

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

**ICSI/DC: 236/2014**

**Date of Decision: 20<sup>th</sup> November, 2014**

**Mr. Hasmukh Balvantrai Barot**

**....Complainant**

**Vs.**

**Mr. Vinayak Narhari Deodhar B, FCS-1880 (CP No. 898)**

**.... Respondent**

**ORDER**

1. A complaint dated 7<sup>th</sup> May, 2014 in Form 'I' 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 one Shri Hasmukh Balvantrai Barot (hereinafter referred to as the 'Complainant') against Shri Vinayak Narhari Deodhar, FCS-1880 (CP No. 898) (hereinafter referred to as the 'Respondent'). The Complainant has *inter-alia* stated that the explanation/clarification certificate dated 1<sup>st</sup> March, 2014 of Mr. H. V. Deodhar, Chartered Accountant (son of the Respondent) stated that the cheque towards the share application money was received by M/s. XLO Machine Tools Ltd., but credited later (actually several weeks later). This itself makes a strong case for taking disciplinary action against the Respondent as he without ensuring credit of Share Application Money received in the bank has gone ahead and certified the return of allotment as on 29<sup>th</sup> November, 2013, as being fully in compliance with Company Law. The Complainant further alleged that a copy of the letter dated 14<sup>th</sup> February, 2014 of Central Bank of India addressed to the Members of the Board of Industrial & Financial Reconstruction (BIFR) clearly stated the actual date of receipt of money in the company's ICICI Bank account.
2. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 15<sup>th</sup> May, 2014 followed by a reminder dated



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12<sup>th</sup> June, 2014. The Respondent submitted his written statement dated 16<sup>th</sup> June, 2014, in which he *inter-alia* stated that the Board of Directors of M/s. XLO Machine Tools Ltd., had passed a resolution in its Board meeting held on 29<sup>th</sup> November, 2013 allotting 20,00,000 equity shares of Rs.1/- each at a premium of Rs. 20/- per share to the promoter of the company i.e. M/s. XLO Machine Tools Employees Industrial Co-operative Society Limited. He further stated that the company *vide* its letter dated 6<sup>th</sup> January, 2014 has informed him that the Board has allotted 20,00,000 equity shares at Rs. 1/- each at a premium of Rs. 20/- per share on 29<sup>th</sup> November, 2013 i.e. more than a month back. A certified copy of the resolution and table A & B as required to be attached to the Return of Allotment was also sent along with the covering letter. He further stated that the Return of Allotment in Form 2 was prepared and sent to the company for verification and affixing the digital signature of the director on the Form. When the director signs the Form, he verifies that to the best of his knowledge and belief the information given in the form and its attachments are correct and complete. The Respondent further stated that while certifying the Form, he had a certified copy of the resolution passed by the Board of Directors, Table A & B duly signed by the director and the Return of Allotment in Form 2 digitally signed by a director of the company. He further stated that once these documents were with him, it was not necessary for him to check the accounts books and Bank statements to verify whether the company has received the amount. He further stated that he is not auditing the financial records of the company but certifying the correctness of the Form based on the records presented to him for certification. He further stated that when a director of the company is certifying the resolution passed in the Board meeting and certifying Table A & B which are the attachments to the Form, he being a PCS cannot show disbelief in the Executive Director of the company and ask him to show the accounts book to see whether the money has been received from the promoter of the company for further issue of capital. He further stated that he is not supposed to do it for certification of Form 2. He further stated that he uploaded the Form on 7<sup>th</sup> January, 2014 and the company had to pay additional filing fee for late filing of the Form.

