

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

ICSI/DC/287/2015

Order Reserved on: 7th 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 4th February, 2015 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 K Soni, FCS-370 (CP No.2324) (hereinafter referred to as 'the Respondent').
2. The Complainant *inter-alia* alleged that the Respondent has certified the following e-forms pertaining to M/s. Subray Catal Chern Pvt. Ltd., without exercising due diligence:
 - i. Form 23 for registration of the Special Resolution allegedly passed at the meeting.
 - ii. Form 5 for increase in share capital.
 - iii. Form 2 for the allotment of the shares.
 - iv. Form 20B (Annual Return with reference to the AGM held on 30th September, 2006).
3. The Complainant further stated that three Forms were filed without holding any EOGM and without passing the special resolution as required under the Companies Act, 1956. The Complainant further stated that the Respondent has wrongly certified Form 23, Form 2, Form 5 and Form 20B so as to dilute Patel family's (Complainants family) share holding. The Complainant further stated that Mr. Mahesh Soni, the Respondent along with Mr. & Mrs. Veena Hosmilne have conspired to remove Shri Navin Patel by diluting the share holding and removing him from directorship later on by filing a forged



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resignation letter which was verified by Shri Mahesh Soni himself in response to which the complainant already filed a complaint at the Hon'ble Institute.

4. The Respondent on the other hand denied the allegations levied against him and *inter-alia* stated that at his request, M/s. Subray Catal Chem Pvt. Ltd., had called a Board Meeting on May 6, 2006 after giving proper notice and decided to call EOGM on June 3, 2006 for increasing the authorized share capital of the company from Rs. 54,00,000/- divided into 540,000 Equity Shares of Rs. 10/- each to Rs. 125,00,000/- divided into 12,50,000 Equity Shares of Rs. 10/- each. Further, proper notice for calling the EOGM on June 3, 2006 was given to all the members entitled to the same.
5. Thereafter, the said EOGM was convened and the necessary Forms as required were filed by him. All the required forms were first signed by director, then certified by him and uploaded on the MCA Site. The Respondent further stated that his client M/s. Subray Catal Chem Pvt. Ltd., has also increased the authorized and paid up share capital on different occasions and proper procedures for the same were followed by his client as required under the provisions of the Companies Act, 1956. As far as filling of Forms are concerned, Respondent stated as under:
 - (i) FORM 23: Form 23 is required to be filed for registration of Resolution and Agreement. As there was no agreement, copy of the Resolution in the form of Notice was attached along with Form 23 and was filed by him.
 - (ii) FORM 5: Form 5 is required to be filed for Notice of consolidation, division etc., or increase in share capital or increase in number of members. As required, copy of the amended Memorandum and Articles of Association of the company was attached and the same was uploaded.
 - (iii) FORM 2: Form 2 is required to be filed for Allotment of Shares. As required a copy of List of allottees was attached and the same was uploaded.
6. The Respondent further stated that the all the aforesaid documents were personally verified by him and found to be legitimate, authentic, un-biased and in order. Thereafter, all the Forms were prepared, necessary attachments were attached and the forms were digitally signed by one of the Director Mrs. Veena Hosmane. Thereafter, the Respondent certified and uploaded all the Forms on the MCA Portal after due diligence as expected by ICSI for filing E-Forms as laid down in the Referencer on Pre-certification of E-forms issued by the Institute of Company Secretaries of India.
7. The Complainant in his rejoinder while reiterating his earlier submissions made in the Complaint *inter-alia* stated that the Respondent neither filed a copy of the Special Resolution nor did he file a copy of the Altered Articles of Association. Further, the Respondent vide his letter dated 20th February, 2013 requested the Chairman of the Company to allow him inspection of some of



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the documents, however, the inspection was refused vide Shri Hosmane's reply dated 10th June, 2013 on false ground stating that the documents were given inspection. But none of the listed documents were given for inspection. This goes to prove that there were in fact no documents maintained by the company and the documents were being cooked on need base basis. The Respondent should to strict proof of having shown the documents to the Complainant.

8. The Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, vide her prima-face opinion dated 24th April, 2017 *inter-alia* held the Respondent is "Guilty" of professional misconduct under Item (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 as he did not exercise due diligence while certifying and filing the alleged Form 23, Form 2, Form 5 and Form 20B.
9. The Disciplinary Committee on 28th April, 2017 considered and 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.
10. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letter(s) dated 11th July, 2018 asking them to submit the written statement and rejoinder, respectively. Both the parties submitted their written statement and rejoinder, respectively by reiterating their earlier submissions along with certain other submissions.
11. The parties were called upon to appear before the Disciplinary Committee on 6th December, 2017 (rescheduled on 7th December, 2017) however, the said meeting was postponed. The parties were again called upon to appear before the Disciplinary Committee on 6th October, 2018.
12. On 6th October, 2018 the Disciplinary Committee at the request of the Complainant had adjourned the matter.
13. The parties were again called upon to appear before the Disciplinary Committee on 20th October, 2018 at New Delhi. However, the said meeting was postponed.
14. The parties were again called upon to appear before the Disciplinary Committee on 7th December, 2018.
15. On 7th December, 2018, the Complainant along with Shri S. N. Sundram, Advocate appeared before the Committee. The Respondent along with Shri Sukhram Gokhle, Advocate also appeared before the Committee and pleaded that he is not guilty.



