

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
ICSI/ DC: 124/2012

Date of Decision: 4th June, 2013

Shri Girdharlal B Viramgama

...Complainant

Vs

Shri Kunjal Dalal (FCS-3530)

....Respondent

ORDER

1. A complaint in Form I dated 22nd 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 Shri Girdharlal B Viramgama (hereinafter referred to as 'the Complainant') against Shri Kunjal Dalal (FCS-3530) (CP No. 3863) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent despite having the knowledge of the pending dispute between two groups of the management of the company, has certified Form 32 pertaining to his removal from the directorship of the company. It is pertinent to note that in the minutes of the meeting attached along with Form 32, the directors and shareholders shown present in the minutes of the meeting are under dispute and the Respondent is fully aware of the said dispute as he has been appearing before the CLB. The said facts have not been disclosed by the Respondent before certifying the said Form. He has further alleged that no procedure laid down under Section 284 of the Companies Act, 1956 has been followed by the company as there was no Board Meeting, no intimation for General Meeting and no special notice was received by him. He also stated that he has not transferred any of his shares in M/s. Balaji Embroidery Pvt. Ltd., and has not signed any share transfer form and in spite of knowing that no share transfer form is available with the company, the Respondent has certified the Annual Return as on 9th September, 2011 stating that the Complainant has transferred his shares to the fellow directors.



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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 28th February, 2012 calling upon him to submit the written statement. The Respondent submitted the written statement dated 9th March, 2012.
4. The Respondent at the outset has denied the allegations and has *inter-alia* stated that the Complainant should have approached the company for redressal of his complaint regarding his rights as a director or shareholder if same appears to have been taken away illegally. It is the primary duty of the company to follow the procedures laid down in the Companies Act, 1956 and in case of any alleged violation or deviation; the Complainant should first clarify the matter with the company.
5. The Respondent has further stated that the Complainant has failed to show the material facts which have not been disclosed by him. The duty of disclosure of the material statement is at the time of making report or a statement. The Respondent has further stated that while certifying Form 32 a professional is not required to make a report or a statement and is only required to certify the form to the extent of prescribed certificate forming part of Form 32. He further stated that the copy of the minutes of EOGM wherein the resolution for removal of the director was passed has been attached with the alleged Form 32. It is settled law that the minutes/resolutions are the conclusive evidence. It is thus clear that there is no misconduct for disclosure of the material fact.
6. The Respondent has further stated that with regard to compliance of procedural requirement of Section 284 of the Companies Act, 1956, a special notice dated 29th August, 2011 was received by the company from Shri Arvind Soni a shareholder of the company holding 64630 shares. Pursuant to Section 284(3) of the Companies Act, 1956, a copy of the said notice was sent to Shri Girdharlal B Viramgama by the company vide letter dated 30th August, 2011.



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7. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 13th March, 2012 asking him to file the Rejoinder. The Complainant filed the Rejoinder dated 3rd April, 2012.
8. The Complainant has *inter-alia* stated that the Respondent in his written statement has admitted to have known about the pending dispute amongst the management of the company and non compliance of Section 284 of the Companies Act, 1956. He while reiterating the contents of his complaint has stated that the Respondent was appearing on his behalf before the CLB in the company Petition No. 42/2011 filed by the other group. Hence, he was aware about the dispute in the management with regard to the transfer of shares, change in directorship and appointment of wrong directors.
9. The Director (Discipline) pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and observed that the Respondent had certified and filed Form 32 in respect of cessation of Shri Girdharlal B Viramgama, the Complainant as director from the Board of Directors of M/s. Balaji Embroidery Pvt. Ltd., despite having knowledge about the dispute amongst the management of the company as evident from the order dated 12th May, 2011 of the CLB, Mumbai wherein the Respondent had appeared on behalf of the Complainant. It was also observed that the Respondent has failed to notice that the Complainant was removed from the directorship of the company without giving him proper opportunity of being heard, which is in violation of Section 284(3) of the Companies Act, 1956 as the notice dated 30th August, 2011 sent to the Complainant did not specify the date, time, place and the kind of the meeting. The Director (Discipline), in view of the forgoing opined that there was laxity on the part of the Respondent while certifying the said Form 32 and therefore, *prima-facie* the Respondent is 'guilty' of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence and was grossly negligent in the conduct of his professional duties.
10. The Disciplinary Committee on 30th October, 2012 considered the *prima-facie* opinion of the Director (Discipline) dated 13th September, 2012 and advised the



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Director (Discipline) to investigate the matter further as to whether the compliance of Section 284 of the Companies Act, 1956 was done while certifying Form 32 in respect of cessation of directorship of the Complainant from M/s. Balaji Embroidery Pvt. Ltd. Accordingly, vide letter dated 6th November, 2012 the Respondent was called upon to specify as to whether compliance of Section 284 of the Companies Act, 1956 was done while certifying Form 32 pertaining to the cessation of directorship of the Complainant from M/s. Balaji Embroidery Pvt. Ltd. The Respondent vide letter dated 17th November, 2012 submitted the reply.

