

**THE DISCIPLINARY COMMITTEE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT  
UNDER THE COMPANY SECRETARIES ACT, 1980**

ICSI/DC/ 310/2015

Order reserved on: 25<sup>th</sup> April, 2018

Order issued on : 14/15 June 2018

Shri Neelesh Satish Kanade

.....Complainant

Vs.

Shri Dipak Maniar, ACS-3749,  
C.P. No. 2904

....Respondent

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Kamal Ahuja, Advocate on behalf of the Complainant

**FINAL ORDER**

1. A complaint dated 20<sup>th</sup> May, 2015 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (herein after referred to as '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 (herein after referred to as 'the Rules') by Shri Neelesh Satish Kanade (hereinafter referred to as the 'Complainant') against Shri Dipak Maniar, ACS-3749, C.P. No. 2904 (hereinafter referred to as the 'Respondent').
2. The Complainant in his complaint has alleged that Form 32 for cessation of his Directorship from M/s. Edifice Properties Pvt. Ltd. (hereinafter referred to as 'the Company') with effect from 14<sup>th</sup> August, 2008, was filed by the Respondent on the basis of his forged resignation letter. The Complainant stated that he did not receive any notice of the Board meeting allegedly held on 14<sup>th</sup> August, 2008, in which his resignation is stated to have been considered and it is evident from the records that the Complainant was director of the Company as on 20<sup>th</sup> August, 2008.
3. The Respondent in his written statement dated 9<sup>th</sup> June, 2015 has *inter-alia* stated as under :
  - (i) that the Complainant had also filed a Petition No. 13/237.397-398/CLB/MB 2014/1851 before the



Company Law Board, Mumbai Bench, against 13 persons including the Respondent with respect to the same issue as raised in the complaint. The petition was dismissed by the Hon'ble Company Law Board, Mumbai Bench, Mumbai. vide its Order dated 7<sup>th</sup> April, 2015.

- (ii) that the Company had produced the resignation letter of the Complainant and only after its verification he had certified Form 32
4. The Complainant in his rejoinder dated 16<sup>th</sup> June, 2015, reiterated his earlier submissions and stated that a copy of his original resignation letter was not submitted to the ROC. The copy of the resignation letter was not there with the company and the company had filed a complaint with the Police that the resignation letter was stolen along with some valuables of an employee of the company. The Complainant has further stated that he had filed complaint before the Company Law Board, Mumbai Bench, and on its dismissal preferred an appeal before Hon'ble High Court of Bombay.
  5. The Director (Discipline), after examination of the complaint, the written statement of the Respondent and rejoinder of the Complainant and all other material on record, stated that the Respondent has certified Form 32 pertaining to removal of the Complainant from the directorship of M/s. Edifice Properties Pvt. Ltd. In the said form the Respondent has neither attached resignation letter nor any evidence of cessation of the Complainant nor has he stated the effective date of cessation of the Complainant as director of the company. Taking into consideration all the facts and circumstances of the case and other material on record the Director (Discipline), expressed the *prima-facie* opinion that the Respondent is guilty of professional misconduct under Item (7) of Part - I the Second Schedule of the Company Secretaries Act, 1980.
  6. The *prima-facie* opinion dated 30<sup>th</sup> May, 2017 of the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 30<sup>th</sup> June, 2017. The Disciplinary Committee agreed with the *prima-facie* opinion of the Director (Discipline). In terms of Sub-rule (2) of Rule 18 of Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007, a copy each of the *prima facie* opinion of Director (Discipline) and the interim order dated 30<sup>th</sup> June, 2017, of the Disciplinary Committee, were sent to the Respondent asking him to file his written statement, if any. The Respondent, vide his letter dated 1<sup>st</sup> September, 2017, stated that the issue of cessation of directorship of the Complainant has already been adjudicated by the Hon'ble CLB, vide its order



dated 13<sup>th</sup> July 2015 in Company Petition No. 13/2014. Aggrieved by the aforesaid Order dated 13<sup>th</sup> July 2015 of the Company Law Board, Mumbai Bench, the Complainant had filed an appeal under Section 10F of the Companies Act, 1956, being Appeal No. 74/2015. The Hon'ble High Court of Mumbai, by its order dated 1<sup>st</sup> February 2017 dismissed the Appeal and upheld the Order dated 13<sup>th</sup> July 2015 of the Company Law Board.

