

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 100/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 19.02.2013, 2013

Shri B Krishnaswamy

Vs



....Complainant

Shri Ramdas T Rajguroo

.....Respondent

ORDER

1. A complaint dated 12th July, 2011 in Form 'I' was filed by Shri B Krishnaswamy (hereinafter referred to as the 'Complainant') against Shri Ramdas T Rajguroo, FCS-2091 (CP. No.2972) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent had certified Form 32 pertaining to cessation of his directorship from M/s. Lakshmi Cement & Ceramics Industries Ltd., and had filed the same on 29th July, 2010 without exercising due diligence and was grossly negligent in the conduct of his professional duties. He had also stated that he was appointed as Director on the Board of M/s. Lakshmi Cement & Ceramics Industries Ltd., on 15th June, 2005 and has never resigned from the directorship of the said company.
3. Pursuant to sub-rule (3) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), a copy of complaint was sent to the Respondent *vide* letter dated 18th July, 2011 asking him to send his written statement. An acknowledgement of the complaint was sent to the Complainant *vide* letter dated 18th July, 2011 wherein he was asked to



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specify as to under which clause of the First/Second Schedule of the Company Secretaries Act, 1980 he has filed the complaint. The Complainant vide e-mail dated 22nd July, 2011 (from the e-mail id of Shri Ramaswamy Belerangappa (vanimine@gmail.com)) had forwarded a letter dated 20th July, 2011 informing the clauses under which he had made the complaint.

4. The Respondent vide letter dated 5th August, 2011 has submitted his written statement wherein he had denied the allegations of the Complainant and had *inter-alia* stated that the alleged Form 32 was certified by him after verifying the fact that there was a Board resolution passed, on the basis of resignation tendered by the Complainant as stipulated in the preamble of the Board resolution.
5. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of written statement was sent to the Complainant vide letter dated 12th August, 2011. The Complainant submitted his rejoinder dated 29th August, 2011.
6. The Complainant in his rejoinder has stated that he has not resigned from the position of director from the Board of Directors and that it is the ethical responsibility of the professional to verify the original resignation tendered. The Respondent verified Form 32 based on the minutes of the Board meeting dated 1st October, 2009 which was not supported by resignation letter which is not sufficient to prove the resignation of a director.
7. The Complainant had further stated that he has intimated ROC, Patna regarding approval of the alleged Form 32 which is pending for disposal and wrong filing always lies with the committer at first instance; the ROC is just a registry to keep the records. He further stated that as per the written statement, though the alleged resignation has been accepted by the Board at its meeting dated 1st October 2009, there was nine months delay



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in filing of alleged Form 32 which has not been explained by the Respondent in the written statement.

8. 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 Form 32 for cessation of directorship of the Complainant on the basis of certified true copy (undated) of the resolution passed by the Board of Directors of the company at its meeting held on 1st October, 2009; copy of the minutes of the meeting of the Board of Directors held on 1st October, 2009; but did not check the resignation letter of the Complainant which is a vital document for verification of Form 32 of such nature. The Director (Discipline) *prima-facie* opined that the Respondent is 'Guilty' of professional misconduct under the Clause (7) of the Part – I of the Second Schedule of the Company Secretaries Act, 1980 as he did not exercise due diligence in the conduct of his professional duties.
9. The Disciplinary Committee at its meeting held on 1st June, 2012 had considered the *prima-facie* opinion dated 2nd May, 2012 of the Director (Discipline) and the material on record and agreed with the *prima-facie* opinion of the Director (Discipline) 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 did not exercise due diligence in conduct of his professional duties 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.
10. Accordingly, a copy of the *prima-facie* opinion of Director (Discipline) dated 2nd May, 2012 was forwarded to the Respondent *vide* letter dated 5th June, 2012 asking him to file the written statement along with supporting documents and list of witnesses, if any, to the Director



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(Discipline) with a copy to the Complainant latest by 18th June, 2012. The *prima-facie* opinion of the Director (Discipline) was also forwarded to the Complainant *vide* letter dated 5th June, 2012 asking him to submit the Rejoinder to the written statement along with the supporting documents and list of witnesses, if any, latest by 28th June, 2012.

