

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI: DC: 268/2014

Order Reserved On: 3rd June, 2019

Order Issued On: 27 JUN 2019

Shri Krishna Gopal Mor

....Complainant

Vs

M/s. M.D. Baid & Associates

....Respondent

(Representative - Shri Mohanlal Baid, ACS-3598 CP No. 3873).

CORAM:

Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra D Rao, Member
Shri B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

PRESENT

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Gaurav Tandon, Assistant Director
Shri Shareyansh Kumar Jain appeared for M/s. M.D Baid & Associates
None for the Complainant

ORDER

1. A complaint dated 5th November, 2014 in Form 'I' was filed by Shri Krishna Gopal Mor (hereinafter referred to as 'the 'Complainant') against M/s. M.D Baid & Associates, (Representative - Shri Mohanlal Baid ACS-3598 CP No. 3873) (hereinafter referred to as 'the Respondent'). 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. M/s. M. D. Baid & Associates was *vide* letter dated 11th November, 2014 was asked to disclose the name or names of the member or members concerned along with a declaration duly signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint. A letter dated 4th December, 2014 was received from Shri Mohanlal Baid, ACS-3598, Partner of M/s. M. D. Baid & Associate *inter-alia* stating that he will be responsible for answering the complaint on behalf of the firm as Shri Bharat Koyani, Partner of the firm who had issued the Compliance Certificate has retired.
3. The Complainant in his complaint has *inter-alia* stated that he is a director of M/s. Siddharth Polytex Pvt. Ltd., and there is management disputes in the company. The Complainant further stated that one of the directors of M/s. Siddharth Polytex Pvt. Ltd., had misused the company without proper documents, registers, and records and also obtained false Compliance Certificates for the FY ending 2006, 2007 and 2008



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from the Respondent without carrying out proper due diligence. The Complainant further stated that M/s. Siddharth Polytex Pvt. Ltd., had produced all available statutory records and registers before the CLB, Mumbai, for verification in the ongoing Company Petition before the CLB, Mumbai. The Complainant found some inconsistencies in actual facts and the Compliance Certificates issued by the Respondent which are as under:-

No	Factual / admitted position of Company Before CLB	Falsehood in Compliance Certificate
01	No Register of Directors Attendance	In Annexure -A to CC at Sr no 7 CS has certified that it is maintained.
02	No Notice of Board Meeting/ General Meeting issued	In point no.4 & 6 of the CC , CS has certified that proper notices were given
03	Company says that there was no Board Meeting on 31 st March, 2007	In point no.4 of the CC for the year ended on 31 st March, 2007 CS has certified that there was Board meeting on 31 st March, 2007
04	Company says that there was Board Meeting on 31 st May, 2007	In point no 4 of the CC for the year ended on 31 st March, 2008 CS has certified that there was No Board meeting on 31 st May,2007
05	Company says that there were transfer of shares during the year 2008-09	In point no 13 of the CC for the year ended on 31 st March, 2008 CS has certified that there was no transfer during the year.
06	No proof of AGM for the year 2013.	CS has filed form 20B with certificate that all attachment are there is ongoing management dispute.

4. The Respondent in his Written Statement dated 04.012.2014 has *inter-alia* denied all the allegations made against his firm and has stated as under:

a. M/s. Siddharth Polytex Pvt. Ltd., had incurred heavy losses and had to discontinue its business operation in year 2006. As per attendance register of board meeting and minutes of board meeting verified by his firm, the Complainant had not attended any board meeting after discontinuance of business operation of the company till the last Compliance Certificate issued by his firm in the year 2008.

b. That the Respondent has checked certified true copy of the Board Resolution dated 29th September, 2012 attached by the company with form 20B for the financial year ended on 31st March, 2012 (Annual General Meeting date 26th September 2012) and such Board Resolution is certified as true copy by Shri Keshar Deo Mor,



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Director of the Company, (Father of the Complainant).

- c. That the company has five directors Viz. (1) Shri Keshar Deo Mor(2) Shri Madan Gopal Mor (3) Shri Krishna Gopal Mor (4) Shri Girdhar Gopal Mor(5) Shri Aditya Vikram Mor. Further, Shri Keshar Deo Mor is father of Shri Madan Gopal Mor, Shri Krishna Gopal Mor and Shri Girdhar Gopal Mor and Grand Father of Shri Aditya Vikram Mor. The Audited Statement of Accounts and Annual Return from the year 2006 to 2013 signed by the directors of the company and details of which are as under.

