

**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/408/2017

Order reserved on: 22nd June, 2019Order issued on : 12th August, 2019

Serious Fraud Investigation Office
(Through Shri Manoj Kumar Sahoo, Addl. Director)

.....Complainant

Vs

Ms. Bharti Dey, FCS-5345

.....Respondent

CORAM:

CS Deepak Kumar Khaitan, Presiding Officer

CS Manish Gupta, Member

CS Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Gaurav Tandon, Assistant Director

ORDER

1. A Complaint dated 16th August, 2017, in Form-'I' was filed by Serious Fraud Investigation Office (SFIO) through Shri Manoj Kumar Sahoo, Additional Director (hereinafter referred to as 'the Complainant'), against Ms. Bharti Dey, FCS-5345, (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 in his Complaint dated 16th August, 2017 has *inter-alia* stated that SIFO has investigated the affairs of M/s. Vaishnavi Corporate Communications Pvt. Ltd., and its group Companies (hereinafter referred as 'the Company') and the Respondent was working as the Whole Time Company Secretary of the said Company during the period 2002 to 2007 and again from 20th February, 2008 till October, 2010 and that the Respondent was looking after the Secretarial Compliances of all the Companies in M/s. Vaishnavi group. The Complainant further stated that the Company had entered into related party transactions without the approval of the Board of Directors and the Central Govt. even though, such approval was mandatorily required. The Company took premises of M/s. Leisure Club India Pvt. Ltd. (other group company of Vaishnavi Group) on lease in April, 2010 and entered infrastructure and business support services agreement with M/s. VASPL on 1st September, 2010, while the Respondent was the Company Secretary of M/s. VCCPL. Further, during the course of Investigation, it was revealed that the Balance Sheet and



Profit & Loss Accounts of the Company were received back from the auditor in the same meeting in which their drafts were approved by the directors and sent for audit. Thereafter, in the very same meeting, the Auditor's Report has been considered by the Board and the Director's Report thereon has been signed. Details of the dates of signing/approving of Balance Sheet and Profit & Loss Accounts since 2005-2006 till 2010-2011 are tabulated as below:-

F.Y	Date of approval of the draft financial statements by Board of Directors	Date of Auditor's Report	Date of Directors report
2005-06	17.8.2006	17.8.2006	17.8.2006
2006-07	27.7.2007	27.7.2007	27.7.2007
2007-08	20.8.2008	20.8.2008	20.8.2008
2008-09	18.8.2010	18.8.2009	18.8.2009
2009-10	16.8.2010	16.8.2010	16.8.2010
2010-11	25.8.2011	25.8.2011	25.8.2011

3. The Complainant further stated that the Respondent for the period 2005-06, 2007-2008, 2008-2009, 2009-2010 in her statement recorded on oath has admitted that the auditor used to be present in the board meetings though his presence was not recorded. That Investigation revealed that the approval of the Balance Sheet was in a manner, contrary to the established Secretarial norms and procedure laid down by the ICSI and against the provisions of the Companies Act, 1956, when the Company had employed a full-time Company Secretary, tantamount to gross Professional Misconduct on the part of the Company Secretary. Further, as the Respondent was a signatory to the Balance Sheet of the Company during her tenure, which has not made full disclosures as required by the Accounting Standards, Schedule VI of the Companies Act, 1956 and hence, do not reflect the true and fair view of the financial position of the Company. As signatory to the Balance Sheets, the Respondent was duty bound to ensure that they are prepared in compliance of the provision of the Companies Act, 1956 and has failed to exercise due diligence in discharging her professional duties.
4. The Respondent in her Written Statement dated 6th October, 2017, has *inter-alia* stated that the tenure of working of the Respondent as Company Secretary in M/s. VCCPL is a matter of record. However, it is denied that the Respondent was looking after the Secretarial Compliance of all the Companies in M/s. Vaishnavi Group. The Respondent used to look after only work relating to the Secretarial function of the other Companies on honorary basis without any legal or consequential obligation. It is a standard business practice that when, a professional (CA/CS/CWA) is appointed in a particular Company: the services of such professional are also availed for other Companies in that group. That during investigation by the SFIO (April, 2010 to September, 2010), the Respondent was not asked any question pertaining to related parties transactions between group Companies. There was a team of the financial and account person in the Companies under investigation who were responsible for maintenance of account and audit of the Company. It should be noted that as per the record submitted with the letter of the Institute, the SFIO raised many questions on such persons regarding maintenance of account and audit of the company and got their responses, which is a matter of record. The Respondent,



AS

Manish Singh

Devidatta


being a Company Secretary of M/s. VCCPL was assigned the work of recording the transactions which used to come for discussion in the Board Meetings and would have duly complied with the same at that point of time. That without prejudice, it is a debatable question to answer that whether leasing of the property to/by a private limited company will fall within the definition of sale, purchase or supply of any goods, material or services as contemplated under Section 297(1)a of the Companies Act, 1956?

