

**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/173/2013

Order reserved on: 04.09.2017

Order issued on : 26<sup>th</sup> September, 2017

**Shri R B Ruchandani**

.....Complainant

Vs

**Shri Manoj Rajaram Hurkat(FCS-4287)**

.....Respondent

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

**FINAL ORDER**

1. A complaint dated 22<sup>nd</sup> January, 2013 in Form 'I' of Shri R B Ruchandani (hereinafter referred to as the 'Complainant') against Shri Manoj Rajaram Hurkat(FCS-4287)(hereinafter referred to as the 'Respondent') filed under Section 21 of the Company Secretaries Act, 1980 (the Act) read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules).
2. The Complainant *inter-alia* stated that the he is one of the Promoters Director of M/s. Beeceelane Textile Mills Pvt. Ltd., and has inter-alia made the following allegations against the Respondent:-
  - (i) That the Respondent has accepted the assignment for issuing the Compliance Certificate to M/s. Beeceelane Textile Mills Pvt. Ltd., for the period 2011-12 without his proper appointment by the Board of the company.
  - (ii) That the Respondent has not obtained the NOC from the earlier professional before accepting the above said assignment.
  - (iii) That the Respondent has filed and certified Form 18 for shifting of the registered office of the company.
  - (iv) That it is admitted on oath by the company through the Respondent that there are no attendance registers or proof of service of notice of Board meeting maintained by the company.
  - (v) That the Respondent has certified false and fabricated Form 32 for the appointment of two directors in the Board Meeting of the company where he (the Complainant) was present and no resolution was passed for the same in that meeting. The Complainant has filed a petition CP 46 of 2012 with the CLB for oppressions and mismanagement in the company where certification and filing of false Form 32 was included as one of the issues.



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- (vi) That the Respondent has been appearing as authorized representative of the company in the CLB petition CP No. 46 of 2012 and had certified and filed Form 32 being fully aware about the facts of the case.
3. The Respondent in his written statement dated 18<sup>th</sup> February, 2013; denied the allegations levied against him and *inter-alia* stated that:-
- (i) That the issues mentioned in the complaint regarding shifting of registered office of the company, appointment of two additional directors are *sub-judice* under the petition C.P. No. 46 of 2012 filed before the CLB, Mumbai by the Complainant and he had appeared before the CLB, Mumbai in the above said petition under sections 397 & 398 of the Companies Act, 1956 on behalf of the company and other directors.
- (ii) That after receiving the offer from the company, he had intimated *vide* letter dated 8<sup>th</sup> August, 2012 to the earlier incumbent i.e., M/s. GG & Associates regarding his appointment for issuing the Compliance Certificate for the said period and only after receipt of the above intimation from the Respondent, M/s. GG & Associates had issued one confirmation to him showing his no objection for issuance of the Compliance Certificate for the financial year ended 31<sup>st</sup> March, 2012.
- (iii) That as regards the allegation of filling and certifying form 18 for shifting of registered office of the company, the Respondent has denied to have certified the said form.
- (iv) That he had certified Form 32 for the appointment of two directors on the basis of a Board meeting held on 28<sup>th</sup> April, 2012 wherein the Complainant was also present and after verifying copies of notices, proof of dispatch of the notices by registered post, provisions of the Articles of Association, Minutes of the meeting of the Board of Directors w.e.f. held on 1<sup>st</sup> April, 2009 as maintained by the company. It may be mentioned that as per the minute book, the Complainant had voted against the appointment of two directors and having being lost the resolution after voting against it, the complainant is merely making an allegation against the professional.
4. The Complainant submitted his rejoinder dated 1<sup>st</sup> April, 2013 to the written statement wherein he reiterated his earlier submissions and made few additional submissions as under:-
- (i) No valid Board meeting of the company is possible and no Board Resolution was adopted for appointment of PCS for issuance of Compliance Certificate for the financial year ended on 31<sup>st</sup> March, 2012.
- (ii) That the offer letter dated 8<sup>th</sup> August, 2012 stated to have been issued by the company to the Respondent was created as an afterthought by the Respondent himself, subsequent to the receipt of letter from the Complainant or ICSI. Moreover, no proof of postal delivery is produced.
- (iii) That the minutes of the Board meeting held on 28<sup>th</sup> April, 2012 are concocted.
5. The Board further considered the *prima-facie* opinion of Director(Discipline) dated 14<sup>th</sup> August, 2017 of Director (Discipline) in the matter noted the following observations:-
- (i) that there is a dispute in the management of M/s. Beeceelene Textile Mills Pvt. Ltd. of which Complainant is a director.
- (ii) that a petition bearing no C.P. No. 46 of 2012 was filed before the CLB, Mumbai by the Complainant and the same has been decided *vide* order dated 13<sup>th</sup> April, 2017.



