

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
ICSI/DC: 116/2012

**IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER
MISCONDUCT**

Date of Decision: 30th July, 2013

M/s. Sachin Infra Management Limited

....Complainant

Vs

Shri S Swaminathan

....Respondent

ORDER

1. A complaint in Form-I dated 2nd January, 2012 was filed under Section 21 of the Company Secretaries Act, 1980 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 M/s. Sachin Infra Management Limited (hereinafter referred to as the 'Complainant Company') against Shri S Swaminathan, FCS -3635 (CP No. 4581) (hereinafter referred to as the 'Respondent').
2. The Complainant Company in its complaint *inter-alia* alleged that the Respondent has illegally, unlawfully, intentionally, wilfully and fraudulently certified and uploaded following two Form 32 (SRNB21588181) and (SRN B21593223) dated 28th September, 2011 for M/s. Sachin Infra Management Limited.
 - (i) One pertaining to the removal of seven directors u/s 284 the Companies Act, 1956 and appointment of five directors; and



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- (ii) The other pertaining to the appointment of two directors under Article 80 of the AOA and Section 169 and 284 of the Companies Act, 1956.

The above forms were certified and filed on the basis of the EOGM held illegally and fraudulently convened by the requisitionists by the Notice dated 8th September, 2011 purportedly held on 28th September, 2011.

3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 23rd January, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 16th February, 2012.

The Respondent at the outset denied the averments made by the Complainant Company and *inter-alia* stated that on 30th September, 2011 Shri Jagdishbhai S. Ramani, a director of the Complainant Company visited his office and stated that he had convened a requisition meeting for the removal of seven directors and appointment of seven directors in their place. He also gave him a letter asking him to file Form 32 in this regard. The Respondent further stated that he had verified the following before filing the alleged two Form 32:

- A) The notice of the requisitions submitted to the company on 17th August, 2011.
- B) The letter dated 5th September, 2011 demanding details of latest list of the members with their addresses.
- C) A copy of the notice of the EOGM dated 8th September, 2011 signed by Shri Jagdishbhai S. Ramani along with enclosures.
- D) Copies of the speed post receipts for service of notice to all the members in the company.
- E) Copy of the list of members as on 27th September, 2010 as per the Annual Return available in the website.



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- F) Copies of the notices served under section 284(3) of the Companies Act, 1956 to the directors sought to be removed.
- G) Original attendance register for the EOGM held on 28th September, 2011.
- H) Register of Ballot papers with votes cast for or against the resolution.
- I) Scrutinizers' Consolidation statement.
- J) Order dated 26th September, 2011 passed by the Company Law Board (CLB) in the matter.
- K) Minutes of the EOGM held on 28th September, 2011.
- L) CD containing the video recording of the proceedings at the meeting.

4. The Respondent further stated that Shri Jagdishbhai S. Ramani had also shown him various letters in which he disputed the legal right of the company to convene and conduct the EOGM on 30th September, 2011 after the issuance of notice by him i.e. the requisitionists. He also explained the Respondent that he has filed a Petition No.78 of 2011 under section 397/398 of the Companies Act, 1956 with the CLB, Mumbai Bench, and no *ad- interim* orders were passed restraining the requisitionists from convening the EOGM on 28th September, 2011. He further informed the Respondent that the Complainant Company had filed a miscellaneous application on 26th September, 2011 *inter-alia* praying for *ad interim* injunction against the convening the EOGM on 28th September, 2011 by the requisitionists. But the CLB did not entertain the said application.
5. The Respondent further stated that as a professional, before certifying two Forms 32, he had verified from the website of the MCA that Shri Jagdishbhai S. Ramani was continuing as a director on that date and after examining various papers he was satisfied that an EOGM was held on that date and the resolutions proposed were duly passed.



