

**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/266/2015

**Order reserved on: 27th February, 2017
Order issued on : 8th April, 2017**

Shri Balramsa V. Kshatriya

.....Complainant

Vs

**M/s Kanj & Associates
(Through: Shri Mahesh A. Athavale)**

..... Respondent

Present:

Director (Discipline)

FINAL ORDER

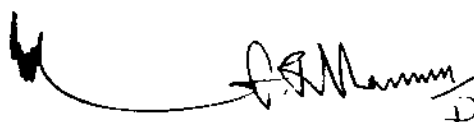
1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion along with reinvestigation report and other material on record.
2. The Board of Discipline noted as under: -

(i) The Complainant who is a Director of M/s. Bhikusa Papers Pvt. Ltd., (the company) stated that :-

(a) Certain differences amongst the directors and major stakeholders of the company with regard to the shareholding were required to be resolved; it was proposed to explore an amicable settlement of the same and the directors took a unanimous decision whereby M/s. Kanj & Associates, Pune of which the Respondent is a partner was appointed as Advisor and Consultant of the company for all matters, deeds and acts required and necessary for global settlement of all 5 directors of the company including the Complainant herein.

(b) The Respondent had an active participation in the meetings of directors/stakeholders of the company which took place pursuant to the aforesaid engagement of M/s. Kanj & Associates. In a meeting held on 18th January, 2012, settlement was reached and various decisions were taken. The noting/ points reduced in writing under the title "Action Points as





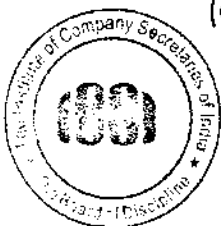


agreed on 18th January, 2012, Family Settlement in Kshatriya Family" specifically speaks about the role of M/s. Kanj & Associates and it has been signed by Respondent who is the partner of M/s. Kanj & Associates. However, the dispute was not resolved and a Company Petition No. 70 of 2014 has been filed by the Complainant and other aggrieved stakeholders with the CLB, Mumbai.

- (c) when he received the reply to the said petition and when the matter came up before the CLB for hearing on 9th October, 2014, he was shocked to observe that none other than the Respondent was representing his opponents and the Respondent stated that before the CLB, an objection was orally raised by the counsel for the Complainant against the appearance of the Respondent. However, a stand was orally taken by the Respondent that he represented the company and none of the individual Respondents. The Complainant further stated that the authority letters annexed to the reply revealed that the Respondent had annexed the authority letters from Respondents in the said company petition in their individual capacity.
- (d) The Respondent and his firm M/s. Kanj & Associates were engaged in professional capacity for a task. If a dispute arose amongst the persons who had jointly engaged as a Company Secretary, the Company Secretary ought not to have accepted the brief of one party. He ought to have refused the brief on ground of clash of interest.
- (e) In a dispute/complaint under section 397 of the Companies' Act, 1956, a company is a formal party and the dispute is basically amongst stake holders despite this clear position, the Respondent has not only made submissions for the directors/stakeholders opposed to petitioner but he made statements about his personal interaction with the Complainant with reference to efforts of the petitioner to negotiate the matter. As Respondent was appointed by the stakeholders jointly, there was nothing wrong in petitioner approaching him and it was completely unethical, improper and wrongful for Respondent to refer to any such conversation in the open court.

(ii) The Respondent in his written statement to the complaint has denied the allegations levied upon him and stated that:-

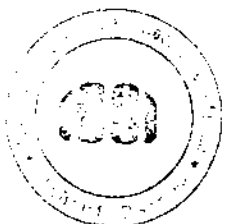
- (a) His firm M/s. Kanj & Associates was appointed as an Advisor and Consultant to the company for settlement and nowhere was it mentioned that the firm has to act as the mediator and



C. S. Manning
[Signature]

conciliator in between the brothers or for family disputes or act as advisor to the individuals.

- (b) Having appointed as a consultant to the company, he was duty bound in representing the company before the CLB in the event of litigation filed against the company, especially the issues about share transfers, passing of resolutions, conduct of EOGM are tossed up in the petition.
- (c) The appearance for all the other Respondents except Respondent No.1 i.e. M/s. Bhikusa Papers Pvt. Ltd, was entered into by one Advocate Ms. Swati Vasan. The Respondent further stated that the allegations and averments made against him and his firm are false, mischievous and have been made with an intention to coerce and unduly influence the undersigned to favour the Complainant (Petitioner in CP No. 70 of 2014) before the Hon'ble CLB, Mumbai.
- (d) That the Complainant has also suppressed material fact that he had obtained ex-parte order from the CLB on 11th September, 2014 within two days of filing of this petition. The CLB, Mumbai had stayed actions to be taken even if the resolutions in the EOGM were passed. The Complainant (Petitioner in CP 70 of 2014) has challenged the appointment of two persons as directors of the company by raising certain issues about conduct of meeting and passing of resolutions.
- (e) The following facts and circumstances may be taken cognizance regarding his appearance for the company: -
- The attendance sheet for the hearing on October 9, 2014 is signed by the Respondent as "PCS on behalf of Respondent one".
 - Advocate Ms. Swati Vasan has signed for Respondent Nos. 2 to 7 and she appeared on their behalf.
 - The attendance sheet for the hearing on October 9, 2014 is already attached.
- i) The Board of Discipline at its meeting held on 5th November, 2015 considered the prima-facie opinion of the Director (Discipline) dated 26th June, 2015 that the Respondent is *prima-facie* 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.







3. 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. Further, to seek a legal opinion if needed.
4. The Director (Discipline) after further investigating the case reiterates the earlier prima-facie opinion in her Investigation Report dated 21st February, 2017 that the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980 as the Respondent was appointed as an Advisor and Consultant to the company for settlement and it was nowhere mentioned in the appointment that the Respondent's firm has to act as a mediator and conciliator between the parties. Mere writing of minutes of the family settlement by the Respondent cannot tantamount that he represented any of the parties or was a mediator. It is further seen from the attendance sheet of the hearing 9th October, 2014 of CP No. 70 of 2010 that the Respondent has appeared on behalf of the company and not on behalf of the directors. The Complainant has also failed to substantiate his allegation related to alleged disclosure of the confidential information.
5. The Board of Discipline at its meeting held on 27th February, 2017 considered the prima-facie opinion dated 21st February, 2017 along with the *further Investigation Report* of the Director (Discipline) dated 21st February, 2017 and agreed to the same.
6. **In view of the above, the Board of Discipline after considering the aforesaid observations, material on record and all the facts and circumstances of the case agreed with 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 Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

