

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/NI/2016

Order reserved on: 21st August, 2019

Order issued on: 22 OCT 2019

Shri Arvind Kumar Meena

.... Informant

Vs

Shri Prateek Mittal, ACS-33807, CP No. 12560

.... Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer
CS Nagendra D Rao, Member
CS B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Mrs. Anita Mehra, Assistant Director
Respondent in person

FINAL ORDER

1. Information was received from Shri Arvind Kumar Meena (hereinafter referred to as '*the Informant*') against Shri Prateek Mittal, ACS-33807 CP No. 12560 (hereinafter referred to as '*the Respondent*') vide email dated 24th September, 2016. As per the provisions of Sub-rule (2) of Rule 7 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as '*the Rules*'), the Informant was asked to confirm whether he was interested to file a complaint in Form I and, if so, to submit the same along with applicable fees. The Informant, in response has stated that he did not want to file a complaint in Form I and requested that his email dated 24th September, 2016, be treated as Information. The Informant was thereafter asked to send duly signed Information by post, disclosing his correct identity for taking further action in the matter. Accordingly, the Informant sent a duly signed letter, received on 7th December, 2016.

2. The Informant has *inter-alia* alleged that some of the Company Secretaries in Practice are soliciting professional work online and quoting very low fees which is not allowed as per the established code of conduct and the same is creating imbalance in the market. The Informant has provided a snap



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shot of "Profraternity.com" through which professional work is being soliciting and quoted very low rates. The Informant has also provided a copy each of Form No. MGT-14 and Invoice bearing No. 0001 dated 07.09.2016 issued by Profraternity Inc. to M/s. Dhanwan Leasing & Finance Company Limited raising Rs. 349/- on account of charges for certification of Form No. MGT-14. A perusal of Form MGT-14 shows that it was verified and digitally signed by the Respondent.

3. The Respondent in his Written Statement dated 4th April, 2017 denied the allegations and has stated that he is not indulged in any form of advertisement or marketing whether directly or indirectly, with respect to the secretarial work performed by him. The firm Profraternity is a sole proprietorship firm independently owned and operated by Ms. Preeti Sharma. Profraternity is one of his Clients to which services were offered by him on retainership basis for lump sum payment. The Respondent is not involved in the marketing and advertisement, if any, done by Profraternity. The pricing is also controlled by Profraternity and its team.
4. In response to the letters dated 31st May, 2017 and 26th August, 2017 issued by the Disciplinary Directorate pursuant to sub-rule (5) of Rule 8 of the Rules, wherein the Respondent was asked to submit (i) a copy of any document in respect of his claim that he was associated with the firm 'Profraternity'; (ii) a copy of any agreement or any other document containing the terms and conditions of his association with the firm 'Profraternity'; (iii) due diligence he has conducted/ documents and records of the company verified by him before certifying Form MGT 14 of M/s Dhanwani Leasing & Finance Company Limited, the Respondent vide letter dated 2nd September, 2017 has *inter-alia* stated that he has signed the agreement with 'Profraternity' which is non-disclosable to third party and he cannot share copy of such agreement without prior permission from his client. The Respondent has stated that he has conducted proper due diligence before certifying Form MGT 14 of the Company as per the guidelines issued by the Institute; for example, he has searched MCA Portal and cross checked data available on MCA Portal with the information filled in the Form MGT 14 before filing the same.
5. The Director (Discipline) in the prima-facie opinion dated 23rd September, 2017 opined that the Respondent is guilty of professional misconduct under Items (1), (2), (5) and (6) of Part I of the First Schedule and Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 (hereinafter referred to as 'the Act') as the Respondent is indirectly soliciting professional work through the medium of Profraternity and also shares the income/professional fees so obtained with Profraternity in the disguise of retainership. There is also no information whether the requisite due diligence was conducted and, if so, by whom. It is also observed by the Director (Discipline) that the firm Profraternity is soliciting professional work online



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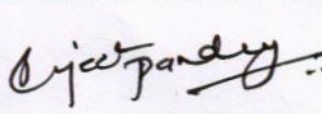

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and quoting fees which is very low and has advertised it on its website as - "ROC Form Certification in just Rs. 349/-". The Respondent is a Company Secretary in Practice and cannot at the same time be in employment. Even in the case of retainership, he is required to do the professional work relating to his employer only i.e. Profraternity in this case. The Respondent cannot, while being on retainership, verify and certify the Forms of any other third person as a Company Secretary in Practice. The Respondent is indirectly indulged in soliciting professional work vicariously through the website of Profraternity.