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6. The Respondent further stated that Shri Jagdishbhai S. Ramani shown him the purported notice dated 29th August, 2011 of the company, his objection letter dated 8th September, 2011, Addendum to the notice by the company dated 12th September, 2011 rectifying the defect pointed out by Shri Jagdishbhai S. Ramani and his letter dated 15th September, 2011 objecting to hold the EOGM on 30th September, 2011.
7. The Respondent further stated that he relied on the documents produced before him by Shri Jagdishbhai S. Ramani, Director of the company. As a PCS with abundant caution, he verified the supporting documents and certified the said forms. There is no irregularity or illegality in the certification.
8. The Respondent further stated that the Complainant Company admitted that the requisitions were deposited on 17th August, 2011 and the Complainant Company allegedly convened an EOGM at its board meeting held on 29th August, 2011. If these requisitions were allegedly defective as canvassed out in this complaint, how could the Complainant Company have convened an EOGM on 30th September, 2011? Moreover, if these requisitions were defective, why the Complainant Company did not point out the defects to the requisitionists themselves? Further, similar resolutions were passed by these companies at the time of giving consent affidavits for the filing of the company petition and the Complainant Company has disputed those affidavits. When these resolutions were used for a requisitioned meeting, the company would act on those resolutions but when the company petition was made on similar resolutions, the Complainant Company would point out defects not only in the resolutions for consent affidavits but also in the requisitions themselves.
9. The Respondent further stated that the requisitionists were entitled to convene an EOGM under section 169 (6) (a) of the Companies Act, 1956 on the failure of the company to convene the EOGM. The Respondent



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further stated that there were no glaring discrepancies in the Notice dated 17th August, 2011. The Complainant Company did not point out any discrepancies in the requisitions notice before the issuance of the EOGM notice neither on 8th September, 2011 nor at any time thereafter. The Respondent further stated that regarding the complaint or any action proposed against him in the EOGM and resolution passed at the EOGM purportedly held on 30th September, 2011, the Complainant Company had no *locus-standi* to pass any such resolution as there was no notice in this regard to the members and the alleged notices dated 29th August, 2011/12th September, 2011 did not mention initiation of proceedings against him as one of the items of the agenda. A requisitioned meeting cannot transact any item of business not requisitioned. As per section 172(1) of the Companies Act, 1956, statement of the business to be transacted at the EOGM should be mentioned in the notice of the meeting in the absence of which, the resolutions passed in this regard are illegal and void *ab-initio*.

10. The Respondent further stated that there is a dispute between the directors of the company and he is being dragged unnecessarily between the directors of the company.
11. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant Company vide letter dated 22nd February, 2012 asking him to submit the Rejoinder followed by a reminder dated 20th March, 2012. The Complainant Company submitted the Rejoinder dated 13th March, 2012 (received on 22nd March, 2012) wherein it *inter-alia* stated that the Respondent has tried to camouflage the true facts to hide his lapses while certifying the said forms. The Notice of the requisition dated 11th August, 2011/ 17th August, 2011 it stated that Complainant Company had received the notice of requisition on 11th August, 2011/ 17th August, 2011 from Shri Jagdishbhai S. Ramani under Article 80 of the Articles of Association read with Section 169 and 284 of



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the Companies Act, 1956. In view of the statutory provisions contained in Section 169 (6) of the Companies Act, 1956, the Complainant Company overlooked the discrepancies and illegalities in the notice sent by Shri Jagdishbhai S. Ramani and Notice dated 20th August, 2011 *inter-alia* to consider the notice sent by the requisitioner. The provision of Section 169(6) provides that if the Board, does not within 21 days from the date of deposit of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of those matter on a day not later than forty five days from the date of deposit of the requisition, the meeting may be called by the requisitionists themselves. The Respondent did not verify the validity and legality of the Notice of requisition which contained various discrepancies.

- (a) The Resolution passed by the Board of Directors of the respective companies annexed to the Notice of requisition are forged, fabricated and anti-dated as the Resolutions are of the same day, date and time i.e. Thursday, 11th August, 2011 at 11.00 am. It is highly improbable that all the companies would have held Board meeting at their registered offices on the same day, date and time. None of the Resolutions are on the Letter head of the respective companies. The Resolutions passed by all the companies are identical and contain similar error. Further, all the resolutions except the resolution of M/s. Vardhaman Organics Pvt. Ltd. and M/s. Mahavir Sybthesis Pvt. Ltd. are typed with the same font size.
- (b) The Requisition Notice bears date of Notice as 11th August, 2011 and below the said date 17th August, 2011 has been mentioned by hand. It is highly improbable that the Board of Directors of all the Companies held the Board Meetings at their respective Registered Offices on 11th August, 2011 at 11:00 a.m. and had provided certified copies of the said Resolutions to



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Shri Jagdishbhai S. Ramani on the same day and the Requisition Notice could have been prepared on that date itself i.e. 11th August, 2011 as requisition notice contained signature of 34 Shareholders which was not practically possible.

