

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

ICSI/DC/ 206/2013

Order reserved on: 31st July, 2018

Order issued on: 25th August, 2018

M/s Laxtronics Instruments &
Controls Pvt. Ltd.
Through: Shri Laxman Waman Khalkar

.....Complainant

Vs.

Mrs. Dipti Atul Mehta, FCS-3667, (CP No. 3202)

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

A complaint dated 30th June, 2013 in Form-I was filed under Section 21 of the Company Secretaries Act, 1980 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') by M/s Laxtronics Instruments & Controls Pvt. Ltd., through Shri Laxman Waman Khalkar, Managing Director (hereinafter referred to as 'the Complainant') against Mrs. Dipti Atul Mehta, FCS-3667, (CP No. 3202) (hereinafter referred to as 'the Respondent').

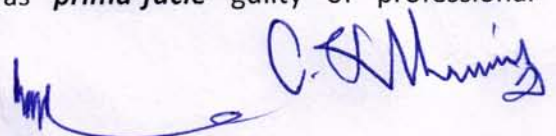
2. The Complainant has alleged *inter-alia* that the Respondent had certified and filed Form DIN-3 on 16th September, 2011 intimating DIN of Shri Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar as Directors in M/s Laxtronics Instruments & Controls Private Limited. The Complainant further stated that Shri Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar were not Directors of the Company on the day the alleged Form DIN-3 was filed as they had already resigned in August, 2004 from the post of Directors of the Company and Form-32 intimating their resignation was filed with the ROC, Mumbai, accordingly. The



Complainant further stated that in the alleged Form DIN-3 a reference to a resolution dated 12th September, 2011 is mentioned. However, no such resolution was ever passed by the Board of Directors of the Company.

3, The Respondent denied the allegations made in the complaint. It was stated by her that the matter is *sub-judice* and pending before the Company Law Board (CLB), Mumbai Bench in Company Petition No. 101 of 2011. In the said petition the Respondent has directly and substantially raised the same issue to decide the question as to the directorship of Shri Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar and, therefore, any hearing on the same issue before the Disciplinary Committee would amount to parallel hearing in respect of the same matter. It was further stated by the Respondent that Mr. Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar are represented as the Directors and this fact they have admitted in their Affidavit filed in the Company Law Board (CLB). It was further stated that from the Registered Deed of Assignment dated 07th October, 2004 it was evident that Mr. Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar have signed the documents in the capacity of the Directors. They were Directors on 7th October, 2004, and even thereafter. It was also stated by the Respondent that upon online inspection of the details about the Company on the MCA site she did not come across any Form-32 for removal of Shri Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar. The documents produced before her were sufficient evidence as to the directorship of the aforesaid two (2) persons.

4. After completion of the pleadings, the then Director (Discipline) was of the *prima-facie* opinion that the Respondent was guilty of professional misconduct under Item (7) Part I of the Second Schedule of the Company Secretaries Act, 1980, as she did not exercise due diligence while certifying the alleged Form DIN-3 apparently only relying on the resolution dated 12th September, 2011. In his *prima-facie* opinion dated 12th November, 2014 the then Director (Discipline) had referred to the judgment/order dated 12th September, 2013, of the Company Law Board (CLB), Mumbai, passed in Company Petition No. 101 of 2011, wherein the Company Law Board (CLB) had *inter-alia* held that Shri Bhola Waman Khalkar and Mrs. Vidya Bhola Khalkar were not the Directors/Shareholders of M/s Laxtronics Instruments & Controls Private Limited since their resignation in 2004. The Company Law Board (CLB) had directed that their name should be removed from the MCA Website. The Director (Discipline) concluded that the Respondent was *prima-facie* guilty of professional



misconduct under Item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980, as she did not exercise due diligence while certifying the alleged Form DIN-3 apparently only relying on the resolution dated 12th September, 2011.

5. The Disciplinary Committee considered the *prima-facie* opinion dated 12th November, 2014 of the Director (Discipline) in the meeting held on 20th November, 2014 and after considering the *prima-facie* opinion dated 12th November, 2014 of the Director (Discipline) and the other material on record, the Disciplinary Committee advised the Director (Discipline) to send a copy of the letter dated 13th September, 2013, of the Complainant along with the copy of order dated 12th September, 2013, passed by the Company Law Board (CLB) Mumbai, in Company Petition No. 101 of 2011, to the Respondent asking her to submit her comments on the said order of the Company Law Board (CLB).

6. Accordingly, the attention of the Respondent was drawn to the Para 57 (i) of the Company Law Board (CLB) order dated 12th September, 2013 in Company Petition No. 101 of 2011 wherein it had been stated as under:

"57 (i) It seems that Ms. Dipti Mehta did not verify the records properly, which according to the Circular 14/2011 No. 17/102/2011 CL-V she was duty bound to do. So it appears that Respondents either with Ms. Dipti Mehta in collusion or Ms. Dipti Mehta despite knowing all this, fraudulently with R1 and R2 created false records and misguided the ROC and obtained the DIN number and thereafter the names of R1 and R2 stated to appear on the website portal of ROC."

7. The Respondent was asked to state whether any Appeal against the aforesaid order of CLB has been filed by her, and, if so, also to state the present status thereof. In response to the aforesaid letter, the Respondent has sent a reply dated 22nd February, 2018 wherein it has *inter-alia* been stated as under:

"I respectfully submit that the Company Law Board's order dated 12th September, 2013 in the captioned matter does not indict me of any activities amounting to collusion with my Client, whatsoever."

