

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

ICSI/DC: 195/2013

Date of decision: 20<sup>th</sup> November, 2014

**M/s. Kerala Tourism Development Corporation Ltd. (KTDC)      ....Complainant**

**Vs.**

**Mr. Benny Mathew, ACS - 21459**

**.... Respondent**

**ORDER**

1. A complaint in Form-I dated 22<sup>nd</sup> June, 2013 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 M/s. Kerala Tourism Development Corporation Ltd.,(KTDC) (hereinafter referred to as the 'Complainant') against Mr. Benny Mathew, ACS-21459 (hereinafter referred to as the 'Respondent'). A letter dated 1<sup>st</sup> July, 2013 was sent to the Complainant asking him to file the Board resolution of the company (KTDC) authorizing him to file the instant complaint and requisite fee of Rs. 2500/-. A letter dated 13<sup>th</sup> July, 2013 received from the Complainant submitting the demand draft of Rs. 2500/- along with the extract of the Minutes of the 274<sup>th</sup> meeting of the Board of M/s. KTDC Ltd., held on 9<sup>th</sup> July, 2013 authorizing him to file the complaint against the Respondent. The Complainant has *inter-alia* alleged that the Respondent being Secretary & Finance Controller of M/s. KTDC Limited had used the official computer for his private work while he was officiating in the capacity of Secretary & Finance Controller of M/s. KTDC Ltd. He further stated that the official computer of the Respondent was seized on a complaint and was sent to Resources Centre for Cyber Forensics, CDAC Thiruvananthapuram for retrieving the data of private work carried out by him. The Complainant further stated that the Resources Centre has reported that they have analyzed the hard disk of the computer used by the Respondent and have retrieved eight Microsoft Excel files and fifty five Microsoft Word document files related to the companies/ firms mentioned by the M/s. KTDC Ltd., and has submitted the files along with the details including last accessed time and logical size of the files. The observations of CDAC are as follows.

- a) One document showing the bank details of Company 'Emerizz' has been found. Ref: File name-"Emerizz Bank Details.docx". Last accessed time: 25-10-12 10:35:02 AM. Logical size of the file- 11,680KB.
- b) Documents such as Memorandum of Association, list of share holders, appointment details of directors, list of share transfer of share holders of M/s Dolphin Wires Pvt. Ltd has been found. Ref:-File name-"Articles.docx",



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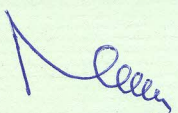



- "Object.docx", "Copy of, Dolphin Register of members-I.xlsx, dolphin.xlsx, notice "dolphin.docx". Last accessed time- 27/12/2013.19,14.04,17:53.
- c) Minutes prepared for the Company 'Emeritus Legal Technology Pvt. Ltd' was found. Ref:-file name-"Emeritus.docx", "Kenny.docx". Last accessed time:- D8/08/12 04:54:02 PM, 09:11:12,12:20:37PM. Logical size:-15,045KB and 26,683KB.
  - d) A document showing details of share transfers of persons "Elizabeth and Jose Thomas was found. Ref:-File name-"Details of share transfers.xlsx". Last accessed time:-28/12/12 17:53 Logical size:-9.133KB.
  - e) One letter related to the Company M/s. A V Technologies was found. Ref:-File name- "Avtechnology.docx" Last accessed time:-20/01/13 03:02:33PM. Logical size:-11,314KB.
  - f) The Articles of Association of the company 'Mariya Groups International Private Ltd was found. Ref:-File name-" AOA.doc", "Declaration.docx". Last accessed time-04/10/12 02:18:57PM. Logical size-79,360.
  - g) Documents like Legal notice, explanatory statements, resolutions of the company "Choice Trading Corporation Private Ltd." has been found. Ref:-File name" 1301290049\_b0021.doc". Last accessed time: 29/01/13 02:28:55 PM. Logical size:- 9,641KB.

The Complainant further stated that it is evident that during the time of accessing the files, the Respondent was present in the office on all occasions. The Complainant further stated that the Respondent had misused the office and official computer for private business and for this purpose he had utilized the services of the employees and the computer resources of M/s. KTDC Ltd. He had held the position of Managing Director of M/s. Benny & Co., Director of M/s. Emerizz and member at M/s. Kocheris Legal Consultants LLP without any permission from M/s. KTDC Ltd. The Complainant further stated that the Respondent had association with M/s. Dolphin Wires, M/s. A V Technologies, M/s. Emeritus Legal Technology Pvt. Ltd., M/s. Maria Groups International Pvt. Ltd. and M/s. Choice Trading Corporation Pvt. Ltd., etc., without prior sanction from the Complainant M/s. KTDC Ltd. Further, the Respondent had also affixed fraudulently the signature of Managing Director in a communication to the Government.

