

**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/341/2016

Order reserved on : 27th February 2018

Order issued on : 22nd March 2018

Shri Eldo K. Mathew

....Complainant

Vs

Shri K.P. Satheesan FCS-4173

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 11th January, 2016 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 (hereinafter referred to as 'the Rules') by Mr. Eldo K. Mathew (hereinafter referred to as 'the Complainant') against Mr. K.P. Satheesan FCS-4173(hereinafter referred to as 'the Respondent').
2. The Complainant in his complaint has inter alia alleged that the Respondent has certified DIR-12 in respect of the resignation of the Complainant as Managing Director and appointment of other directors of M/S Canaan Granite and Crushers Private Limited(hereinafter referred to as 'the Company') without exercising due diligence. The Complainant has alleged that the Complainant has never signed resignation letter and resignation letter attached with the DIR 12 is a forged document. The Respondent has certified Form DIR-12 of the Company in respect of the appointment of four new Directors, resignation of the Complainant and cessation of the one existing Director and the said e-form DIR-12 had been digitally signed using fraudulently obtained digital signature of the Complainant.



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[Handwritten Signature]


3. The Respondent, in his written statement dated 2nd March, 2016, has rebutted all the allegations levelled against him in the complaint and *inter-alia* stated that he has certified and uploaded two sets of DIR-12 in respect of change in designation of the complainant as well as appointment and cessation of directorship of certain persons pertaining to the Company . The Respondent has brought on record
- (i) Minutes on Meeting dated 14th June 2010 signed by the promoters of the company before incorporation of the company
 - (ii) Share Purchase Agreement made on 5th May 2015 between Ashad Davood Aysha, Jacob Kuppady , Ibrahim and Eldo Kaniyattilveedu Mathew
 - (iii) Memorandum of understanding entered into on 7th February 2015 in the presence of Deputy Superintendent of Police, Manathavady division.
4. The Respondent has stated that on 19th October, 2015, the mediators came to the office of the Respondent and produced two resolutions of the Board Meetings dated 19th October, 2015, one for resignation of the complainant as the Managing Director of the Company and other for cessation of Directorship of Shri M P Kuriakose and for appointment of certain other persons namely Shri Rajith Kumar Arunalaym, Shri Anil Kumar Padmalayam and Shri Ibrahim. The mediators produced the original resolutions signed by the complainant and also other relevant documents signed by the respective parties as also the minutes of the Board meeting. The Respondent has insisted for resolutions to be notarized. Accordingly, the mediators furnished Notarised copy of the resolution and other papers and all original papers and books were returned to the mediators.
5. The Complainant in his rejoinder dated 20th April,2016 has reiterated the submissions and further *inter-alia* stated that the Respondent has failed to explain what were the original documents verified before certification and if Respondent was sure that the resolutions were original so why did he insisted for the Notarized copies of documents. The admission of the Respondent clearly manifests that he has signed the DIR-12 with the influence of the mediators and he never followed the rules and regulations of filing DIR-12 by a company secretary and prayed that the contentions of the Respondent be rejected in the interest of justice.
6. The Director (Discipline) in her *prima-facie* of opinion dated 20th September, 2017 opined that the Respondent is "Not Guilty" of professional misconduct under item (7) of the Part I of the Second





C. B. Manning

Schedule of the Company Secretaries Act, 1980 as he has filled DIR-12 about resignation of M.D and appointment of other Directors after verification of all relevant papers and documents such as resignation letter, Consent letter, minutes of the relevant Board Meeting. Moreover the safe custody of the digital signature, is the prime responsibility of the individual concerned and no other person shall be held responsible for the misuse and fraudulent use of his digital signature.

7. The Board of Discipline in its meeting held on 27th February 2018 has considered prima facie opinion dated 20th September, 2017 along with all the material on record wherein she is prima facie of opinion that the Respondent is **"Not Guilty"** of professional or other misconduct under any of the provisions of the Act and made the following observations :
- (i) that the original documents were produced before the Respondent and the respondent has asked for the Notarised copy of Resignation letter, Consent letter, minutes of Board meeting and the same were attached along with DIR 12, which affirms that the Resignation letter is signed by the complainant by appearing before the Notary Public.
 - (ii) the safe custody of digitally signature is responsibility of the individuals and no other person can be held responsible for the misuse and fraudulent use of Digital Signature.
 - (iii) that there was dispute between the directors of the Company
 - (iv) in terms of Memorandum of Understanding dated 7th February 2015, directors agreed to transfer of shares and to resign from the directorship consequent to such transfer.
 - (v) in terms of Share Purchase Agreements dated 5th May, 2015 with Shri Ashad Davood Aysha and certain other persons, the Complainant agreed to transfer shares held by him and confirmed to waive his rights in the company.
8. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case and observations made in para 7 above agreed to the prima-facie opinion of the Director (Discipline), that the Respondent is "Not Guilty" of Professional or other misconduct under the Act, for the acts and/or omissions alleged by the Complainant and accordingly decided to close the complaint.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

