

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

ICSI/ DC/261/2014

Order Reserved On: 11<sup>th</sup> March, 2019

Order Issued On: 24 APR 2019

**Shri Sundaram Pillai M.K**

.....Complainant

**Vs.**

**Shri R Harikrishnan Nair FCS-4915 (CP 3132)**

.....Respondent

**CORAM:**

Shri Ranjeet Pandey, Presiding Officer

Shri Nagendra D. Rao, Member

Shri B Narasimhan, Member

Mrs. Meenakshi Datta Ghosh, Member

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Vikash K Srivastava, Deputy Director

Shri R Harikrishnan, the Respondent

**FINAL -ORDER**

1. A complaint dated 23<sup>rd</sup> September, 2014 in Form 'I' was filed by one Shri Sundaram Pillai M. K. (hereinafter referred to as the 'Complainant') against Shri R Harikrishnan Nair R, FCS-4915 (CP 3132) (hereinafter referred to as the 'Respondent') 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').
2. The Complainant has inter-alia stated that he is a shareholder and former director of a public limited company namely M/s. Business Benefit Company Ltd. The Complainant further stated that he had tendered his resignation from the directorship of M/s. Business Benefit Company Ltd., on 15<sup>th</sup> February, 2010 which was accepted by the Board of Directors of



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the said company. Consequently, the company had filed Form 32 with the ROC, Kerala confirming his cessation as director of the company. The Complainant further stated that thereafter, he was not involved in the management of the company and he has not been attending any of the meetings of the Board of Directors of the said company even though he continues to be a shareholder of M/s. Business Benefit Company Ltd. The Complainant further stated that on a search of the website of MCA in November, 2010, he was shocked to see that Form 32 showing his appointment as the director of M/s. Business Benefit Company Ltd., has been filed on the basis of his forged consent letter dated 3rd October, 2010. The Complainant further stated that he has not given any such consent. The Complainant further stated that he immediately wrote a letter to the Managing Director of the company on 9th November, 2010 and the Respondent (as the Respondent was handling the work of the company) seeking explanations for the same. However, no reply was received from them.

3. The Complainant further stated that the said false Form 32 and the declaration (consent to act as director) with forged signature of the Complainant were certified by the Respondent. The Respondent is a consultant of M/s. Business Benefit Company Ltd., for reasonably long time and a professional having deep knowledge about the affairs of M/s. Business Benefit Company Ltd. The Complainant further stated that the Respondent has acted in connivance with other directors of the company created false and forged documents and certified the same so as to make false impression that Complainant was appointed as director of the company. Further, the Respondent has illegally certified Form 32 knowing it to be illegal in connection with the said false appointment. The Complainant further stated that he had lodged a criminal complaint before the Hon'ble Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulum [CMP No. 1517 of 2011] against the Respondent and three others for offences under section 628 and 629 of Companies Act, 1956 and the Court has taken cognizance of the same after enquiry which is pending as CC No.190/2011.
4. As per records of the case, the Respondent did not submit his written statement despite a reminder.
5. Pursuant to rule 9 of the Rules, the Director (Discipline) formed the prima-facie opinion dated 2nd March, 2015, wherein the Director



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S. Jeevan Pandey

(Discipline) was of the opinion that the Respondent did not submit the written statement despite reminder; therefore, Respondent is prima-facie guilty of violation of Item (2) of Part III of the First Schedule to the Company Secretaries Act, 1980. Further, as non-reply of Respondent is deemed to be admission by the Respondent in absence of any specific denial as provided under Order 8 Rule 5 of the Civil Procedure Code 1980, hence the Respondent is also prima-facie guilty of professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980.

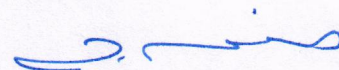
6. A copy of the prima-facie opinion of the Director (Discipline) was sent to the parties and both the parties submitted their written statement & rejoinder respectively. The Respondent in his written statement mainly raised an objection that there are three directors in the company namely M/s. Business Benefit Company Ltd, and all are brothers and the Complainant is one of them. Further the Hon'ble High Court of Kerala has stayed the proceedings of a criminal complaint filed by the Complainant. The Complainant on the other hand stated that it is settled position that the disciplinary authority can very well continue with disciplinary proceedings irrespective of the existing criminal case on the very same allegation or any stay of such case so long as the disciplinary proceedings itself is not stayed by competent court.
7. Thereafter, the parties were heard by the Committee in detail on various occasions wherein the parties made their respective submissions and also filed their respective documents substantiating their averments. The Respondent has contended that he had verified the relevant documents before certifying the alleged Form 32 for appointment of the Complainant as a director of M/s. Business Benefit Company Ltd and had also attached the consent letter of the Complainant. Further as a Practising Company Secretary he is not supposed to go on the veracity / genuineness of the signature on a letter given to him by a director of the company and he was not aware of any dispute in the company, more so the Complainant himself had come to his office with his brother. The Complainant has contended that the Respondent has in connivance with the other directors of the company has inducted him as a director of the company knowing fully he has resigned from the company as the Respondent himself has filed the form 32 for cessation of the Complainant.

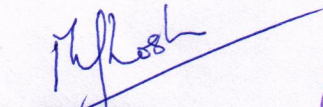


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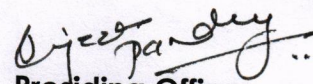
8. The Disciplinary Committee on 11<sup>th</sup> March, 2019 after considering all the material on record; arguments adduced before it by both the parties; prima-facie opinion of the Director(Discipline) and after considering all the facts and circumstance of the matter held that the Respondent is **'Not Guilty'** of Professional Misconduct under the Company Secretaries Act, 1980 as the Respondent being Practising Company Secretary was under no obligation to verify the genuineness of the signatures of the Complainant on the consent letter attached with Form 32.
9. Accordingly, the matter is closed and the Complaint is disposed of.

  
Member

  
Member

  
Member



  
Presiding Officer