

THE BOARD OF DISCIPLINE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 221/2014

In the matter of complaint of professional or other misconduct filed by Ms. Deepthi Agarwal Bindal, FCS-5437 (CP No. 4860) against Mr. Ramakant Pathak, FCS-6131 (CP No. 6571).

Coram: Mr. P K Mittal, Presiding Officer
Mr. Sutanu Sinha, Member

ORDER

1. A complaint dated 28th January, 2014 in Form 'I' 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 Ms. Deepthi Agarwal Bindal, FCS-5437 (CP No. 4860) (hereinafter referred to as the 'Complainant') against Mr. Ramakant Pathak, FCS-6131 (CP No. 6571) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* alleged that the Respondent has issued the Compliance Certificates for the FY ending 2011-12 to M/s. Halwasiya Developments Pvt. Ltd., and M/s. Welldone Infrastructure Pvt. Ltd., without first communicating to her in writing as she had issued the Compliance Certificates to the said companies for the previous years.
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 30th January, 2014 calling upon him to submit the written statement. The Respondent submitted the written statement dated 10th February, 2014 wherein he has *inter-alia* stated that Clause (8) of Part I of The Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, "if he accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing." The Respondent further stated that if any,



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position is held by any Company Secretary in any Company and is still continuing such position and if the other Company Secretary accept such position without first communicating with him in writing, then such other Company Secretary shall be deemed to be guilty of Professional misconduct. The Respondent further stated that as per the email sent to his firm by the Complainant on October 15, 2013, the Complainant was alleging that she had undertaken the Secretarial Compliance of the Companies (M/s. Halwasiya Developments Pvt. Ltd., and M/s. Welldone Infrastructure Pvt. Ltd.) for the FY ending 2010-2011 and he has issued the Secretarial Compliance Certificate for the above two Companies for the year 2011-12. The Respondent further stated that in his reply of the aforesaid email, the Complainant was requested to send the proof and the reason to believe that he had done the Professional Misconduct. The Respondent further stated that in the reply of the Complainant received by him it had an attached letter issued by the Authorised Representative of the Halwasiya Group of Companies dated 01/02/2010 as proof of her position in the Company. The Respondent further stated that that such appointment letter was issued for 9 group Companies for the services i.e. (a) Maintenance of minutes of the Board and general meetings of such 9 Companies, (b) Annual Filing of such 9 Companies, (c) Maintenance of Statutory Registers of such 9 companies and (d) Any other Consultancy on any matter related to the Company Law. The Respondent further stated that engagement letter does not appoint the Complainant for the issuance of the Compliance Certificate required under Section 383A of the Companies Act, 1956 for the year 2010-11 or 2011-12. The Respondent further stated that if any Company Secretary in practice is providing any certificate for any year, then it does not mean that such Company Secretary is engaged/ appointed for issue of such Certificate for all the future period. If the Complainant had issued the Compliance Certificate for the year 2010-11, then it does not mean that she was appointed for the issue of the Compliance Certificate for the year 2011-12 unless she has been appointed by the Company for such purpose. The Respondent further stated that as the Complainant was not appointed for the issuance of the Compliance Certificate for the year 2011-12 of the above Companies, so the provisions of Clause (8) of Part I of the First Schedule of the Company



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Secretaries Act, 1980 do not get attracted. The Respondent further stated that the services for which the Complainant was appointed on 1st February, 2010 was also terminated on 26th October, 2012 by writing a letter to her due to the reason known to the Company and the Complainant. The Respondent further stated that the Complainant still has the Digital signature and various files of the Halwasiya Group of Companies and has not returned despite requests. The Respondent further stated that the Director of the Halwasiya Group of Companies approached them through their Solicitors for engaging him in the first week of November 2012 and thereafter he had sent them his proposal on 7th November 2012. The Respondent further stated that the management of the Halwasiya Group of Companies were also going to file a complaint against Ms. Dipti Agarwal Bindal, the Complainant for her Professional Misconduct for not returning their documents and the Digital signature, but he requested them to not to file any complaint against the Professional colleague. The Respondent further stated that as on date, when he sent his proposal to the Halwasiya Group of Companies, the services of the Complainant was already terminated and none of her services were continuing on such Company. The Respondent further stated that the Complainant tried to hide the facts in her complaint that she was engaged by the company for Maintenance of minutes of the Board and general meetings, Annual Filing, Maintenance of Statutory Registers of such 9 companies and providing any other Consultancy on any matter related to the Company Law but she was not appointed for issue of the Compliance Certificate for the year 2010-11 or for the year 2011-12. The Respondent further stated that the Complainant was not appointed for issue of the Compliance Certificate of the above years, so she was not holding any position in such Companies as Company Secretary in Practice for such services, so considering the requirement of Clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980. Hence, he was not required to write any letter to the Complainant. The Respondent further stated that he was not required to intimate any persons before issuance of the Compliance Certificate for the year 2011-12. The Respondent further stated that the allegation of the Complainant is untrue and based on false or wrong information and required to be dismissed. Further the Complainant should be



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directed to return the file and digital signature to the company as not returning the same is unprofessional behaviour and also causes loss of reputation of professionals before the corporate.

3. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement dated 10th February, 2014 was sent to the Complainant vide letter dated 14th February, 2014 asking her to submit the rejoinder. The Complainant submitted the rejoinder dated 25th February, 2014 wherein she has denied all the averments made in written statement which are contrary to what is stated in the complaint and what is stated herein. Nothing may be deemed to be admitted unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied and disputed specifically. The Complainant *inter-alia* stated that she wants to draw the attention of the Respondent to the contents of Clause (8) of Part I of the First Schedule to The Company Secretaries Act, 1980. It simply states that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing. The Complainant further stated that the above mentioned provisions nowhere states that the earlier incumbent should continue to hold such position to be eligible to receive a written communication from the new incumbent. The Complainant further admitted that the appointment letter was issued to her by the company for looking into the compliances relating to company law matters for 9 group companies. However, as claimed by the Respondent, the appointment was not limited to maintenance of minutes, annual filing, maintenance of Statutory Registers and consultancy as mentioned by him the consultancy work is an all inclusive term which includes all compliances relating to Company Law matters including issuance of Compliance Certificates. The Complainant further stated that she was appointed w.e.f 1st February, 2010 for looking into the compliances relating to Company Law matters for 9 group companies. The Compliance Certificate of the mentioned years may be viewed and verified on the MCA website. The Complainant further stated that she is not challenging the appointment of the Respondent rather it is a complaint that



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the Respondent did not intimate the earlier incumbent i.e. the complainant in writing before taking up the assignment. The Complainant further stated that her services were terminated w.e.f. 26th October, 2012. The Complainant further stated that the Respondent himself in his written statement has claimed that he had sent his proposal for appointment on 7th November 2012. Then how the Respondent has issued the Compliance Certificates to M/s. Halwasiya Developments Pvt. Ltd. and M/s. Welldone Infrastructure Pvt. Ltd., on 14th August, 2012? (much before the proposal sent by the respondent to the company). The Complainant further stated that the contents of Clause 8 of Part I of the First Schedule to the Company Secretaries Act, 1980 states that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing. The said provisions nowhere states that the earlier incumbent should continue to hold such position to be eligible to receive a written communication from the new incumbent. The Complainant further stated that the complaint made by her is true and based on evidences. The matter of Digital Signatures of the Company is related to dispute between the Complainant and the company and has no relevance in this matter. However, if the Institute wishes to look into the matter and get into the details, then she is ready to provide the details.

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 has issued the Compliance Certificates for the FY ending 2011-12 to M/s. Halwasiya Developments Pvt. Ltd., and M/s. Welldone Infrastructure Pvt. Ltd., without first communicating with the Complainant who had issued the Compliance Certificates to these companies for the previous year which is in contravention of clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980. The Director (Discipline) also observed that the Respondent has stated that the director of Halwasiya Group of companies had approached him through their solicitors for engaging him in the first week of November, 2012 and he had sent a proposal to the company on 7th November, 2012. But it is seen that the



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Respondent has issued the alleged Compliance Certificates in August, 2012. Therefore, the Respondent is *prima-facie* 'Guilty' of professional misconduct under Clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980 as the Respondent ought to have communicated with the Complainant in writing before issuing the Compliance Certificates for the FY ending 2011-12 to M/s. Halwasiya Developments Pvt. Ltd., and M/s. Welldone Infrastructure Pvt. Ltd.

5. The Board at its meeting on 14th August, 2014 had considered the *prima-facie* opinion dated 5th July, 2014 of the Director (Discipline); material on record and agreed with the *prima-facie* opinion and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Complainant and the Respondent *vide* letters dated 19th August, 2014 asking them to submit their written statement and rejoinder, respectively. The Respondent submitted the written statement dated 3rd September, 2014. The Complainant submitted the rejoinder dated 11th September, 2014.
6. The parties *vide* letter dated 16th September, 2014 were called upon to appear before the Board on 26th September, 2014. The Complainant did not appear before the Board. The Respondent appeared before the Board and made oral submissions. The Respondent admitted that the Complainant had issued Compliance Certificates for the year 2010-11 to M/s. Halwasiya Developments Pvt. Ltd., and M/s. Welldone Infrastructure Pvt. Ltd., and he has issued the Compliance Certificates in respect of the said companies for the year 2011-12. He further admitted that he had not sent any written communication to the Complainant before accepting the assignment of certification of Compliance Certificates. He further stated that it is not necessary for him to communicate in writing to the previous incumbent unless there is a letter of engagement from the principal for the assignment. He further stated that nowhere in the law it is mandatory that the PCS to communicate his previous incumbent before accepting any assignment.