11. The Respondent submitted his written statement dated 15th June, 2012 to the *prima-facie* opinion. A reminder letter dated 17th July, 2012 was sent to the Complainant to submit his Rejoinder latest by 27th July, 2012 which he submitted.
12. The Complainant and the Respondent were called upon to appear before the Disciplinary Committee at its meeting on 16th August, 2012 *vide* letter dated 31st July, 2012.
13. Shri Pallav Mongia, Advocate of the Complainant appeared before the Disciplinary Committee at its meeting held on 16th August, 2012 and made oral submissions. The Respondent also appeared in person and submitted the written arguments dated nil and also made oral submissions.
14. The Disciplinary Committee heard the parties. A copy of the written arguments submitted by the Respondent was given to Shri Pallav Mongia, Advocate. The Committee thereafter directed Shri Pallav Mongia to submit his written arguments if any, on the same within two weeks with a copy to the Respondent to submit his comments, if any on the same within one week thereafter.
15. The Advocate for the Complainant submitted the written submissions dated nil on 28th August, 2012. The Respondent *vide* letter dated 18th September, 2012 *inter-alia* informed that there were some typographical error on page 2 (para 5) of his written statement to the complaint. The



A handwritten signature in black ink, appearing to be "Pallav Mongia".

A handwritten signature in black ink, appearing to be "Shri Pallav Mongia".

Respondent submitted his reply *vide* letter dated 21st September, 2012 to the written submissions of the Complainant.


16. The Disciplinary Committee at its meeting held on 30th October, 2012 considered the material on record and decided that the matter be examined further as to whether the resignation letter of the Complainant was essential to be verified by the Respondent along with relevant minutes of the meeting of the Board of Directors of the company before certifying the alleged Form 32 for cessation of the directorship of the Complainant.
17. Accordingly, the matter was examined further and it was observed that as per the filing instructions for Form 32 available on the website of the MCA, in case of cessation w.e.f. 2006, it is mandatory to attach the supporting evidence in case of cessation. The Disciplinary Committee at its meeting held on 10th December, 2012 considered the matter and advised to check as to whether the guidelines issued by the MCA making it mandatory to attach the resignation letter were in force during the period when the Form 32 for cessation of directorship of the Complainant was filed by the Respondent. Accordingly, a clarification in this regard was sought from the MCA *vide* letter dated 2nd January, 2013 followed by reminder dated 23rd January, 2013 and dated 11th February, 2013. However, no reply was received from the MCA.
18. The Disciplinary Committee at its meeting held on 19th February, 2013 after considering the material on record; observed that the Respondent had certified and filed Form 32 for cessation of directorship of the Complainant from M/s. Lakshmi Cement & Ceramics Industries Ltd., on the basis of certified true copy (undated) of the resolution passed by the Board of directors of the company at its meeting held on 1st October, 2009. The Committee also noted that the Complainant in his rejoinder has stated that as per the written statement of the Respondent, though the alleged



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resignation has been accepted by the Board in its meeting on 1st October, 2009, there was nine months delay in filing of the alleged form 32 which has not been explained by the Respondent in the written statement. The Complainant in his rejoinder has also stated that the Respondent has failed to note that Shri Sanjeev Khandelwal was not at all a Director or was no way associated with the affairs of the company at the time of filing of Form 32 by the Respondent. The Complainant in his rejoinder has also stated that Shri Sanjeev Khandelwal has vacated the office under Section 260 of the Companies Act, 1956 on 30th September, 2009 and was illegally re-appointed on 25th September, 2010 much after filing of Form 32. The Complainant has also alleged that the Respondent has not verified the attendance sheet of the meeting. The Disciplinary Committee accordingly arrived at a finding that the Respondent is 'Guilty' of professional misconduct under Clause (7) of the Part I of the Second Schedule of the Company Secretaries Act, 1980.

19. The Disciplinary Committee, in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, decided to afford an opportunity of being heard to the Respondent before passing an order under Section 21B(3) of the Company Secretaries Act, 1980.


(S Balasubramanian)
Member


(S K Tuteja)
Member


(B Narasimhan)
Member


(Gopalakrishna Hegde)
Member


(S N Ananthasubramanian)
Presiding Officer

New Delhi

