

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/345/2016

Order Reserved on: 15th May, 2019

Order issued on: 27 JUN 2019

Dr. Jeevaraj Sorake

....Complainant

Vs

Shri Ulhas S Bhat (FCS-7116,CP-7806)

....Respondent

CORAM:

Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra D Rao, Member
Shri B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

Present

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kumar Srivastava, Deputy Director
Shri Abhijit Atur, Advocate on behalf of the Complainant
Respondent in person

ORDER

1. A complaint dated 29th February, 2016 in Form 'I' was filed under section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as the '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 (hereinafter referred to as the 'the Rules') by Dr. Jeevaraj Sorake (hereinafter referred to as 'the Complainant') against Shri Ulhas S Bhat, (FCS - 7116, COP-7806) (hereinafter referred to as 'the Respondent').
2. The Complainant is Chairman and Managing Director, M/s Sorake Chandra Shekhar Hospitals Private Ltd. (hereinafter referred to as the 'the Company'). The Respondent has pre-certified Form 32 for appointment of four Directors and change of designation of one of the Directors and filed on 10th October 2013. Regarding this certification of said form 32 by the Respondent, the Complainant in his complaint has *inter-alia* alleged as under:-
 - (i) that the Respondent has not communicated to the previous Company Secretary who was earlier certifying the forms for the Company,
 - (ii) that the Respondent has not exercised due diligence while certifying and filling the Form 32 of the Company with Registrar of Companies.



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- (iii) that the Respondent has not verified the supporting documents for the appointment of a Director as Joint Managing Director and four persons as Executive Directors.
- (iv) that he has threatened the complainant that he would have to expose many irregularities committed by the Respondent.
3. The Respondent has not submitted written statement to the complaint inspite of allowing extension of time of 30 days as provided under the Rules.
4. In pursuance of Section 21 of the Act read with the Rules, the Director (Discipline) has formed *prima-facie* opinion dated 6th July 2017, wherein the Director (Discipline) was *prima-facie* of the opinion that the Respondent has not contravened Item (8) of Part I of the First Schedule to the Act as pre-certification of Form 32 is not in exclusive domain of Company Secretaries. Regarding the allegation of threatening, it is opined that the allegation does not hold good as the Respondent vide his letter dated 12th November, 2013 has expressed his views and made counter allegations to the allegations levelled by the Complainant. However, for non-exercise of due diligence by the Respondent while per-certifying Form 32, the Director (Discipline) is *prima-facie* of the opinion that in absence of any specific denial by the Respondent, the contentions of the Complainant are deemed to have been admitted by the Respondent as provided under Order 8 Rule 5 of the Civil Procedure Code, 1908. Further, as the Respondent has not submitted written statement called for by the Director Discipline inspite of allowing extension of time of 30 days.
5. In view of the above, the Director (Discipline) is *prima-facie* of the opinion that the Respondent is 'Guilty' of professional misconduct under Item (7) of Part I of the Second Schedule and Item (2) of Part III of the First Schedule to the Act.
6. *Prima-facie* opinion of the Director (Discipline) was placed before Disciplinary Committee in its meeting held on 8th September, 2017. The Disciplinary Committee agreed with the *prima-facie* opinion of the Director (Discipline) and decided to adjudicate the matter, in accordance with Rule 18 of the Rules. Written statement to *prima-facie* opinion and rejoinder thereof were called from the Respondent and the Complainant, respectively.
7. The Respondent in his written statement dated 30th November, 2017 to the *prima-facie* opinion has *inter-alia* stated as under :
- (i) that he was approached by one Shri Jaya Vikram Sorake, who introduced himself as one of the Directors of the Company to pre-certify Form 32 for the Company for appointment of Directors.
- (ii) that he has pre-certified Form 32 on the basis of the certified copy of the Resolution and Minutes of Meeting along with Memorandum of Association. Shri Jaya Vikram Sorake also shown minutes book maintained by him which was common for Board and Annual General Meetings.
- (iii) that the Respondent was not aware of existence of any dispute between shareholders or directors of the Company .



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- (iv) that Shri Jaya Vikram Sorake, used the Form 32 for furtherance of dispute.
- (v) that the Respondent was trapped by Shri Jaya Vikram Sorake and later on he came to know that the Company has been marked for management dispute at the request of the Complainant.
- (vi) that due to filing of Annual Returns and Financial statement during October, 2013 he could not do in-depth analysis of Resolution passed in Annual General Meeting held on 23rd September 2013, at the time of filing of Form 32.
8. The Complainant in his rejoinder dated 14th December, 2017 to the written statement to the *prima-facie* opinion, has reiterated the allegations and *inter-alia* stated that ROC after verifying the correct records of the company, rejected all the filings done by the Respondent.
9. The matter came for hearing before the Disciplinary Committee on 15th May 2019. Shri Abhijit Atur, Advocate appeared on behalf of the Complainant. Respondent appeared in person.
10. The Disciplinary Committee heard the submissions and perused the written submissions of both the parties and observed that the Respondent while pre-certifying Form 32 has not exercised due diligence. The Respondent proceeded for pre-certification and filing of Form 32 only on the submissions made by one Shri Jaya Vikram Sorake who has introduced him as Director of the Company and assigned the Respondent the work of pre-certification of Form 32. The Respondent has relied on the noting of the minutes of Board of Directors and Annual General meeting maintained and shown by Shri Jaya Vikram Sorake. It is admission of the Respondent on record that he has not done the in-depth analysis of the Minutes of meeting of the Annual General meeting held on 23rd September, 2013, which formed part of Form 32. It is clear from the plain reading of the attached minutes of the meeting that there was dispute in the Company. Minutes of meeting of the Annual General meeting held on 23rd September 2013 is the only attachment with Form 32 for which appointment of four directors and change of designation of one of the directors has been pre-certified by the Respondent. It is also on record that the Respondent has not attached the minutes of meeting of Board of Directors held on 26th September 2013 in which Resolution of appointment of four directors was passed. It has also been brought on the record that Registrar of the Companies; Bangalore has cancelled the said Form 32. Further, the Respondent, in the written statement has admitted his mistakes as unintentional and inadvertent and requested for lenient view in the matter.
11. In view of the observations, in para 10 above, the Disciplinary Committee, after considering all the material available on record, the written and oral submissions of parties and in totality of the facts and circumstances of the case and the arguments adduced before it by both the parties, is of the



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opinion that Respondent is 'Guilty' of professional misconduct under Item (7) of Part-I of the Second Schedule to the Act for not exercising due diligence while pre-certifying Form 32 for change of designation of one Director and appointment of four Additional Directors of the Company.

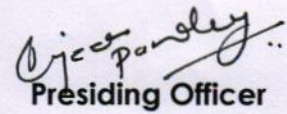
12. The Disciplinary Committee further decided to afford an opportunity of being heard to the Respondent before passing any order under Section 21B (3) of the Act, in terms of sub-rule (1) of rule 19 of the Rules.



Member


Member

Member


Presiding Officer