

**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/346/2016

Order reserved on: 8th April, 2017

Order issued on : 7th July, 2017

Mr. Shantanu Prakash

.... Complainant

Vs.

Mr. Manoj Kumar Jasoria, ACS-24361

.... 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 is a director of M/s. Educomp-Raffles Higher Education Limited (ERHEL) and the Respondent is Company Secretary of the company.
 - (ii) The Complainant alleged that the Respondent has not complied with the statutory provisions of the Companies Act, 2013 read with Secretarial Standard-1, for convening the board meetings of the Company and has manipulated and fabricated the records of the Company by showing the board meeting on papers.
 - (iii) The Complainant's contention was that -
 - a) ERHEL is a joint venture company of Educomp Solutions Limited ("Educomp") and Raffles Corporation Limited ("Raffles"). It is specified in the Articles of Association of ERHEL that there must be equal representation of Educomp and Raffles to satisfy the quorum for the board meeting and at least one representative director from both must be present, failing which the board meeting would be invalid.
 - b) On October 7 and October 13, 2015, Mr. Ashish Mittal who was Additional Director of the ERHEL received emails from the Respondent asking him to sign AGM notice and certified true



C. A. Manning

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copy of the board resolutions for approval of annual accounts of ERHEL and Director's Report. Mr. Ashish Mittal reviewed the documents and was surprised to know that the Respondent was seeking his signatures on the documents which showed his purported presence in the board meeting of ERHEL on September 5, 2015. Mr. Ashish Mittal approached him and brought glaring deficiencies/non-compliances in the ERHEL to his knowledge.

- c) The Respondent was also showing his presence in the purported meeting of September 5, 2015 which was completely incorrect and false. The purported meeting of September 5, 2015 lacked requisite quorum as the minutes did not show participation of directors of Raffles.
 - d) The Complainant and Mr. Ashish Mittal had never received any notice for any Board meeting purportedly held on September 5, 2015 and/or Annual General Meeting of ERHEL for approval of Annual Accounts for the financial year 2014-15. The purported draft minutes of the said meeting dated September 5, 2015, records presence of the Complainant and Mr. Ashish Mittal in the said board meeting which is a blatant lie as they both had not attended any of such meetings. In light of the above, ERHEL cannot be said to have duly convened any meeting.
 - e) On getting suspicious with the activities of the Respondent, Mr. Ashish Mittal raised the issue before the board of directors of ERHEL. However, the Respondent justified his inappropriate and illegal action and *vide* his email dated October 27, 2015 admitted that he has been showing the board meeting of ERHEL "on papers" *at the instructions of directors*.
- (iv) ERHEL has a paid up capital of less than Rs.5 crores. However, MIDL which is a subsidiary of ERHEL has a paid up capital of more than 5 crores which mandates it to appoint a Company Secretary under Section 203 of the Companies Act, 2013. In view thereof, the Respondent was appointed as a Company Secretary of MIDL. It was well within the knowledge of the Respondent that his secretarial Services will be used by ERHEL. This fact is also evident from the employment agreement executed between MIDL and the Respondent.
- (v) The Respondent's contention was that -
- a) The Complaint is totally frivolous, baseless and devoid of any merit.



