

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

ICSI/DC/434/2018

Order reserved on: 26th April, 2019

Order issued on : 2 JUN 2019

Shri Vasant Prabhu

.....Complainant

Vs

Shri Roshan Raikar, ACS-32941

.....Respondent

CORAM:

CS Deepak Kumar Khaitan, Presiding Officer

CS Manish Gupta, Member

CS Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Ms. Anita Mehra, Assistant Director, Disciplinary Directorate

ORDER

1. A Complaint dated 16th May, 2018 in Form 'I' was 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 Vasant Prabhu ('the Complainant') against Shri Roshan Raikar, ACS-32941 (hereinafter referred to as 'the Respondent') inter-alia alleging that: -

(i) The Respondent has concealed his 'Conflict of Interest'. The Complainant is one of the two directors in M/s Siddmed Ehealth Pvt. Ltd. ('the Company'). The services of the Respondent were hired for secretarial services on 22nd May, 2014 to fulfill the statutory obligations of M/s Siddmed Ehealth Pvt. Ltd. His appointment was done on reference and recommendations of the other director Shri Girish Porwal. At the time of providing credentials, the Respondent has concealed the fact that he was already serving as the Company Secretary to one of the companies i.e. M/s Jyothi Electrodes in which Shri Girish Porwal was director, Other family members of Shri Girish Porwal are directors in that company.

(ii) The Respondent is grossly negligent in conduct of his professional duties. A request letter was sent to the Respondent to fulfill his statutory obligations and to represent the company in a matter of NCLT case, Bangalore, as the Court has sent out notices to appear before the Tribunal. However, the Respondent declined to take up the responsibility in contravention to the agreed role he had accepted to play for M/s Siddmed Ehealth Pvt. Ltd.

(iii) The Respondent has failed to obtain sufficient information which is necessary for expression of an opinion. The Respondent has filed a petition with the NCLT



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on behalf of Shri Girish Porwal wherein Respondents No. 1 & 2 are M/s Siddmed Ehealth Pvt. Ltd. and the Complainant Shri Vasant Prabhu, company's director, respectively. The Respondent petitioned NCLT on unfounded and baseless allegations that a sum of Rs. 53 lacs was diverted by the Complainant from M/s Siddmed Ehealth Pvt. Ltd. to friends and relatives and has attached the company's Bank Statements which were not even audited. No proof or materials claims were produced in support of his claims while the Complainant has provided the details of all transactions to the NCLT with proof to debunk his claims. The Respondent has recklessly made some allegations to NCLT without verifying its authenticity. He has done it with malafide intention as he has taken a biased stand in favour of the other director of the company Shri Girish Porwal with whom he has business interests.

2. The Respondent in his Written Statement dated 18th September, 2018 has *inter-alia* stated as under: -

- (i) The Respondent denied the allegation that his services were hired by the Company M/s Siddmed Ehealth Pvt. Ltd. for secretarial services on 22nd May, 2014 as he has only facilitated in annual filing of financial statements and annual return related documents for the financial years 2015 and 2016, for which he was paid in between Rs. 9,500/- to 15,000/- approx., without any certification services (the company is a small company as defined u/s 2(85) of the Companies Act, 2013 and the Rules made thereunder). This does not constitute his appointment as a Company Secretary to fulfill the statutory provisions under the Companies Act, 2013. There is no appointment letter/engagement letter defining or delineating his role and responsibilities.
- (ii) The allegation of concealment of the fact that he has done filings for M/s Jyothi Electrodes (Belgaum) Pvt. Ltd., in which Shri Girish Porwal was a director, is also baseless. He was introduced to the complainant by Shri Girish Porwal in the premises of M/s Jyothi Electrodes (Belgaum) Pvt. Ltd.
- (iii) The Respondent was not rendering his services to M/s Jyothi Electrodes (Belgaum) Pvt. Ltd. on retainer basis but on work to work basis. As a PCS also, he is not under an obligation to disclose the names of his clients or the details of services rendered to other clients.
- (iv) The forms filed for the purpose of incorporation of M/s SiddMed Ehealth Pvt. Ltd. required details of companies in which a person is already a director, wherein Shri Girish Porwal had disclosed the same in the forms; and thus the complainant was aware of this fact. The allegations do not deserve any cognizance.
- (v) The Respondent has stated that he was not at all under obligation to appear before the Hon'ble NCLT in petition no. 20/BB/2018 on the request of the Complainant as he was never engaged as Company Secretary of the company and he was not bound to take the assignment given by the Complainant. He is a Practising Company Secretary and it is his prerogative to accept or reject an assignment. He has also pointed out that M/s Siddmed Ehealth Private Limited consists of only two Directors who themselves are its two shareholders, and who are at loggerhead with each other. It is inconceivable that there could be a Board Resolution passed by the two directors to proceed against the Respondent. There was no such resolution and the document may be impounded as a piece of fabricated evidence being



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sought to be used in judicial proceedings to mislead the judicial authority. The Respondent relied upon the letter of Shri Girish Porwal denying any such Resolution or any Board Meeting.

