regard alleged contravention of SEBI (SAST) Regulations, 1997, the Respondent has *inter-alia* stated that Regulation 11 deals with consolidation of the share holding upto 5% in a financial year and Regulation 12 deals with the "control" by an acquirer in the manner as stated therein.
- 2.3.13 The Complainant has not furnished any evidence as to how these provisions were violated.
- 2.3.14 The Respondent also denied the allegations of deceiving or depriving the rights of the shareholders of GOSL/. M/s India Star Mauritius Ltd. triggered the threshold limit of 15% of the shareholding and made an open offer in March, 2008.
- 2.3.15 The Respondent has stated that further issue and allotment of equity share and Fully Convertible Debentures (FCDs) to M/s India Star Mauritius Ltd. was



C. A. Maring

- made prior to his appointment in the Company, therefore, the question of any professional misconduct being done by him does not arise.
- 2.3.16 As per records, except for the pricing certificate issued by Statutory Auditor, no certificates of CFO and Company Secretary were issued at the time of convening of EGM as alleged.
- 2.3.17 As per records, as regards the issuance of wrong certificates to BSE and NSE, the Respondent has stated that it is not clear as to which certificates are being referred to, by the Complainant. However, based on the records, the Respondent has denied that any wrong certificate was issued to BSE and NSE under the SEBI (DIP) Guidelines, 2000 and that GOSL has misled the Exchanges or violated the provisions of Stock Exchange.
- 2.3.18 As per records, the Respondent has stated that there was no violation of FEMA Regulations, as regards foreign inward remittances from M/s India Star Mauritius Ltd to the tune of Rs. 40 Crores. GOSL's industry (shipping) fall under automatic route and 100% FDI is permitted. Therefore, no prior approval under FEMA was required. Further, he reiterated that the matter relates to the period prior to his appointment. Further, he fails to understand how PMLA Regulation/Guideline applies to GOSL and call upon the complainant to provide evidence for all the allegations.
- 2.3.19 As regarding certification of Listing agreement, the Respondent has stated that based on the records, no false certificate was issued by any Chartered Accountants, CFO or the Respondent. Therefore, no question arises to defraud the shareholders.
- 2.3.20 The Respondent denied that the public share holders were cheated. The Promoters along with PAC acquired shares within the permissible threshold limits in accordance with the SEBI (SAST) Regulations, 1997 and 2011, and there was no violation of any Regulations which triggered the requirements of making an open offer by GOSL.
- 2.3.21 Based on records, the Respondent denied that the professionals of GOSL obtained any approval of investors at the AGMs and EGMs without adequate information/disclosure under relevant regulations. Shareholders' approval was sought based on such disclosures.
- 2.3.22 The Respondent has denied that shares were allotted to Mauritius bases Foreign Friends of the Promoters and GOSL has exercised due care to follow the Law of the Land.
- 2.3.23 The Respondent has stated that based on the records there is no violation of SEBI (SAST) Regulations, 1997 due to declaration /certification issued by the Statutory Auditors and the Respondent.



C. A. M. ...

(A)

- 2.3.24 The allegation of non-disclosure of related party disclosures is vague. Admittedly Shri Aditya Garware is a related party of the Company and the Consultancy Agreement entered into between the Company and him is a related party transaction in terms of Section 188 (1) (d) but his appointment as Consultant was approved by the Board of Directors of the Company at the Board meeting held on 10th November, 2015. In terms of Rule 15 of the Companies (Meetings of Board of Its Powers) Rules, 2014, the Company was required to obtain approval of the share holders by way of any resolution, only in the event where the payment of consultancy fees exceeded 10% of the turnover of the Company or Rs. fifty (50) Crores whichever is lower.
- 2.3.25 In this case the consultancy fees payable to Shri Aditya Garware are Rs. 25.67 Lakhs during the financial year 2015-16 which does not and did not trigger limits specified in Rule 15 of the said Rules.
- 2.3.26 As regard to disclosures of related party of M/s Arena Ship Management Services Pvt. Ltd., there is no transaction entered into between GOSL and M/s Arena Ship Management Services Pvt. Ltd. and therefore, no disclosure is required by GOSL pursuant to Section 188 of the Companies Act, 2013.
- 2.3.27 Moreover, the Company is incorporated under the laws of Singapore, GOSL's subsidiary viz M/s Global Offshore Services B. V. (GOSBV) is incorporated under the laws of The Netherlands. Thus, these Companies are not subject to and bound by the provisions of the Indian, Companies Act, 2013.
- 2.3.28 In terms of AS 18, the Company is required to disclose only the transactions with its related party and not the related party transactions of its subsidiaries. Section 134 of the Companies Act, 1956, makes it clear that the report of the Board of Directors (to consolidated financial statements) shall only disclose transactions between the Company and its related party.
- 2.3.29 It is not clear what the complainant means by "*the Chartered Accountant and the Company Secretaries involved GOSL habitually.*" The Complainant should provide concrete evidence as to how, when and which of the shareholders, Banks and Financial Institutions and many others were cheated.
- 2.3.30 As regard to allegations related to *Panama Paper Leaks*, the Respondent denied that many SPVs were formed repeatedly on various occasions. The Complainant should provide documentary evidence in support of his allegations.
- 2.3.31 The Respondent is not aware of any investigations in *Panama Paper Leaks* of two Entities referred by the



[Handwritten signature]

[Handwritten signature]

Complainant. There is no certificate issued by the Respondent, as alleged.