Sr No	Year	Audited Statement of Accounts signed by	Annual Return signed by
1	31 st March, 2006	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor
2	31 st March, 2007	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor
3	31 st March, 2008	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor
4	31 st March, 2009	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor	Shri Madan Gopal Mor & Shri Girdhar Gopal Mor
5	31 st March, 2010	Shri Madan Gopal Mor & Shri Aditya Vikram Mor	Shri Madan Gopal Mor & Shri Aditya Vikram Mor
6	31 st March, 2011	Shri Madan Gopal Mor & Shri Aditya Vikram Mor	Shri Madan Gopal Mor & Shri Aditya Vikram Mor
7	31 st March, 2012	Shri Keshor Deo mor & Shri Madan Gopal Mor	Shri Keshor Deo Mor & Shri Madan Gopal Mor
8	31 st March,2013	Not available at MCA portal	Shri Madan Gopal Mor & Shri Aditya Vikram Mor

- d. That the Audited Statement of Accounts and Annual Returns are signed by Directors of the company. Shri Krishna Gopal Mor has not signed Audited statement of accounts, Annual Return and not submitted his DIN to the company till Annual General Meeting held on 26th September, 2012.
- e. That Shri Krishna Gopal Mor, Shri Girdhar Gopal Mor and Shri Keshar Deo Mor has filed present ongoing petition with the CLB, Mumbai Bench, Mumbai in the year 2013, when some of the members of the company had given Special Notice for removal of Shri Krishna Gopal Mor as Director of the company.
- f. That the Respondent denied the existence of management dispute during 2006 to 2008. If for the sake believing about existence of management, if there was management dispute during 2006 to 2008, the Complainant must have communicated to the Statutory Auditor and Practising Company Secretary about existence of management dispute.
- g. Shri Bharat Koyani, Partner of M/s. M D Baid & Associates had issued the



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Compliance Certificate for the years 2006 to 2008 after verifying all statutory registers and records mentioned therein and were produced before him by the Company. The Complainant has distorted the report of Bench officer of the CLB, Mumbai. The content of the Report of the Bench Officer of the CLB, Mumbai is hereunder:

"No other documents and statutory registers and records were produced before me by the representatives for the Respondents"

- h. That the report of CLB, officer that no other documents and statutory registers and records were produced is not to be construed as the non maintenance or non existence of other statutory registers and records. The Complainant has twisted and distorted the details of report of the Bench office of the CLB.
- i. That the Complainant has not attached any documentary evidence wherein the company has admitted or the CLB has made observation about the allegation made by the Complainant. The Complainant is making a false and baseless statement that aforesaid is Factual/admitted position of company before the CLB.
- j. That the Compliance Certificate for the year ended on 31st March, 2008 did not contain the share transfers which have taken place in year 2008-09. It is not possible for PCS who is issuing Compliance Certificate for year ended on 31st March, 2008 to forecast the transfers of shares which will take place in year 2008-09. The Compliance Certificate for the year 2009 has not been issued by the Respondent's firm.
- k. The AGM of the company as on 30th September, 2013 convened and held as per the order of the CLB, Mumbai. The Respondent had certified the form 20B for 2013 after verifying the following records/ papers:
- (i) Order of the CLB, Mumbai dated 19th September, 2013.
 - (ii) Notice convening the Annual General Meeting.
 - (iii) Proof of service of notice of Annual General Meeting.
 - (iv) Attendance Register for Annual General Meeting held on 30th September, 2013.
 - (v) Annual Return made upto last Annual General Meeting dated 30th September, 2013, duly signed by Shri Madan Gopal Mor and Shri Aditya Vikram Mor. The Respondent has verified the same with the statutory records maintained by the Company and Minutes of AGM.
- l. That the Complainant not only distorted and suppressed the facts, but also made false statement knowing it to be false. The Complainant is a petitioner in the ongoing matter before Company Law Board, Mumbai Bench & is fully aware that Board Meeting dated 26th September, 2013 and Annual General Meeting dated 30th September, 2013 were held as per the order of the CLB dated 19th September, 2013.
5. The Complainant in his rejoinder dated 15.01.2015 *inter-alia* stated that as far as the signature and certification of the Board Resolution by Shri Keshar Deo Mor is concerned, it seems to be ill advice of the Respondent only to create such false and concocted evidences as Shri Keshar Deo Mor and Shri Girdhar Gopal Mor have already made an affidavit that they have not signed any document of the Company and any such document containing their signatures shall be void and forged one. That the Respondent is making a serious attempt to misguide the Disciplinary Committee by



