

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

ICSI/DC: 207/2013

Date of Decision: 24th September, 2014

Mr. S. Radhakrishnan

....Complainant

Vs

Mr. Ajay S. Srivastava, FCS-3489

.... Respondent

ORDER

1. A complaint dated 29th June, 2013 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 one Mr. S. Radhakrishnan (hereinafter referred to as the 'Complainant') against Mr. Ajay S. Srivastava, FCS-3489 (CP No. 3479) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that since 1996 he is a director of M/s. Hyderabad Pollution Controls Ltd., (HPCL) and Mr. S. Gopalakrishnan Nair is the MD of HPCL. He further stated that he and his family members are holding 50% of the paid up equity share capital of HPCL. He further stated that there are disputes in the management of HPCL and a Company Petition No. 40/2011 u/s 397 and 398 of the Companies Act, 1956 has been filed before the Hon'ble CLB, Chennai in the year 2011 and the Hon'ble CLB, Chennai has passed interim '*status quo*' orders in the said petition. The Complainant has *inter-alia* alleged that the Respondent has acted in connivance with Mr. S. Gopalakrishnan Nair, MD of HPCL and certified and filed Form 32 pertaining to his removal from the directorship of HPCL on the basis of a fake extract of the Board Resolution dated 15th December, 2011, wherein it is stated that he (the Complainant) was absent for 3 consecutive meetings of Board of Directors of the company without obtaining leave of absence from the Board. However, as per the Complainant there was no Board meeting called or held on 15th December, 2011. He further stated that there are no references of dates of the consecutive three Board meetings not attended by the Complainant without seeking leave of absence has been stated. The Complainant further *inter-alia* alleged that the Respondent has filed Form 32 pertaining to his removal after a lapse of considerable time from the date of the





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alleged fake resolution dated 15th December, 2011. He further stated that the Respondent failed to verify documentary evidences such as the dates, dispatch of notices, agenda papers etc., of the three Board meetings not attended by the Complainant without seeking leave of absence. The Complainant *vide* his letter dated 3rd March, 2014 has also provided a copy of the order dated 4th February, 2014 passed by the Hon'ble High Court of Andhra Pradesh in Criminal Petition No. 1096 of 2013 quashing the criminal proceeding against him.

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 5th July, 2013 calling upon him to submit the written statement followed by a reminder dated 1st August, 2013. The Respondent submitted the written statement dated 2nd August, 2013. The Respondent on the other hand has denied all the allegations levied against him and has *inter-alia* stated that he had certified the alleged Form 32 on the strength of the verified statement of the MD of HPCL and the extract of the minutes of the meeting held on 15th December, 2011 duly certified by the MD of HPCL and the corroborating records of the company placed before him, which he has reason to believe to be true.
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 8th August, 2013 asking him to submit the rejoinder. An email dated 16th August, 2013 was received from the Complainant requesting for additional time to file the rejoinder which was granted *vide* letter dated 21st August, 2013. The Complainant submitted the rejoinder dated 7th September, 2013. A letter dated 11th November, 2013 was sent to the Respondent asking him to submit the copies of all the documents relied upon by him for certifying Form 32 pertaining to removal of Mr. S. Radhakrishnan, the Complainant from the directorship of M/s. Hyderabad Pollution Controls Ltd., (HPCL). A letter dated 22nd November, 2013 was received from the Respondent on 25th November, 2013. A letter dated 3rd March, 2014 received from the Complainant.
4. 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 3rd July, 2014 observed, that there is a dispute in the management of HPCL and a CP No. 40/2011 under Section 397 and 398 of the Companies Act, 1956 has also been filed before the Hon'ble CLB, Chennai in the year 2011. It is further observed that the Respondent has filed Form 32 pertaining to the removal of the Complainant from the directorship of HPCL on the basis of the resolution dated 15th December, 2011 passed by the Board of directors of HPCL



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allegedly under section 283(i)(g) of the Companies Act, 1956 after about 16 months i.e. in March, 2013. The Respondent for the said certification has solely relied on the verified statement of the MD of HPCL in the said Form and the extract of the minutes of the meeting of the Board of Directors held on 15th December, 2011 duly certified by the MD of HPCL. The Respondent *vide* letter dated 11th November, 2013 was called upon to submit the copies of all the documents he had relied upon while certifying/filing Form 32 pertaining to cessation of the Complainant from the directorship of HPCL. The Respondent *vide* letter dated 22nd November, 2013 could not provide any thing substantial to rebut the allegations levied by the Complainant. The Respondent failed to verify the vital documents viz. (i) notice(s) and dispatch proof(s) to the Complainant (ii) agenda (iii) attendance register; and (iv) the minutes etc. More particularly in this case where the Complainant was to be removed from the directorship of HPCL under section 283(i) (g) of the Companies Act, 1956. Hence, the Respondent is *prima-facie* 'Guilty' of Professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence and was grossly negligent in the conduct of his professional duties.