3. 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 23<sup>rd</sup> June, 2014 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 14<sup>th</sup> July,



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2014 wherein he *inter-alia* stated that the Respondent has shown a very casual approach to work as stated in his letter that he had believed the Executive Director, Mr. A. N. Vayangankar to be correct but as a person of normal prudence and as done by all other Company Secretaries not kept the copy of the bank statement as a proof of having received money against the allotment of Shares. The Complainant further stated that M/s. XLO Machine Tools Ltd., is a widely held company having 23,000 Shareholders and is listed on the Bombay and Delhi Stock exchange, he has to ensure that the company has complied with (i) the Listing Guidelines (ii) Information to Securities and Exchange Board of India (SEBI) (iii) Postal Ballot (iv) this being Preferential offer whether all legal compliance of filing of forms as per Circular No.14 of 2011 issued by MCA and (v) obtaining Valuation report. The Complainant further stated that the Company Secretary is well aware that M/s. XLO Machine Tools Ltd. is a sick company and at present registered with BIFR and looking into the circumstances prevailing, ought to have verified all the basic documents which is a primary requirement of any attestation function. The Complainant further stated that the certificate at page 4 of Form 2 to be certified by the Company Secretary clearly states as follows-




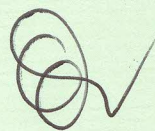
**"Certificate**

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of XLO Machine Tools Ltd. and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form and proper stamp duty has been paid wherever required."

In view of above, it is clearly a violation of Rules for certifying the Form 2. The Complainant further stated that the Company Secretary and Auditor of the company are related to each other as father and son, both of them are in connivance with the present management (Managing Committee of ECS), the Builder Mr. Anil Kursija.

The Complainant further stated that the Respondent has stated that the company has passed a resolution in its Board meeting held on 29<sup>th</sup> November, 2013 allotting the shares. As a matter of fact and as per the information available, no



such Board meeting took place, only paperwork was done by the Respondent in connivance with builder and ECS Nominee Director Mr. A. N. Vayangankar (who was a worker prior to becoming Director and is only 10<sup>th</sup> passed and he is not English literate). It is also significant to note that his son Mr. H. V. Deodhar has prepared the Audited Balance Sheet as on 30<sup>th</sup> November, 2013 to show that net worth of the company has turned positive based on the allotment of shares to ECS on 29<sup>th</sup> November, 2013. The Complainant further stated that the Respondent has stated that "when Director signs the Form, he gives verification that all the information given in the form is correct", is blatantly false, as a matter of fact the Respondent prepares all forms & documents and obtains signature of Director Mr. A. N. Vayangankar (who was a worker prior to becoming director and is only 10<sup>th</sup> pass and not an English literate). The Complainant further stated that the Respondent has stated that while "certifying the Form, he had certified copy of resolution, Table A & B duly signed by the director and Form 2 digitally signed by Director", he further stated that "therefore he need not check the Accounts and Bank Statement to verify as to whether company has received the amount or not". This para itself is an admission by the Respondent himself that he has not acted as per the circular 14 of 2011 dated 08<sup>th</sup> April, 2011 issued by MCA for certification of e-forms under the Companies Act, 1956 by the practicing professionals and has committed a breach of responsibility entrusted as a practicing professional registered as member of professional body and has miserably failed with the responsibility of ensuring correctness and integrity of documents filed by him with MCA in electronic mode. The Complainant further stated that the Respondent has relied upon the copy of letter dated 6<sup>th</sup> January, 2014 written by the director of the company and the certified copy of the resolution passed by the Board of Directors. He further stated that the letter dated 6<sup>th</sup> January, 2014 has been recently prepared by the Respondent and has obtained signature of Mr. A. N. Vayangankar.

The Complainant further stated that the explanation/clarification certificate dated 1<sup>st</sup> March, 2014 signed by Mr. H. V. Deodhar Chartered Accountant (son of the Respondent) accepts that the cheque towards share application money was received but credited later. This admission by itself also makes a strong case for taking disciplinary action against the Respondent as without ensuring credit of share application money in the bank account, he has gone ahead and certified



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Form 2 for return of allotment as on 29<sup>th</sup> November, 2013. The Complainant further stated that the copy of letter of the Central Bank of India having Ref. No. as MMO/RECV /2013-14/251 dated 14<sup>th</sup> April, 2014 addressed to the Members of BIFR clearly stated the actual date of receipt of money in the Company's ICICI Account. The Complainant further stated that the bank statement of ICICI Bank Ltd., from 1<sup>st</sup> December, 2013 to 7<sup>th</sup> December, 2013 starts with an opening balance as on 1<sup>st</sup> December, 2013 of Rs. 6,18,655.06. Though, the so called audited financial statements as on 30<sup>th</sup> November, 2013 signed by son of the Respondent states that cash and bank balances are Rs. 4,27,54,445/-.