Some persons have signed the Requisitionist Notice as Authorized Signatory/Manager on behalf of some of the companies. However, the Resolutions allegedly passed by these companies do not authorize any such person to sign the Notice of Requisition on behalf of the concerned companies.

12. The Complainant Company further stated that the Respondent further did not verify the legality and validity of the Notice of EOGM dated 8th September, 2011 sent by Shri Jagdishbhai S. Ramani and failed to find that the said Notice was patently illegal and bad in law and hence void and non-est. The Respondent grossly erred in not checking the compliance of provisions of Section 169(6) of the Companies Act, 1956. Shri Jagdishbhai S. Ramani had sent the Notice of Requisition u/s 169 of the Companies Act, 1956 on 17th August, 2011 to the Complainant Company. In terms of provisions of section 169(6) of the Companies Act, 1956, the Complainant Company immediately acted on the said Notice and sent the Notice dated 20th August, 2011 to its directors calling its Board Meeting on 29th August, 2011 i.e. within 21 days from the date of receipt of the Requisitionists Notice date 17th August, 2011 and also held the EOGM on 30th September, 2011 i.e. within 45 days from the date of receipt of the said notice. The Notice dated 29th August, 2011 was sent to all the Shareholders of the Complainant Company. Hence, Shri Jagdishbhai S. Ramani was not entitled to send the notice of the EOGM on 8th September, 2011 to convene the Requisitionists Meeting on 28th September, 2011. The Respondent however did not verify the following Forms filed by the Complainant Company which were also displayed on the same website under the icon "View Public Documents".



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(a) Form 23 (SRN B 19640887) u/s 192 of the Companies Act, 1956 for appointment of Shri Manilal Patel as the Managing Director of the Complainant Company and Special Resolution passed by the Board of Directors of the Complainant Company u/s 81 (1A) of the Companies Act, 1956 authorizing Board of Directors to issue and allot Equity Shares of Rs. 10 each not exceeding Rs. 50,000 of Rs. 10 each.

(b) Form 2 (SRN S05891718) along with list of allottees to whom 50,000 equity share of Rs. 10 each were allotted by the Board of Directors in its meeting held on 29th August, 2011.

13. The Complainant Company further stated that the Notice dated 8th September, 2011 signed by Shri Jagadishbhai S Ramani was not sent to all the members of the Complainant Company as the Respondent had not verified Forms 23 and 2 filed by the Complainant Company which were displayed on the MCA website and should have been seen by the Respondent when he checked various documents filed by the Complainant Company for certifying the captioned Forms 32. It is denied that there was no Board Meeting held on 29th August, 2011 and the records were fabricated by the Complainant Company as falsely alleged. It is submitted that the said Board Meeting was attended by 11 out of the 15 directors of the Complainant Company.. The Board of directors of the Complainant Company had duly proceeded to convene the EOGM within 21 days by sending Notice dated 20th August, 2011 and Board meeting on 29th August, 2011 i.e. was duly held within 21 days from the date of deposit of the requisition i.e. 17th August, 2011, the Requisitionist was not entitled to convene the EOGM by themselves. It is submitted that the Respondent had failed to verify whether the notice dated 8th September, 2011 sent by Shri Jagadishbhai S Ramani was valid and if so, whether it was sent to all the shareholders of the Complainant Company as on 08th September, 2011. It is denied that there was any