- (vi) The Respondent has stated that he was not assigned any certification work nor he has done any certification for M/s Siddmed Ehealth Private Limited. So, the question of invocation of any violation does not arise. The Respondent had filed petition with NCLT on the instructions of Mr. Girish Porwal and not in his personal capacity. After filing of the petition, the Complainant started approaching the Respondent for appearing in NCLT, and as a matter of transparency, the Respondent sent an email to the Complainant for not accepting his request with a copy marked to Shri Girish Porwal, which also created distrust in the mind of Shri Girish Porwal and he has appointed some other professional for appearing before the NCLT. After that the Respondent is not involved in the case.
- (vii) The Respondent has stated that on one side the Complainant is complaining that he was acting against the interest of the company and favouring Shri Girish Porwal; and on the other side he is sending letters/emails to him to appear before the NCLT. From this it is crystal clear that the Complainant only wants to harass the Respondent. The Complainant has also made allegations against the Statutory Auditor of the company stating that he is a relative of Shri Girish Porwal.
3. The Complainant in his Rejoinder dated 11th December, 2018 inter-alia stated as under: -
- (i) That Respondent's submission made to the NCLT dated 16.11.2017 should be noted in which he has declared that he is the Practising Company Secretary and duly authorised by Shri Girish Jayantilal Porwal (one of the director of M/s Siddmed Ehealth Pvt. Ltd.) to appear on his behalf in the matter of Section 241 operation and mismanagement of the Companies Act, 2013. The Respondent denied his role and responsibilities and liable to be prosecuted for making false statement.
- (ii) That the complaint is true and correct and backed by facts. It is an undeniable fact that he has provided services to the company M/s Siddmed Ehealth Pvt. Ltd. in his professional capacity as Company Secretary. The Respondent accepted this fact that he has provided services to the company in his Written Statement and by virtue of accepting the contract, he was duty bound to work in the company's best interest and declare any conflict of interest in respect of his association with one of its director.
- (iii) That the Respondent did not disclose the fact that he was providing services in his professional capacity to one of the directors Shri Girish Porwal and his firm M/s Jyothi Electrodes Pvt. Ltd. The fact that this Practising Company Secretary did not disclose this either in written or oral form amounts to 'concealing of information' and liable for disciplinary action.
- (iv) That the Respondent was hired by M/s Siddmed Ehealth Pvt. Ltd. to provide professional services that is expected of a Company Secretary and paid fees in that capacity. His appointment to perform the role was based on the fact that he claimed his qualification and credentials. It is undeniable that he filed the annual return of a company but that does not dilute his role and



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responsibilities as acting Company Secretary and is liable to be covered under the Company Secretaries Act, 1980.

- (v) That the Respondent in his Written Statement admits his association with M/s Jyothi Electrodes Pvt. Ltd., at the time of offering his services to M/s Siddmed Ehealth Pvt. Ltd., which is morally corrupt and unprofessional behaviour of him to say that he was introduced in the offices of his client company but he did not deem it fit to disclose that he was offering services to the company and he presumed that the Complainant was having knowledge of it.
- (vi) That the Respondent in his submission admitted filing a petition in the NCLT on the instruction of Shri Girish Porwal. He justified this by saying that 'as a professional he can take up any assignment'. However, he does not specify in what role or capacity that he did this. It only proves allegation that he is acting in prejudice and with malafide intent which is grossly unprofessional and becoming of a Company Secretary. The Respondent took undue favours from Shri Girish Porwal and enjoyed his patronage in M/s Jyothi Electrodes Pvt. Ltd., which he concealed deliberately so that he could act in the interest of Shri Girish Porwal who is one of the directors in M/s Siddmed Ehealth Pvt. Ltd.
- (vii) That it can be established without doubt that he is professional conduit of Shri Girish Porwal in all professional misdemeanours, it is only expected that the Respondent has used his statement to buttress his claims. Therefore, no company's Resolution against the Respondent is possible where the other director has vested interests and is hand in glove with the accused.
4. The Director (Discipline) in her *prima-facie* opinion dated 29th March, 2019, after considering the material on record and all the facts & circumstances of the matter, held that the Respondent is *prima facie* 'Not Guilty' of professional or other misconduct under the First and/or Second Schedule(s) to the Company Secretaries Act, 1980, as -
- (i) The Complainant has failed to substantiate any conflict of interest of the Respondent. Being a professional, the Respondent may know Shri Girish Porwal. Only knowing and providing professional services to a company in which Shri Girish Porwal, (the other director of M/s Siddmed Ehealth Pvt. Ltd.) is a director does not reflect any conflict of interest. The Respondent has provided his services as a professional only and one person can be a director in multiple companies. There is no requirement of disclosing the name of one client Company to the other. Moreover, the complainant has stated that the Respondent was assigned work on reference and recommendations of Shri Girish Porwal only.
- (ii) Being a professional, the Respondent can decline to take up any assignment. Moreover, the Respondent was not appointed as a PCS of M/s Siddmed Ehealth Pvt. Ltd. on retainership basis.
- (iii) Nothing is wrong in filing a petition on behalf of a client who may be a company or an individual. In this case the Respondent has filed the petition on behalf of Shri Girish Porwal (who is also one of the two directors of the Company). The Respondent cannot be blamed for making allegations in the NCLT petition as he has represented there for and on behalf of his client Shri Girish Porwal.

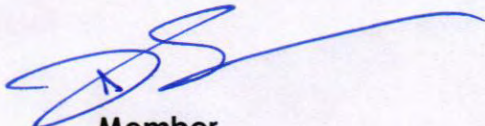


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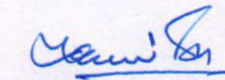
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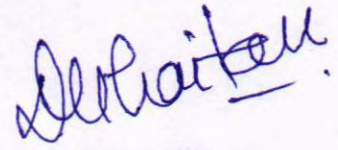
5. The Board of Discipline after considering the Complaint, Written Statement, Rejoinder, related material on record, *prima-facie* opinion of the Director (Discipline) dated 29th March, 2019 and in totality of all the facts and circumstances of the case, agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Complainant.
6. Accordingly, the complaint stands closed and disposed off.



Member



Member



Presiding Officer

