

**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/318/2015

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

Order issued on : 14<sup>th</sup> 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 of the Complainant

**ORDER**

1. A complaint dated 27<sup>th</sup> May, 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 Neelesh Satish Kanade (hereinafter referred to as the 'Complainant') against Shri Dipak Maniar, ACS-3749 (CP No. 2904) (hereinafter referred to as the 'Respondent').
2. The Complainant has inter-alia stated that the Respondent has issued a Compliance Certificate dated 3<sup>rd</sup> September, 2007 for FY ended 31<sup>st</sup> March, 2007 to M/s. Edifice Properties Pvt. Ltd. in which he has wrongly reported the facts as under :
  - (i) that the company has not effected the transfer of shares during the financial year, although there was the transfer of shares.
  - (ii) that there was no appointment of Additional Director during the financial year whereas the complainant and 3 other directors were appointed as Additional Directors as on 18th May, 2006.
  - (iii) that the company has duly filed the form and returns within the time prescribed whereas the company has delayed in filing most of the forms with the requisite authorities.
  - (iv) that contravention of provision prescribed in the AAO was not pointed out in the Compliance Certificate issued by the Respondent.



3 The Respondent in his written statement dated 30<sup>th</sup> June 2015 has inter-alia stated as under:

- (i) that he is 64 years old and have been doing Secretarial Practice for last 15 years since 1998, serving/rendering approximately 80 to 90 valued clients.
- (ii) that he always has been a Law abiding person and an honest Practicing Member of the Institute since the year 1998 and have never got any such notices regarding his Professional Misconduct Institute's image or bring disrepute to his Membership.
- (iii) that the Complainant has 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 issues in the this complaint. The Hon'ble Company Law Board, Mumbai Bench, had, vide its Order dated 7<sup>th</sup> April, 2015, dismissed the said Petition. In view of the Order passed by the Hon'ble Company Law Board, Mumbai Bench, the complaint of the Complainant should and cannot be entertained and accepted by the Institute as Company Law Board is the final authority in the Company Law matters.
- (iv) that he has verified and checked all the documents, Forms and other records to comply with the requirement of the Companies Act 1956. However, Form 32 and Share Transfer Register have remained unchecked and not verified. The above matters in his Compliance Certificate were therefore, not properly mentioned mainly due to foresight without any bad intention on his side, despite taking utmost care and after exercising proper due diligence for all the items of Compliance Certificate minutely. That it is his request to consider it as typographical errors/mistakes.
- (v) that as regards this allotments of 7,75,000 Equity Shares issued by the company on 15<sup>th</sup> February, 2007, the Hon'ble Company Law Board, Mumbai Bench, had, specifically touched upon these points, vide its Order dated 7<sup>th</sup> April, 2015, dismissed the Petition filed by Complainant without entertaining any single plea mentioned by him therein.

4. The Disciplinary Committee in its meeting held 29<sup>th</sup> July, 2016 considered the prima-facie opinion dated 11<sup>th</sup> December, 2015 of the Director (Discipline) and the material on record. The Committee agreed with the prima-facie opinion that the Respondent is prima-facie "GUILTY" of Clause (7) of the Second Schedule of the professional misconduct under the Company Secretaries Act, 1980, as he did not exercise due diligence in conduct of his professional duties as the Respondent has admitted his mistakes and stated that these were without any bad intention on his side but due to foresight, despite taking utmost care and after



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exercising proper due diligence for all the items of Compliance Certificate minutely.

