

**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/332/2015

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Shri Shravan K. Mandelia

....Complainant

Vs

Shri Govind Deora ACS-9439, FCS-8585

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint dated 3rd November, 2015 in Form 'I' has been 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') by Shri Shravan K. Mandelia ('the Complainant') against Shri Govind Deora, FCS-8585, (hereinafter referred to as 'the Respondent').
2. The Complainant, in his complaint dated 3rd November, 2015, *inter-alia*, stated that:
 - (i) The Respondent has been appointed on 19th June, 1995 as a Company Secretary with M/s Hindustan Everest Tools Limited (hereinafter referred to as the 'Company'). The Respondent was also placed in custody of the statutory records of holding Company M/s Mandelia Investment Pvt. Ltd.
 - (ii) Various acts and duties committed and performed by the Respondent have caused disrepute to the profession of Company Secretaries. It is alleged that the Respondent permitted the renewal of insurance policy for a plant of the Company on standard basis even though a higher premium for loss on reinstatement basis had been paid to the insurer. Consequently, arising out of a claim preferred, the Insurance



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- Company processed the claim on standard basis alone and approved less than 50% of the claim.
- (iii) The Respondent actively aided and assisted Mr. B.G. Mandelia, Joint Managing Director (JMD) in carrying out latter's nefarious design to illegally and unlawfully usurped the management of the company.
 - (iv) The Respondent has allowed an emergent Meeting to be convened for 18th September, 2015 by giving short notice of seven days alone despite request by an independent Director Mr. Ambiarish Raj for postponement of the Meeting.
 - (v) The Respondent attempted to obtain signature of the complainant on a document pertaining to holding investment company of Hindustan Everest Tools Limited by presenting the same to be an innocuous document whereas such innocuous document was a purported certified copy of the extract of a resolution alleged to have been passed at the meeting of the above holding company, i.e. M/s. Mandelia Investment Private Limited, *inter alia*, seeking to change the mandate given to the complainant exclusively to represent the said holding company at the AGM of HETL.
 - (vi) The Respondent permitted tabling of a resolution - purportedly on behalf of the aforesaid JMD seeking to take over the management from and by removing the complainant and appointing the aforesaid JMD as Chairman of the Company - which was not part of agenda item at the Board Meeting of Hindustan Everest Tools Limited held on 18th 2015.
 - (vii) The Respondent circulated distorted version of the proceedings as draft minutes of the said Board Meeting held on 18.09.2015 as the same suited the purpose and needs of the aforesaid JMD and thus aided and abated the latter by falsifying and fabricating record and recording incorrect minutes.
 - (viii) The Respondent did not permit the complainant to exercise, at the AGM of the Company, latter's voting right on behalf of M/s Mandelia Investment Private Limited on the ground that a similar mandate had also been filed by the aforesaid JMD, thereby depriving the complainant to exercise voting right of 51% shareholding.
 - (ix) The Respondent fabricated the records under instructions of the aforesaid JMD - a resolution allegedly passed at a meeting of the Board of Directors on 24th September, 2015 was presented to the Bankers of the Company for enhancement/renewal of the financial facilities, whereas no such meeting had taken place.

3. The Respondent, in his written statement dated 1st December, 2015, inter- alia stated that 'there is no specific allegation and mention of any clause/part of the relevant Schedule, under which the alleged acts of commission or omission or both would fall that he 'has not



[Handwritten signatures and initials]

committed any professional or other misconduct and is being made a scapegoat for not siding with the Complainant to fulfil his mala fide, ulterior and unfair motives. Everything in the Company is regulated by SEBI Regulations, Corporate Laws, Rules and Secretarial Standards of the ICSI'.

4. The Complainant in his Rejoinder dated 15th December, 2017 has reiterated the submissions and further *inter-alia* stated that the Board Meeting was called by the Respondent without giving any details as to the items that will be discussed in Board Meeting. There is neither agenda provided nor supporting documents given & just a notice is circulated to the Board of Director for important matters which have changed the entire operations of the Company. The Respondent has pushed pre-drafted resolutions to the Board members for voting on 18th September, 2015, through his letter he also refused to accept the request of a Director for making available the video conferencing or audio conferencing facility to attend the meeting. The intent behind has been nothing but to create minority in the Board so as to certain resolution were taken up and allegedly passed through voting in favour of one group of Members with whom he has biased attachment. On 20th September, 2015, Respondent has submitted a resolution before the lead banker of the company i.e. UCO Bank, mentioning it a resolution passed in the Board Meeting of 24th September, 2015 wherein no such Board Meeting took place and no notice of Board Meeting was issued to many of the directors. Respondent has changed his position by a new letter dated 22nd October, 2015 and claimed that the Resolution of 24th September 2015 was passed by circulation whereas no such circulation ever took place. The respondent has recorded incorrect minutes with regards to proceedings held at a Board Meeting since the minute Book was tempered by him as minutes were coupled with incorrect reporting/claim of an alleged Resolution dated 24th September, 2015 the said acts cannot be explained as the same are invalid, incorrect and illegal at law.

5. The Director (Discipline) in her *prima-facie* opinion dated 21st September, 2017 is of opinion that the Respondent is "Not Guilty" of professional misconduct under any of the items of the First and Second Schedule to the Company Secretaries Act, 1980 as it appears that it is a matter between the employer and employee Company Secretary and the misconduct alleged by the Complainant if any, are to be dealt with in accordance with the terms and conditions of the employment and service Rules of the concerned company. The act and omissions of the complaint alleged by the Complainant do not constitute professional misconduct under Act.



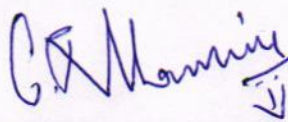
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6. The Board of Discipline in its meeting held on 27th February 2018 after considering the material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the matter observed as under:-
- (i) The complainant, in his complaint has invoked Items 5, 6, and 7 of Part I of the Second Schedule the Act. The said Item/part of the Second Schedule is applicable to a 'Company Secretary in practice' i.e., whereas the Respondent is not in practice but a member in employment. The Part I is not applicable on the Respondent.
 - (ii) Alleged misconduct may fall within the purview of clause (1) of Part IV of the First Schedule relevant to members of the Institute generally. In terms of the said clause (1) - 'A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if, in the opinion of the Council, he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work'. However, the Complainant has failed to substantiate the charges of attempt to and/or aiding or abetting in the falsification/fabrication of record.
7. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case and forgoing observations in para 6 above, 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 and accordingly decided to close the complaint.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Atul H Mehta
Presiding Officer

