

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/340/2015

Order reserved on: 26<sup>th</sup> April, 2019

Order issued on : 12 JUN 2019

Shri Kiran Sequeira

..... Complainant

Vs.

Shri Hariharan Narayanan Iyer  
(FCS-559) (CP No-7119)

..... Respondent

**CORAM:**

Shri Deepak Kumar Khaitan, Presiding Officer  
Shri Manish Gupta, Member  
Shri Ashok Kumar Dixit, Member

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Vikash Kumar Srivastava, Deputy Director

**ORDER**

1. A Complaint dated 2<sup>nd</sup> December, 2015 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 Shri Kiran Sequeira (hereinafter referred to as 'the Complainant'), against Shri Hariharan Narayanan Iyer, FCS-559, COP-7119 (hereinafter referred to as 'the Respondent').
2. The Complainant in his complaint has *inter-alia* alleged as under :-
  - (i) that the Respondent in connivance with other Director, Shri Micheal George of M/s Glentrans Shipping & Logistics (I) Pvt. Ltd (hereinafter referred to as 'the Company') carried out illegal acts such as appointment of another Director, opening of Bank account and carrying out change in the status of realised amount of Rs. 48 lacs in



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the bank and did not respond to legal notice issued by the complainant.

- (ii) the Respondent carried out the following activities by keeping the Complainant *in toto* in dark/unaware –
- Appointment of another Director namely Shri Christopher George not in compliance with concerned acts, rules & regulations as prescribed.
  - Opening of Bank A/c of the Company in Sree Narayanan Co-Operative Bank, Nerul, Navi Mumbai for realisation of cheque of Rs. 48 lacs.
  - Conversion of said realised amount into fix deposit.
  - Keeping of the records of the Company at his own office.
  - Creation of charge in the records of ROC.

3. The Respondent in his Written Statement dated 28<sup>th</sup> January, 2016 has denied the allegations levied against him and has *inter-alia* stated as under:

- that the Respondent was not the Company Secretary of the Company; he was engaged for conducting meetings and drafting of Minutes of the meeting.
- that the directors of the Company were going for voluntary winding up the affairs of the Company and liquidate the assets of the Company, wherein the Respondent was asked to help in the affairs of winding up and conduct meetings and recording of minutes of the meeting.
- that the Respondent has intimated about the due filings of the Company and the consequence for the non-filing of accounts and returns with the Regulators.
- that the Complainant has threatened the Respondent for filing of FIR against him.
- that the Residential Address of the Complainant was not updated with the Company.
- that the Complainant is under impression that the Company has been wound up and the surplus amount has not been distributed to the members, where as the fact is that the Company is yet to be wound up and the resolution for winding up is not yet passed.





- (vii) that the receipt of Rs. 48 lacs was a surplus amount after paying off all the creditors including the Income-tax Department. Though the Company was not functioning from the latter part of 2012-13, the procedure laid down in the Act for winding up started only after passing a Special Resolution of the shareholders. The Company could have deposited the cheque of Rs. 48 lacs when it was received in January, 2015 but for the fact that the Complainant stood in the way of depositing the cheque of Rs. 48 lacs by his illegal and unethical conditions on the bank to transfer the amount to the personal accounts of the shareholders. With great difficulty and persuasion, Shri Michael George got another cheque for Rs. 48 lacs from the buyer and the action taken by the Company in safeguarding its income was done in accordance with the provisions of the Articles of Association.
- (viii) that the Complainant has written to the bank for transferring the realization of Rs. 48 Lakhs into the personal Account of the Shareholders, without settling the statutory dues of the Company. The Complainant is holding 4750 shares in the Company.
- (ix) that the statutory records of the Company are still at the Registered office of the Company, the registered office of the Company has not yet shifted to the other place.
- (x) that the issue pertaining to appointment of new Director was well known to the Complainant as he was present in both the meetings when induction of fresh Directors was discussed and approved and when the third Director was appointed.
- (xi) that a Memorandum of Satisfaction was filed when all the debts were paid to the Karnataka Bank Limited. Form CHG-4 for the Memorandum of Satisfaction was filed on December 29, 2014 under the charge creation ID number 10271517. Before filing the memorandum of satisfaction, it was noted that certain modifications as to the amount of the charge was not filed and hence they had to be done first before filing the memorandum of satisfaction.
4. The Complainant in his Rejoinder dated 2<sup>nd</sup> March, 2016 while reiterated his earlier submissions has *inter-alia* stated as under:
- (a) that the minutes of the meetings held on 7<sup>th</sup> May, 2015 and 28<sup>th</sup> July, 2015, annexed in the Written Statement of the Respondent are fabricated documents.



