

**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/232/2014

Order reserved on: 8th April, 2017

Order issued on : 7th July, 2017

CS N.C. Nair

.... Complainant

Vs.

CS Baiju Ramachandran

.... 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 the following: -
 - (i) The Complainant has made allegations against several persons including the Respondent.
 - (ii) Primarily, he has alleged that the directors of M/s Sita Ram Steel Industries Private Ltd. have committed several criminal acts, including fraud and forgery, with the help and the connivance of the Respondent.
 - (iii) The Complainant has *inter-alia* alleged that: -
 - a) The Respondent has fabricated records/ created false records to show as if a Board Meeting of the company was held on 02-02-2006 i.e. before the death of Jagadguru Sathyananda Saraswathy, one of the first promoters of the company mentioned above, at which Shri K. Gajadharan Nair and K.R. Hariharan were appointed as Additional Directors and that Form No. 32 in respect of the aforesaid appointment of Additional Directors was certified and filed by the Respondent.



C. S. Nair
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- b) The DSC of Madathipathy P.H. Krishnan Namboothiri, the second Promoter Director of the said company, was stolen by Shri K. H. Hariharan and his accomplice Shri K. Gajadharan Nair after the death of Shri Sathyananda Saraswathy on 24.11.2006, and used to sign the aforesaid Form 32. Similarly, another Form 32 about the cessation of office of the Director, Sathyananda Saraswathy, on account of his death on 24-11-2006, also was filed using the same stolen DSC of P.H. Krishnan Namboothiri and that this form was also certified by the Respondent.
- (iv) The Respondent denied all the above allegations and has stated that he did the pre-certification of the aforesaid Forms, only on the basis of the supporting documents viz. Certified copies of Board Resolution, death Certificate shown and made available to him by the directors of the company.
- (v) Allegations for theft and misuse of DSC of Madathipathy P.H. Krishnan Namboothiri, were observed as false in as much as the stolen DSC could not have been used without the personal appearance of its genuine holder and authentication by a secret password. In fact Shri P.H. Krishnan Namboothiri has himself, in a statement before the Judicial Magistrate, stated that *"The kit containing my digital signature was kept under my custody. Having high faith in the company secretary (Baiju Ramachandran)...I handed over my signature contained digital kit and Passwords to and permitted him to affix my signature on my behalf on the company documents for the welfare of the company..."* On the face of the aforesaid statement the allegations of the Complainant regarding theft and misuse of the said DSC is false and not sustainable.
- (vi) The allegation of the Complainant that on 6th October, 2006, one Ms. J Anandavalley, w/o Shri K. R. Hariharan, was wrongly appointed as Additional Director because after the death of first promoter as there was only one legally appointed director and Form 32 certified by CS Ms Jayasree Sridhar (CP No. 13388), does not pertain to the Respondent and, therefore, no cognizance of the same can be taken.
- (vii) The Complainant did not brought on record any evidence to sustain the allegation regarding the alleged zero paid up capital of the company, against the Respondent.
- (viii) The allegations relating to the shifting of Regd. Office of the Company outside municipal limits without the Special Resolution of the company, does not concerned the Respondent as he has not pre-certified Form 18 in this regard. According to the admission of the Complainant himself this Form was filed under



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the signature of Shri Hariharan and was certified by Ms. Jayasree Sreedhar (CP 13388). No evidence has been produced by the Complainant to sustain the aforesaid allegation against the Respondent.

- (ix) The allegations of the Complainant against the Respondent that he was the sole advisor and brain behind the fraud as key documents were filed by him and he shared the cash generated through purchase and sale of the land of the Company along with Sh. K. Gajadharan and Shri K R Hariharan, are also not sustainable as no evidence at all has been produced in this regard. The allegation is based on mere surmises and conjectures. The Respondent did not file any documents. He had only certified two Forms 32, on the basis of supporting documents produced before him by the Directors of the Company.
- (x) The criminal complaint stated to have been filed by the Company in which the Respondent has been named as one of the Accused is still pending and no adverse view against the Respondent can be taken till he is found guilty and convicted by the Court for the alleged offences.
- (xi) The allegations that the Respondent brought disrepute to the Institute and its members and that because of his actions the Company Secretaries have been branded as 'Community of fraudsters/criminals', are also not substantiated by the Complainant by any evidence and, therefore, no cognizance can be taken thereof.
- (xii) Status of the complaints filed against the Respondent for the Professional and/or other misconduct as referred in the Complaint to show that the Respondent is a habitual offender and having a criminal track record fall flat as, no adverse inference can be drawn against the Respondent, as indicated below:

- (a) DC: 128/2012 – Shri Siyad Sirajudeen Vs. CS Baiju Ramachandran and Shri A.S. Narayanan:

The Disciplinary Committee, vide its Order dated 04.06.2013, has closed the matter after holding that the Respondents are not guilty of professional misconduct under Clause (7) of Part 1 of the Second Schedule of the Company Secretaries Act, 1980.

