

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

DC/441/2018

Order reserved on : 23rd October, 2019
 Order issued on : 4th November, 2019

M/s. Distinctive Properties and Leasing Ltd.
 Through Shri Arun Bahuguna
 Flat No 13 Stilt Floor
 Devika Tower 6, Nehru Place
 New Delhi -110019

.....Complainant

Vs

Ms Mukta Debnath (ACS-47813)
 T-274/A, Baljeet Nagar, Road No. 20
 Near Janta Park
 New Delhi-110008

.....Respondent

CORAM:

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

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
 Shri Vikash Kumar Srivastava, Deputy Director, Disciplinary Directorate
 Respondent in person

ORDER

1. A Complaint dated 21st June, 2018, in Form I is filed by M/s. Distinctive Properties and Leasing Limited (hereinafter referred to as 'the Complainant') through Shri Arun Bahuguna against Ms. Mukta Debnath ACS-47813 (hereinafter referred to as 'the Respondent') under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as '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 (hereinafter referred to as 'the Rules').



2. The Respondent was a Company Secretary in employment with of M/S Genius Minds Private Limited (hereinafter referred to as 'the Company').
3. The Complainant has *inter-alia* alleged that the Respondent in connivance with the Directors of the Company namely Shri Aditya Agarwal, Shri Abhishek Agarwal and Shri Amit Jain created false, forged and fabricated emails dated 26th December, 2017 and 29th December, 2017 to cause wrongful loss to the Complainant. In the said emails, it is mentioned that the Complainant owes loan amounting to Rs. 13 crores to the Company @ 16% interest, which the Complainant has not been able to pay the Company due to financial crunch. It is alleged that the act of sending forged email has been committed in order to extract money from the Complainant showing it as a loan transaction. A police complaint at Mehrauli Police Station has also been filed by the Company against the Respondent, the Directors and the other accomplices of the Company.
4. The Complainant has further alleged that the Respondent has failed to comply with of the Secretarial Standard and maintenance of a Registered Office by the Company as required under the Companies Act, 2013.
5. The Respondent in her written statement under Rule 8(3) of the Company Secretaries (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007 dated 20th September, 2018 has stated that she has joined the Company w.e.f. 1st November, 2017 and resigned on 17th February, 2018. She was in employment of the Company only for the total period of 3.5 months and she herself is an aggrieved party like other employees of the Company as she has not received her dues from the Company. The impugned emails dated 26th December, 2017 and 29th December, 2017 have neither been sent from the email Id of the Respondent nor the copy has been marked to the Respondent. The allegation of non-maintenance of registered office on 28th February, 2018 pertains to the period after her resignation on 17th February, 2018. That she is neither aware of the petition against the Complainant nor has she prepared the alleged resolution and even holding of Board Meeting on 5th February, 2018 was not communicated to her by the Directors of the Company.
6. Pursuant to sub-rule (4) of Rule 8 of the Rules, copy of the written statement was sent to the Complainant vide letter dated 26th September 2018 for filing rejoinder, if any. No rejoinder has been received from the Complainant.
7. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examining the material on record formed prima-facie opinion dated 6th September, 2019 wherein Director(Discipline) has opined that the Respondent is not



guilty of Professional Misconduct under any of the Items of First and/or Second Schedules to the Act for the allegations made in the Complaint as there is no evidence on record establishing the Respondent's connivance or involvement in acts as alleged by the Complainant.

8. The Board of Discipline in its meeting held on 12th September, 2019 considered the *prima-facie* opinion dated 6th September, 2019, the materials on record and all the facts and circumstances of the matter and felt that before taking any decision on the *prima-facie* opinion of the Director (Discipline), it was important to hear the Complainant and the Respondent in person and directed the Disciplinary Directorate to call the Complainant and the Respondent pursuant to Section 21C of the Act to appear before the Board of Discipline at next date of hearing and also call for the status of the cases from the Complainant including the matter pending before Hon'ble National Company Law Tribunal as mentioned by the Complainant.
9. The Complainant vide letter dated 4th October 2019 has informed that the CP No IB-424(ND)/2018 filed before Hon'ble National Company Law Tribunal, New Delhi Bench, has been dismissed as withdrawn.
10. The Complainant along with his Advocate appeared before Board of Discipline on 9th October, 2019. The Complainant requested for adjournment for 7 days for preparation of the case. The Respondent vide letter dated 27th September, 2019 requested to adjourn the meeting as she has moved to Bangalore after her marriage and requested for adjournment on any day between 21st October, 2019 to 29th October, 2019. On the request of the Complainant and Respondent, adjournment granted.
11. The parties vide letter dated 10th October, 2019 were called to appear before the Board of Discipline on 23rd October, 2019 at New Delhi and it was informed that in case any of the parties are unable to attend, the parties may appear through their Advocate/Authorized Representative failing which, the matter will be heard *ex-parte*.
12. On 3rd October, 2019, none appeared on behalf of the Complainant. Respondent appeared in person and reiterated the submissions made in the written statement. She has emphasized that the impugned emails dated 26th December, 2017 and 29th December, 2017 were sent from email Id 'distinctivepro1984@gmail.com' which is not her email Id. It is shown by the Respondent that her email Ids are 'compnaysecretary@4gm.in' and 'muktadeb2014@gmail.com'.
13. The Board of Discipline after considering *prima-facie* opinion, submissions of the Respondent and material on record is of the view that the

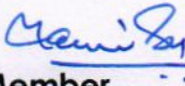


allegations against the Respondent are based only on the assumptions of the Complainant and there is no document on record to substantiate the same. The Complainant has not submitted any rejoinder to the written statement. The Board of Discipline agrees with the contention of the Respondent that the impugned emails dated 26th December 2017 and 29th December 2017 were not sent from her Official email Id 'compnaysecretary@4gm.in' or from personal email Id 'muktadeb2014@gmail.com' .

14. In view of the above, considering all the material on record and of all the facts and circumstances of the case in totality, the Board of Discipline agrees with the prima-facie opinion of Director (Discipline) and holds the Respondent '**Not Guilty**' of any Professional or other misconduct under the Act for the allegations made in the Complaint as that there is no evidence on record establishing the Respondent's connivance or involvement in acts as alleged by the Complainant.

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


Member


Member


Presiding Officer