G. S. Manning

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- b) The Complainant failed to file either the letter of appointment or any Board Resolution or any documentary evidence to show that the Respondent is the Company Secretary of M/s. ERHEL. He has never been appointed as a Company Secretary or as an employee or an authorized signatory of M/s. ERHEL. He was appointed as Company Secretary of M/s. Millennium Infra Developers Ltd (hereinafter called MIDL) w.e.f. 02/05/2011 and Form 32 was filed with the Registrar of Companies NCT of Delhi & Haryana. Since the Respondent was working as the Company Secretary of MIDL from the date of joining to till date and pursuant to section 203 sub-section 3 of the Companies Act, 2013, he cannot hold office in more than one company at the same time except in its subsidiary company and ERHEL is not the subsidiary of MIDL.
- c) M/s. Educomp Raffles Higher Education Ltd is a Company having paid-up share capital of Rs. 3,77,20,440/- as per its Balance Sheet for financial year ending on 31.03.2014. Since the paid-up Share Capital of the Company never exceeded Rs. 5 crores and, therefore, there was no occasion for the Company to appoint a Company Secretary.
- d) Mr. Ashish Mittal claims to have the knowledge of the facts of the whole case but Mr. Ashish Mittal did not file the said complaint but the complaint has been filed by Mr. Shantanu Prakash.
- e) He is not the signatory to the JV Agreement referred by the Complainant. If any requirement is required to be complied with in accordance with the Articles of Association of the Company, the Complainant being one of the Directors of M/s. ERHEL is fully aware of the requirement as set out under the Articles of Association and more particularly about the quorum. The Article of Association does not fasten any duty upon the Respondent by name and rather fasten liability upon the Complainant and/or Mr. Ashish Mittal or to the directors of ERHEL. Nonetheless, the Respondent has never advised the Complainant contrary to the requirement of quorum as set out in the Articles of Association.
- f) Mr. Ashish Mittal was also one of the Director of ERHEL and for the purpose of complying with the provisions of Companies Act, 1956/2013, at times he also in active discussion with other directors used to give mandates/instructions about the contents of the notice; to whom the notices to be sent; date, time and place of the notices; mode and manner of sending notices; person and to whom notices to be sent & others.



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- g) In compliance of the above instructions/mandate of Mr. Ashish Mittal and as a matter of courtesy only, at few occasions the Respondent used to assist the directors in drafting document, which was supposed to be further confirmed by themselves or their authorized representative or their Company Secretary for their final vetting and confirmation, who, in turn, used to send the same to Mr. Ashish Mittal for his final approval. The Respondent further stated that he has never attended board meeting or general meeting of the ERHEL. Since he was not attending either the Board Meeting or General Meeting and Mr. Ashish Mittal or directors of ERHEL used to give notes to the Respondent for preparation of draft minutes and notes about; the person who attended & who do not attend the meeting; discussion took place on each of the agenda items; decision taken place on each of the items and then person to whom the minutes are to be sent.
- h) Mr. Ashish Mittal used to give instructions on the points mentioned above and on the basis of the telephonic/email instructions from Mr. Ashish Mittal, he was only assisting them to draft either the notice and/or minutes of the board meetings and general meetings. At the same time, as submitted herein above, the Respondent was not an employee of ERHEL and purely as a courtesy used to assist in draft of documents at the instructions and behest of Mr. Ashish Mittal. The e-mail dated 07.10.2015 and 13.10.2015 were written by him addressed to Mr. Yogesh Saluja, Company Secretary of Educomp Solutions Limited (an associate company of ERHEL) and was marked to Mr. Ashish Mittal in CC, since Mr. Ashish Mittal was the one who has been directing him the mode, manner, content and items, presence of the persons to be shown. It may please be noted that in the email dated 07.10.2015, the Respondent has categorically mentioned "as discussed" which has never been objected by Mr. Ashish Mittal and Respondent asked for confirmation of the draft from Mr. Yogesh Saluja and further sought his advice.
- i) He has not signed any notice of either the Board Meeting or the General Meeting and at the same time, he has also not finalized the drafts of "minutes" of either the Board meeting or the General meeting. Further, on the basis of instructions from Mr. Yogesh Saluja and based on discussions and final instructions from Mr. Ashish Mittal a revised draft of notice of AGM were shared on 13.10.2015. The draft was also marked to Mr Yogesh Saluja keeping Mr. Ashish Mittal in CC. It is specifically pointed out that the Respondent has written in the email dated 13.10.2015 "kindly confirm the same" meaning



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thereby whatever has been written was written at the instructions of Mr. Ashish Mittal and whatever final documents/papers have been prepared, was prepared after approval by Mr. Ashish Mittal. The Respondent was assisting in preparing the draft documents (prepared at the instructions and behest of Mr. Ashish Mittal), subject to final confirmation by Mr. Yogesh Saluja & Mr. Ashish Mittal is also evident from the email dated 23.10.2015.