7. The Respondent in his written statement dated 10<sup>th</sup> October 2017 to *prima-facie* opinion of Director (Discipline) has *inter-alia* stated that the Complainant, on confrontation after revealing of misappropriation of funds by him, tendered his resignation to save himself from legal consequences. It has been stated that the Notice of Board meeting held on 14<sup>th</sup> August, 2008 to consider the resignation was sent to the Complainant at his address at 1073, Bhosale Mystiqua, Model Colony, Shivaji Nagar, Pune, the same address as given in his Letter head by Registered post. However, it was received back undelivered with the postal remarks "unclaimed". The refusal of the Complainant to accept the notice sent at the address mentioned in his Letterhead is deemed to be service of the notice on him. It has been stated that the Original Form No. 32 bearing the signature of the Complainant was produced on behalf of the Company before the Hon'ble Company Law Board.
8. The Respondent, vide letter dated 24<sup>th</sup> January 2018, informed the Disciplinary Committee that the authority given by him to Advocate Shri Rohit to represent his case stood withdrawn and that his statement or any documents submitted by him or appearance for any hearing should not be considered and taken on records. He further requested to proceed in the matter *ex-parte*.
9. The parties vide letter dated 9<sup>th</sup> April, 2018 were afforded an opportunity to appear before the Committee on 25<sup>th</sup> April, 2018 at New Delhi. Shri Kamal Ahuja, Advocate, appeared on behalf of the Complainant and informed the Committee that the Complainant had filed review petition against the Order dated 1<sup>st</sup> February 2017 of Hon'ble High Court of Bombay upholding the Judgement dated 7<sup>th</sup> April 2015 of Company Law Board, Mumbai Bench in the CP No13/237.397 - 398 /CLB /MB 12014/1851. The Respondent expressed his inability to appear before the Committee on the ground of poor health and financial constraints. The Respondent requested the Disciplinary Committee to proceed further in the matter in the basis of the submissions already made before the Committee.
10. The Disciplinary Committee, noted that the Complainant had filed a Company Petition CP No 13/237.397-398/CLB/2014/1851 before



Mumbai Bench of Company Law Board, under Sections 237, 397, 398, 402 & 403, of the Companies Act, 1956, having been aggrieved by the alleged acts of oppression and mismanagement against the Company, namely, M/s Edifice Properties Pvt. Ltd. and other persons including the respondent seeking various reliefs, *inter-alia* the one relating to his removal from the directorship of the Company. The Hon'ble CLB in its Judgment dated 7<sup>th</sup> April, 2015, dismissing the Petition, has observed that there is ample reliable evidence available on record that the Complainant himself has tendered resignation as Director of the Company. In Para of its order dated 7<sup>th</sup> April, 2015, the Hon'ble Company Law Board has observed as under:

"The original Form 32, which bears signature of the Petitioner (the complainant herein) produced on behalf the Company during the course of arguments confirms this fact. The fact is further corroborated by the statement made by the Petitioner during the course of income tax proceedings, wherein he had stated before the Income Tax authorities that he is no more a director the company."

11. The allegation of unlawful removal of the Complainant by way of forging his resignation letter was dismissed by the Hon'ble Company Law Board. The Complainant preferred an appeal before Hon'ble High Court of Bombay which has been dismissed by the Hon'ble High Court upholding the judgement of the Hon'ble Company Law Board. A Review Application filed by the Complainant is stated to be pending in the Hon'ble High Court of Bombay.

12. The Committee also noted that in reply to the Complaint dated 30<sup>th</sup> August 2011, the Registrar of Companies, Maharashtra, Mumbai, had sent to the Complainant a copy of his resignation letter dated 10<sup>th</sup> August, 2008, as supplied by the Company. Therefore, the statement of the Complainant that his resignation letter was forged is false.

13. The Committee noted that Form No. 32 was certified by the Complainant in the year 2008. The FIR for its having been stolen was filed by the Company on 25<sup>th</sup> January 2014. Therefore the averment of the Respondent that the original resignation letter of the complainant was produced to him before he certified the Form 32, cannot be disbelieved.

14. The Committee after, considering the material on record, all the facts and circumstances of the case and the observations order dated 15<sup>th</sup> July 2015 of the Hon'ble Company Law Board, Mumbai I Bench and the order dated 1<sup>st</sup> February 2017 of the Hon'ble High of Bombay, is of the view that the issue of validity of removal of



the Complainant from Directorship has already been settled by Company Law Board, Mumbai Bench on the basis of ample reliable evidence available on the records before Company Law Board. Accordingly the Disciplinary Committee is of the opinion that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980, as alleged by the Complainant in his complaint.

**Ashish C Doshi**  
Member

**Meenakshi Datta Ghosh**  
Member



**Santosh Kumar Agrawala**  
Member

**Makarand Lele**  
Presiding Officer