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 19<sup>th</sup> July, 2013 calling upon him to submit the written statement followed by a reminder dated 13<sup>th</sup> August, 2013. The Respondent submitted his written statement dated 8<sup>th</sup> August, 2013. The Respondent has *inter-alia* stated that he has not carried out any private work during the period of his employment as Secretary and Finance Controller in M/s. KTDC Ltd. The allegation is therefore baseless and hence denied. He further stated that after joining the service with M/s. KTDC Ltd., he had not signed any single documents or done any private work in any manner other than documents pertaining to M/s. KTDC Ltd., in the capacity as Company Secretary using his seal and signature. He further stated that the Complainant has not produced any documents in proof of private work done by me. The Respondent further stated that regarding the allegation that the Bank details of company Emerizz allegedly found in the computer is of no consequences, since it only relates to name, bank account details of two of his friends namely Sivaji Pradhan and Smt. Geetha Kailas. The alleged logical size of the file seems to have been exaggerated. The Respondent further stated that regarding the allegations relating to the documents of Memorandum of Association, details of directors, list of transfer of share holders of M/s. Dolphin Wires Pvt. Ltd., I submit



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that it is a company registered in the year 1992 and Memorandum and other details were downloaded from the MCA website as a study tool. This document cannot be interpreted as a record of private work done by him. He further stated that the allegation relating to the minutes of the company M/s. Emeirtus Legal Technology Pvt. Ltd., that these were found in the computer, I submit that the same was sent to his email on the basis of specific request, in order to follow the same procedure for changing the name of M/s. KTDC Hotels and Resorts to M/s. KTDC Ltd, The said minutes of M/s. Emeritus Legal Technology Pvt. Ltd., also pertains to change of name of the said company. This is clearly a work related to M/s. KTDC Ltd., and not a private work. The Respondent further stated that regarding the allegation in paragraph that the alleged recovery of details of share transfers of persons Elizabeth Jose and Jose Thomos, it is nothing but an advice given by him while he was practicing and before joining the service of M/s. KTDC Ltd., It seems the transfer was effected by the parties only later and the same was sent for his information. This also cannot be interpreted as private work. He further stated that he had absolutely no connection with M/s. AV Technologies. On verification of the registry kept by the ROC, he could not find any company registered in the aforesaid name. This also does not show any private work done by him. He further stated that regarding the allegations that the Articles of Association of M/s. Mariya Groups International Pvt. Ltd., it is nothing but a study tool downloaded from the MCA website and is therefore, not a private work. The Respondent further stated that regarding the allegation which referred to a notice by one M/s. Choice Trading Corporation Ltd., regarding their EOGM, it is submitted that he had given certain guidelines to the party long before he has joined the service of M/s. KTDC Ltd. Perhaps on the basis of such advice, they have prepared the notice and sent for his information. The Respondent further stated that he had not given any advice during his employment in M/s. KTDC Ltd. The Respondent further stated that regarding the biometric punching on various dates, this only shows his presence in the office of M/s. KTDC Ltd., and not any private work done by him, as alleged. The Respondent further stated that regarding the allegation "Utilizing the materials and Human Resources of M/s. KTDC Ltd., for Private works", it is submitted that it is vague, unspecific and made without any proof and hence denied. The Respondent further stated that there is no documentary proof to show that he was MD of M/s. Benny & Co. Further CDAC, in their concluding forensic analysis report have themselves stated that they could not find any documents related to M/s. Benny & Co. This matter can also be confirmed from virtual records kept by the MCA 21 website. The Respondent further stated that regarding the allegation that he was the director of M/s. Emerizz, he submitted that the CDAC in their concluding forensic analysis report themselves have stated that they could not find any document that prove the Respondent is the director of the company 'Emerizz'. This matter can also be confirmed from the virtual records kept by the MCA 21 website.

