

BEFORE THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

DC: 128/2012

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 4th June, 2013

Shri Siyad Sirajudeen

....Complainant

Vs

Shri Baiju Ramachandran
Shri A S Narayanan

....Respondent 1

....Respondent 2

ORDER

1. A complaint in Form I dated 9th March, 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 Siyad Sirajudeen (hereinafter referred to as the 'Complainant') against Shri Baiju Ramachandran, ACS - 16505 (CP No. 7071) and Shri A S Narayanan, ACS - 6972 (CP No. 8147)(hereinafter referred to as the 'Respondent 1 & 2 respectively).
2. The Complainant has *inter-alia* alleged that the Respondent 1 has acted in collusion with the other directors of M/s. Devi Scans Private Limited and unlawfully removed him from the directorship of the said company w.e.f. 13th July, 2010 by certifying and filing Form 32. He further alleged that the Respondent 1 has also colluded with the directors of the said company and intentionally amended the Articles of Association of the said company in association with the



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Respondent 2 only for illegally removing him from the directorship of the said company and also incorporated the provisions in Articles of Association which violates the provisions of the Companies Act, 1956, without giving him the notice of the AGM for amending the Articles of Association by passing only Ordinary Resolutions instead of Special Resolution. The said Form 23 has been certified by the Respondent 2. The Complainant further stated that presently he is holding 16.5% of the paid up share capital of the company along with his family members and the company owes him Rs. 1, 13, 00, 000/- as per the Balance Sheet of the company as on 31st March, 2010 and this amount has been shown as Rs. 1, 12, 80,000/- as unsecured loan payable to him and this money has not been given back to him by the company.

3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent 1 & 2 vide letters dated 13th March, 2012 calling upon them to submit their written statements followed by reminders dated 9th April, 2012. The Respondents 1 & 2 submitted their written statements dated 31st March, 2012 (Received on 2nd & 13th April, 2012, respectively).
4. The Respondent 1 in his written statement at the outset has denied the averments made by the Complainant and has stated that he had certified Form-32 dated 4th August, 2010 for cessation of the directorship of the Complainant from the Board of Directors of M/s. Devi Scans Private Limited on the basis of the records made available to him along with Form 32 which demonstrate that the term of office of the directors of the said company except that of the Managing Director had expired on 13th July, 2010 and in the



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consequent election to the Board of Directors, the Complainant was not re-elected. He further stated that he had verified Form 32 on the basis of the minutes of the AGM held on 13th July 2010. The extracts of the relevant resolution certified by the Chairman & Managing Director and two other directors were also attached to Form 32. The notice of the AGM was also sent to the shareholders of the company in respect of the AGM held on 13th July, 2010 specifying date, time and venue and also incorporating the business proposed to be carried out in the meeting in detail especially regarding election of Board of Directors and proposed amendment of the Articles of Association.

5. The Respondent 1 further stated that as a Company Secretary, while certifying Form 32, his duty was limited to the verification of the particulars therein from the records of the company irrespective of whether those particulars contain right or wrong decisions. He, as a Company Secretary, is not authorised either to sit in judgement on the resolutions passed by the AGM or the Board of Directors of the company. If any of such resolutions is felt illegal or unacceptable to the Complainant, he is free to dispute the same in appropriate forum. He also stated that the Complainant who has been mostly in abroad, did not attend the meeting of the Board of Directors consecutively so as to attract section 283(1)(g) of the Companies Act, 1956 and that AGM held on 13th July, 2010 did not re-elect him on his retirement but had authorised the Managing Director to file Form 32 in the matter of cessation of the Complainant as per section 283(1)(g) of the Companies Act, 1956 and clause 29(b) of the Articles of Association pertains to the tenure of directors of the company. However, column 5 of Form 32 is filled



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with the word "Retirement". Hence, it is evident that there was no removal but only retirement by operation of law in the case of the Complainant.