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stating that Company has five director's. In fact the Company has only four directors and fifth one was appointed without any authority and that false Form 32 was also certified by the same PCS who has signed false Compliance Certificates when 3 out of 4 Directors confirm that there were no Board Meetings, there cannot be, any valid Board Meeting, but closing their eyes on the basic facts they have kept doing such malpractices and non professional acts and deeds. That as far as table of signing Balance Sheets are concerned, the risk of repetition that Shri Girdhar Gopal Mor and Shri Keshar Deo Mor have denied on affidavits that they have not signed any documents including Balance Sheet. Affidavits are enough to prove the false and concocted submissions of the Respondent. That knowledge and information of ongoing CLB matter reflects that the Respondent was and is having full knowledge of dispute and has done these professional misconducts with full knowledge and ill intention. That the Respondent need not to go into details of existence of Management Dispute, affidavit of non-signing of any documents for the company is *prima facie* evidence of all false documents and submissions of respondent. Total three out of four directors have denied convening of any Board Meetings during that period, question of any Board Meeting or notice of Board Meeting or approval of any business at Board Meeting or general meeting does not arise.

6. The Director Discipline after examination of the complaint, written statement, rejoinder and other material on record, *vide prima-facie* opinion dated 25th August, 2017 opined the Respondent is *prima-facie* "Guilty" of professional misconduct as per Item (7) of Part I of the Second Schedule of the Act. Item (7) of Part-I of the Second Schedule to the Act as after considering the facts of the case it can be reasonably be assumed that the Respondent had not verified the relevant records of the company while issuing the Compliance Certificates to the company.
7. The Disciplinary Committee at its meeting held on 8th September, 2017 had considered the *prima-facie* opinion dated 25th August, 2017 of the Director (Discipline) and the material on record. The Disciplinary Committee after considering the same and all the facts and circumstances of the matter, observed that Shri Bharat Koyani, the then Partner of the Respondents' firm had issued the Secretarial Compliance Certificate for years 2006, 2007 and 2008. The said Compliance Certificates are the subject matter of the Complaint. Therefore, the Disciplinary Committee advised the Director (Discipline) to further investigate as to whether Shri Bharat Koyani will be responsible or the Respondent will be responsible for the said certifications.
8. Accordingly, the matter was further investigated by the Director (Discipline) and after further examination she reiterated the *prima-facie* opinion dated 25th August, 2017 wherein it was opined that the Respondent Shri Mohanlal Baid is *prima-facie* guilty of professional misconduct as per Item (7) of Part I of the Second Schedule to the Act. Item (7) of Part-I of the Second Schedule to the Act.
9. On 29th June, 2018 the Disciplinary Committee after considering the Further Investigation Report of Director (Discipline), material on record and all the facts and circumstances of the matter agreed with the *prima-facie* of opinion of the Director (Discipline) that the Respondent had not verified the relevant records of M/s. Siddharth Polytex Pvt. Ltd., the Company while issuing the Compliance Certificates to the Company and decided to adjudicate the matter



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to finally decide whether the Respondent is guilty or not.

10. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letter(s) dated 23rd August, 2018, calling upon them to submit their written statement/Rejoinder, respectively to the *prima-facie* opinion of the Director (Discipline).
11. The Respondent *vide* his letter dated 14th September, 2018 submitted his Written Statement to the *prima-facie* opinion of the Director (Discipline) with a copy to the Complainant. However, no Rejoinder was received from the Complainant.
12. The Respondent in his aforesaid Written Statement has mainly reiterated his earlier submissions that his firm had verified the required documents and that there is no guideline or requirement to retain documents after issuance of Compliance Certificate. The Respondent further stated that the Bench officer has only observed that no other documents and statutory registers and records were produced before the Bench. It is nowhere observed that the other documents and statutory registers are not maintained. The Respondent once again denied the existence of management dispute during 2006 to 2008 and stated that the Complainant had obtained DIN through Shri Bharat Koyani, Partner of M/s. M D Baid & Associates , the very professional who had issued the Compliance Certificates for FY 2006-2008.
13. The parties *vide* letter dated 22nd February, 2019 were called upon to appear before the Disciplinary Committee on 12th March, 2019.
14. On 12th March, 2019, the Disciplinary Committee observed that the Complainant is neither present before it nor any communication has been received from him and that the Respondent has requested for an adjournment. The Disciplinary Committee after considering the material on record, all the facts and circumstances of the matter decided to adjourned the matter and call upon both the parties to appear before it on the next date of hearing in this case, as may be decided by the Presiding Officer of the Disciplinary Committee.
15. The parties *vide* letter dated 16th May, 2019 were again called upon to appear before the Disciplinary Committee on 3rd June, 2019.
16. On 3rd June, 2019, the Disciplinary Committee observed that the Complainant is neither present before it nor any communication has been received from him and Shri Shareyansh Kumar Jain appeared on behalf of M/s. M.D Baid & Associates and submitted that he shall be representing the matter before the Committee. He once again denied the existence of management dispute during 2006 to 2008 and stated that the Complainant had obtained DIN through Shri Bharat Koyani, Partner of M/s. M D Baid & Associates, the very professional who had issued the Compliance Certificates for FY 2006-2008. He further stated that the Bench officer has only observed that no other documents and statutory registers and records were produced before the Bench. It is nowhere observed that the other documents and statutory registers are not maintained. He further



