

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

ICSI/DC/223/2014

Order Reserved on: 7<sup>th</sup> December, 2018

Order issued on: 07 JAN 2019

Shri Navin A Patel

.....Complainant

Vs.

Shri Mahesh Soni, FCS-3706, CP No. 2324

.....Respondent

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

Complainant in person along with Shri S. N. Sundram, Advocate

Respondent in person along with Shri Sukhram Gokhle, Advocate

**ORDER**

1. A complaint dated 11<sup>th</sup> February, 2014 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 ('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 ('the Rules') by Shri Navin A Patel (hereinafter referred to as 'the Complainant') against Shri Mahesh Soni, FCS-3706 (CP No. 2324) (hereinafter referred to as 'the Respondent').
2. The Complainant in his complaint *inter-alia* stated that he was a director of M/s. Subray Catal Chem Pvt. Ltd. The other directors of the said Company were Shri Subray Sadashiv Hosmane and Ms. Veena Subray Hosmane.
3. The Complainant in his complaint *inter-alia* alleged that the Respondent has certified Form 32 pertaining to his cessation from the directorship of M/s. Subray Catal Chem Pvt. Ltd., without excising due diligence as he has not resigned from the directorship of the said company. The Complainant further stated that his purported resignation letter 29<sup>th</sup> September, 2006 is forged and fabricated. The Complainant also denied to have attended the Board Meeting held on 29<sup>th</sup> September, 2006 wherein the alleged false resignation letter of the Complainant was considered.
4. The Respondent on the other hand has denied the allegations levied against him and has stated that his client, M/s. Subray Catal Chem Pvt. Ltd., had approached him to file resignation of Shri Navin A. Patel (Director of M/s. Subray Catal Chem Pvt. Ltd.) with ROC, Mumbai. At his request, M/s. Subray Catal Chem Pvt. Ltd., had provided him with the following documents-



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- Original Board Resolution signed by Shri. Subray Hosmane and Mrs. Veena Hosmane, Directors of the company.
  - Original Resignation Letter dated 29th September, 2006 signed by Shri. Navin A. Patel.
5. The Respondent further stated that the aforesaid documents were personally verified by him and found to be legitimate, authentic, un-biased and in order. Thereafter, the Form 32 was prepared, the resignation letter of Shri Navin A Patel was attached and the said Form was digitally signed by Ms. Veena Hosmane. He certified and uploaded the said Form 32 on the MCA Portal on 2<sup>nd</sup> November, 2006, after exercising due diligence.
  6. The Complainant in his rejoinder reiterated his earlier submissions and further stated that the Respondent failed to demand from the company Notice for convening the Board meeting, proof of dispatch/receipt of Notice by the Complainant and the minutes of the Board meeting at which the alleged resolution was passed. He has denied that the aforesaid documents were personally verified by the Respondent and found to be legitimate, authentic, un-biased and that he had certified and uploaded the e-form 32 on the MCA portal on 2<sup>nd</sup> November, 2006 after due diligence as. The Complainant further stated that the Respondent failed to verify the genuineness of the resignation letter alleged to have been submitted by the Complainant. In spite of the fact that the resignation letter carried wrong DIN of the Complainant and his signatures in purported resignation letter is different from the signature made in various letters / statement of Accounts, share certificates which have already been annexed with the complaint.
  7. The then Director (Discipline) on examination of material on record vide his *prima-facie* opinion dated 15<sup>th</sup> September, 2014 held 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 he did not exercise due diligence in conduct of his professional duties. He also observed that the purported resignation letter of the Complainant is dated 29<sup>th</sup> September, 2006 and the Board Resolution is also of the same date i.e., 29<sup>th</sup> September, 2006. It raises a qualm as to how the resignation letter is put up on the same day before the Board of the company. Since, it is claimed to be put up before the Board and disposed-off by the Board on the same day, the Respondent should have checked the Notices of the purported Board Meeting held on 29<sup>th</sup> September, 2006 sent to the Complainant, evidence of having dispatch/receipt of the notice and also the attendance register of the said meeting before certification of the alleged Form 32 pertaining to the removal of the Complainant from the directorship of M/s. Subray Catal Chem Pvt. Ltd.
  8. The Disciplinary Committee on 24<sup>th</sup> September, 2014, considered the *prima-facie* opinion dated 15<sup>th</sup> September, 2014 along with the material on record. The Committee agreed with the *prima-facie* opinion of 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, copy of



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*prima-facie* opinion of the Director (Discipline) was sent to the parties vide letter(s) dated 25th September, 2014 asking them to submit the written statement and rejoinder, respectively.