6. The Respondent 1 has further stated that the second allegation in the matter of amendment of the Articles of Association has no nexus at all with him. It was the AGM of the company which passed the resolutions amending the Articles of Association. Either he or another professional who verifies Form 23 is not empowered to alter resolutions. Further, such verifying professional has no role in passing of the disputed resolution. He further stated that the Complainant cannot claim any special right to continue as director simply because he holds a particular percentage of shares. Amount, if any due from the company also does not bestow any special right on the Complainant to hold office beyond the expiry of the term without being re-elected. The cessation of the Complainant from the directorship does not affect the debtness if any, of the company to him. The professionals who certify the returns mentioned in the complaint are not at all concerned with the amounts advanced by the directors. The Complainant is free to realise the said dues to him by the company in accordance with the terms of agreement with the company at the time of advancing the finance.

7. The Respondent 2 in his written statement at the outset has denied averments made by the Complainant in the complaint. He further stated that he being a PCS had certified Form 23 dated 4th August, 2010 in connection with registration of three special resolutions passed at the AGM of M/s. Devi Scans Private Limited held on 13th



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July, 2010. He further stated that the Complainant has raised allegation against other directors of the said company but has not stated as to whether he had brought such allegations before the company court or CLB which empowers to take action against the company and its directors. Further, the directors of the company who are allegedly involved in the so called illegal activities are not made parties in the complaint. He also stated that certification of Form 23 amounts to only statutory compliance u/s 192 of the Companies Act, 1956 and he had verified the particulars in Form 23 and the connected relevant records with due diligence at the time when it was certified. Further, the ROC, Kerala being the Statutory Authority to approve passing of the resolutions has duly approved Form 23; it clearly establishes the fact that only special resolutions have been passed and not ordinary resolutions as alleged in the complaint. The notice of the AGM produced by the Complainant mentions in para 4 under special business "resolutions as ordinary resolutions" which is only a clerical error. From a plain reading of form 23, it is clear that only three special resolutions have been passed at the AGM, which have been duly taken on record by the ROC.

8. The Respondent 2 has further stated that the second allegation regarding amendment to the Articles of Association has no nexus at all with him. It was the AGM of the company which passed the resolutions amending the Articles of Association. This Respondent further stated that while certifying form 23 he is not empowered to alter such resolutions. Further, such verifying professional has no role in passing the disputed resolutions. He also stated that the Complainant cannot claim any special right to continue as director



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simply because he holds particular percentage of shares. Amount, if any due from the company also does not bestow any special right to the Complainant to hold office beyond the expiry of the term without being re-elected. The cessation of the Complainant from the directorship does not affect the indebtedness if any of the company to him. The professionals who certified the returns mentioned in the complaint are not at all concerned with the amounts advanced by the directors. The Complainant is free to realise the said dues to him by the company in accordance with the terms of agreement with the company at the time of advancing finance.

9. Pursuant to sub-rule (4) of Rule 8 of the Rules, copies of the written statements received from the Respondent 1 & 2 were sent to the Complainant *vide* letters dated 16th April, 2012 and 20th April, 2012, respectively asking him to submit the rejoinders. The Complainant submitted his rejoinders dated 9th May, 2012 and 10th May, 2012, respectively in which he has stated that all facts mentioned in the complaint as well as the contents of the subject Form 1 attached thereto are only facts and are absolutely maintainable and also stated that the Respondent 1 has certified Form 32 for his removal from the directorship of the said company knowing the illegalities of the amendments of the Articles of Association of the said company. He also stated that he has already filed a complaint before the ROC, Kerala as an investor complaint dated 17th April, 2010 and the reply to the ROC, Kerala against that investor complaint from the Managing Director of M/s. Devi Scans Private Limited was received by him through the ROC, Kerala on 17th January, 2011.



