

THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 213 /2013

In the matter of complaint of professional or other misconduct filed by Shri M R Kulkarni, FCS-2012 against Ms. Neha P Agrawal, FCS-7350 (CP No. 8048).

Date of decision: 21st July, 2014

Coram: Mr. P K Mittal, Presiding Officer
Mr. Anil Murarka, Member

ORDER

1. A complaint dated 13th December, 2013 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 M R Kulkarni, FCS-2012 (hereinafter referred to as the 'Complainant') against Ms. Neha P Agrawal, FCS-7350 (CP No. 8048) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent has issued the Compliance Certificate(s) and certified Forms 20B, 23AC, 66 for the year ended 31st March, 2013 in respect of M/s. Bihani Binayake Cotex Pvt. Ltd. and M/s. Bihani Agro Industries Pvt. Ltd., (hereinafter referred as companies) without any prior notice to him. The Complainant further alleged that Respondent has become habituated in violating the professional ethics and code of conduct which can also be seen from the instances that the Respondent has obtained NOC in the past of M/s. Satyam Group Companies by using undue influence and pressure from MD of the Group.
2. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 3rd January, 2014 calling upon her to submit the written statement followed by a reminder dated 29th January, 2014. The Respondent submitted the written statement dated 23rd January, 2014 (received on 3rd February, 2014) wherein the Respondent has *inter-alia* stated that she has not violated Clause (6) of Part I of the First Schedule of the Company Secretaries Act, 1980. She further stated that she had not advertised or solicited the directors of the companies for professional work either directly or indirectly. She further stated that the directors of the said companies are not satisfied with the professional services provided by the Complainant and were looking for other Company Secretary. She further stated that



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one of common director of both the companies was already availing professional services from her for his own company and knows her personally. She further stated that the director suggested her name and the company approached her and she accepted the assignment. The Respondent further submitted letters dated 21st August, 2013 of her appointment as a Company Secretary of the companies. She further stated that she was appointed as a Company Secretary for issuing the compliance certificates of the companies pursuant to the provisions of Section 383A of the Companies Act, 1956 for the FY 2012-2013 in the Board meeting held on 20th August, 2013. The Respondent submitted the minutes of the meeting of the Board of directors of the companies held on 20th August, 2013 in this regard. She further stated that she after being appointed as a Company Secretary of the companies had communicated with the Complainant regarding shifting the secretarial matters of both the aforesaid companies. She also submitted courier receipt and delivery sheet of the said communications dated 22nd August, 2013 sent to the Complainant. She further stated that in regard to issuing of the compliance certificate and certifying form 20B, 23AC, & 66, she had sent written communication to the Complainant through courier and the same were also received by the Complainant. She further stated that she has also communicated the same with the Complainant over phone regarding shifting of secretarial matter to her as the directors of both the companies were not satisfied by the services provided by the Complainant. She further stated that the director of the company has also requested the Complainant to issue NOC in favour of the Respondent but the Complainant refused for the same and was trying to force the company not to shift the work from him to the Respondent. She further stated that the Complainant has made an allegation that in the past also she has obtained NOC's by using undue influence and pressure from MD of Satyam Group of companies. The Respondent further stated that Satyam Group of companies came to her in year 2009 which was her first year of practice. The Respondent further stated that at that time she did not knew the MD of Satyam Group so there is no question of putting undue pressure on the Complainant. She further stated that the Complainant was not able to provide proper services due to which the clients are shifting from him. The Respondent further stated that to issue the NOC in regard to Satyam Group of companies, the Complainant took Rs. 10,000/- as compensation by harassing the MD and was not ready to leave the work. This behaviour of Complainant is against professional ethics. The Respondent further stated that Complainant has no right to demand compensation if the client wants to shift the work from the Complainant. She further stated that a company can call its AGM at a shorter notice after taking approval of shareholders. M/s. Bihani Agro Industries Pvt. Ltd., had called its AGM at



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a shorter notice after taking written approval of shareholders pursuant to Section 171(2) of Companies Act, 1956. Thus, the Complainant has no right to declare the AGM of the company as void.

