

**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/211/2013

Order reserved on: 8th April, 2017

Order issued on : 7th July, 2017

Shri Girdharlal B Viramgama

.....Complainant

Vs

Shri Kunjal Dalal FCS-3530, (CP No. 3863)

..... 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 director and shareholder of M/s. Balaji Embroidery Pvt. Ltd. and there is dispute in Management of the company.
 - (ii) The Complainant has *inter-alia* alleged that the Respondent had certified Form 20B and the Share Transfer Form, transferring the shares of the Complainant, 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. The Complainant further stated that the Respondent in his written statement has claimed that he had appeared on behalf of the Complainant on the instructions of Shri Arvind Soni rather than taking the permission from him. It is also an admission of the Respondent that he had only marked his appearance for the Complainant once on 12th May, 2011, on the instruction of Shri Arvind Soni.
 - (iii) The Respondent's contentions was that he had signed the Share Transfer Form as well as the physical share certificates provided



[Handwritten signature]

[Handwritten signature]

by the company as a matter of proof demonstrated to him that due compliance had been made by the management of the company before transferring the shares. As a professional certifying and uploading of Form 20B, his role was limited to ascertaining the verification of the signed transfer deed duly revalidated by Registrar of Companies, Gujarat, Dadar & Nagar Haveli, share certificates and certified copy of Board Resolution to ensure that the provisions of section 108 of the Companies Act, 1956 had been followed and complied with.

- (iv) He had submitted a duly filled in Share Transfer form duly signed by the Complainant transferring his shares to Shri Arvind Soni.
 - (v) He claimed to appear on behalf of the Complainant on the instructions of Shri Arvind Soni who was also one of the Respondents along with Shri Girdharlal B Viramgama, the Complainant in the petition No. 42 of 2011 filed before CLB, Mumbai. Hence, it could have reasonably be presumed by the Respondent that there was no dispute between Shri Arvind Soni and Shri Girdharlal B Viramgama, the Complainant. It would not be out of place to mention the Complainant was removed subsequently after certifying the Share Transfer Form.
3. The Board of Discipline at its meeting held on 5th November, 2015 considered the prima-facie opinion of the Director (Discipline) dated 9th July, 2015 that the Respondent is "Not Guilty" of professional misconduct under the Company Secretaries Act, 1980 as the Respondent has exercised reasonable due diligence in certifying the Form 20B and the Share Transfer Form. The Board of Discipline advised the Director (Discipline) to investigate the matter further; and if needed, to summon, hear the parties and witnesses related to the matter.
4. The Board of Discipline further observed that -
- a) The Director (Discipline) asked the Respondent to submit certified true copy of signed Share transfer Form which was relied for certifying Form 20 B and relevant extract of minutes of Board meeting of the company in which transfer of shares of the Complainant was approved, any other additional document/evidence /information in support of his defense.
 - b) In response, the Respondent submitted copy of Share Transfer Form relied upon by him for certifying Form 20 B and copy of resolution vide which the transfer of shares of the company was approved.
 - c) After further investigating the case, the Director (Discipline) in her Further Investigation Report dated 3rd April, 2017 stated that the

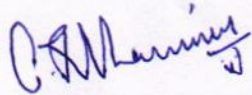


C. J. Mehta
2

CS

Respondent is *prima-facie* not guilty of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent while certifying the Form 20B the Respondent had exercised reasonable due.

- d) 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