

**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/376/2017

Order reserved on: 12th August, 2019

Order issued on : 29th August, 2019

CS Tumuluru Krishna Murty, FCS-142 C P- 1293Complainant

Vs.

CS R. Sridharan, FCS-4775 CP-3239Respondent

CORAM:

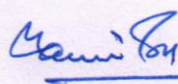
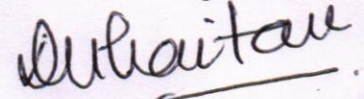
Shri Deepak Kumar Khaitan, Presiding Officer
Shri Manish Gupta, Member
Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Gaurav Tandon, Assistant Director, Disciplinary Directorate

ORDER

1. A Complaint dated 14th December, 2016 in Form I has been filed by CS Tumuluru Krishna Murty, FCS-142, CP-1293 (hereinafter referred to as the 'Complainant') against CS R. Sridharan FCS-4775 CP-3239 (hereinafter referred to as the 'Respondent'). 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').
2. The Complainant *inter-alia* alleged that the Respondent has undertaken the work of Secretarial Audit and filing of the Annual Return both for the financial year ended on 31st March, 2016 of M/s. Coromandel International Limited (hereinafter referred to as 'the CIL'), without prior communicating with the Complainant in writing as he had done Secretarial Audit and Annual Return Audit of the Company for the previous financial year. The Respondent, therefore, has violated Item (8) of Part I of the First Schedule to the Company Secretaries Act, 1980.
3. The Respondent in his Written Statement dated 31st March, 2017 denied the allegations levied against him and *inter-alia* stated that CIL vide their letter dated 22nd February, 2016 informed him that the


Board of Directors of CIL at their meeting held on 22nd January, 2016 have appointed the Respondent as the Secretarial Auditor of the Company for the financial year 2015-16. Further, CIL through their letter dated 22nd February, 2016 informed the Respondent to take up the Annual Return Audit for the financial year 2015-16 on such fees as may be mutually agreed. That on 25th February, 2016 the Respondent had sent an e-mail to the Complainant informing him about his accepting the appointment as Secretarial Auditor for CIL for the Financial Year ending on 31st March, 2016 and also for undertaking Annual Return Audit for the said year. That only after receipt of the Complaint from the Complainant the Respondent came to know that he had inadvertently mentioned the wrong email ID of the Complainant. The correct email ID and the wrong email ID on which he had sent the email are as under:-

- a. tkm_hyderabad @ yahoo.co.in (correct email ID)
- b. tkm-hyderabad @ yahoo.co.in (wrong email ID)

4. The Respondent further stated that due to inadvertently mentioning wrong email ID, the said email was not delivered to the Complainant. There was no intention of the Respondent not to communicate the Complainant in terms of Item (8) of Part I of the First Schedule to the Company Secretaries Act, 1980. That as regards the undercutting of professional fees, the company fixed the professional fees by taking into account the number of assignments handled by the Respondent and the Respondent is not bound to communicate the same to the new incumbent.
5. The Complainant in his rejoinder dated 22nd April, 2017 mainly reiterated his allegations already made in his complaint and stated that the Respondent has attempted to make out a case that his failure to actually communicate in writing to the Complainant as required under Item (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 was not intentional, but due to inadvertently using a wrong e-mail ID sent to the Complainant.
6. The Complainant further stated that Item (8) Part I of First Schedule to the Company Secretaries Act, 1980 laying down the requirement for a Company Secretary in Practice before accepting a position in place of another Company Secretary in Practice first to communicate in writing, has stipulated that such compliance would need to be adhered to before sending acceptance of his appointment, which in the instant case would mean that such communication to the Complainant should have been addressed on a date prior to 25th February 2016, since it is presumed that the acceptance to the letter dated 18th February, 2016 from M/s. Coromandel International Ltd. , Hyderabad would have been much earlier to 25th February, 2016.



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7. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, formed the prima facie opinion dated 6th March, 2019 that the Respondent is 'Guilty' of professional misconduct under Item (8) of the Part I to the First Schedule to the Company Secretaries Act, 1980 for accepting the assignment of Secretarial Audit and Annual Return of M/s. Coromandel International Limited., for the Financial year ended on 31st March, 2016 without first communicating with the Complainant who had done the said assignments of the company for the previous financial year.
8. The Board of Discipline in its meeting held on 3rd April, 2019 considered the prima-facie opinion dated 6th March, 2019 of the Director (Discipline) and the material on record. The Board of Discipline observed that the Respondent had specifically mentioned that he had sent an email to the Complainant on 25th February, 2016, but inadvertently the email ID was wrong. The Board of Discipline had advised the Director (Discipline) to call from the Respondent an affidavit under oath of his submission.
9. Accordingly, the Respondent was asked to submit his affidavit under oath of his submission which he submitted after seeking extension of time. The Respondent in his affidavit dated 15th July, 2019 while reiterating his earlier submission once again stated under oath that due to inadvertently mentioning wrong email ID, the email dated 25th February, 2016 was not delivered to the Complainant.
10. The Board of Discipline after considering the materials on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case, the nature of issues involved and given the totality of the circumstances of the case disagreed with the Prima-facie opinion of Director (Discipline) that it appears that there was no intention of the Respondent not to communicate to the Complainant in terms of Item (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 as the Respondent had actually sent an email on 25th February, 2016, but inadvertently mentioning the wrong email ID of the Complainant. The Board relied on the following judgements of the Hon'ble Supreme Court of India -

(a) In the case of Union of India & Ors. Vs. J. Ahmed, 1979 (2) sec 286, and Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors., (2007) 4 SCC 566 where it was held that innocent mistake does not constitute any misconduct.

(b) In the case of Shri Harish M. Mankodi vs. State of Gurjarat, (2001) 1 SLR 484, it was held that procedural mistake does not amount to misconduct. Misconduct presupposes deliberate, conscious and mala-fide intention.

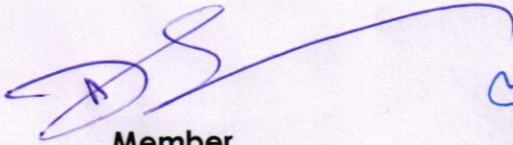


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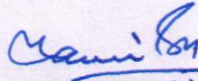
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In view of the above, considering all the facts and in totality of all circumstances of the matter, the Board of Discipline holds that the Respondent is not guilty of Professional or other misconduct under the Company Secretaries Act, 1980 for the allegations made in the Complaint. Chairman

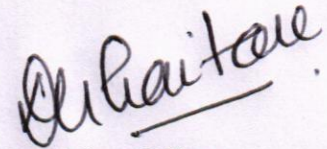
Accordingly, the Complaint is closed and stands disposed-off.



Member



Member



Presiding Officer