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16. Shri S. N. Sundram, Advocate of the Complainant emphasized that this matter is interlinked with the other matter between the same parties i.e. ICSI/DC/223/2014 so he would be arguing both the matters together and would be relying on the documents filed in the other matter also. Thereafter, he gave a brief background of the case and stated that the Complainant along with his family members was holding forty five percent (45%) of the equity shareholding in M/s. Subray Catal Chem Pvt. Ltd., before illegal increase of the Share Capital of the company by the other two directors of the company in connivance with the Respondent. He further stated that as per the Annual Report in relation to the AGM held on 30th September, 2006 the Complainant has been shown as the director of the company as on the date of the AGM. He further stated that he has made a detailed submission in case ICSI/DC/223/2014 as to how the Complainant was removed illegally. He further stated that there was no need for increasing the authorized share capital and the Complainant being a director of the Company as on 30th September, 2006 did not receive any notice for the purported Board meeting held on 6th May, 2006. Shri S. N. Sundram further emphasized that the Respondent has also not produced any proof of service/ delivery of the said Board meeting notice to the Complainant. It may be pertinent to note that the Respondent has stated that the Company had issued the notice for the said meeting on his request yet he did not confirm/ check as to whether the notice was issued to the Complainant or not, more so when he knows that the other two directors of the company are husband and wife. Therefore, no meeting of the Board of Directors was held where the notice of convening share holder meeting disclosing clearly the purpose of increasing the share capital was held. Further, if a Board meeting is held without notice to the director of a company, i.e., the complainant, the meeting is not duly called. Therefore, it is a clear case of non compliance of statutory provisions of Section 286 of the Companies Act, 1956 (in case of Board meeting) and Section 171 of the Companies Act, 1956 (in the case of general Meeting)
17. Shri S. N. Sundram, Advocate of the Complainant further stated that the Respondent has not attached certified true copy of the resolution passed at the meeting of shareholders along with the explanatory statement, MOA, AOA with Form 23. But has only attached a notice with the explanatory statement. He further emphasised that he could not have attached the special resolution as no meeting was held and in fact no resolution could have been passed without the attendance of the Complainant at the meeting as the Complainant group was holding 45% shares on date of the said EOGM. Without admitting, even if presumed the EOGM was held on 3rd June, 2006, no Special resolution could be passed without the presence of the Complainant and his group who are holding 45% shares of the company on the date of EOGM. Therefore, it is clear that no EOGM was held on 3rd June, 2006 and no resolutions were passed and consequently Form 23, Form 2 and Form 5 were wrongly filed. In addition the Respondent has neither produced the Bank statement nor has kept back up papers before pre-certifying.
18. Shri Sukhram Gokhle, Advocate on behalf of the Respondent denied the allegations levied against his client and stated that the duty cast on a Company Secretary is to certify the correctness of the contents of the form.



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When two directors of a company represent to a professional CS that the third director has resigned, there is nothing prima-facie suspicious about it. There is nothing unusual or uncommon that would trigger a doubt in one's mind. In normal course of our profession, one has to proceed on good faith unless there are circumstances to warrant any suspicion or disbelief. Further, attaching a copy of the Notice with Form No. 23 instead of certified true copy of the Resolution, by mistake a wrong file was selected and a copy of the Notice calling EOGM was attached along with explanatory statement. Though, the body of certified copy of the resolution and explanatory statement were same. Further, altered copy of Articles of Association and Memorandum of Association were not attached with Form 32 as the same was attached as an attachment to Form 5. Further, after about 11 years, his client is not in possession of the proof of dispatch of neither the Notice nor the Attendance Register.

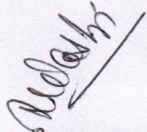
19. The Disciplinary Committee after considering all the material on record; arguments adduced before it by both the parties; prima-facie opinion of the Director(Discipline) and after considering all the facts and circumstance of the matter hold the Respondent 'Guilty' of Professional Misconduct under Clause (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 for not exercising due diligence while certifying alleged Form 23, Form 2 and Form 5 as the Respondent should have checked the notices sent to the Complainant for the alleged Board meeting and the EOGM that to when the other two director of the company were husband and wife and that the Complainant and his family members were holding 45% shares on date of the said EOGM i.e. on 3rd June, 2006. Further the Form 20 B of the company with reference to the AGM held on 30th September, 2006 also confirms that the Complainant was the Director of the company. The said Form 20 B has been admitted by the Respondent to have been verified by him in his communication dated 11th July, 2015 sent to the Institute. In addition, there are minutes of the meeting attached by the Respondent of several meetings of the company, which shows absence of the Complainant from the Board meetings and allegation against him to suspect a dispute in the company. It goes to show that the notice of the Board meeting held on 6th May, 2006 calling the EOGM on 3rd June, 2006 was not sent to the Complainant. In the absence of which, no special resolution could have been passed as the Complainant and his family members were holding 45% of the shares in the company. Hence, three forms were filed without holding any EOGM and without passing special resolution as required in the Companies Act, 1956. In addition the requisite attachment such as certified true copy of the resolution passed at the meeting of shareholders along with the explanatory statement, MOA, AOA were not attached with Form 23. The Respondent has also not been able to produce bank statements apart from Board Resolution which was held on 9th October, 2006 for certifying the form 2 filed with the Registrar.
20. 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.
21. 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



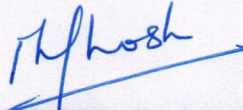
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by the Presiding Officer of the Disciplinary Committee. In case any of the parties for sudden or personal reasons is unable to attend the hearing as may be decided; the Respondent may appear through an authorized representative along with a duly signed 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