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10. The Complainant stated that all facts mentioned in the complaint as well as the contents of the concerned Form 1 attached thereto are only facts and are absolutely maintainable. The Complainant further stated that the Respondent 2 has certified and filed Form 23 for filing Special Resolutions passed in the AGM held on 13th July, 2012 of the company and in the same meeting, he was also removed from the directorship of the said company. He also stated that the Respondent 2 has acted in consonance with the Respondent 1 and the other directors of the company for filing Form 23 for recording the alteration of the Articles of Association of the company aiming to remove him from the directorship of the company.
11. 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 Respondents have acted in connivance with the other directors as it appears that the Articles of Association of the said company were amended only for removing Shri Siyad Sirajudeen, the Complainant from the directorship of the said company. For passing a special resolution as per Section 189 of the Companies Act, 1956, the intention to pass a special resolution should be clearly mentioned in the Notice dated 14th June, 2010 calling the meeting. But the same was not given in the Notice issued by the company calling the said AGM on 13th July, 2010. In the instant case only ordinary Resolutions were passed instead of Special Resolution for amendment in the Articles of Association of the company. Furthermore, the Complainant has been removed from the directorship of M/s. Devi Scans Private Limited under Section 283(1) (g) of the Companies Act, 1956



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without giving him an opportunity of being heard as required under Section 284(3) of the Companies Act, 1956. Moreover, the Complainant has denied to have received the Notice calling the said meeting. The Director (Discipline) in view of the foregoing, opined that there has been laxity on the part of both the Respondents i.e. Shri Baiju Ramachandran, ACS – 16505 and Shri A S Narayanan, ACS – 6972 in carrying out their professional duties and therefore, both the Respondents are *prima-facie* 'Guilty' of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as they did not exercise due diligence and were grossly negligent in the conduct of their professional duties.

12. The Disciplinary Committee on 17th January, 2013 considered the *prima-facie* opinion of the Director (Discipline) dated 11th January, 2013; the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondents are 'Guilty' of Professional Misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 and 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.
13. Accordingly, a copy of the *prima-facie* opinion of the Director (Discipline) dated 11th January, 2013 was sent to both the Respondents *vide* letters dated 23rd January, 2013 asking them to file the written statements along with supporting documents and list of witnesses, if any to the Disciplinary Directorate with a copy to the



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Complainant latest by 6th February, 2013. The *prima-facie* opinion of the Director (Discipline) was also sent to Complainant *vide* letter dated 23rd January, 2013 asking him to submit the rejoinders to the written statements along with the supporting documents and list of witnesses, if any, by 20th February, 2013.

14. Shri A S Narayanan, the Respondent No.2 and Dr. Baiju Ramachandran, the Respondent No.1 *vide* letters dated 4th February, 2013 and 5th February, 2013, respectively had submitted their written statements. Further, copies of the written statements received from the Respondents were sent to the Complainant *vide* letter dated 11th February, 2013 asking him to submit the rejoinders by 25th February, 2013. The Complainant *vide* letters dated 25th February, 2013 had submitted the rejoinders to the written statements of the Respondents.
15. The Disciplinary Committee on 22nd April, 2013 considered the written statements and the rejoinders received from the parties; and the material on record and directed 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 on 4th June, 2013.
16. The Complainant did not appear before the Disciplinary Committee. Dr. Baiju Ramachandran, Respondent 1 along with Dr. S Chandra Sekharan, Practising Company Secretary appeared before the Committee and submitted the authority letters given by the Respondent 1 & 2 for representing the case on their behalf. He also submitted letter dated 29th May, 2013 of Mr. A S Narayanan, the Respondent 2 wherein he had stated that he is not in a position



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to travel due to ill-health and requested to consider the written submissions already made by him.

17. Dr. S Chandrasekharan made oral submissions and also submitted the following documents on behalf of the Respondent 1 & 2:


- i. Copy of the notice of the AGM of 2009
- ii. Copy of the notice of the AGM of 2011
- iii. Copy of the notice of the AGM of 2012
- iv. Copy of the Annual Return, 2011
- v. Copy of the Annual Return, 2012
- vi. Copy of the proceedings of Lok Adalat dated 27th January, 2012
- vii. Copy of page No. 1796 of the commentary of Ramayya

18. The Disciplinary Committee considered the submissions made by Dr. S Chandrasekharan, the representative of the Respondent 1 & 2; material on record and in totality of the issues involved in this matter; came to the conclusion that the Respondent 1 & 2 are not guilty of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 and accordingly closed the matter.

Accordingly, the complaint stands disposed off.


(S Balasubramanian)
Member


(B Narasimhan)
Member


(S N Ananthasubramanian)
Presiding Officer

New Delhi