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7. The Board drawn the attention of the Respondent to clause 8 of Part I of the First Schedule of the Company Secretaries Act, 1980 and for his benefit the said clause was read. The Respondent further argued that on the basis of market news, it is not necessary to communicate to the previous incumbent before taking up any assignment of certification. The Board further enquired from him as to whether he has any judgment of Hon'ble Supreme Court, High Court or any other courts of law in support of his arguments or any material in support of his arguments. He stated that neither he has any judgment nor any material to support his contentions/arguments.

8. The Board felt that there are strong grounds and reasons to hold the Respondent Guilty. During the course of hearing, the Board also found that there was no remorse or repentance shown by the Respondent but on the contrary, he argued that as per his interpretation, nowhere the law says that he is required to communicate in writing to the previous incumbent - though it is mandatorily required in clause 8 of Part I of the First Schedule of the Company Secretaries Act, 1980.

9. The Board heard the Respondent very passionately after giving due and adequate opportunity of personal hearing and while carefully analysing the papers of this case, found something very interesting. During the course of hearing, the Respondent stated that through some Learned Advocate he was approached in the month of November, 2012 for the purpose of taking up the assignment. The Board noted that though there is a proposal which is of 7th November, 2012, however, surprisingly and astonishingly, a Compliance Certificate dated 14th August, 2012 was issued by the Respondent which is on record. The Board observed that though the Respondent was engaged after November, 2012, but the Respondent had issued the said Compliance Certificates on 14th August, 2012. This anomaly was pointed out to him during the course of hearing. The Respondent stated that the referred e-mail is in respect of some other assignments and not for the said Compliance Certificates. The Respondent was asked as to whether the assignment was given for issuance of Compliance Certificates under question or for other



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assignments as contended by him. The Respondent, however, very fairly admitted that there is nothing on records to suggest that he was engaged for some other assignment except for issuance of Compliance Certificate. In order to further satisfy our-self, the Board had called upon the Respondent to file an affidavit stating the date of filing of the Compliance Certificates with the ROC and also provide copies of the challans under which the said Compliance Certificates were filed. The Respondent agreed to submit the same within 2 days.

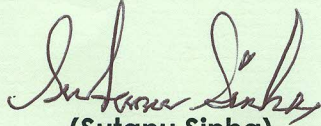
10. The Respondent *vide* letter dated 30th September, 2014 submitted (i) Affidavit dated 30th September, 2014; (ii) challan dated 20.11.2012 for filing Form 66 of M/s. Welldone Infrastructure Pvt. Ltd., for FY ending 31.3.2012; (iii) challan dated 20.11.2012 for filing Form 20B of M/s. Welldone Infrastructure Pvt. Ltd., for FY ending 31.3.2012; (iv) Form 20B of M/s. Welldone Infrastructure Pvt. Ltd., for FY ending 31.3.2012; (v) challan dated 21.11.2012 for filing Form 66 of M/s. Halwasiya Developments Pvt. Ltd.; (vi) challan dated 21.11.2012 for filing Form 20B of M/s. Halwasiya Developments Pvt. Ltd., for FY ending 31.3.2012 and (vii) Form 20B of M/s. Halwasiya Developments Pvt. Ltd., for FY ending 31.3.2012.
11. The Board of Discipline considered the material on record and concluded that the Respondent is 'Guilty' of Professional Misconduct under Clause (8) Part 1 of the First Schedule of the Company Secretaries Act, 1980 as the evidences clearly show that the Respondent has not communicated to the previous incumbent. At the same time, during personal hearing on 26th September, 2014 the Respondent also confirmed that he did not communicate. Further, we have also seen that the Respondent has issued backdated Compliance Certificates for the FY ending 31st March, 2012 to M/s. Welldone Infrastructure Pvt. Ltd., and M/s. Halwasiya Developments Pvt. Ltd., more so when he had received the assignments from the said companies on a proposal sent by him on 7th November, 2012 once the director of Halwasiya Group of companies had approached him through their solicitors for engaging him in the 1st week of November, 2012.

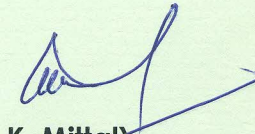


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12. We decide to afford an opportunity of being heard to Mr. Ramakant Pathak, FCS-6131 (CP No. 6571), the Respondent before passing any order under Section 21A (3) of the Company Secretaries Act, 1980 read with Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.


(Sutanu Sinha)
Member


(P. K. Mittal)
Presiding Officer

Date: 29th October, 2014

