



BEFORE THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 129/2012

In the matter of complaint of professional or other misconduct filed by Shri Pankaj Pal against Dr. Asim Kumar Chattopadhyay, FCS-2303 (CP No. 880).

Coram: Sudhir Babu C, Presiding Officer
Umesh H Ved, Member
Sutanu Sinha, Member

ORDER

1. A complaint in Form I dated 20th February, 2012 was filed under Section 21 of the Company Secretaries Act, 1980 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 Pankaj Pal (hereinafter referred to as 'the Complainant') against Dr. Asim Kumar Chattopadhyay, FCS-2303 (CP No. 880) (hereinafter referred to as 'the Respondent').
2. The Complainant *inter-alia* stated that M/s. Sapling Agrotech Pvt. Ltd., despite having a paid up capital of Rs. 7.06 Crores did not appoint a whole time Company Secretary since its inception.
3. The Complainant *inter-alia* alleged that the Respondent despite knowing that the company is violating Section 383A of the Companies Act, 1956 is involved as a Company Secretary under the grab of Company Secretarial Advisor for his personal gain/agenda. The Respondent's accepting the Company Secretary's job and circumventing the law under different name only to help the company in systematically violating the Company Law, is gross professional misconduct.
4. The Complainant further stated that there are serious charges against the company and its CMD ranging from false equity capital to defalcation of cash and criminal breach. The Respondent is aware of these facts and has helped guiding and advising the CMD of the company in drafting letters, preparation of the Board minutes, suppressing the criminal activities to various *fora*.





5. The Complainant has further stated that about 30% of the paid up equity capital of Rs. 7.06 crores is false and illegal. He further stated that false cash entries have been made in the books of accounts and the share register for the CMD of the company, his wife a director, his relatives and for dummy individual and companies, which do not exist.
6. The Complainant has further alleged that these manipulations must have been done with the tacit support of the Respondent. Further, checking and verification of veracity of authorized and paid up capital is the primary duty of a qualified Company Secretary. It appears that the CMD and the Respondent perhaps made joint venture to deceive other genuine shareholders, lenders, creditors and the government.
7. The Complainant further stated that the AGM of the company held at the registered office on 19th November, 2011 was a farce piloted by the Respondent, wherein the objections and the clarifications sought on the Annual Accounts for 2010-11 by three independent shareholders during adoption of the said accounts were rejected.
8. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 15th March, 2012 calling upon him to submit the written statement. However, the same was received undelivered. A copy of the complaint was again sent to the Respondent *vide* letter dated 26^h March, 2012 followed by reminder dated 30th April, 2012. A copy of the complaint was again sent to the Respondent *vide* letter dated 1st June, 2012. The Respondent submitted the written statement dated 6th June, 2012.
9. The Respondent at the outset denied the averments made by the Complainant and has stated that the Complainant has no *locus-standi* to lodge the complaint as he was an ex- employee of M/s. Sapling Agrotech Pvt. Ltd., and was involved in a number of criminal cases.
10. The Respondent *inter-alia* stated that the Complainant had stolen cheques of the company and had forged the signatures of the CMD of the company to acquire funds illegally from the company to his account. The Respondent further stated that the Complainant was sacked by the company on 23rd September, 2011 for such acts.
11. The Respondent further stated that on scrutiny of the copy of Form-I filed by the Complainant, it is observed that he has not signed the verification which is a mandatory requirement and his complaint is against Mr. Ashim Chattopadhyay (ACS - 16505) and not against Dr. Asim Kumar Chattopadhyay (FCS - 2303).



12. The Respondent further stated that the Complainant has mentioned that apart from him, the facts of the case are also known to Shri S. N. Bhowse, Shri B. K. Ray, Shri D. Sawlani and Shri P. Roy. Amongst these persons, Shri B. K. Ray and Shri P. Roy are the ex-directors of the company and Shri S. N. Bhowse, Shri D. Sawlani and Shri P. Roy are the minority shareholders of the company. The Respondent has further stated that there is a nexus between the Complainant and Shri B. K. Ray, who was the then, a Non - Executive Director of the company who with the said minority shareholders, intended to grab the project of the company with an ulterior motive.
13. The Respondent further stated that he has always acted as a Secretarial Advisor of the company and rendered consultancy in various matters of the Companies Act, 1956 as and when asked for by the management. The Respondent further stated that he attended some of the Board meetings of the company as an Invitee, wherein he had delivered his job as per existing laws. Being a senior member of the Institute, he had never involved himself in any manner which leads to professional misconduct.
14. The Respondent further stated that the objection raised by the Complainant for authentication of the Annual Accounts is also baseless. The company had duly convened the AGM and the authentication of accounts was carried on by majority voting. As such, there was no violation of the relevant provisions of the Companies Act, 1956.
15. The Respondent further stated that in his capacity as a Secretarial Advisor of the company, he has suggested the management in various matters to the best of the company's business interest and also as per the existing provisions of the Companies Act, 1956.
16. The Respondent further stated that he is not involved in the day to day activities of the company and has not issued any certificate to the company in any manner whatsoever.
17. The Respondent further stated that he never supported the said illegal activities of the Complainant and the act done by Shri B. K. Ray and his group and due to this reason, the Complainant has initiated this complaint out of grudge. The Complainant has lodged this complaint without any specific charge against him.
18. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant vide letter dated 12th June, 2012 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 28th June, 2012.