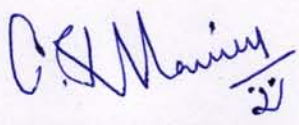
- 2.4 The Complainant in his rejoinder dated 7th February, 2017 has reiterate his allegations made in the complaint and has confuted the explanations given by the Respondent
3. The Board of Discipline at its meeting held on 31st July, 2018 considered the prima facie opinion of the Director (Discipline) dated 27th July, 2018 that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.
4. The Board of Discipline further noted the following observations of the Director (Discipline) in this matter: -
- 4.1 The Respondent was appointed as Company Secretary in GOSL (previously known as M/s Garware Offshore Services Ltd. and Garware Shipping Corporation) w.e.f. 1st July, 2009.
- 4.2 During the relevant period, Shri C. V. Ramachandran (now deceased) was the Company Secretary and President- Legal and Admin of GOSL.
- 4.3 However, the Complainant has rebutted this statement stating that :-
- 4.3.1 He was Company Secretary of M/s Garware Marine Services Ltd. a Promoter Company of GOSL holding more than 14 Lakhs shares. In fact this company has no business and is only holding this investment.
- 4.3.2 Both GOSL (earlier Garware Offshore Services Ltd.) and M/s Garware Marine Services Ltd. were functioning from the same premises and address.
- 4.3.3 The Respondent was the Promoter Director and share holder of two (2) other Promoter Companies of GOSL viz M/s Mauve Trading Company Pvt. Ltd. and M/s Universal Investment Services Pvt. Ltd.
- 4.3.4 The Respondent is also a Promoter of GOSL while being associated as Company Secretary and Promoter himself and Director in other Promoter Companies, as stated above (M/s Mauve Trading Company Pvt. Ltd. and M/s Universal Investment Services Pvt. Ltd.).
- 4.4 Majority of the allegations made by the Complainant, are more towards the Statutory Auditors of the Company.
- 4.5 The Complainant has made complaints to the ROC, SEBI, BSE and NSE etc. but he has not provided any documents showing that his complaint were acceded by these Authorities except stating that the ROC, Mumbai is investigating into the matter.
- 4.6 The Complainant has alleged in his complaint about issuance of wrong certificates with attached statements and explanations by the Chartered Accountant of the Company and other Officers like CFO and also issued related documents to defraud

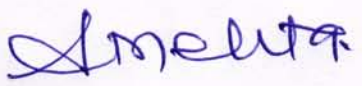


C. S. Manoj

- the shareholders by making false statement to various Regulatory Authorities like SEBI, BSE and NSE etc.
- 4.7 The Complainant had not given any details about the nature of the alleged false statements/ wrong certificates and have not furnished any documents in support thereof against the Respondent. Nothing proves against the Respondent.
- 4.8 The Complainant has also failed to substantiate his allegations against the Respondent, which evident any involvement of the Respondent for the alleged frauds or alleged violations of SEBI Guidelines/or Stock Exchanges requirements/or provisions of Companies Act/or Income Tax Act by GOSL.
- 4.9 Moreover, the Respondent was not holding the position of Company Secretary at the relevant point of time.
- 4.10 Therefore, there is no question of any professional misconduct being done by the Respondent, as he was not working with GOSL as the relevant point of time.
- 4.11 The alleged violation relate to the contravention of provisions of SEBI, Listing requirements of BSE and NSE and the provisions of the Companies Act, 1956/ 2013, The jurisdiction for the adjudication of the alleged contravention is not in the domain of the Company Secretaries Act 1980. In the present case no case of contravention of the provisions of the Company Secretaries Act or Regulations made there under.
- 4.12 In view of the observations made above and considering all the facts and circumstances of the matter, the Director (Discipline) is *prima-facie* of the opinion that the Respondent is 'Not Guilty' of professional misconduct under any of the Items in First and/or Second Schedules of the Company Secretaries Act, 1980.
5. **The Board of Discipline at its meeting held on 31st July, 2018, after considering the aforesaid observations, material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed to the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under any of the Items in First and/or Second Schedules of the Company Secretaries Act, 1980.**


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