- (b) DC:115/2012 – Shri Vimal SV Vs. Dr Baiju Ramachandran



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The Board of Discipline, vide its Order dated 30.11.2013, had found the Respondent guilty of the allegations levelled against him and had imposed a fine of Rs. 10,000/-. However, on Appeal, being Appeal No. 03/ICSI/2013, the Appellate Authority had exonerated the Respondent, by its order dated 14th February, 2014 and quashed and set aside the Order dated 30.11.2013 of the Board of Discipline.

(c) DC:110/2011 – Shri Vijay Bhaskar Viswanath Vs. Dr Baiju Ramachandran

The Board of Discipline, by its order dated 13th August, 2013 had dismissed the complaint as withdrawn and closed the matter.

- (xiii) The only substantive allegation of the Complainant is that the Respondent is guilty of professional misconduct under Items (7) and (10) of Second Schedule to the Company Secretaries Act, 1980, for pre-certification of two numbers of Form 32 and the alleged sharing of the cash generated by purchase and sale of land of the Company.
- (xiv) In so far as aforesaid Item (7) of Part I of the Second Schedule is concerned, the facts on record show that the pre-certification of two numbers of Form 32 was done by the Respondent on the basis of supporting documents produced to him by the Directors of the Company after doing verification from the original documents. He had, thus, exercised due diligence and was also not grossly negligent in the conduct of his professional duties. He, therefore, cannot be held to be guilty of the professional misconduct as described in this Item. In regard to the alleged connivance of the Respondent in the alleged purchase and sale of land and sharing of huge cash generated through the same, it is stated that the Complainant has not placed on record any evidence whatsoever to substantiate the allegations. In the absence of evidence, said allegations are not proved. It is further stated that the aforesaid matter is already *sub-judice* in a criminal complaint case and till the Court of the complaint jurisdiction convicts and punishes the Respondent, no case for professional misconduct in terms of Item (10) of Part I of Second Schedule is made out.
- (xv) As regard the action under Sections 8(c) and 8(f) of the Company Secretaries Act, 1980 it is stated that these provisions are not attracted in the facts of the case.
- (xvi) The Complainant has also referred the directions of the Central Government contained in Para 3 of the letter No. 12/23/2010-PI dated 13-12-2010, and has stated that the Institute is obliged to



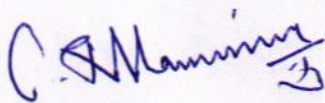
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initiate disciplinary action against the Respondent and publish details thereof on its website. In terms of the aforesaid directions the Institute is, *inter-alia*, required to take notice of any misconduct on the part of any of its members on his arrest in a criminal case, for bringing disrepute, and putting out the details thereof on its website. In the present case the Respondent was on anticipatory bail and was not arrested. Until and unless he is convicted of any offence, he cannot be proceeded against for any professional misconduct on this account.

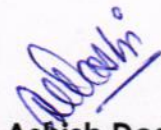
(xvii) In so far as the pending criminal complaint is concerned, the matter may be kept open till its outcome is known. If the Respondent is found guilty and convicted by the Court, the question of taking disciplinary action against him could be considered at that time. Taking any view on this issue, when the matter is *sub-judice* is likely to prejudice his defence.

3. The Respondent had submitted an affidavit dated 30th March, 2016, duly notarised affirming that he had verified the originals of the said documents before pre- certification of the e-forms 32.
4. The Board of Discipline considered the *prima facie* opinion dated 18th February, 2017 of the Director (Discipline) that the Respondent is *prima facie* not guilty of professional misconduct under the Company Secretaries Act, 1980 as the Respondent is *prima facie* not guilty of the alleged professional misconduct under the Company Secretaries Act, 1980 as he had pre-certified the two Forms 32 after carrying out the necessary due diligence. The other allegations made in the complaint by the Complainant were not concerned with the Respondent and are not sustainable in the absence of any evidence. The Respondent is *prima facie* not guilty of professional or other misconduct under any of the Items of First and /or Second Schedule to the Company Secretaries Act, 1980.
5. **The Board of Discipline at its meeting held on 8th April, 2017, after considering the aforesaid observations, material on record, *prima facie* opinion of the Director (Discipline), affidavit dated 30th March, 2016 of the Respondent 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