5. The Disciplinary Committee on 24th July, 2014 considered the *prima-facie* opinion dated 3rd July, 2014 of the Director (Discipline) and the material on record. The Disciplinary Committee 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 Respondent and the Complainant *vide* letters dated 25th July, 2014 asking them to submit their written statement and the rejoinder, respectively.
6. The Respondent *vide* letter dated 8th August, 2014 submitted his written statement to the *prima-facie* opinion of the Director (Discipline). A copy of the *prima-facie* opinion was sent to the Complainant *vide* letter dated 12th August, 2014 asking him to submit his rejoinder. The Respondent also submitted certain additional documents which were received on 13th August, 2014. These additional documents were also sent to the Complainant *vide* letter dated 14th August, 2014. The Complainant submitted his rejoinder dated 21st August, 2014.
7. The parties *vide* letter dated 2nd September, 2014 were called upon to appear before the Disciplinary Committee on 24th September, 2014. Mr. S. Radhakrishnan, the



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Complainant along with Mr. S V Ramakrishna, Advocate appeared before the Committee. Mr. Ajay S. Srivastava, the Respondent along with his Authorised Representative, Mr. CS Ramakant Pathak, also appeared before the Committee.

8. Mr. S.V. Ramakrishna, Advocate for the Complainant *inter-alia* submitted that for the last 25 years, the Complainant was a director of M/s. Hyderabad Pollution Control Ltd. (HPCL). He further submitted that the Complainant and his family members are holding 50% of the shares. He further stated that the Respondent has uploaded Form 32 for the removal of the Complainant from the directorship of HPCL on the basis of fake extracts of the Board Resolution dated 15th December, 2011 wherein it was wrongly mentioned that the Complainant was absent without seeking leave of absence for three consecutive meetings of the Board of Directors. It was further stated that none of the purported three consecutive board meeting dates were mentioned in the said board resolution dated 15th December, 2011. It was also referred in the said resolution that the Complainant after committed so many serious crimes stated in the said resolution, abruptly left the Company with effect from 29th October, 2010. It was strange that for an alleged event of 29th October, 2010 the Board minutes of the meeting dated 15th December, 2011 shown as evidence itself ample proof that there were no board meetings in between this period as well. It was further submitted that there was no board meeting at all held and the question of disqualifying would not arise at all. He further stated that the Complainant has not received any notices for the said meetings nor any evidence was produced by the Respondent to show that there were board meetings properly convened and conducted.
9. Thereafter, Mr. Ramakant Pathak, Authorised Representative for the Respondent *inter-alia* submitted that the Respondent has filed the said Form 32 on the basis of the resolution dated 15th December, 2011 passed by the Board of Directors of HPCL. He further submitted that in this regard, the Respondent had checked the Minutes duly signed by the Chairman. He admitted that the Respondent was aware about the dispute in the management and that the Respondent had relied only on the Minutes and the attendance. He emphasised Section 194 of the Companies Act, 1956 and stated that as per the said section, the Minutes are the conclusive proof and no other document is therefore required for certification/verification of such Form.
10. After hearing oral submissions of both the parties and considering the material on record, the Disciplinary Committee observed that the Respondent has admitted that he had relied only on the Minutes of the Board meetings signed by the Managing

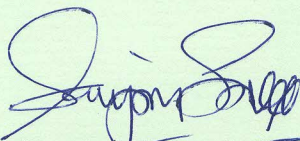


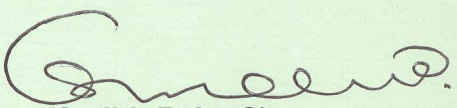
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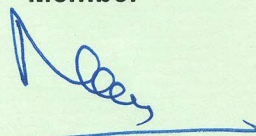
Director of the company. The Disciplinary Committee felt that relying on the minutes was not at all enough to certify the said Form 32, more particularly when this was a case of vacation of a position of a director under section 283(i) (g) of the Companies Act, 1956. The Respondent failed to check the basic requirements viz. as to whether the Board meetings were properly convened and held, as to whether the notices were given to all the directors including the Complainant, as to whether the attendance of the directors is marked in the register, more so when the Respondent was aware about the dispute in the management of M/s. Hyderabad Pollution Controls Ltd., (HPCL). The Disciplinary Committee therefore came to the conclusion that there was a casual and callous approach on the part of the Respondent in performance of his professional duties and he was grossly negligent in doing necessary due diligence while certifying and filing the said Form 32 of the Complainant.

11. The Disciplinary Committee, thereafter held the Respondent 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence and was grossly negligent in the conduct of his Professional duties while certifying and filing Form 32 for removal of the Complainant from the directorship of M/s. HPCL as he failed to verify vital documents for certifying Form 32, more particularly when the case involved removal of a director and the Respondent being aware about the dispute in the management of the company.
12. The Disciplinary Committee 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, decides 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 Balasubramanian)
Member


(Sanjay Grover)
Member


(Sudhir Babu C)
Member


(R Sridharan)
Presiding Officer

Date: 07th November, 2014

