

**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/255/2014**

Order reserved on: 27<sup>th</sup> February, 2017

Order issued on : 8<sup>th</sup> April, 2017

**Shri Rashmikant Patel**

**.....Complainant**

**Vs**

**Shri J B Sojitra ACS-6351**

**..... Respondent**

**Present:**

**Director (Discipline)**

**FINAL ORDER**

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion of the Director (Discipline) and other material on record.
2. The Board of Discipline has noted that:
  - (i) The Complainant has *inter-alia* alleged that the Respondent knowingly, willfully, with *malafide* intention and to gain undue advantage for his employer company i.e. M/s. Dinesh Remedies Ltd. (DRL), misrepresented and misled the members of the Board of Directors of DRL including the Complainant by stating that: -
    - (a) in law the position of 'alternate director' is equivalent to 'Independent Director' of a company; and
    - (b) in law independent director of a company has to vote in favour of approval of accounts and no vote of dissent can be made by him in this regard.
  - (ii) The Respondent in his written statement to the complaint stated that: -
    - (a) Mr. Sunil Vakil has not raised any issues/comments/allegations against the Respondent which the

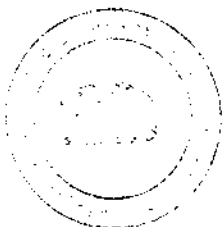


Complainant is raising on the matters relating to the Alternate Director.

- (b) he had only clarified that an alternate director could always express his independent opinion / views on the concerned agenda.
- (c) the Respondent gave a brief background of the company and stated that Shri Paresh Saraiya, Chairman of the Audit Committee informed that the aforesaid Annual Accounts had already been reviewed by the Audit Committee and recommended to the Board for their consideration.
- (d) except two directors, the rest of the other seven directors approved the Annual Accounts, and accordingly, the resolution was carried out with majority.
- (e) it is pertinent to note that he had never said that Mr. Sunil Vakil must vote in favour of the above resolution. Against the same, Mr. Sunil Vakil reiterated that since he had been given mandate by the original director, he would dissent the above resolution.
- (f) further, the Respondent has substantiated his advice given to Mr. Vakil by producing extracts from a book published by Taxman Publishers which reads as under:

*"Original Director cannot force his views on the Alternate Director and ask him to act or vote in a particular way. He is not a proxy of original director. Alternate Director can even vote on a resolution in which original director is interested."*

- (g) moreover, except the Complainant and Mr. Sunil Vakil acting as an alternate director, the rest of the other directors approved the above resolution and accordingly the resolution was carried out with majority i.e. seven directors supporting and only two directors opposing the resolution. Hence there was no wilful malafide intention on part of the Respondent.



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C. S. Manjunath  
D

*[Handwritten signature]*

3. The Board of Discipline at its meeting held on 12<sup>th</sup> August, 2015 considered the prima-facie opinion of the Director (Discipline) dated 16<sup>th</sup> July, 2015 that the Respondent is *prima-facie* not guilty of professional or other misconduct under the Company Secretaries Act, 1980. The Board of Discipline advised the Director (Discipline) to investigate the matter further; and if needed, to summon and hear the parties and witnesses related to the matter.
4. The Director (Discipline) after further investigating the case, reiterates the earlier prima-facie opinion vide her *further Investigation Report* dated 21<sup>st</sup> February, 2017 that the Respondent is *prima-facie* 'Not guilty' of professional misconduct under the Company Secretaries Act, 1980, as the Complainant has not produced any documents on record to substantiate the allegations made in the complaint. On the basis of material available on record, no case of professional or other misconduct is made out against the Respondent under the Company Secretaries Act, 1980.
5. The Board of Discipline observed the following: -
  - (i) A Board meeting of DRL was convened on 26<sup>th</sup> May, 2014 for consideration of Annual Audited Financial Statements for the FY 2013-14. The Respondent, who is Assistant Vice-President and Company Secretary and also a Board Member of Shri Dinesh Mills Ltd., the majority shareholder in DRL, also attended the said meeting as an invitee.
  - (ii) The complainant has stated that the Respondent was not supposed to express his views suo-moto. However, the Respondent still expressed his views to one Mr. Sunil Vakil, an alternate director of Mr. Manish Patel, the original director, who represents another minority group. The said Mr. Sunil Vakil is neither a complainant nor he has supported the complainant through any affidavit or other communication. Further, any clarification/advice given by the Respondent to Mr Sunil Vakil on the voting pattern on any item of the agenda of the Board Meeting was not binding on Mr. Vakil or any other director.
  - (iii) It is pertinent to note that the said Mr. Vakil did not act on the advice of the Respondent. Had he acted on the advice of the Respondent, the outcome of the decisions on the agenda items of the Board Meeting would have still remained the same as all the resolutions were passed with requisite majority despite opposition by the Complainant and Mr Sunil Vakil.







(iv) On the other hand, the Complainant has failed to provide any proof or evidence in support of the allegations levelled in his Complaint.

6. The Board of Discipline at its meeting held on 21<sup>st</sup> February, 2017 considered the *Further Investigation Report of the Director (Discipline)* dated 18<sup>th</sup> February, 2017 and agreed with the same.
7. **The Board of Discipline after considering the aforesaid observations, material on record and all the facts and circumstances of the case held the Respondent "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 and no case of professional or other misconduct is made out against the Respondent under the Company Secretaries Act, 1980.**

  
CS Dinesh Chandra Arora  
Member

  
CS C Ramasubramaniam  
Member

  
CS Ashish Doshi  
Presiding Officer