4. Pursuant to rule 9 of the rules, Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, *vide* his *prima-facie* opinion dated 12<sup>th</sup> August, 2014 observed that the Respondent did not check the accounts books and bank statements in order to ensure as to whether the company has received the amount towards share application money or not before certifying the alleged Form 2. It is also observed that the Complainant has submitted a copy of the letter dated 14<sup>th</sup> February, 2014 of Central Bank of India which states that the cheques received towards the share application money were realized by the company on 11<sup>th</sup> December, 2013 and 9<sup>th</sup> January, 2014. The Complainant has also submitted a copy of the explanation / clarification dated 1<sup>st</sup> March, 2014 of Shri H V Deodhar, CA which does not specifies that the money was credited in the account of the company. The Director (Discipline) *prima-facie* opined 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 necessary due diligence in conduct of his professional duties, while certifying Form 2 under question.
5. The Disciplinary Committee at its meeting held on 28<sup>th</sup> August, 2014 considered the *prima-facie* opinion dated 12<sup>th</sup> August, 2014 of the Director (Discipline) and the material on record. The Committee agreed with the *prima-facie* opinion of the Director (Discipline) and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, a copy of the *prima-facie* opinion of the



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Director (Discipline) was sent to the parties *vide* letters dated 29<sup>th</sup> August, 2014 asking them to submit the written statement and the rejoinder, respectively.

6. The Respondent *vide* letter dated 9<sup>th</sup> September, 2014 requested for additional time to submit the written statement to the *prima-facie* opinion of the Director (Discipline) which was granted *vide* letter dated 15<sup>th</sup> September, 2014. A copy of the said letter was also sent to the Complainant asking him to submit his rejoinder by 15<sup>th</sup> October, 2014. The Respondent *vide* letter dated 25<sup>th</sup> September, 2014 once again requested for time up to 30<sup>th</sup> September, 2014 to submit the written statement. The Respondent *vide* e-mail dated 29<sup>th</sup> September, 2014 forwarded a scanned copy of his written statement and subsequently filed his written statement dated nil received in the Institute on 7<sup>th</sup> October, 2014. A copy of the written statement received from the Respondent was sent to the Complainant *vide* letter dated 10<sup>th</sup> October, 2014 asking him to submit the rejoinder, if any. The Complainant *vide* e-mail dated 13<sup>th</sup> October, 2014 submitted the scanned copy of the rejoinder and subsequently a hard copy of the same was received on 16<sup>th</sup> October, 2014. Accordingly, *vide* letter dated 7<sup>th</sup> November, 2014 parties were called upon to appear before the Disciplinary Committee on 20<sup>th</sup> November, 2014 at Delhi.
  
7. On 20<sup>th</sup> November, 2014, the Complainant appeared before the Committee and made oral submissions. The Respondent along with Shri S M Sundaram, Advocate also appeared before the Committee and made oral submissions. The Disciplinary Committee after considering the submissions made by the parties; and the material on record, observed that the matter revolves around certification of a Form 2 for return of allotment pertaining to M/s. XLO Machine Tools Ltd. As per the Complainant, the Respondent without ensuring credit of share application money in the bank account of M/s. XLO Machine Tools Ltd. has certified the said Form 2. On the other hand, the Respondent has stated that he had a certified copy of the resolution passed by the Board of Directors, Table A & B duly signed by the director and the return of allotment, Form 2 digitally signed by a director of the company. He further stated that once these documents were with him, it was not necessary for him to check the accounts books and bank statements to verify whether the company has received the amount.



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8. We observe that at the time of certification, the cheques towards the application money were received by the company and the Board of the company has passed a resolution dated 29<sup>th</sup> November, 2013 for allotment of shares which was sufficient for the Respondent to certify the alleged Form 2 and therefore, we conclude that no case is made out against the Respondent. We therefore dismiss the complaint.

Accordingly, the complaint stands disposed-off.

  
(S K Tuteja)  
Member

  
(Sanjay Grover)  
Member

  
(Sudhir Babu C)  
Member

  
(R Sridharan)  
Presiding Officer

Date: 12<sup>th</sup> Jan, 2015