3. The Respondent further stated that regarding the allegation that he was a member of M/s. Kocheris Legal Consultant LLP, he submitted that CDAC, in their concluding forensic analysis report themselves have stated that they could not find any document that prove the Respondent is a member of M/s. Kocheris Legal Consultants LLP. This matter can also be confirmed from the virtual records kept by the MCA 21 website. He further stated that regarding the allegation that he had association with M/s. Dolphin Wires, M/s. A V Technologies, M/s. Emertitus Legal Technology Pvt. Ltd., M/s. Maria Group International Pvt. Ltd., and M/s. Choice Trading Corporation Pvt. Ltd., he submitted that he had no association at all with any of these companies and that the allegation of utilizing the materials and Human Resources of M/s. KTDC Ltd.



*Neer*  
*dr* *S* *[Signature]*

for private work is baseless and hence, vehemently denied. The Respondent further denied that he had affixed fraudulently the signature of MD in a communication to the government as the allegation is factually incorrect and submitted the following clarification regarding the same.

- (i) The Respondent was holding charge of the Managing Director from 10<sup>th</sup> December, 2012 onwards during the period, while the Managing Director was away on paternity leave. He was put in charge under the orders of the Managing Director himself. A copy of the said order is on record.
- (ii) While the Respondent was holding charge of the Managing Director, he had written a letter among others, addressed to the Secretary, Tourism Department, Government of Kerala (who is also a member of the Board of M/s. KTDC Ltd.) for communicating a Board decision to the Government. He had put his signature on the letter in the capacity as Managing Director. The fact that he had signed the letter as Managing Director is for and on behalf of the Managing Director, which has the authority of the Managing Director. It is an accidental omission that the letter "t" before the designation of the Managing Director was not affixed, particularly because a professional of his standing will never sign as Managing Director and this may be properly understood. He had never affixed fraudulently the signature of the Managing Director as alleged. The genuineness of his signature in the said letter can be verified from the records kept by the ICSI. A copy of the alleged letter sent to the Government is on record.
- (iii) The Respondent further stated that the complaint was made on the basis of personal vengeance and animosity. Shri N Prasanth, MD, M/s. KTDC has suspended him from the service of M/s. KTDC Ltd., and given false propoganda to both the visual and print media. Shri N Prasanth, MD, M/s. KTDC Ltd. by misusing the authority vested with him, even tried to pass a Board resolution against him in order to attach the same along with the complaint. But the members of the Board declined the proposal and left the Complainant no choice rather than to file a personal complaint against him (the Respondent). It is also worth to notice that M/s. KTDC Employees Union had made serious allegation against the Complainant (Shri N Prasant IAS, Managing Director, M/s. KTDC Ltd.) and as per the Government order he was transferred from the position of Managing Director of M/s. KTDC Ltd., with effect from 10<sup>th</sup> July, 2013.

4. 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 16<sup>th</sup> August, 2013 asking him to submit rejoinder followed by a reminder dated 6<sup>th</sup> September, 2013. The Complainant submitted rejoinder dated 9<sup>th</sup> September, 2013. The Complainant *inter-alia* stated that the denial of allegation of carrying out private work during the employment as Secretary & Finance Controller on probation by Shri Benny Mathew is not honest and contradictory to the facts. The Complainant further stated that CDAC has only retrieved records available in the official computer of the Respondent and hence, he cannot take defence on any document that is downloaded from the website. Therefore, any defence by the Respondent about his association with any company is not proved just because it is not available in his personal computer does not sustain. e.g. the Respondent's profile and photograph in the web page of M/s. Kocheries Legal Consultant LLP downloaded from the website and presented by the Complainant. The Complainant further stated about the statement given in one of the paragraphs of the written



