

**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/277/2014

Order reserved on: 04.09.2017

Order issued on : 26th September, 2017

Mr. Badrinath Udesingh Rathod

.....Complainant

Vs

Mr. Arun Rajabhau Joshi, ACS-5450 & CP No. 4247

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline considered the complaint dated 5th December, 2014 in Form 'I' of Mr. Badrinath Udesingh Rathod (hereinafter referred to as the 'Complainant') against Mr. Arun Rajabhau Joshi, ACS-5450 & CP No. 4247 (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 Board noted that the Complainant has inter- alia alleged that:-
 - a) he along with other Directors had written a letter dated 09.12.2013 to the Respondent with a cc marked to Mr. Rasik Bhai Patel to not to act as a Company Secretary of the Company;
 - b) despite the said letter, the Respondent had removed the Complainant, Mr. S.D. Deshpande and Ms. Jyoti Jadhav from the Directorship of the Company by wrong methods;
 - c) vide the board resolution dated 18.07.2005 the Complainant and Ms. Jyoti P. Jadhav were appointed as permanent Directors and vide board resolution dated 01.07.2005 Mr. S.D. Deshpande was appointed as Director till he submits his resignation;
 - d) despite these resolutions, the Respondent used his junior i.e. Mr. Gaurav Mishra to sign the form 32/DIR-12 and forged the documents to remove the Complainant and Mr. S.D. Deshpande from the Directorship of the Company.



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- e) the Respondent executed an affidavit taking full responsibility of submission of Form 32/DIR-12 for the removal of the Complainant and Ms. Jyoti Jadhav from the Directorship of the Company to ROC, Maharashtra.
3. The Respondent submitted his written statement dated 24th March, 2015; wherein he denied the allegations levied against him and inter-alia stated that:-
- the actual work for vacation of office of Mr. B.U Rathod and Ms. Jyoti Jadhav was done by CS Gaurav Mishra, practising Company Secretary;
 - a notice was given to the Complainant stating that they were appointed as whole time directors for tenure of 5 years and the period was over and why they should not be removed from the office of Board of Directors of the Company;
 - the board resolution dated 04.12.2013 for non- continuation of office of the Complainant and Mrs. Jadhav as Directors of the Company was duly passed in the Board Meeting held on 04.12.2013;
 - one more opportunity was given to the Complainant and others by the Company for being re-appointed as Directors of the Company;
 - the Extraordinary General Meeting was convened by giving seven days notice as per the clause 8 of AoA of the Company on 29.09.2014. However, none of these Directors could be appointed on the board due to lack of sufficient shareholding. After a time period of 3-4 months the Complainant and other Directors approached CS Gaurav Mishra for re-appointing them as Directors of the Company without any documents.
4. The Complainant submitted his rejoinder dated 13th May, 2015 wherein he reiterated his earlier submissions and stated that the respondent has followed wrong and fraudulent procedure in removing the Complainant from directorship.
5. The Board further considered the prima-facie opinion of Director (Discipline) dated 12th August, 2017 and observed as under:-
- In the instant case, it is not disputed that the work for vacation of office of Mr. B.U Rathod, Ms. Jyoti Jadhav, and Mr. S.D Deshpande from the directorship of M/s Shri Narsimha Chemo Pharma Pvt. Ltd. was filed by CS Gaurav Mishra, practising Company Secretary and not by the Respondent.
 - Since the Respondent has not certified the alleged form for vacation of office of Mr. B.U Rathod Ms. Jyoti Jadhav, and Mr. S.D Deshpande he cannot be held guilty of professional or other misconduct. It is the duty of the concerned PCS, who has certified the form to satisfy himself/ herself of the compliances of due procedure as contemplated under the provisions of the Companies Act, 1956 / the Companies Act, 2013.
 - In view of the above, the Director Discipline is prima-facie of the opinion that the Respondent is "**not guilty**" under the provisions of




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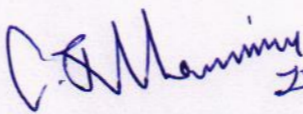
C. S. Mishra
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the Company Secretaries Act, 1980. The Complainant if so desire, is at liberty to file the complaint against the concerned Company Secretary who has certified the subject forms.

6. **The Board of Discipline at its meeting after considering the material on record, aforesaid observations of Director (Discipline), 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 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