- j) It is totally baseless to allege that he was seeking the signature of Mr. Ashish Mittal for the board meeting dated 05.09.2015 of ERHEL. Without prejudice to the above and in the alternative, it is submitted that even if the Respondent was asking Mr. Ashish Mittal to sign any documents, Mr. Ashish Mittal being a prudent, qualified professional will not sign any documents unless it is in full compliance of Law.
- k) He has never called upon to sign any documents, which is not in compliance with the provisions of the Companies Act, 1956/2013 in view of the fact that the relationship of the Respondent pertain to secretarial matter of ERHEL was to the extent of assisting in preparing draft of documents/notice on the basis of personal/telephonic instructions of Mr. Ashish Mittal or the directors of ERHEL.
- l) No documents have been filed with the ROC under the signature of Respondent and based on the instruction/direction of Mr. Ashish Mittal or directors of the Company respondent used to assist in drafting documents only, which in turn used to put to Mr. Yogesh Saluja, their own company secretary for vetting and ultimately final approval/confirmation by Mr. Ashish Mittal. It is however submitted that the draft minutes were prepared on the basis of instructions and mandate of Mr. Ashish Mittal, Mr. Ashish Mittal being the director of the company "as submitted herein above also" use to give instruction/mandate about; the Director present in the meeting, items discussed in the meeting and decision taken in the meeting etc., and hence in the light of the mandate/instructions of Mr. Ashish Mittal, draft minutes were prepared and sent to Mr. Yogesh Saluja for his vetting and ultimate final approval by Mr. Ashish Mittal.
- m) He neither has nor possesses any authority to send the notice of either the Board meeting or General meeting of ERHEL which is a Complainant company. The draft minutes of the Board meeting dated 05.09.2015 of ERHEL were prepared on the basis of the instructions of Mr. Ashish Mittal as he was the one who has been all along Director of ERHEL and have also been given instructions to the Respondent about the

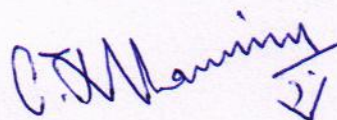


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proposed text, contents, decisions, persons attended or not attended in the light of instructions/mandate given by Mr. Ashish Mittal. The drafts prepared by the Respondent were sent to Mr. Yogesh Saluja for his vetting and ultimate final approval by Mr. Ashish Mittal, It is specifically pointed out that the Respondent has not filed any documents, returns or paper under his signature with the Registrar of Companies, NCT of Delhi and Haryana pertaining to ERHEL.

- n) On the contrary, it was Mr. Ashish Mittal and Mr. Shantanu Prakash have indulged in the acts of forgery and fabrication including showing the board meetings only on paper and, therefore, the email dated 27.10.2015 was by way of warning and/or caution to them. Without prejudice to the above, the Respondent, being nobody in ERHEL, is not competent to show any Board meeting either on paper or in reality.
3. The Board of Discipline considered the prima facie opinion dated 3rd March, 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 was not the Company Secretary of ERHEL and, therefore, the question of violation of relevant provisions of the Companies Act, 2013 as a company secretary of the said company does not arise and for the same reason the question of dereliction of duty towards the Company and its shareholders also does not arise. Moreover no allegations have been levied against Shri Yogesh Saluja, who is Company Secretary of M/s. Educomp Solutions Limited. Though, the Respondent in the instant case has prepared the draft minutes but in case there is any discrepancy in the minutes, the same could be corrected by the Chairman of the Company. More so, it can reasonably be presumed that the Respondent has not attended the alleged meetings.
4. **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) 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