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/NI/2015

Order reserved on : 10th July, 2018
Order issued on : 31st July, 2018

Shri Ankur Shah, ACS-25779 **.... Informant**

Vs.

Shri Dinesh Gupta, FCS-4999 **....Respondent No. 1**

Mrs. Anuradha Gupta, FCS-5007 **....Respondent No. 2**

Present:
Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Information, Written Statement, prima-facie opinion & further investigation report of the Director (Discipline) and all the material on record.

2. The Board of Discipline noted the following: -

   (i) An information dated 05th July, 2014, has been filed under Section 21 of the Company Secretaries Act, 1980, (the Act) read with Rule 7 (1) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, ('the Rules'), by Shri Ankur Shah, (ACS-25779), ('the Informant'), against Shri Dinesh Kumar Gupta, (FCS-4999) (hereinafter referred to as 'the Respondent No. 1') and his wife Mrs. Anuradha Gupta (FCS-5007), (hereinafter referred to as 'the Respondent No. 2').

   (ii) The Informant has *inter-alia* alleged the following against the Respondents:

      a) Professional misconduct under Item (10) of Part I of First Schedule of the Company Secretaries Act, 1980, by engaging in other businesses since 2002 in addition to be in practice as Company Secretaries. The Respondents have incorporated several Companies under their own flagship,

wherein they are Executive Directors apart from the Company Secretarial Services like the Information Technology Consultancy Services, Green Energy Consultancy Services, Real Estate & Infrastructure Consulting Services etc. in contravention of Section 2 (2) of the Company Secretaries Act, 1980.

b) Professional misconduct under Item (5) of Part I of Second Schedule of the Company Secretaries Act, 1980. It has been alleged that the Respondents are holders of Secretarial Practice Certificates and are also engaged in other businesses since 2002 and have incorporated several Companies under their own flagship, wherein they are Executive Directors. Apart from the Company Secretarial Services they are engaged in the other business areas including the Information Technology Consultancy Services, Green Energy Consultancy Services, Real Estate & Infrastructure Consulting Services etc. in contravention of Section 2 (2) of the Company Secretaries Act, 1980.

c) Professional misconduct under Item (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980, and they have contravened the provisions of Section 2 (2) of the Company Secretaries Act, 1980, Regulation 64 of the Company Secretaries Regulations, 1982, as Shri Dinesh Kumar Gupta contested the NIRC Regional Council Elections, 2006, while being only as an Associate Member of the Institute whereas only Fellow Members of the Institute are eligible.

d) Violating Section 37 of the Company Secretaries Act, 1980, by maintaining a Branch Office of PARD Associates in Ghaziabad City and also not furnishing the information about the Company Secretary In-charge of the said Branch Office.

e) Professional misconduct under Item (3) of Part II of Second Schedule of the Company Secretaries Act, 1980, by filing false Form-D with the Institute by giving false information in the Nomination Form. Mrs. Anuradha Gupta has not disclosed the particulars of Branch Office.

f) Professional misconduct under Item (2) of Part IV of First Schedule of the Company Secretaries Act, 1980, as the Respondents have brought disrepute to the Institute by spreading the Web of lies on the Social Public Platform and are using the unwarranted words which are bringing disrepute to the Institute. Also as Mr. Dinesh Kumar Gupta and Mrs. Anuradha Gupta have contested the NIRC Regional Council Elections in the year 2006 and 2010, respectively and by doing so they have tried to become the Face and Representative of the Institute.

(iii) The Respondent No. 1, Shri Dinesh Kumar Gupta, in his Written Statement has denied the allegations made in the Complaint and contended as under:

a) That he was one of the Partners of the firm PARD Associates till 2007. He surrendered his Secretarial Practice Certificate in April, 2007 and thereafter he was appointed as Director in the four (4) Companies floated by him. There is, therefore, no contravention of Clause (10) of Part I of First Schedule to the Company Secretaries Act, 1980.

b) The Respondents have denied the alleged contravention of Item (2), Part I of the First Schedule to the Company Secretaries Act, 1980, as the said Item is not applicable to him because at the relevant time he was not a Practising Company Secretary and had surrendered his Certificate of Practice.

c) The Respondent have denied the allegations of professional misconduct under Item (2) of Part III of First Schedule to the Company Secretaries Act, 1980, as he had already become a Fellow Member of the Institute in December, 2005 and he contested the Elections to the NIRC Regional Council in December. 2006. Therefore there is no alleged violation of Clause (2) of Part III of the First Schedule to the Company Secretaries Act, 1980.

d) The Respondents have denied the allegations of professional misconduct under Item (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980, as he had become a Fellow Member of the Institute before contesting the Elections in December, 2005.

e) The Respondents have denied the contravention of Item (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980, as he was not doing any other business during the time he held the Certificate of Practice.

(iv) The Respondent No. 2, Ms. Anuradha Gupta wife of Shri Dinesh Gupta has not filed any separate Written Statement.

(v) In terms of Clause (b) of Sub-Rule (2) of Rule 7 of the Rules, the person giving information does not have the right to be represented during the investigation or hearing of the case. Consequently, no Rejoinder was called for from the Informant.