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- (iii) that the Respondent had accepted assignment for issuing the Compliance Certificate to M/s. Beeceelane Textile Mills Pvt. Ltd., for the period 2011-12 after receiving an offer letter dated 8<sup>th</sup> August, 2012 from the company for issuing the Compliance Certificate for the financial year ended on 31<sup>st</sup> March, 2012 duly signed by Mr. Pitamberdas B. Ruchandani, Director, M/s. Beeceelane Textile Mills Private Limited. Further, the Respondent after receiving the offer from the company, had intimated vide letter dated 8<sup>th</sup> August, 2012 to the earlier incumbent i.e., M/s. GG & Associates regarding his appointment for issuing the Compliance Certificate for the said period. M/s. GG & Associates has also given his no objection for issuance of the Compliance Certificate for the financial year ended 31<sup>st</sup> March, 2012.
- (iv) the Complainant has raised objections on mode of sending the letters by the Respondent to M/s. GG & Associates but nowhere it is specified that the letters are to be sent through speed post for compliance only a prior intimation with positive proof of delivery is required to be done before issuing the compliance certificate. Since the same has been done in the instant case and more so there is no provision of taking NOC from the previous incumbent, the Respondent prima facie is not guilty for said allegation.
- (v) As far as allegation of filling and certifying form 18 for shifting of registered office of the company against the Respondent is concerned, on perusal of the said form, it has been observed that the Respondent has not certified the said Form. Therefore, the Respondent is not guilty of professional misconduct for said allegation.
- (vi) As far as allegation of certification of Form 32 for the appointment of two directors, the Respondent has stated that he had done so after verifying the following records of the company:
- a) copies of notices, proof of dispatch of the notices by registered post of a Board meeting held on 28<sup>th</sup> April, 2012, wherein the Complainant was also present.
  - b) Articles of Association of the company.
  - c) Minutes of the meeting of the Board of Directors w.e.f. held on 1<sup>st</sup> April, 2009 as maintained by the company. It may be mentioned that as per the minute book, the Complainant had voted against the appointment of two directors and having being lost the resolution after voting against it, the complainant is merely making an allegation against the professional.
  - d) Certified copy of the Board Resolution.
- (vii) The doctrine of Indoor Management affords that persons dealing with a company having satisfied themselves, are not bound to inquire into the regularity of any internal proceeding. In this case, the Respondent has certified and filed the said Form 32 after verifying the aforesaid documents. The allegations levied by the Complainant against the Respondent do not find any merit to say that the Respondent has not exercised due diligence in the conduct of his professional duties. The observation in the final orders in C.P. No. 46 of 2012 cannot be taken against the Respondent as he had relied on the documents required for certification and the certified true copy of the resolutions passed in the meeting of the Board of Directors of the company clearly indicated the




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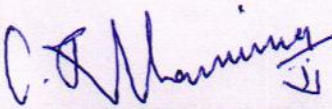
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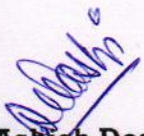


appointment of Mr. Amit P Ruchandani as an additional director of the company."

6. **The Board of Discipline after considering the complaint, written statement, rejoinder and other material on record, *prima-facie* opinion of the Director (Discipline) and keeping all the facts and circumstances of the case, agreed to the *prima-facie* opinion of the Director (Discipline), that the Respondent has exercised due diligence in performing his duties & is held "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Complainant in his complaint.**

  
**CS Dinesh Chandra Arora**  
Member

  
**CS C Ramasubramaniam**  
Member

  
**CS Ashish Doshi**  
Presiding Officer

