

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/160/2012

Order reserved on: 8th April, 2017

Order issued on :7th July, 2017

Shri M J Bagwan

.....Complainant

Vs

Shri Manoj Hiralal Shah, FCS4238, CP No. 2499

..... Respondent

Present:

Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion and reinvestigation report of the Director (Discipline).
2. The Board of Discipline noted as under: -
 - (i) The Complainant is a founder, promoter director of M/s. Opulent Auto Care Pvt. Ltd. He has inter-alia stated that he has never signed any Share Transfer form for transferring his shares from M/s. Skyfitness & Wellness Pvt. Ltd., to M/s. Opulent Auto Care Pvt. Ltd., or submitted any such form with the ROC which was never intimated to him till date.
 - (ii) The Complainant was unaware about filing of false and fabricated share transfer form as he has never transferred his share. The alleged share transfer form dated 31st March, 2010 was uploaded and filed by the Respondent.
 - (iii) The Respondent's contentions was that the alleged act of transfer of shares, which is the main allegation of the Complainant, were carried out by the then existing management as stated in the petition before the Company Law Board, when the Complainant was a Director on the Board of the company and was a part of the management. The Complainant has not only executed the transfer deed for which



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he has filed a complaint but has also signed all the balance sheets of the company and the holding company for the respective financial years.

3. The Board of Discipline at its meeting held on 5th November, 2015 considered the prima-facie opinion of the Director (Discipline) dated 5th August, 2015 that the Respondent is "Not Guilty" of professional misconduct under the Company Secretaries Act, 1980. The Board of Discipline advised the Director (Discipline) to investigate the matter further.

4. The Board of Discipline further observed the following: -

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a) Some ~~a~~ dispute exists within the management of the company and a Company Petition bearing CP No. 34/397-398 / 2012 was filed before the CLB, Mumbai for an alleged act of an oppression and mismanagement by one group wherein it has been held that there have been certain acts of oppression and mismanagement of the company. The CLB, Mumbai vide order dated 5th August, 2013 has disposed-off the petition CP No. 34/397-398 / 2012.

b) It appears that the Complainant transferred the shares in favour of Mrs. Bhagirathi Sathyaprakash Subramanian in the year 2005. The alleged Share Transfer Form and Share Transfer Certificate apparently bear the signature of the Complainant which was also approved by the Board of Directors of the company for noting in the Register of members and in the Register of Transfer as maintained at the company.

c) The complainant has executed the Balance Sheet of both the Holding and Subsidiary Companies containing details of shareholding pattern of both companies as also the Annual Return which indicative of the complainant having complete knowledge of the alleged transfer of shares.

d) The complainant as a director while signing the Annual Return has inter-alia has certified that:-

a. The return states the facts, as they stood on the date of the closure of the financial year aforesaid correctly and completely.

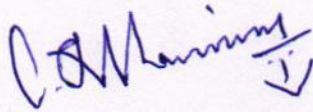
b. Since the date of the last Annual Return the transfer of all the shares, debentures, the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose.



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- e) After further investigating the case, the Director (Discipline) in her Further Investigation Report dated 6th April, 2017 reiterates prima-facie opinion dated 5th August, 2015 that the Respondent prima-facie is not guilty of Professional or other misconduct under the Company Secretaries Act, 1980.
- f) **The Board of Discipline at its meeting held on 8th April, 2017, after considering the aforesaid observations, material on record, prima-facie opinion along with reinvestigation report of the Director (Discipline) and all the facts and circumstances of the case, agreed to the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980.**



CS C Ramasubramaniam
Member



CS Ashish Doshi
Presiding Officer