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inaction on the part of the Complainant Company till 7th September, 2011 in respect of requisition dated 17th August, 2011. Further, the original notice dated 29th August, 2011 and addendum notice dated 12th September were sent within the period prescribed in Article 82 of the Articles of Association of the Complainant Company. It is further stated that the Complainant Company had also issued Public Notice in two widely circulated News Papers of Surat city i.e. Times of India and Gujarat Samachar on 16th September, 2011 and 18th September, 2011 intimating the shareholders about the EOGM convened by the Complainant Company on 30th September, 2011 and informing them that the Meeting convened by Shri Jagadishbhai S Ramani on 28th September, 2011 was illegal. Hence, the Respondent cannot feign ignorance that he was not aware that the Meeting held on 28th September, 2011 by Shri Jagadishbhai S Ramani was illegal. The Complainant Company has denied that the Notice sent by the Complainant Company convening the EOGM itself was illegal as Article 82 of the Articles of Associations authorizes to issue the Notice of not less of 14 days to convene the General Meeting of the Complainant Company. It is submitted that the Notice dated 29th August, 2011 and Addendum Notice dated 12th September, 2011 were sent well in advance within a period 14 clear days for the EOGM held on 30th September, 2011. It is denied that the Addendum Notice dated 12th September, 2011 was not signed by Shri Magan Bhai G Patel as alleged. It is denied that the Addendum Notice issued by the Complainant Company was a time barred notice and was also fabrication and forgery, as alleged. It is submitted that the Notice dated 8th September, 2011 was sent by Shri Jagadishbhai S Ramani and not by the Complainant Company. In the Addendum Notice itself the date of Notice of the EOGM sent by the Complainant Company is mentioned as 29th August, 2011. However, due to typographical error in Para 4 of the Note to the Addendum Notice, the date of said Notice dated 29th August, 2011 is typed as 08th September, 2011. It is submitted that the Complainant Company had not sent a notice on 8th September,



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2011 to its shareholders and hence, the question of sending another alleged forged addendum Notice on the said date did not arise. It is submitted that the several documents listed in the reply of the Respondent were forged, fabricated and anti-dated and hence, the contention of the Respondent that he was satisfied with the same only proves his collusion with Shri Jagadishbhai S Ramani. It is further submitted that since the removal of the existing 7 (Seven) directors and appointment of 7 (Seven) persons as directors of the Complainant Company in place of those removed at the illegally and fraudulently held EOGM on 28th September, 2011 were illegal and since the Respondent had illegally and fraudulently certified captioned Forms 32 certifying the said illegal Resolutions, the share holders of the Complainant Company exercised their inherent powers to undo the fraudulent act committed by the Respondent in collusion with Shri Jagadishbhai S Ramani which resulted in deletion of the names of existing directors of the Complainant Company on the MCA website. The Shareholders of the Complainant Company in their own wisdom had authorized Mr. Maganbhai G Patel to reinstate all the seven directors who were illegally and fraudulently shown as removed and to remove all the seven persons illegally and fraudulently shown as appointed as directors in the captioned Forms 32 illegally and fraudulently certified by the Respondent and to initiate appropriate proceedings against them.

14. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record opined *prima-facie* that there is dispute amongst the directors of the Complainant Company and there are two groups in the Complainant Company. One group (Shri Jagadishbhai S Ramani) has convened an EOGM on 28th September, 2011 and the other group has convened an EOGM on 30th September, 2011 both the EOGM were held pursuant to the requisitionists dated 17th August, 2011. Further, there is no irregularity in the certification and since there was inaction on the part of the



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Complainant Company till 7th September, 2011 in respect of requisitions deposited on 17th August, 2011 amounting to clear violation of the law regarding meetings to be convened on the basis of requisitions. Hence, the requisitionists were entitled to convene EOGM under section 169 (6) (a) of the Companies Act, 1956 on the failure of the company to convene an EOGM. Therefore, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.


15. The Disciplinary Committee on 30th July, 2013 considered the *prima-facie* opinion dated 16th July, 2013 of the Director (Discipline); material on record and agreed with the *prima-facie* opinion of the Director (Discipline). The Disciplinary Committee in view of the circumstances and totality of the issues involved in this matter held that the Respondent is not 'Guilty' of professional or other misconduct under the Company Secretaries Act, 1980; and closed the matter.

Accordingly, the complaint stands disposed-off.


(S K Tuteja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member


(S N Ananthasubramanian)
Presiding Officer

Date; 13th January, 2014
New Delhi;