11. The Disciplinary Committee on 10th December, 2012 considered the reply submitted by the Respondent vide letter dated 17th November, 2012 and directed that a copy of the notice convening the EOGM on 5th September, 2011 at 11:00 AM be called from the company. Accordingly, vide letter dated 13th December, 2012, M/s. Balaji Embroidery Pvt. Ltd., was asked to submit the copy of the notice convening the EOGM on 5th September, 2011 at 11.00 AM.
12. The Disciplinary Committee on 17th January, 2013 noted that no reply was received from M/s. Balaji Embroidery Pvt. Ltd. The Committee thereafter, directed that a copy of the notice convening the EOGM of M/s. Balaji Embroidery Pvt. Ltd., on 5th September, 2011 at 11:00 AM, stated to have been sent to the Complainant be sought from the Respondent.
13. Accordingly, letters dated 23rd January, 2013 were sent to the Managing Director, M/s. Balaji Embroidery Pvt. Ltd., and Shri Kunjal A Dalal, the Respondent asking them to submit the copies of the notice convening the EOGM of M/s. Balaji Embroidery Pvt. Ltd., on 5th September, 2011 at 11:00 AM along with proof of dispatch/ delivery of the Notice sent to Shri Girdharlal B Viramgama, the Complainant. Since, no reply was received, the reminders were sent vide letters dated 6th February, 2013 asking them to submit the said documents.
14. The Respondent vide letter dated 5th February, 2013 submitted the copies of the EOGM Notice, copy of Share Transfer Deed, Explanatory Statement and also *inter-alia* stated that the notice of the EOGM was not required to be sent to the



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Complainant as he was not a shareholder of the company on the date of EOGM / issue of notice of the EOGM.

15. The Disciplinary Committee on 19th February, 2013 noted the letter dated 5th February, 2013 of the Respondent and after considering the material on record; agreed with the *prima-facie* opinion dated 13th September, 2012 of the Director (Discipline) that there was laxity on the part of the Respondent while certifying the said Form 32 and therefore, the Respondent is 'Guilty' of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence and was grossly negligent in the conduct of his professional duties. The Disciplinary Committee decided to proceed further in the matter in accordance with Chapter V of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.
16. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) dated 13th September, 2012 was sent to the Respondent *vide* letter dated 20th February, 2013 asking him to file the written statement along with supporting documents and list of witnesses, if any, to the Disciplinary Directorate with a copy to the Complainant by 6th March, 2013. The *prima-facie* opinion of the Director (Discipline) was also sent to Complainant *vide* letter dated 20th February, 2013 asking him to submit the rejoinder to the written statement of the Respondent along with the supporting documents and list of witnesses, if any, by 20th March, 2013.
17. The Respondent *vide* letter dated 3rd March, 2013 had requested for extension of two weeks for filing the written statement which was granted to him up to 20th March, 2013 *vide* letter dated 7th March, 2013. A copy of the said letter was also sent to the Complainant asking him to submit the rejoinder by 4th April, 2013. The Respondent *vide* letter dated 17th March, 2013 submitted the written statement with a copy to the Complainant. The Complainant *vide* letter dated 8th April, 2013 submitted the rejoinder to the written statement.



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18. The Disciplinary Committee on 22nd April, 2013 considered the written statement and the rejoinder received from the parties; and the material on record and decided to call the parties to appear before its next meeting. Accordingly, *vide* letters dated 6th May, 2013 the parties were called upon to appear before the Disciplinary Committee at its meeting on 4th June, 2013.
19. The Respondent *vide* letter dated 14th May, 2013 requested for a copy of the rejoinder along with supporting documents submitted by the Complainant in response to his written statement. A copy of the rejoinder was sent to the Respondent *vide* letter dated 20th May, 2013. The Complainant *vide* letter dated 27th May, 2013 stated that he had not received the Share Transfer Form as requested by him and requested to consider all his pleadings.
20. The Respondent along with Mr. Jitender Bhagat, FCS-3032 appeared before the Disciplinary Committee on 4th June, 2013 and made oral submissions. The Disciplinary Committee after hearing the submissions made by the Respondent asked him whether an opportunity of hearing was provided to the Complainant pursuant Section 284(3) of the Companies Act, 1956, and in compliance to the same whether the notice issued to the Complainant had all the requisite information i.e. date, time and venue of the meeting where the proposal to remove him from the directorship was to be considered. The Respondent stated that a notice was sent to the Complainant for the Board meeting, but it did not contain the date, time and venue of the meeting. The Respondent then submitted in writing that there was laxity/lapses on his part while certifying and filing Form 32 in respect of cessation of Shri Girdharlal B Viramgama, the Complainant and requested the Disciplinary Committee for a lenient view.
21. The Disciplinary Committee considered the submissions made by the Respondent and the material on record; came to the conclusion that the Respondent is 'Guilty' of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he failed to exercise due diligence and was grossly negligent in the conduct of his professional duties as a Company Secretary while certifying and filing Form 32 in respect of cessation of



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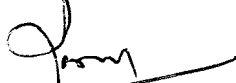
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Shri Girdharlal B Viramgama from the directorship of M/s. Balaji Embroidery Pvt. Ltd., and communicated its decision to the Respondent.

22. Thereafter, the Disciplinary Committee gave an opportunity of being heard to the Respondent before passing any order under Section 21B (3) of the Company Secretaries Act, 1980. The Respondent accepted the decision of the Committee and requested for leniency.
23. The Disciplinary Committee considered the oral and written submissions made by the Respondent; the material on record; the nature of issues involved and in totality of the circumstances of this case, passed the following order:

'Reprimand'

This order shall be effective after 60 days of the communication of this order to the Respondent.



(S Balasubramanian)
Member



(B Narasimhan)
Member



(S N Ananthasubramanian)
Presiding Officer

New Delhi