19. The Complainant has *inter-alia* stated that the Respondent has in accepted the charges as he has only tried to digress from the moot p by bringing in *locus-standi* of the Complainant.



20. The Complainant further stated that he has lodged the complaint behalf of two rightful shareholders who had given him the Power Attorney to do so. Further, another shareholder had authorized him attend the AGM on 19th October, 2011 on his behalf as a proxy.

21. The Complainant further stated that he has filed three cases against the CMD and other directors under section 138 of the Negotiable Instrument Act, 1881 for issuing the cheques against his salaries and remuneration before the Chief Metropolitan Magistrate, Calcutta. The Complainant has further stated the CMD is absconding out of fear and the Company Secretary claimed to be advisor of the CMD could not advise him to appear in the Court and prove the forgery.

22. The Complainant further stated that again dwelling in the domain of personification whether the said Company Secretary is 'Shri' or 'Dr.' and 'ACS - 16505' or 'FCS - 2303' is an attempt to digress the matter only as he has nothing to defend.

23. The Complainant further stated that he got the name without 'Dr.' and ACS number from letter no. DC: NI: 2011 Dated 18th November, 2011 of the Institute. Moreover, a person's identity is not only dependent on 'Shri' or 'Dr.' strangely enough, all the names he mentioned in the written statement are without any prefix as 'Shri in all cases' and 'Dr.' in case of Shri P. Roy who is a genuine doctorate and ex-HOD of the Biotechnology Department of the University of Burdwan. Therefore, his ultrasound campaign for 'Dr.' is a misplaced zeal for self-advertisement on qualification only to impress upon to suppress his professional capability.

24. The Complainant further stated that it is a blatant lie under the garb of 'Secretarial Advisor. He was, de facto, Company Secretary and no other Secretary was there as per the Company Law as applicable to the company. Each and every Board meeting in Kolkata and Mumbai from 2006-2011 has been attended by him and all the Board notes have been prepared by him. The Respondent's claim to render services to renowned company does not give him immunity against professional misconduct.

25. The Complainant further alleged that the Respondent was the master of ceremony at the AGM of the company and did not attend the complaints of three shareholders only to pursue his own objectives to make gain from the CMD and his wife and other two shareholders with procedural gymnastics. The statements made by the Respondent are a




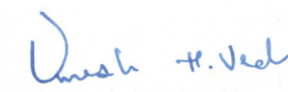


mundane, irrelevant, puerile and a routine 'not guilty' plea in nature. He is rendering all secretarial services along with legal ones (as he claimed to be holding LLB degree also). Mr. and Mrs. Basu only directors of the company, as the other directors left due to criminal activities of the CMD, could only depend on him for all his ill-convinced and illegal activities as claimed to be consultant advisor. He claims that he is in an advisory role but advised the CMD only to bring 'huge cash' for share buying in the name of Mr. and Mrs. Basu and benami share purchases. He ought to have been disclosed this in any of the Board meetings on the discussion of shareholdings, which occurred many times.

26. The Complainant further stated that the Respondent and the CMD jointly terminated his services after happening of all professional misconduct of the Respondent and criminal activities of the CMD.
27. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that the company has retained the Respondent as an advisor. The violation of Section 383A of the Companies Act, 1956 may be taken up before the appropriate forum. In this matter, the Complainant has an assumption that the Respondent has helped guiding and advising the CMD of the company in manipulations, which is legally not plausible. Hence, the Respondent is not guilty of professional or other misconduct under the First and/or the Second Schedule of the Company Secretaries Act, 1980.
28. The Board on 3rd May, 2013 considered the *prima-facie* opinion dated 16th April, 2013 of the Director (Discipline); material on record and 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 and closed the matter.

Accordingly, the complaint stands disposed-off.


(Sutanu Sinha)
Member


(Umesh H Ved)
Member


(Sudhir Babu C)
Presiding Officer

Date: 17th June, 2013
New Delhi