9. The Respondent submitted his written statement to the *prima-facie* opinion of Director (Discipline) and thereafter the Complainant submitted his rejoinder wherein both the parties while reiterating their earlier submissions made a few additional submissions.
10. The parties were called upon to appear before the Disciplinary Committee on 12<sup>th</sup> January, 2015, 4<sup>th</sup> March, 2016 (meeting called off), 19<sup>th</sup> November, 2016, 27<sup>th</sup> December, 2016, 1<sup>st</sup> July, 2017, 9<sup>th</sup> September, 2017, 6<sup>th</sup> October, 2018.
11. The parties once again *vide* letter dated 22<sup>nd</sup> November, 2018 were called upon to appear before the Disciplinary Committee on 7<sup>th</sup> December, 2018 at New Delhi. The Disciplinary Committee also noted that along with the instant matter another matter ICSI/DC/287/2015 is also listed before it as per its directions of the Committee.
12. On 7th December, 2018, the Complainant along with Shri S. N. Sundram, Advocate appeared before the Committee. Further, Respondent along with Shri Sukhram Gokhle, Advocate also appeared before the Committee.
13. Shri S. N. Sundram, Advocate of the Complainant emphasized that this matter is inter linked with the other matter between the same parties i.e. ICSI/DC/287/2015 so he would be arguing both the matters together and would be relying on the documents filed in the other matter also. Thereafter, he argued that the Respondent has not exercised due diligence for certifying Form 32 pertaining to cessation of the Complainant from the directorship of M/s. Subray Catal Chem Pvt. Ltd. In support of his averments he contended that in the purported resignation letter dated 29/09/2006 not only the signatures of the Complainant have been forged but the said resignation letter also has a wrong DIN number of the Complainant. He further contended that email ID of the Company was written in the said Form 32 so as to keep the Complainant in dark and he does not receive any intimation of filing of the said form. Thereafter, he drew the attention of the Committed to the Annual return filed by the Company in relation to the AGM of the Company held on 30.09.2006 under the digital signatures of One Shri Subray Sadashiv Hosmane (Director of M/s. Subray Catal Chem Pvt. Ltd.) i.e. day after the purported forged resignation letter where in the date of the Cessation of the Complainant has been left blank, which proves that the Complainant had not resigned from the directorship of the company and interestingly the Respondent has relied on the said Annual Return for certifying the alleged E forms in the other complaint i.e. ICSI/DC/287/2015 wherein the Respondent has admitted to have verified the said Annual Return although the Form 20B does not bear his signatures. He further pointed out discrepancies in the said Annual Return regarding equity share break up. He further contended that the Respondent was aware of the dispute in the company and for which he relied on the statement made by the Respondent before the police authorities regarding his contractual appointment with the Company and certain Minutes of meeting of the Company which shows absence of the Complaint in those meeting and alleged



*[Handwritten signatures]*

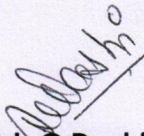
allegations against the Complainant. Lastly, the Complainant denied to have attended the Board Meeting held on 29<sup>th</sup> September, 2006 wherein the alleged false resignation letter of the Complainant was considered.

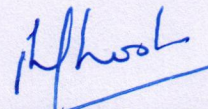
14. Shri Sukhram Gokhle, Advocate appearing on behalf of the Respondent stated before the Committee that the Instant case related to certification of Form 32 by the Respondent pertaining to cessation of the Complainant from the directorship of M/s. Subray Catal Chem Pvt. Ltd., for which the Respondent had seen the resignation letter, notice of the meeting and attendance register where it was considered and the same are not in his custody now. He further contended that under law it is not necessary to issue notice to director who has resigned and consideration of the Resignation letter of a director by the Board of Directors is not unreasonable. He further contended that Section 286 of the Companies Act, 1956 does not provide for any period for issuance of Notice for holding of a Board meeting. He further argued that in the instant case when the resignation letter was considered i.e. 29<sup>th</sup> September, 2006 two out of three directors were present as one director had resigned. Lastly, the Respondent has no reason to suspect when the resolution is available and if question of forgery is involved it is the competent authority to decide and he can't 'be expected to know the same.
15. The Disciplinary Committee after considering all the material on record; arguments adduced before it by both the parties; prima-facie opinion of the Director(Discipline) and after considering all the facts and circumstance of the matter hold the Respondent Guilty of Professional Misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 for not exercising due diligence while certifying Form 32 pertaining to cessation of the Complainant from the directorship of M/s. Subray Catal Chem Pvt. Ltd., as the circumstantial evidence shows that the signature of the Complaint is different on the purported resignation letter than on the other documents, The Committee further observed that the said resignation letter has a wrong DIN of the Complainant. Though as per records, it is observed that the Respondent has been associated with the Company w.e.f 2006 but has not been able to give any satisfactory answer as to why the date of cessation of the Complainant has been left blank in the Annual return filed by the company in relation to the AGM of the Company held on 30.09.2006 under the digital signatures of one Shri Subray Sadashiv Hosmane (Director of M/s. Subray Catal Chem Pvt. Ltd.) i.e. day after the purported resignation letter of the Complainant which he has relied for certifications of other E forms in the other complaint i.e. ICSI/DC/287/2015. Further, in these circumstances we agree with the Director (Discipline) it should have raises a qualm in the mind of the Respondent as to how the resignation letter is put up on the same day before the Board of the company. Since, it is claimed to be put up before the Board and disposed-off by the Board on the same day, the Respondent though had claimed to have seen the resignation letter, notice of the meeting and attendance register where it was considered but has not been able to produce the same. Further, it is not disputed that the Respondent has been associated with the Company for a while and the Complainants advocate has shown minutes of the meetings of the company showing the absence of the Complainant in the Board meetings and the allegations against the company.




*[Handwritten signatures and initials]*

16. The Disciplinary Committee also decided to provide an opportunity of being heard to the Respondent pursuant to sub- rule (1) of Rule 19 of the Rules.
17. The Disciplinary Committee further decided to call upon the Respondent to appear before it at the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee. In case any of the parties for sudden or personal reasons is unable to attend the hearing as may be decided; the Respondent may appear through an authorized representative along with a duly signed and attested letter of authority addressed to the Disciplinary Committee seeking exemption from personal appearance failing which, the matter will be heard *ex-parte*.

  
Ashish C Doshi  
Member

  
Meenakshi Datta Ghosh  
Member

  
Makarand Lele  
Presiding Officer

