

**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/422/2017

Order Reserved On: 12th August, 2019

Order Issued On: 29th August, 2019

**M/s. Wholesale Trading Services
India Private Limited**

..... Complainant

Vs.

Shri S. Kedarnath, FCS-3031, CP-4422

.....Respondent

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 10th October, 2017 in Form-'I' by M/s. Wholesale Trading Services India Private Limited ('the Complainant'), against Shri S. Kedarnath, FCS-3031, CP-4422 ('the Respondent') has been 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').
2. The Complainant has *inter-alia* alleged that the Respondent has issued a Compliance Certificate in respect of M/s. Hasham Investment and Trading Company Private Limited, Mumbai, for the Financial Year ending 31st March, 2009, in which he allegedly made the following false statements/Non-compliance of requirements:
 - (i) In Para 2 of the Compliance Certificate, the Respondent has stated that the Regd. Office of the Company is in 'Karnataka' whereas in actuality it is in 'Maharashtra'.
 - (ii) In Para 23 of the Compliance Certificate, the Respondent has falsely stated that the Company has not accepted any deposit under Section 58A of the Companies Act, 1956, whereas the Company has actually accepted loan of



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Rs. 110 Crores from one of its Directors which are interest free and repayable on demand after one year.

- (iii) In Para 33 of the Compliance Certificate, the Respondent has stated that the Company has not constituted a separate Provident Fund Trust for its employees as contemplated under Section 418 and Miscellaneous Provisions Act, 1952 of the Act.
3. The Respondent on the other hand raised preliminary objections about the maintainability of the complaint on the grounds of *locus* of the Complainant, the bar of limitation and alleged defects in the Board's Resolution authorizing the filing of the Complaint and has requested that it should be dismissed *in limini*. Further in his para wise reply, the Respondent has denied all the aforesaid three allegations and in support of his defence has stated as under:
- (i) In Para 2 of the Compliance Certificate, there was an inadvertent error by stating that the Company was registered in 'Karnataka' whereas in fact it was registered in 'Maharashtra'.
- (ii) In regard to Para 23 of the Compliance Certificate, the Respondent has *inter alia* stated that the amount of Rs. 110 Crores taken from one of the Directors of the Company was in fact as unsecured loan and is not deposit as claimed by the Complainant. The Balance Sheet of the Company as on 31.03.2009, shows that the aforesaid amount of Rs. 110 Crores was taken unsecured interest free loan which was taken from one of the Directors repayable after a period of one year. This amount has been correctly shown in the Balance Sheet under the "Loan Funds". Since this was not a deposit in terms of the Companies (Acceptance of Deposit) Rules, 1975, the Respondent has correctly certified that the Company has not accepted any deposit falling under Section 58A of the Companies Act, 1956. This fact is corroborated by the Audited Balance Sheet of the Company for the year ended on 31.03.2009 wherein the Statutory Auditors have certified that "According to the information and explanations given to us, the Company has not accepted any deposits from the public, covered under Section 58A or Section 58AA of the Companies Act, 1956."
- (iii) In Para 33 of the Compliance Certificate, the Respondent has *inter alia* stated that Section 418 of the Companies Act, 1956 is not applicable to the Company for which he has also relied on the Schedule 9, Para A(4) of the Notes to the Accounts of the Balance Sheet dated 31st March, 2009 it was stated that the Provident Fund Scheme is not applicable to the Company.
4. The Director (Discipline) after examining all the material on record and considering all the facts and circumstances of the matter, through *prima facie* opinion dated 3rd August, 2019 opined that the Respondent is '**Not Guilty**' of professional misconduct under any of the item(s) of First and/or Second Schedule to the Act as the Respondent has been able to rebut all the allegations levied against him. As regards para 2 of the Compliance Certificate, there appears to be an error with regard to state in which Company's Registered Office is located but the Complainant is not able to show how it has impacted the Complainant. Hence, the contention of the Respondent can be accepted. As regard para 23



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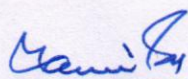
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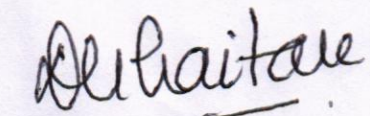
of the Compliance Certificate wherein the Respondent has stated that during the financial year, the Company has not accepted any deposits falling under Section 58A of the Companies Act, 1956 read with the Companies (Acceptance and Deposit) Rules, 1975, the contentions of the Respondent can be accepted keeping in view the circumstantial evidence such as Audited Balance Sheet of the Company for the year ended on 31st March, 2009 and the Statutory Audit Report for the same period, certifying that the according to the information and explanation given to them, the Company has not accepted any deposits from the public, covered under Sections 58A or Section 58AA of the Companies Act, 1956. Further, the contention of the Respondent with regard to Para 33 of the Compliance Certificate can also be accepted as the Section 418 of Companies Act, 1956 was not applicable to the company.

5. 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 agreed with the *prima-facie* opinion of the Director (Discipline), that the Respondent cannot be held Guilty of Professional or other misconduct under the Company Secretaries Act, 1980 as the Respondent has rebutted all the allegations leveled against him and that the Respondent has stated the correct CIN No. U67120MH1983PTC029943 of the Company in the Compliance Certificate which mentions that the Registered Office of the Company is in Maharashtra and all the filing as annexed mentioned in the Compliance Certificate are e-Forms and are not filed physically. Therefore, the contention of the Respondent of inadvertent/typographical can be accepted. It is also observed that the instant complaint was filed on 10th October, 2017 in respect of Compliance Certificate issued by the Respondent in 2009 i.e. after elapse of about 8 years. However, the Respondent is cautioned to be more careful in future.

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


Member


Member


Presiding Officer