5. The Respondent in his written statement dated 20<sup>th</sup> September, 2016 to prima-facie opinion has submitted that he has issued Compliance Certified to two other companies on the same on the day when he has issued Compliance Certificate to M/s Edifice Properties Pvt. Ltd. In other two companies there were no appointment of additional Directors and alternate Directors. Due to oversight and because of last moment rush to give Compliance Certificate to his clients well in time he has mentioned the same fact also in the Compliance Certificate of M/s Edifice Properties Pvt. The Respondent has however complete details of appointment of 3 directors as additional Directors in Annexure 2 of the Compliance Certificate of M/s Edifice Properties Pvt. Ltd. The Complainant in his rejoinder dated 7<sup>th</sup> October, 2016 to written statement to prima-facie opinion has reiterated the submission already made in the complaint and *inter-alia* stated that the Respondent has admitted his mistakes and consequential misconduct and has pleaded that some errors have occurred due to oversight, typographical errors and without any bad intention and therefore he should be pardoned. The Respondent has also apologized for mistakes committed by him which cannot be accepted in any circumstances.
6. The Respondent in his written submission dated 17<sup>th</sup> October, 2016 has *inter-alia* stated that it is not required to mention separately the number of days /months delayed in filing particular e-Forms with ROC in the Compliance Certificate. The Respondent further stated that in the Compliance Certificate he has mentioned that there were no transfers of shares only after confirming the status from the concerned department which was looking after Secretarial Function of M/s Edifice Properties Pvt. Ltd. The Respondent has further stated that if the ICSI feels that some errors due to oversight, by mistake and without bad intentions are done by him then, the ICSI has every right to take action against him and the same is acceptable to him. The Respondent felt sorry and apologized and assured that he will take more attention and care for such type of errors and ensure that the same should / will not be repeated in future.
7. The Respondent in his written submission dated 27<sup>th</sup> February 2017 has retreat his submission and *inter-alia* stated that non-mentioning of delay in submission of Forms is immaterial so far the same has been condoned by the ROC. The Respondent further submitted that delay once condoned cannot be re-agitated.
8. The Complainant in his brief synopsis submitted vide letter dated 16<sup>th</sup> September, 2017 has *inter-alia* stated that the plea that any discrepancy in Compliance Certificate was due to oversight and not deliberate cannot be accepted , as the same has led to irreparable



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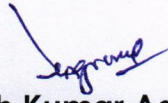
harm and heavy financial loss to the Complainant and affected rights and interests.

9. The Respondent vide letter dated 24<sup>th</sup> January 2018 informed that the authority given to Advocate Shri Rohit to represent his case stands withdrawn and 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.
10. The Complainant and the Respondent has been provided opportunity to appear before the Committee and there have been five hearings in the matter.
11. On 25<sup>th</sup> April, 2018 Shri Kamal Ahuja, Advocate appeared on behalf of the Complainant before the Disciplinary Committee and informed the Committee that the Complainant has 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/2014/1851. The Respondent expressed his inability to appear before the Committee on the ground of poor health and financial constraints. The Respondent has requested to proceed further in the matter in the basis of the submissions already made before the Committee.
12. The Disciplinary Committee after considering the submissions made by the Complainant and the Respondent, material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case observed that the Respondent has issued Compliance Certificate to M/s. Edifice Properties Pvt. Ltd. for the financial year ending on 31<sup>st</sup> March 2007 in which he has wrongly reported the facts. The Committee is of the view that allegation regarding not mentioning of contravention of the provisions for transfer of share as prescribed in AAO of the Company has already be dealt with and settled by the Company Law Board, Mumbai Bench in CP No 13/237.397-398/CLB/MB/2014/1851 dated 7<sup>th</sup> April 2015. Hence the Respondent is not guilty for the same.
13. the Committee found the Respondent guilty of professional misconduct under Item (7) of Part I of the Second Schedule of the Act as the Respondent has failed to report the following in his Compliance Certificate issued to M/s. Edifice Properties Pvt. Ltd. for the financial year ending on 31<sup>st</sup> March 2007: -
  - (i) the transfer of shares during the financial year,
  - (ii) appointment of Additional Director during the financial year in the Report. However, the same has been reflected in the Annexure to the Compliance Certificate
  - (iii) delay in filing of Forms with the requisite authorities.




14. The Committee in terms of sub-rule (1) of Rule 19 of the Rules decided to afford to the Respondent as opportunity of being heard before passing final order under section 21B(3) of the Act

  
**Ashish C Doshi**  
Member

  
**Santosh Kumar Agrawala**  
Member

  
**Meenakshi Datta Ghosh**  
Member



  
**Makarand Lele**  
Presiding Officer