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produced before the Committee, certified copies of Annual Returns of FY 2007 and 2008 duly signed by two directors of the company wherein transfer of shares were duly shown on 30.03.2007 and 31.03.2007 and the Compliance certificate indicates both those meetings i.e. on 30.3.2007 and 31.03.2007. The Representative of the Respondent firm concluded by submitting that Shri Bharat Koyani, the then Partner of the Respondents' firm had issued the Secretarial Compliance Certificate for years 2006, 2007 and 2008 after duly verifying the records of the company and there is no guideline or requirement to retain documents after issuance of Compliance Certificate.

17. The Disciplinary Committee had advised Shri Shareyansh Kumar Jain, the Representative of the Respondent to file written submissions in the matter within two (2) weeks along with a declaration, which the Respondent inter-alia submitted wherein he once again denied that there, was a management dispute and existence of oppression in the company. It was further stated that Shri Bharat Koyani, the then Partner of the Respondents' firm had visited the registered office of the company and had verified the relevant records of the company. The Respondent further reiterated that the Bench officer has only observed that no other documents and statutory registers and records were produced before the Bench. It cannot be construed that statutory registers are not maintained. Further, Annual Returns of FY 2007 and 2008 duly signed by two directors of the company wherein transfer of shares was duly shown on 30.03.2007 and 31.03.2007 and the Compliance certificate indicates both those meetings i.e. on 30.3.2007 and 31.03.2007. The Respondent further submitted that the Company law Board had issued the directions to convene the Board meeting and the Annual General meeting for the year 2013. The Respondent also submitted certain documents related to Annual General meeting of the company held on 30.09.2013.

18. The Disciplinary Committee after hearing the submissions made by representative of the Respondent firm and the written submissions received from the Respondent; all the material on record and all the facts and circumstances of the case the Disciplinary Committee is of the opinion hold that the Respondent is "Not Guilty" of professional or other misconduct under Item (7) of the Part I of the Second Schedule to the Company Secretaries Act, 1980 as the case is mainly based on the Bench officer report wherein it has been stated that no other documents and Statutory Registers and records were produced before the Bench. However, it is nowhere stated that the other documents and Statutory Registers are not maintained and therefore, it cannot be concluded that the Respondent firms had issued the Compliance Certificates without verification of Secretarial Records of the company just for the reason the same were not produced before the Bench Officer appointed by the CLB, Mumbai.

19. Further, the Complainant has neither attended the hearings before the Disciplinary Committee nor submitted any rejoinder to Written Statement to the *prima-facie* opinion of the Director (Discipline) submitted by the Respondent. The Complainant has also not been able to substantiate his claim that the Respondent firm was aware of the dispute and as far as the transfer of



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shares are concerned, the Respondent has shown to the Disciplinary Committee, the certified copies of Annual Returns of FY 2007 and 2008 duly signed by two Directors of the Company wherein transfer of Shares were duly shown on 30.3.2007 and 31.03.2007 and the Compliance Certificate indicates both those meetings i.e. on 30.3.2007 and 31.03.2007.

20. The Disciplinary Committee concludes that no case is made out against the Respondent firm and accordingly, the Complaint stands closed and disposed-off.



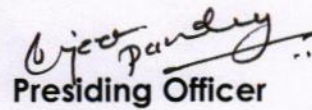
Member



Member



Member



Presiding Officer