I humbly submit that the Para 57 (i) of the Company Law Board (CLB) order dated 12th September, 2013 in C. P. No. 101 of 2013 read in conjunction with Para 57 of the order, clearly shows that, Para 57 (i) of the said order is merely the submissions which are made by the Respondent in C. P. No. 101 of 2011 who are the Complainants here, in the captioned matter."



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In fact, it is pertinent to note that the Company Law Board vide its order dated 12th September, 2013 has not given any finding to that effect that I have indulged in the activities warranting disciplinary action. Moreover, the observations of the Hon'ble CLB are not in the nature of obiter dicta. Therefore, no cognizance has to be taken of the same.

I say that I have exercised due diligence by searching the MCA website which revealed that the Ms. Vidya Bhola Khalkar and Mr. Bhola Waman Khalkar is named as First Directors in the Articles of Association and original subscribers to the Memorandum of Association. Moreover, no Form-32 indicating the cessation of Directors has been filed with the ROC. Thus it is evident that I have carried out due diligence and verification in ROC website and have arrived at the reasoned conclusion.

Moreover, this complaint filed by the Complainant who is originally the Respondent in CP No. 101 of 2011 is got up motivated and merely an afterthought and therefore liable to be dismissed in limine.

I further submit that I am not the party to the proceedings in the CP No. 101 of 2011. Moreover, the Hon'ble CLB, vide its order dated 12th September, 2013, had not arrived at any findings regarding my alleged negligence. Therefore, as I have not been aggrieved by the Hon'ble CLB's order dated 12th September, 2013, I have been legally advised not to prefer an Appeal."

8. Accordingly, the letter dated 10th December, 2014 and 22nd February, 2018 received from the Respondent wherein she has submitted her comments on the Order dated 12th September, 2013 of Company Law Board, Mumbai, in CP No.101 of 2011 was placed before the Disciplinary Committee in its meeting held on 25th April, 2018.
9. The Disciplinary Committee after considering the letters and all the facts and circumstances of the matter and submission made by the Respondent vide 10th December, 2014 and 22nd February, 2018, directed to further investigate the matter and proceed further in accordance with Rule 9 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007.
10. As per the aforesaid directions by the Disciplinary Committee, the Director (Discipline) further investigated the matter and made *inter-alia* the following observations in her further opinion dated :



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It is stated that the observations contained in Para 57 (i) of the Company Law Board (CLB), Mumbai Bench order dated 12th September, 2013, records only the submissions made by the Respondent to the petition (who is the Complainant in the present complaint.) The Company Law Board (CLB) in its order has not given any findings on the aforesaid submissions of the Respondent in the petition (the Complainant herein). Moreover, the Respondent was not a Party to the Company Petition No. 101 of 2011 filed by the Petitioner before the Company Law Board (CLB), Mumbai, and had no occasion or opportunity to rebut the submissions made by the Respondent (the Complainant herein). Therefore, the statements contained in Para 57 (i) of the Company Law Board order dated 12th September, 2013, cannot be taken as adverse observations of the Company Law Board (CLB) against the Respondent.

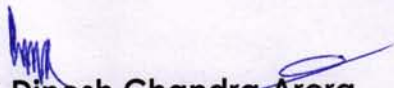
.....in the light of the new facts made available and is of the **prima-facie** opinion that the Respondent **cannot be held guilty** on account of the observations made by the Company Law Board (CLB) in Para 57 (i) of its order dated 12th September, 2013. Accordingly, the Director (Discipline) is prima facie of the opinion that the Respondent is **not guilty** of professional or other misconduct under the Company Secretaries Act, 1980.

11. On 10th July, 2018 the Director (Discipline) placed her further opinion dated 3rd July, 2018 along with all the case papers before the Board of Discipline for its consideration. However, due to paucity of time the matter deferred.
12. The Director (Discipline) has again placed her said opinion dated 3rd July, 2018 along with all the case papers before the Board of Discipline in its meeting held on 31st July, 2018. The Board of Discipline observed that the Respondent was not a party to the Company Petition No. 101 of 2011 before the Company Law Board (CLB), Mumbai. Further, the Respondent has certified the alleged DIN 3 in good faith and on the basis of the documents provided to her.
13. The Board also agrees with the contentions of the Director (Discipline) that the observations contained in Para 57 (i) of the Company Law Board (CLB), Mumbai Bench order dated 12th September, 2013, records only the submissions made by the Respondent to the petition (who is the Complainant in the present complaint).

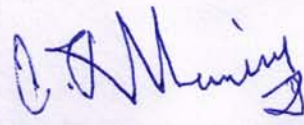


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14. The Board also noted that the Respondent has stated that she was not a party to the proceedings in CP No. 101 of 2011 before the Company Law Board. The Hon'ble Company Law Board vide its Order dated 12th September, 2013 had not arrived at any findings regarding her alleged misconduct. The Respondent further stated that as she had not been aggrieved by the Order dated 12th September, 2013 of the Hon'ble Company Law Board, she was legally advised not to prefer an appeal against the aforesaid Order.
15. The Board of Discipline after considering the aforesaid observations, material on record, further opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with the further opinion of the Director (Discipline) that the Respondent is "Not Guilty" of Professional or other Misconduct under any of the Items of First and/or Second Schedule to the Company Secretaries Act, 1980.


CS Dinesh Chandra Arora
Member




CS C Ramasubramaniam
Presiding Officer