6. The Director (Discipline) in the prima-facie opinion has also mentioned that the Institute has issued a Legal Notice dated 16th November, 2016, to the firm Profraternity for soliciting professional work and advertising the rates of fees/professional charges to be charged by it for rendering various services as Company Secretary in Practice work for and on behalf of Practising Members of the Institute. It was also requested to disclose names of Practising Members on whose behalf it is advertising and soliciting professional work and also to state the terms and conditions of such an arrangement. In her reply dated 8th December, 2016, it has been stated by Ms. Preeti Sharma, Proprietor of Profraternity that the website is just a platform paved for convenience of Clients considering contribution to Digital India promoted by the Government; she is not providing certification services in her professional capacity rather they are being outsourced to various professional of different domain; her website shows no advertisements, solicitations, names of professionals or any other activity which may violate any law, rule or act of the country including the Company Secretaries Act, 1980; she has no names of Practising Members to be shared and she is working as a support service e-platform and is not an advertising agency; and since she is not a member of ICSI, she is not obligated under the Company Secretaries Act, 1980 and Rules and Regulations framed thereunder and expressed her complete denial of any such contravention being made against her.
7. The Disciplinary Committee in its meeting held on 17th October, 2017 considered and agreed with the *prima-facie* opinion dated 23rd September, 2017 of the Director (Discipline) and decided to adjudicate the matter in accordance with Rule 18 of the Rules to finally conclude as to whether the Respondent is guilty or not in the matter.
8. Despite of giving an opportunity, no Written Statement to the *prima-facie* opinion of the Director (Discipline), is received from the Respondent.
9. The Disciplinary Committee in its meeting held on 25th April, 2018, considered an email dated 8th January, 2018 received from the Informant *inter-alia* stating that he does not wish to further pursue the said complaint and thus seeks to withdraw the same. The Disciplinary Committee also



observed that duly signed withdrawal request was called from the Informant vide two emails dated 8th January, 2018 and 5th March, 2018. However, no response has been received from the Informant. The Disciplinary Committee also referred the relevant provisions contained in the Act and the Rules governing the withdrawal of the Complaint and observed that there are specific provisions which govern withdrawal of Complaint. On the contrary, there is no such specific provision which governs or allows withdrawal of Information cases. Therefore, the Disciplinary Committee decided not to consider withdrawal of this Information case. The Disciplinary Committee further decided to call the Respondent to appear before it.

10. The Disciplinary Committee in its meeting held on 3rd June, 2019, observed that the Respondent vide letter dated 16th May, 2019 was called to appear before it on 3rd June, 2019. However, the Respondent vide email dated 25th May, 2019 requested to reschedule the hearing. The Disciplinary Committee considered the request of the Respondent and adjourned the matter.

11. The Respondent was called to appear before the Disciplinary Committee on 26th June, 2019 vide letter dated 12th June, 2019.

12. The Disciplinary Committee in its meeting held on 26th June, 2019, heard the oral submissions made by Shri Sourabh Gupta, PCS appeared on behalf of the Respondent that the Respondent is not involved in soliciting or advertising of professional work through Profraternity, and also apologized before the Disciplinary Committee for any wrong doings. After considering the material on record and all the facts and circumstances of the case, the Disciplinary Committee held the Respondent "**Guilty**" of professional misconduct under Items (1), (2), (5) and (6) of Part I of the First Schedule and Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980, as the Respondent is indirectly soliciting professional work through the medium of Profraternity and also the shares the income/professional fees received with Profraternity in the disguise of retainership. The Respondent has also failed to substantiate that he has exercised due diligence in certifying the alleged Form No. MGT 14 of M/s Dhanwan Leasing & Finance Company Limited. The Respondent is a Company Secretary in Practice and even in the case of retainership, he is required to do the professional work relating to his client only i.e. Profraternity. The Respondent cannot, while being on retainership, verify and certify the Forms of third person referred to him by Profraternity as a Company Secretary in Practice. The Respondent is indirectly indulged in soliciting professional work vicariously through the website of Profraternity.

13. The Disciplinary Committee also decided to provide an opportunity of being heard to the Respondent pursuant to sub-rule (1) of Rule 19 of the Rules. The Disciplinary Committee further decided to call upon the



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Respondent to appear before it at the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee. In case the Respondent for sudden or personal reasons is unable to attend the hearing; the Respondent may appear through an authorized representative along with a duly signed and attested letter of authority addressed to the Disciplinary Committee seeking exemption from personal appearance failing which, the matter will be heard ex-parte.

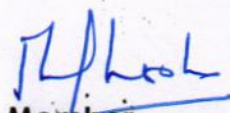
14. The Respondent was called to appear before the Disciplinary Committee on 21st August, 2019 vide letter dated 13th August, 2019.
15. On 21st August, 2019, the Respondent appeared in person and made oral submissions before the Disciplinary Committee. The Respondent has also requested to take a lenient view in the matter.
16. **The Disciplinary Committee after considering the oral submissions and request made by the Respondent, material on record and all the facts and circumstances of the case, passes the following Order against the Respondent under Section 21B (3) of the Company Secretaries Act, 1980 read with Rule 19(1) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007: -**

- i) REPRIMAND; and
- ii) Fine of Rs. 15000/- (Rupees Fifteen Thousand Only) payable within 60 days from the date of receipt of this Final Order.

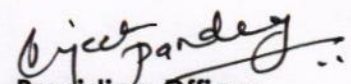
In the event of default in payment of Fine of Rs. 15000/- within the stipulated time period, the name of the Respondent shall be removed from the Register of Members for a period of 45 days.


Member


Member


Member




Presiding Officer