3. The Board of Discipline at its 74th meeting held on 18th January, 2018 considered the prima-facie opinion dated 25th September, 2017 of the Director (Discipline) that the Respondents 1 & 2 are 'Not Guilty' of

professional or other misconduct under the Company Secretaries Act, 1980. The observations of the Director (Discipline) are as under: -

a) The Informant has not produced any cogent evidence to substantiate the allegations made by him in the information under Rule 7 (1) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
b) Each of the allegation leveled by the Informant have been forcefully denied by the Respondents with all facts and figures.
c) There is no contravention of the alleged Rules as the Respondent Shri Dinesh Kumar Gupta had surrendered his Certificate of Practice before floating the Companies. As per records of the Directorate of Membership of ICSI *(as per email dated 3rd July, 2018 of Deputy Director, Membership)*, Shri Dinesh Kumar Gupta holds Certificate of Practice of ICSI for the period from 30th December, 2000 to 23rd May, 2007. As non Practising Company Secretary Shri Dinesh Kumar Gupta was not debarred from doing other business. There is also no evidence on record that he contravened the provisions of Section 2 (2) of the Company Secretaries Act, 1980.
d) In so far as the contesting of Election by Shri Dinesh Kumar Gupta for NIRC Regional Council is concerned it has been stated by the Respondent that he had become a Fellow Member in 2005 and was eligible to contest the Election held in December, 2006. In any case the candidature of Shri Dinesh Kumar Gupta would have been carefully scrutinized by the Returning Officer before allowing him to contest the Election.
e) No case is made out for professional misconduct falling under Item (2) of Part IV of First Schedule to the Company Secretaries Act, 1980, as the Informant has not been able to show as to how and in what manner the Respondents have brought disrepute to the Institute or the profession.
f) In fact the Respondents have denied the allegations of contravention of all the Items under the First and Second Schedules as leveled by the Informant.
g) Mrs. Anuradha Gupta has already filed a Police complaint in Police Station Shakarpur, Delhi, against the Informant and an FIR Np. 1719 dated 25.08.2014 has already registered in the said Police Station under Section 354-D of IPC (Stalking).
h) Mrs. Anuradha Gupta has also filed a complaint alleging misconduct on the part of the Informant which is being dealt with separately.
i) The Information is the result of inter-se fighting between the Informant and the Respondents. Both have exchanged posts on the Facebook, sent legal notices to each other and an FIR has been registered against Informant, as stated above, on the

basis of complaint made Ms. Anuradha Gupta. The present status of the FIR is not known.

j) The Informant has not provided any documentary evidence to substantiate any of his allegations.

k) In view of the aforesaid and considering all the facts and circumstances of the case, the Director (Discipline) formed her *prima-facie* opinion dated 25th September, 2017 that the Respondents are prima facie 'Not Guilty' of professional or other misconduct as alleged by the Complainant under any of the Item(s) in First and Second Schedule(s) of the Company Secretaries Act, 1980. The information is liable to be closed.

4. After considering the prima facie opinion of the Director (Discipline), the Board of Discipline in its 74th meeting held on 18th January, 2018, advised the Director (Discipline) to further investigate the matter, and also to call the latest status of FIR filed by the Respondent No. 2.

5. Accordingly, the Respondent No. 2, Mrs. Anuradha Gupta vide letter dated 3rd April, 2018 was asked to submit the latest status of Police complaint made by her in Police Station Shakarpur, Delhi against the Informant, Shri Ankur Shah and FIR No. 1719 dated 25th August, 2014 registered in the said Police Station under Section 354-D of IPC; and any other documents/information, deem fit in the matter.

6. The Respondent No. 2 vide letter dated 11th April, 2018 has submitted the status of the aforesaid Police complaint made by her: -

a) Police is in receipt of reply from Google for leakage of email and contents and important documents from ICSI house by official or any other person.

b) Police yet to receive information from Facebook office USA regarding the complaint pertaining to section 354-D/506/500 of IPC and Section 66A of I.T. Act 2000 filed by Respondent No. 2 on 12th July, 2014.

c) Statement u/s 164 had been made by her before duty magistrate.

d) Complaints have also been made to National Women Commission and Delhi Commission of Women. Detailed enquiry ordered by both the Commissions.

e) Police is in process to file charge sheet in court, once the pending information is received.

f) Complaint has been made in Cyber Cell u/s 66A of IT Act 2000 and investigation has been done, police may file its charge sheet after getting some information pending from Facebook office.

7. In view of the above and considering all the facts and circumstances of the matter, the Director (Discipline) further vide her further investigation report dated 4th July, 2018 in the matter, reiterates her earlier prima

facie opinion dated 25th September, 2017 that both the Respondents are "Not Guilty" of professional or other misconduct under the Company Secretaries Act, 1980, as the Informant has not produced any cogent evidence to substantiate his allegations.

8. **The Board of Discipline at its meeting held on 10th July, 2018, after considering the aforesaid observations, material on record, prima-facie opinion & further investigation report of the Director (Discipline), and all the facts and circumstances of the case, agreed with the prima-facie opinion & further investigation report of the Director (Discipline) that the Respondent No. 1 and the Respondent No. 2, are *"Not Guilty"* of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Informant.**

CS Dinesh Chandra Arora	CS C Ramasubramaniam	CS Atul H Mehta
Member	Member	Presiding Officer