

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

ICSI/DC/342/2016

Order Reserved on: 12<sup>th</sup> March, 2019

Order issued on: 25 APR 2019

Shri Hasmukh B Baraiya

Complainant

Vs.

Shri Manan Chandraprakash Bhavasar, FCS 7009

Respondent

**CORAM:**

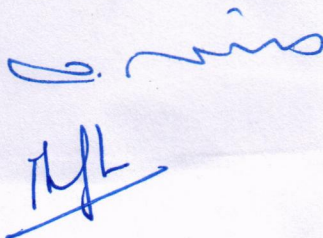
Shri Ranjeet Pandey, Presiding Officer  
Shri Nagendra D. Rao, Member  
Shri B Narasimhan, Member  
Mrs. Meenakshi Datta Ghosh, Member

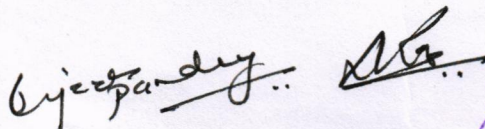
**Present**

Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Vikash Shrivastava, Deputy Director  
Complainant in person

**FINAL ORDER**

1. Shri Hasmukh B Baraiya, (hereinafter referred to as 'the Complainant') has filed a complaint dated 1<sup>st</sup> February 2016 in Form 'I' against Shri Manan Chandraprakash Bhavasar, FCS-7009, (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* alleged against the Respondent as follows:-
  - (i) that the Respondent with malafide intention has joined hands with the Shri Subrat Rath to damage his interest and creating hurdles in issue of duplicate shares and made conspiracy in fabrication of documents with the alleged third party.
  - (ii) the Respondent has not disclosed the correct status to Stock Exchange regarding the pendency of grievance of the complainant.
  - (iii) the Respondent has not informed about the change of his professional address to the ICSI.
3. Pursuant to Rule 9 of the Rules, the Director (Discipline) after examining the complaint, written statement, rejoinder and other material on record, formed her *prima-facie*







opinion dated 12<sup>th</sup> June 2017 wherein the Director (Discipline) held the Respondent not guilty for the allegations stated at Sl. No (i) & (ii) respectively in para 2.

4. Regarding allegation at Sl. No (iiii) stated in para 2, the Director (Discipline) opined that the Respondent has communicated to the Institute about the change of professional address after 6 months of change of his employment i.e. on 20<sup>th</sup> February, 2016 and the same is in contravention of Regulation 3 of the Company Secretaries Regulations, 1982. Hence, The Respondent is *prima-facie* guilty of professional misconduct under Item (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980.
5. The Disciplinary Committee in its meeting held on 30<sup>th</sup> June, 2017 has considered the *prima-facie* opinion of the Director (Discipline) and after considering *prima-facie* opinion, material on record and all facts and circumstances of the matter agreed with *prima-facie* opinion of the Director (Discipline) that the Respondent is guilty of professional misconduct under Item(1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 for violating Regulation 3 of the Company Secretaries Regulations, 1982 as he has not communicated change of his professional address to the Institute within one month of change of address.
6. The Disciplinary Committee decided to proceed further in the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional Misconduct and Conduct of Cases) Rules 2007 read with the Company Secretaries Act, 1980.
7. The Respondent in his written statement dated 27<sup>th</sup> September, 2017 to the *prima-facie* opinion of the Director (Discipline) has *inter-alia* stated the he has joined M/s Symphony Limited on 13<sup>th</sup> August, 2015 and took charge as Company Secretary & Compliance Officer of the Company w.e.f 1<sup>st</sup> November, 2015 and sent email to the Institute on 16<sup>th</sup> February, 2016 along with copy of DIR-12 and challan intimating his joining of M/s Symphony Limited w.e.f 1<sup>st</sup> November, 2015. The Respondent has admitted that there was a delay of 2.5 months which was unintentional and there was procedural lapse on his part.
8. Copy of written statement dated 27<sup>th</sup> September, 2017 of the Respondent to the *prima-facie* opinion of the Director (Discipline) was sent to the Complainant by the Respondent and also by the Disciplinary Directorate vide letter dated 5<sup>th</sup> January, 2018 for submitting his rejoinder. However, no rejoinder to the written statement to the *prima-facie* opinion has been received from the Complainant.
9. The Complainant and the Respondent have been called upon to appear for hearing before the Disciplinary Committee on 12<sup>th</sup> March, 2019.
10. The Respondent appeared in person. No communication was received from the Complainant and none appeared on his behalf.
11. The Respondent made written oral submissions before the Disciplinary Committee wherein he has stated that delay in intimation of professional address was purely procedural and was unintentional. It was due to mental stress which he was undergoing during the period due to extreme pressure on him by the Complainant. Due to the pressure, the Respondent was not able to function well. The Respondent



has further stated that he has resigned from M/s. Symphony Limited and he was relieved from services w.e.f. 30<sup>th</sup> June, 2016.

12. The Respondent has further stated that the Complainant has made all attempts and pressure on him by filing cases with Hon'ble Company Law Board and with the Institute so that he could get his shares. The Complainant has filed a petition under Section 59 of the Companies Act, 2013 before Hon'ble Company Law Board, Mumbai Bench for claiming his shares wherein Respondent was also made a party. The matter was transferred to Hon'ble NCLT, Ahmadabad Bench and the Bench vide its Order dated 26<sup>th</sup> April, 2017 dismissed the petition *inter-alia* stating that no material on record to substantiate the allegations made by the Complainant against the Respondent. The Respondent has further submitted that the Complainant preferred an appeal before Hon'ble NCLT, New Delhi against the aforesaid Order dated 26<sup>th</sup> April, 2017 which was also dismissed vide order dated 17<sup>th</sup> August, 2017. The Respondent has further submitted that a dispute over ownership of shares is *sub-judice* before Hon'ble Court of 1<sup>st</sup>, Civil Judge (Jr. Division), Alipore and M/s Symphony Limited shall do the needful as per the Orders of Hon'ble Court.
13. The Respondent apologized before the Disciplinary Committee and ensured that he would comply with the requirement of intimating to the Institute within the time prescribed in case of change in professional address in future, without fail.
14. The Disciplinary Committee after considering the material on record and fact and circumstances of the matter felt that though there was delay on part of the Respondent in communicating his professional address to the Institute, there was no *mala-fide* intent of the Respondent and nothing has been found on record to show that it has caused any harm to anybody. In view of the same, the Disciplinary Committee has taken broader view in the matter and is of the opinion that the Respondent is "**Not Guilty**" of Professional misconduct under the Company Secretaries Regulations, 1982.

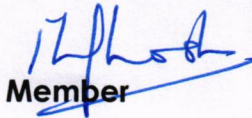
Accordingly, the matter is closed and the complaint is disposed of.



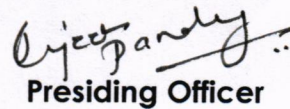
Member



Member



Member



Presiding Officer