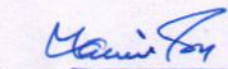
5. The Respondent further stated that all the matters discussed in the meeting of the Board of Directors were duly recorded in the Minute's Book as maintained u/s 193 of the Companies Act, 1956. As far as approval of the Annual Accounts including the Auditor's Balance Sheets and Profit & Loss Accounts are concerned, the same used to be laid before the Board for their approval and submitted to the auditors for their report. There is no legal impediment in holding the Board Meeting on the same day for their approval and then taking on record the final accounts. It may also be mentioned that the Respondent left the company in the month of November, 2010. That the Complainant has failed to point out which section of the Companies Act, 1956 and Corporate Governance has been violated by having same date of Annual Account, Board Meeting and Directors Report's. It has been well established practice of the Corporate Sector to have the draft Annual Account approved in the Board Meeting, furnish them to the auditors for their report and then sign them on the same date. The Respondent attached for reference the copy of Annual Accounts of few listed companies to substantiate her arguments.
6. The Respondent further stated that as per provisions of Section 194 of the Companies Act, 1956, minutes of the meeting were kept in accordance with the provision of Section 193(4) of the Companies Act, 1956, in the case of meeting of the Board of Directors or of a Committee of the Board, the minutes shall also contain the name of the directors present at the meeting. It is submitted that the minutes of the Board of Directors contains the name of the directors who attended the meeting which is in perfect compliance of the provisions in the said section. The Respondent further stated that the auditor, whenever attended the meeting, was not mandatorily required to list in the attendee who attended the meeting, therefore his presence was not recorded in the Board Meeting. As per 193(5) of the Companies Act, 1956, the Chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the ground specified in this sub-section. A part of the Director's Report prepared under Section 217 of the Companies Act, 1956 used to reflect financial figures of the Company which are derived from the audited financials of the Company, without prejudice it may be submitted that the obligation to audit the books of accounts is the responsibility of the auditor of the Company as appointed under Section 224 of the Companies Act, 1956. It is submitted that in the statement recorded by the Complainant, the Respondent categorically mentioned the name of persons who were responsible for the preparation of annual account, auditing of the same etc. and the Complainant had also recorded their statement which are annexed with the Complaint.
7. The Written Statement of the Respondent was sent to the Complainant. However, the Complainant has not submitted the Rejoinder

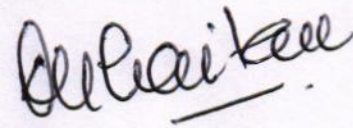


8. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, formed the prima facie opinion dated 4th June, 2019 that the Respondent is '**Not Guilty**' of professional misconduct under the First and/or Second Schedule to the Act as the Respondent has rebutted all the allegations levied against her and the Complainant has not filed any rejoinder despite sufficient opportunity. Further, there is no legal impediment in holding the Board Meeting on the same day for approval of accounts and then taking on record the final accounts. Further, the Board of Discipline observed that as per Section 193(5) of the Companies Act, 1956, the Chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the ground specified in this sub-section and as per Section 193(4) of the Companies Act, 1956, in the case of meeting of the Board of Directors or of a Committee of the Board, the minutes shall also contain the name of the directors present at the meeting and it is not mandatory to include the name of the auditor in the list of attendee who attended the meeting. Further whole time Company Secretary is a signatory to the Balance Sheet and Profit & Loss Account as authorised by the Board of Directors, who approve the same and that the obligation to audit the Books of Accounts is the responsibility of the auditor of the company as appointed under Section 224 of the Companies Act, 1956.
9. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with 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.

Accordingly, the Complaint is closed and stands disposed off.


Member


Member


Presiding Officer