*[Handwritten signatures and scribbles]*

statement, that he was given the charge of MD, M/s. KTDC Ltd., while the Managing Director availed the paternity leave. The Respondent was instructed to look after the routine matters and that has been in practice also when charge is handed over to another person for a short period when the MD is on leave. This means in ordinary sense, the MD in-charge just have to attend the matters for pushing the normal operations ahead. Therefore, signing in a document which involves a number of consequences with regard to promotion / appointment by transfer of the employees especially in a PSU which is regarded as a state under law and amenable to writ petitions cannot be regarded as an accidental commission especially from a qualified company secretary. It may be also noted that the Respondent had fraudulently affixed his signature as MD of M/s. KTDC Ltd. on the very same draft which has been rejected by the MD in order to pursue with his *mala-fide* intention. The copy of the rejected draft by the MD is produced for record. The fraud committed by the Respondent was detected by the Secretary to the Government of Kerala, Tourism Department. It was upon the direction from the government that the action was initiated against the Respondent. Upon perusal of the note sheet, it was detected that the file was handled on a date after the MD had returned from leave, but that the Respondent had fraudulently affixed his signature on a prior date to pursue his *mala-fide* objective. This particular file is live in the Government Secretariat and the consequences could naturally follow. The Complainant further stated that the Respondent is trying to evade allegation by raising baseless personal counter allegations. The then MD, Shri N. Prasanth, IAS is presently MD of M/s. Beverages Corporation of Kerala, another government company having a turnover of over Rs. 9000 Crore, many times bigger than M/s. KTDC Ltd. with a turnover of 100 Crore. He is also the Director of Employment and Training and also holding charge of Additional Excise Commissioner of Kerala. This shows the reputation and goodwill enjoyed by him in the government as an honest and efficient civil servant. The action initiated against the Respondent is based on the Board resolution of M/s. KTDC Ltd. It is hilarious to suggest that it is a complaint in the personal capacity of the then MD. The Corporation obviously acts through the MD. Such personal and nasty allegations raised to defend the indefensible by the Respondent portray the dishonest and disloyal nature of the Respondent. The series of events narrated above clearly show that such a member would only bring disrepute and shame to the fraternity of the ICSI. Hence, taking into consideration of the above facts, the Complainant requests that appropriate action may therefore be initiated against the Respondent.

5. Pursuant to rule 9 of the rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, *vide* his *prima-facie* opinion dated 3<sup>rd</sup> July, 2014 observed, that the Resources Centre for Cyber Forensics, CDAC has reported that they have analyzed the hard disk of the computer used by the Respondent and they have retrieved eight Microsoft Excel files and fifty five Microsoft Word document files related to the companies/firms mentioned by M/s. KTDC Ltd. and has submitted the files along with the details including last accessed time and logical size of the files. In some of those records, the name of the Respondent is appearing. In exercise of the powers contained in Section 22 of the Company Secretaries Act, 1980, the matter has been inquired. Reliance was made to the forensic report dated 17<sup>th</sup> April, 2013 of CDAC submitted by the Complainant. It is observed that the Respondent *per-se* deemed "to be in Practice" as (i) held himself out to the public as a Company Secretary in Practice; and (ii) while being in employment with M/s. KTDC Ltd. has rendered professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of the Company Secretaries as



given in Section (2)(e) of the Company Secretaries Act, 1980. The Council of the Institute had passed a Resolution dated 12<sup>th</sup> May, 1991 prohibiting the members holding the Certificate of Practice to accept employment. In this case, it is abundantly clear that the Respondent has undertaken the assignments of other companies being in employment with M/s. KTDC Ltd., which has violated the said Resolution dated 12<sup>th</sup> May, 1991 passed by the Council. Therefore, *prima-facie* the Respondent is 'guilty' of professional misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980.

