BEFORE THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

DC: 81/2010

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Mr. Vikram Bakshi - Complainant

Vs

Mr. Rahul Saini - Respondent

ORDER

1. The Institute had received a complaint dated the 16th September, 2010 in Form - I filed by Mr. Vikram Bakshi (hereinafter referred to as the 'Complainant') against Mr. Rahul Saini, ACS-16716 (C.P.NO.7009) (hereinafter referred to as the 'Respondent').

2. Pursuant to sub-rule (3) of rule 8 of the (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a copy of the complaint was sent to the Respondent vide letter dated the 22nd the September, 2010 asking him to submit his written statement. The Respondent submitted the written statement dated the 05th October, 2010. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was forwarded vide letter dated the 22nd October 2010 to the Complainant asking him to submit his rejoinder. Further, a reminder was sent to the Complainant to submit his rejoinder vide letter dated the 18th November, 2010. The Complainant submitted his rejoinder dated the 06th December, 2010. A letter dated the 04th January, 2011 was sent to the Respondent asking him to provide copies of all the documents.
he relied upon while certifying Form No.32. The Respondent submitted his reply dated the 07th January, 2011.

3. The Complainant, in his complaint, had alleged that the Respondent had falsely certified Form No. 32 for cessation additional directorship of Mr. Vinod Surha and Mr. Wadia Parkash in the Company... w.e.f. the 30th September, 2006.

4. The Respondent in his reply had referred to a list containing nine documents claiming that these were sought to be filed as attachment by Ms. Sonia Khosla along with the said Form No. 32. However, the Respondent failed to explain the connection of these documents with certification of the respective Form.

5. The Company Law Board order dated the 31st January, 2008, passed in petition CP No. 114 of 2007 had inter-alia directed to restore status quo of shareholding and directorship of the Company as existed on the date of filing of the said petition on the 13th August 2007. Both Shri Vinod Surha and Shri Wadia Parkash were on the Board of M/s Montreaux Resorts Pvt. Ltd., on the 13th August, 2007 i.e. the date of filing of the petition before the Company Law Board. Hence, certification of Form No. 32 on and around the 26th September, 2008, by the Respondent was in contravention of the order dated the 31st January, 2008 of the Company Law Board.

6. The Director (Discipline) pursuant to rule 9 of the Rules examined the complaint; written statement; rejoinder & additional information received and was of the prima facie opinion that the Respondent was ‘Guilty’ of Professional Misconduct under clause (7) of part I of the Second Schedule of the Company Secretaries Act, 1980, as the Respondent had certified Form No. 32 pertaining to cessation of Mr. Vinod Surha and Mr. Wadia Parkash as Additional Directors of M/s Montreaux Resorts Pvt. Ltd. w.e.f. the 30th September, 2006,
without exercising due diligence as both Mr. Vinod Surha and Mr. Wadia Parkash were on Board of M/s Montreaux Resorts Pvt. Ltd. on the 13th August, 2007 i.e. the date of filing of the petition before the Company Law Board. Hence, the certification of Form No. 32 on and around the 26th September, 2008 by the Respondent was in contravention of the Company Law Board order dated the 31st January, 2008.

7. The prima facie opinion of the Director (Discipline) was placed before the Committee in its meeting held on the 6th June, 2011. The Committee considered and agreed with the prima facie opinion of the Director (Discipline) and directed the Director (Discipline) to proceed further in the matter accordance with the rules.

8. A copy of the report of Director (Discipline) was forwarded to the Respondent asking him to file written statement on the report of the Director (Discipline) along with supporting documents and the list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant.

9. The Complainant and the Respondent were asked vide letter dated the 21st June, 2011, to appear before the Disciplinary Committee on the 22nd July, 2011. The Complainant appeared but the Respondent failed to appear before the Committee on the 22nd July, 2011. The Committee took serious view of the Respondent's non appearance due to which the Complainant and the members of the Committee were put to inconvenience. However, the Committee decided to provide last and final opportunity to the Respondent to appear before the Committee in its meeting scheduled on the 5th August, 2011. Accordingly, a letter dated the 23rd July, 2011, was sent to the Respondent, asking him to appear before the Disciplinary Committee on the 5th August, 2011.
10. The Respondent, vide his letter dated the 26th July, 2011, made additional submissions and prayed for leave of absence stating that he apprehended security hazard.

11. The Committee in its meeting held on the 5th August, 2011 considered the letter dated the 26th July, 2011, received from the Respondent and decided to proceed ex-parte based on all the submissions made by the Respondent. However, the Committee decided to provide an opportunity of hearing to the Respondent before decision under section (1) of Section 21B of the Company Secretaries Act could be taken. Accordingly, a letter dated the 16th August, 2011 was sent to the Respondent asking him to appear before the Disciplinary Committee on Wednesday, the 24th August, 2011. However, the Respondent again did not put in his appearance before the Committee.

12. The Disciplinary Committee considered the report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances and have come to the conclusion that the Respondent is 'Guilty' of Professional Misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent had certified Form No. 32 pertaining to cessation of Mr. Vinod Surha and Mr. Wadia Parkash as Additional Directors of M/s Montreaux Resorts Pvt. Ltd. w.e.f. the 30th September, 2006, without exercising due diligence as both Mr. Vinod Surha and Mr. Wadia Parkash were on Board of M/s Montreaux Resorts Pvt. Ltd. on the 13th August, 2007 i.e. the date of filing of the petition before the Company Law Board. Hence, the certification of Form No. 32 on and around the 26th September, 2008 by the Respondent was in contravention of the Company Law Board order dated the 31st January, 2008. Also, the Respondent is 'Guilty' of professional misconduct under clause (2) of Part III of the First Schedule of the Company Secretaries Act, 1980, as he failed to comply with the
requirements asked for i.e. non appearance before the Disciplinary Committee. The Committee proceeded ex-parte and decided to remove the name of Shri Rahul Saini, ACS – 16716, the Respondent, from the Register of Members of the Institute, for a period of 90 (Ninety) days. The said period of 90 (Ninety) days will be effective after the expiry of the 7th day of issue of this order.

S. K. Agnihotri, IAS (Retd.)
Member

Dr. S. P. Narang
Member

Gopalakrishna Hegde
Member

P K Mittal
Member

Anil Murarka
Presiding Officer

Date: 3rd October, 2011