3. 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 4th February, 2014 asking him to submit the rejoinder followed by a reminder dated 3rd March, 2014. The Complainant submitted the rejoinder dated 21st February, 2014 (Received on 6th March, 2014) wherein the Complainant has *inter-alia* stated that it is not correct to say that the Respondent has not solicited the work without approaching Mr. Vijay Kumar Bihani, Director, M/s. Bihani Agro Industries Pvt. Ltd. and M/s. Bihani Binayake Cotex Pvt. Ltd. directly or indirectly. He further stated that it is also not true that the directors of the said companies were not satisfied of the services provided by the Complainant. The Complainant further stated that the Respondent has approached the companies directly or indirectly over telephone and also played caste card for soliciting the secretarial work. The Complainant has further stated that M/s. Bihani Agro Industries Pvt. Ltd., and M/s. Bihani Binayake Cotex Pvt. Ltd., had appointed the Complainant as CS under section 383A of the Companies Act, 1956 in AGM held on 29th September, 2013 for the year 2012-2013 and the same was signed by Mr. Vijay Kumar Bihani and Mr. Nilesh Bihani in regard to M/s. Bihani Binayake Cotex Pvt. Ltd., and Mr. B. B. Bihani and Mr. V. B. Bihani in regard to M/s. Bihani Agro Industries Pvt. Ltd. The said resolutions are filed with the Notice calling the AGM of the respective companies, which are also available on the MCA portal, hence, the statement of the Respondent that she was appointed as CS by the Board of directors on 20th August, 2013 which is not correct and even if so, the appointment of the Respondent as CS by the Board is illegal, fabricated and afterthought. The Complainant further stated that the Board of directors has no legal right to pass, change, amend, abrogate a resolution of the AGM, any change; amendment or abrogation of the resolution passed by AGM can be amended only by shareholders by calling EOGM/AGM. Hence, it is against the provisions of the Companies Act, 1956. And even if it is passed, it is *ab-initio void* and illegal as it is not within the jurisdiction of the Board. The Complainant further stated that he has not received any communication from the company or from the Respondent in this matter prior to the letter dated 4th February, 2014 as attached to the written statement. He further stated that the directors of the said companies never requested him in writing or even over phone to issue any NOC in favour of the Respondent. He further stated that he was constantly in contact with Mr. Avinash Bihani, who is the common director and



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looking after legal and accounts matters. However, Mr. Avinash has never told him that there is a proposal for appointment of another CS or the Respondent has filed the compliance certificate, Balance Sheet and Annual Return of both the companies. He further stated that it is the fact that the Respondent is habituated in violating professional ethics by using undue influence and pressure on the directors of Satyam Group of companies. Mr. Nakul Chandak is the director of Satyam Group of Companies. Mr. Puneet Agrawal, CA, husband of the Respondent is the good friend of the Mr. Nakul Chandak. He was assigned some tax matters of Satyam Group. He has always persuaded the director to give the secretarial work to the Respondent several times in his presence but Mr. Satyanarayan Chandak being senior director has not succumbed to the pressure and continued the secretarial work with the Complainant. The Satyam Mats Ltd., had appointed the Complainant in AGM held on 28th September, 2007. The Complainant further stated that afterwards the Respondent was successful through her husband by playing caste card lastly to secure the work of the CS of this group. He further stated that he had never harassed the directors of M/s. Satyam Group. He has always given active support and co-operation for all legal work all the time viz. 1) registration of section 25 company (Mangal Medicentre) as the work was in the memory of late wife of Mr. Satyanarayan Chandak 2) application under section 295 of the Companies Act, 1956, for giving loan to Mangal Medicentre where directors were interested 3) Export compliances like export licenses etc. He further stated that if all the shareholders have given their consent for short notice then the company can hold the AGM and the meeting will be valid but verification of the consent be carried out. He further stated that the minute's book of Board meeting and shareholders' meeting be called from the companies so that no manipulation, alteration and fabrication of the record can be carried out.

4. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, observed that the Respondent had communicated with the Complainant prior to taking up the assignments of M/s. Bihani Binayake Cotex Pvt. Ltd. and M/s. Bihani Agro Industries Pvt. Ltd, and for that she has submitted copies of the letters sent to the Complainant along with the proof of dispatch and delivery of the same to the Complainant. He also observed that the Complainant has not substantiated his allegation pertaining to the solicitation of the work by the Respondent. He also observed that the Respondent was not required to go into the validation of the resolution passed by the Board of directors of these companies pertaining to her appointment. Hence, the Respondent



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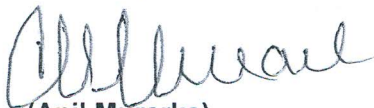
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is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.

5. We considered the *prima-facie* opinion dated 6th May, 2014 of the Director (Discipline), material on record and agree with the *prima-facie* opinion that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980 as the Respondent had communicated with the Complainant prior to taking up the assignments of M/s. Bihani Binayake Cotex Pvt. Ltd. and M/s. Bihani Agro Industries Pvt. Ltd, for the year ended 31st March, 2013 and for that she has submitted copies of the letters sent to the Complainant along with the proof of dispatch and delivery of the same. We also find that the Respondent has placed on record the courier receipt dated 22nd August, 2013 and the courier sheet dated 26th August, 2013 as proof of delivery showing at Sl. No. 25 that the said letter has been duly delivered to the Complainant.

Therefore, we conclude that the Respondent is not guilty of professional misconduct under the Company Secretaries Act, 1980 and accordingly close the matter.

The complaint stands disposed-off, accordingly.


(Anil Murarka)
Member


(P. K. Mittal)
Presiding Officer

New Delhi

