

**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/279/2014

Order reserved on: 04.09.2017

Order issued on : 26th September, 2017

Mr. D. VenkateshGuptha

.....Complainant

Vs

Mr. H.N. Krishnamurthy, ACS 6505 &CP 2091

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline considered the complaint dated 13th December, 2014 in Form 'I' of Mr. D. VenkateshGuptha (hereinafter referred to as the 'Complainant') against Mr. H.N. Krishnamurthy, ACS 6505 &CP 2091(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:-
 - (i) the Respondent has certified and filed e-form 32 pertaining to his cessation as a Director from board of M/s. Indus Steels & Alloys Ltd.(the company) without exercising due diligence. The Complainant has further stated that there is a dispute over the affairs of the company between him and Mr. S.S Srikanth (other director) of the company.
 - (ii) The Complainant had submitted his resignation letter dated 4th January, 2014 to the board of the company under an arrangement that he will resign from the board and his son Mr. D.V. Srihari will be inducted as a Director on the board of the company. But, after a few days he was informed that such arrangement could not be made, so when the Complainant asked for his resignation letter to be returned, he was informed that it has been misplaced and would be returned as and when found. The Complainant further stated that after sometime, he found that his misplaced resignation letter has been filed with the ROC and he has been removed as a director of the Company.
 - (iii) That the document enclosed with Form-32 includes a board resolution dated 29.02.2012 which is about 2 months after he tendered his resignation. Further neither in the Minutes of the said board meeting he was present nor was he informed that his resignation has been accepted. The Complainant also pointed out that in the same board meeting he was authorised to continue as an employee of the company with the same salary as a Director.



C. J. Manning
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(iv) In August 2012, eight months after the Complainant had supposedly resigned and seven months after the board had "accepted his resignation, the Complainant had filed Form 23B with the ROC, through their Company Secretary, M/s B.G. Associates, and the proceeds of the AGM ratifying the directorship of Mr. S.R. Sathanantham.

3 The Respondent submitted his written statement dated 19th January, 2015; wherein he denied the allegations levied against him and *inter-alia* stated that for certification of Form 32 for removal of Complainant, he had verified the following:-

- (i) original resignation letter of the Complainant,
- (ii) certified true copy of the minutes of board meeting held on 29th February, 2014; wherein such resignation letter was duly accepted by the Board.

3.1 Further the Respondent *inter-alia* stated that :-

- (i) in the original resignation letter of the complainant reason of resignation was mentioned as "due to my personal reasons" and "with immediate effect".
- (ii) he was not having any information about the difference of opinion between Mr. Srikanth (Existing Director) and the Complainant and as per the Companies Act, 1956 the moment a resignation letter is received by the company it is deemed to have been effective unless a specific subsequent date is mentioned in the letter and filing form 32 is only an intimation to ROC. That this Form-32 is filed in February 2013 whereas the complaint was made by the Complainant in December, 2014 which after a gap of about 2 years, which shows the ill motive of the Complainant who is a Law Graduate and a Chartered Accountant.
- (iii) the company's management is very slow in filing documents to any government agencies and before and engagement quite a number of documents were pending for filing, for example for financial year 2010-11 all annual documents supposed due for filing during October-November, 2011, but filed form 20B on 17.12.2012 vide SRN- Q04473799 and form 66 on 31.12.2012 vide SRN Q05357272 after the delay of about 14 months.
- (iv) Another reason why the form 32 filing was delayed was that the annual filings of 2010-11 was not filed till December, 2012 and unless the same are filed form 32 cannot be filed which was a subsequent dated resignation. In case, form 32 is filed before filing annual return of 2010-11, the directors information's will be deleted from the MCA Portal and the director information in form 20B will not be able to be filled up. The Respondent further stated that he persuaded to management and educated them about the penal consequences of the delay in filing and then first he filed annual filing on 2010-11, and thereafter filed form-32.
- (v) As per the minutes and balance sheet as on 30.06.2012 made available to him the remuneration of the Complainant as a director was stopped but his services were continued as an executive for taking few services from him upto November, 2012 and the Complainant was paid remuneration as a relative to KMP after his resignation.



C. J. Manning

Accountant

(vi) Form 23B pertaining to the appointment of auditor as mentioned by the Complainant is supposed to be signed digitally by the auditors of the company and not by any director of the company and as such the claim of the Complainant is false.

4. The Complainant submitted his rejoinder dated 12th February, 2015 wherein he reiterated his earlier submissions and made few additional submissions stated as under:-

- (i) that he has never denied to have given resignation however; it was given under different circumstances and with an understanding of reconstitution of the board, which was admittedly not mentioned in his resignation letter.
- (ii) that his resignation letter was dated 04.01.2012 on which date it was not accepted by the company and as per the company record the resignation was accepted on 29.02.2012 and as per the books of the company the Complainant had been paid remuneration as a director until 29.02.2012, thus the question of resignation having been effective the moment it was received does not arise

5. The Board considered the *prima-facie* opinion of Director(Discipline)dated 27th June, 2017and observed as under:-

(i) In the instant case, the Respondent has relied on the following documents while certification of alleged Form 32for cessation of the Complainant as a Director from board of M/s. Indus Steels & Alloys Ltd..

- a) original resignation letter of the Complainant,
- b) certified true copy of the minutes of board meeting held on 29th February, 2014; wherein such resignation letter was duly accepted by the Board

(ii) The aforesaid documents relied upon by the Respondent can be termed as reasonable diligence for certifying Form 32 for cessation of the Complainant as a Director from board of M/s. Indus Steels & Alloys Ltd.

(iii)In view of the foregoing and considering all the fact and circumstances of the matter, 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 for any of the allegations made in the complaint. "

6. **The Board of Discipline 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)& came to the conclusion that there was an arrangement between him and Company to appoint his son as Director after his resignation from the Company but no proper resolution to this effect or consent is available for appointing his son as Director.**

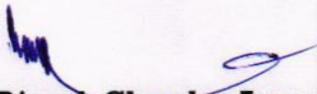


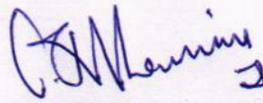
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Therefore, the Respondent is held "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Complainant in his complaint.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