6. The Disciplinary Committee on 28<sup>th</sup> March, 2014 considered the *prima-facie* opinion dated 17<sup>th</sup> December, 2013 of the Director (Discipline) and the material on record. The Committee agreed with the *prima-facie* opinion of the Director (Discipline) 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, a copy of the *prima-facie* opinion dated 17<sup>th</sup> December, 2013 of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 31<sup>st</sup> March, 2014 asking them to submit their written statement and the rejoinder, respectively. The Respondent *vide* letter dated 14<sup>th</sup> April, 2014 requested for additional time of two weeks to submit the written statement, which was granted *vide* letter dated 22<sup>nd</sup> April, 2014. The Respondent *vide* letter dated 28<sup>th</sup> April, 2014 submitted the written statement. The Complainant *vide* letter dated 14<sup>th</sup> May, 2014 requested for grant additional time of two weeks to submit their rejoinder, which was granted *vide* letter dated 20<sup>th</sup> May, 2014. The Complainant *vide* letter dated 14<sup>th</sup> May, 2014 submitted the rejoinder.
7. The Disciplinary Committee on 31<sup>st</sup> May, 2014 after considering the material on record, decided to call upon the parties to appear before it. Accordingly, *vide* letter dated 30<sup>th</sup> June, 2014, the parties were called upon to appear before the Disciplinary Committee on 24<sup>th</sup> July, 2014. The Respondent *vide* letter dated 8<sup>th</sup> July, 2014 *inter-alia* has requested to grant extension of date for appearance before the Disciplinary Committee as he was undergoing medical treatment and was advised to take complete rest for another month. The Disciplinary Committee on 24<sup>th</sup> July, 2014 has noted the letter dated 8<sup>th</sup> July, 2014 of the Respondent wherein he, *inter-alia* has requested for an adjournment on medical grounds. Shri Ali Asgar Pasa, IAS, MD, M/s. KTDC Ltd. appeared for the Complainant and while making oral submissions filed a domestic enquiry report dated 26<sup>th</sup> June, 2014. The Disciplinary Committee informed him about the request of the Respondent for adjournment to which he did not object. The matter was adjourned.
8. Accordingly, *vide* letter dated 11<sup>th</sup> August, 2014 the parties were again called upon to appear before the Disciplinary Committee on 28<sup>th</sup> August, 2014. The Respondent *vide* letter dated 18<sup>th</sup> August, 2014 confirmed that he will be attending the personal hearing on the date and time specified. He also submitted the copies of the Domestic Enquiry Report and written statement dated 3<sup>rd</sup> August, 2014 filed with MD, M/s. KTDC Ltd. On 28<sup>th</sup> August, 2014, the Disciplinary Committee took note of the Domestic Enquiry Report and the written statement filed with the MD of M/s. KTDC Ltd. as submitted by the Respondent. The Respondent appeared in person before the Disciplinary Committee on 28<sup>th</sup> August, 2014 and made oral submissions. Shri Ali Asgar Pasa, IAS, MD of M/s. KTDC Ltd. also appeared and made oral submissions. After hearing the parties, the Disciplinary Committee asked the Respondent to submit the affidavits latest



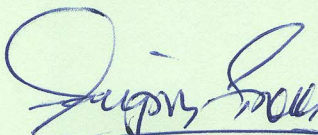
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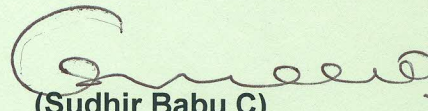
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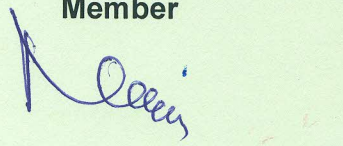
by 20<sup>th</sup> September, 2014 from the companies i.e. (i) M/s. Emerizz (ii) M/s. Dolphin wires (iii) M/s. A V Technologies (iv) M/s. Emeritus Legal Technologies (P) Ltd.,(v) M/s. Maria Group International (P) Ltd., and (vi) M/s. Choice Trading Corporation (P) Ltd., and from his earlier firm stating that they have not paid any consideration to the Respondent during his employment in M/s. KTDC Ltd., to which the Respondent agreed. The Respondent however, stated that there are no companies in the name of M/s. A V Technologies and M/s. Maria Group International (P) Ltd. The Disciplinary Committee thereafter adjourned the matter.

9. We have noted that the Respondent *vide* letter dated 22<sup>nd</sup> September, 2014 has submitted attested copies of the letters obtained from (i) M/s. Emerizz Solutions Pvt. Ltd. (ii) M/s. Dolphin Wires Pvt. Ltd., (iii) M/s. Choice Trading Corporation (P) Ltd., (iv) M/s. Benny & Co. (v) M/s. Kocheries Legal Consultants LLP, (vi) M/s. LSG (India) Pvt. Ltd., (Emeritus Legal Technology Pvt. Ltd.) and (vii) M/s. Maria Group International (P) Ltd.
10. The Disciplinary Committee after considering the complaint, written statement, and rejoinder, other material on record and upon hearing both the parties found that the Respondent has affixed the signature of MD in a communication sent to the Government. It is also observed that the Respondent had misused official computer for his private work while he was officiating in the capacity of Secretary & Finance Controller of M/s. KTDC Ltd. We conclude that the Respondent has been dealing with the said companies while he was in whole time employment with M/s. KTDC Ltd, and therefore, we conclude that the Respondent is 'Guilty' of professional misconduct under Clause (1) of Part-II of the Second Schedule of the Company Secretaries Act, 1980.
11. We, in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, decide to afford an opportunity of being heard to the Respondent before passing any order under Section 21B(3) of the Company Secretaries Act, 1980.

  
(S K Tuteja)  
Member

  
(Sanjay Grover)  
Member

  
(Sudhir Babu C)  
Member

  
(R Sridharan)  
Presiding Officer

Date: 12<sup>th</sup> Jan, 2015