*AS*

*Comd By*

*Subaitan*



- (b) that the Respondent has not replied to the legal notice dated 29<sup>th</sup> October, 2015 on Opening of bank account of the said Company, inducing new Director, not giving account details of the amount.
- (c) that the Respondent has not followed the common practice of conducting the Board meetings of the Company.
- (d) that the Complainant has raised some observations on the recording of the Minutes of the meetings held on 7<sup>th</sup> May, 2015, 28<sup>th</sup> July, 2015, 26<sup>th</sup> & 27 October, 2015 and 17<sup>th</sup> December, 2015.
- (e) that the Respondent has not given any details about the status of balance cash amount of the said Company being in his possession.
- (f) that the Rejoinder contains the thumb impression of the Complainant with a note that the right hand of the Complainant has been fractured.
5. The Director (Discipline), after examination of the Complaint, Written Statement, Rejoinder and other materials on record, formed *prima-facie* opinion dated 14<sup>th</sup> September, 2017 wherein the Director (Discipline) is *prima-facie* of the opinion that the Respondent is 'not guilty' of professional or other misconduct under the Act on the basis of observations given below:
- (i) that there is a dispute in the management of the Company for distribution of the proceeds of the sale of Assets of the Company.
- (ii) that the Respondent was engaged as coordinator for Conducting meetings of Directors and the Recording of Minutes as a Practicing Company Secretary.
- (iii) that the appointment of the Director has been done at the meeting of the Board of Directors i.e. 28<sup>th</sup> July, 2015; wherein Mr. Michael George, who is also one of the Director of the Company, has acted as Chairman of the meeting and the Complainant was also present and signed the attendance register for the meeting.
- (iv) that the minutes of the meeting held on 28<sup>th</sup> July, 2015 were duly approved by the Chairman wherein the Respondent is duly authorized for signing of Forms/ Returns.



*DS*

*Manoj*

*Michael George*



- (v) that the Respondent, being the co-ordinator has well intimated the deficiencies and consequences for non filing of returns with the authorities which is duly covered in the minutes of the meeting.
- (vi) that the Complainant has never conveyed his disagreement/objection in any business items in any of the meeting and also at the appointment of the Director, regarding the venue of meeting and Non Receipt of the draft minutes of the meeting.
- (vii) that regarding appointment of Director, the Respondent has acted according to the minutes of the meeting of the board of Directors, which is signed by the Chairman of the meeting.
6. The Board of Discipline at its meeting held on 18<sup>th</sup> January, 2018 after considering the prima facie opinion of the Director (Discipline) advised the Director (Discipline) to further investigate the matter, and also to call the details about circulation, if any, of draft minutes of the meeting of Board of Directors, specifically to the complainant, before its confirmation and also the comments of the complainant on such draft minutes, if any.
7. Pursuant to the direction of Board of Discipline, the following documents/information were called from the Complainant vide letter dated 8<sup>th</sup> January, 2019: -
- Whether draft minutes of the meeting of Board of Directors held on 28<sup>th</sup> July, 2015 were circulated before its confirmation.
  - Whether the Complainant has received the aforesaid draft minutes of the meeting of Board of Directors, for his comments, before its confirmation.
  - Whether the Complainant has given any comments on the aforesaid draft minutes of the meeting of Board of Directors.
  - Any other documents/ information, deems fit by him in the matter.
8. However, neither the requisite information nor any response is received from the Complainant.
9. After further investigating the matter, the Director (Discipline) has formed Further Investigation Report dated 29<sup>th</sup> March, 2019 wherein the Director (Discipline) has reiterated the prima-facie opinion dated 14<sup>th</sup> September, 2017 that the Respondent is 'Not Guilty' of professional or other misconduct under the Act as the Respondent has acted according to the minutes of meeting of the Board of Directors of the Company signed by the Chairman of the meeting and the Complainant has failed to



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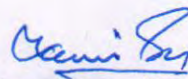
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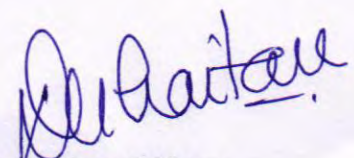


substantiate the allegations made in the Complaint in spite of providing him sufficient opportunity to substantiate the same.

10. Further Investigation Report dated 29<sup>th</sup> March, 2019 along with prima-face opinion dated 14<sup>th</sup> September, 2017 of the Director (Discipline) placed before the Board of Discipline on 26<sup>th</sup> April, 2019.
11. The Board of Discipline after considering Further Investigation Report dated 29<sup>th</sup> March, 2019 along with *prima-facie* opinion dated 14<sup>th</sup> September, 2017 and material on record, observed that the Complainant was one of the Directors of the Company. The Respondent was engaged for conducting meetings and drafting minutes of the Meetings. As per the material on record, the communications to the Respondent were being sent. However, postal address of the Respondent was not updated. Allegation regarding the role of the Respondent in opening of bank account is not tenable as the same is in the exclusive domain of the Company. Regarding the allegation of appointment of the Additional Director, it is clear that the resolution to this effect was passed in the meeting of Board of Directors held on 28<sup>th</sup> July, 2015 in which the Respondent was also present. The Director (Discipline) asked the Complainant vide letter dated 8<sup>th</sup> January, 2019 for substantiating the allegations. However, no reply has been received from the Complainant. It is evident from the material on record that the Complainant has failed to substantiate the allegations against the Respondent.
12. In view of the observations made above and considering the totality of all the facts and circumstances of the case, the Board of Discipline agreed with the Further Investigation Report of the Director (Discipline) that the Respondent is 'Not Guilty' of professional or other misconduct under the Act.
13. Accordingly, the Complaint stands closed and disposed off.

  
Member

  
Member

  
Presiding Officer

