

**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/357/2016

Order reserved on: 31st July, 2018

Order issued on: 25th August, 2018

M/s Brahmani Railways Ltd.

....Complainant

Vs.

CS Amaresh Pradhan, ACS-17501

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion of the Director (Discipline).

2. The Board of Discipline noted the following: -

2.1 A complaint dated 21st June, 2016 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 M/s Brahmani Railways Ltd. through Mr. Bijay Kumar Joshi, Chief Executive Officer ('the Complainant'), against Shri Amaresh Pradhan, ACS - 17501, (hereinafter referred to as 'the Respondent'), who was employed as Company Secretary of the Complainant Company for the period from 4th November, 2013 to 13th February, 2015.

2.2 The Complainant has inter-alia alleged that :-

2.2.1 Incomplete and shoddy record keeping because -

2.2.1.1 Attendance Register of Board meetings and Annual General Meetings has not been maintained in the prescribed manner.

2.2.1.2 Annual disclosure of Directors placed before the Board at the meetings held on 27th June, 2014 & 21st May, 2015 and also the disclosure signed by the Directors has been filed with the Registrar of



Companies in time but the documents are not kept in the file for record.

- 2.2.2 Professional neglect causing pecuniary loss by not filing necessary forms with the Ministry of Corporate Affairs like induction of two Directors, Approval of Directors report for FY 2013-14 and resignation of Company Secretary.
- 2.2.3 Exhibiting cavalier and casual approach to the work.
- 2.2.4 The unprofessional conduct brought a bad name to the post of Company Secretary and the Company had to suffer delay/monetary loss.
- 2.2.5 The Respondent is guilty of Professional Misconduct falling under clause (2), Part IV of First Schedule of Company Secretaries Act. 1980.
- 2.3 The Respondent in his Written Statement dated 23rd June, 2017 inter alia denied all the allegations made in the complaint and has stated as under:
- 2.3.1 The complaint is false, motivated and devoid of merits. The Respondent was appointed as Company Secretary on contract basis. He performed all his duties and responsibilities with dedication, commitment and honesty. The delay in compliances was either beyond his control or occurred after his leaving the job. All the allegations levelled against him are baseless just to harass him because he was having some technical constraints in following the instructions of the Complainant on process of approval of some financial transactions.
- 2.3.2 The Complainant himself accepted the resignation of the Respondent and signed the relieving order of the Respondent from the service of the Company but had never pointed out any such non-compliance or other allegations in the acceptance letter or relieving letter.
- 2.3.3 The Attendance Sheet for Board meeting and General meeting has always been presented to the Members of the Board before the commencement of meeting which can be confirmed from the minute's book.
- 2.3.4 It has been admitted that the Disclosure Statement of Directors were taken and filed with the ROC. The only allegation is these were not kept in record. The Respondent had denied this allegation and has stated the statements were in the record till the date of his leaving the employment.
- 2.3.5 In regard to the filing of forms for resignation of Shri Vishal Kumar Dev and appointment of Shri Sanjeev Chopra as Directors, the Respondent has stated that the last date for filing of these forms was not over when he was relieved.



The Board meeting was held on 30th September, 2015 and the last date for filing of draft was 29th October, 2015, whereas he was relieved on 13th October, 2015. No responsibility in regard to delay could be attributed to him.

- 2.3.6 In regard to non-filing of Directors Report, it has been stated that the Financial Statements for the year 2013-14 were sent to CAG; its comments were received in the month of May-June, 2015 response of Directors on the comments of CAG was approved in the shareholders meeting held on 30th September, 2015 financial statements were required to be filed by 29th October, 2015 whereas he was relieved on 13th October, 2015. The sign and pre-certified form was not available till the date of his relieving from the company. Therefore, no responsibility in this regard could be attributed to him.
- 2.3.7 In regard to the allegation of loss of Rs. 25,200 on account of additional filing fee incurred by the company, it has been stated that in view of the position explained above, the Respondent cannot be held liable for the same.
- 2.3.8 The Respondent has additionally stated that the Complainant joined as CEO of the Company in April, 2015 but did not lay down the Standard Operating Procedure (SOP) though the Company was in nuance stage. The Respondent was given power to sign cheques as one of the signatories but was not given power to verify the transactions before signing the cheques. At times, the CEO tried to forcefully obtain his consent or signature on cheques. Harassed by his victimization, the Respondent looked for other option and ultimately resigned.

2.4 In his rejoinder, the Complainant has reiterated the contents of the complaint and has not given any further material to counter the written statement of the Respondent point-wise and substantiate the allegations.

- 2.4.1 The negligent acts of the Respondent were not beyond his control, as stated, but were because of his lack of application. There was no reason to mention in the acceptance letter, the management's decision not to extend his tenure as his resignation came suddenly before completion of his tenure.
- 2.4.2 The necessary internal documents are not available and/or partially signed documents have been left behind.
- 2.4.3 The documents in question are neither filed with ROC nor are they available with remarks.
- 2.4.4 In regard to filing of form DIR-12 it has been stated that proper notification from Govt. of Orissa, Board Resolution and Resignation letter of Shri Vishal Dev were available with



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the Respondent for filing and the same could be filed before the last date. By not doing so, is construed as negligence. His explanation is not acceptable.

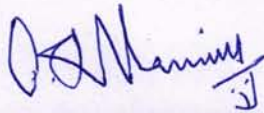
- 2.4.5 In regard to non filing of Directors Report as described by the Respondent to non availability of signed copy, it has been stated that it was his responsibility as Company Secretary to comply with the requirement. Inaction on his part suggests negligence and unprofessional conduct.
- 2.4.6 In his reply dated 23rd July, 2015 the Respondent has admitted that the Govt. Notification dated 05th June, 2015 regarding appointment of independent directors came to his notice in 3rd week of June, 2015. This shows his unprofessional attitude as Company Secretary.
- 2.4.7 Though the management had taken a decision not to extend his tenure but in the meantime he himself resigned.
3. The Board of Discipline at its meeting held on 31st July, 2018 considered the prima facie opinion of the Director (Discipline) dated 20th July, 2018 that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.
4. The Board of Discipline further noted the following observations of the Director (Discipline) in this matter: -
- 4.1 The Complainant has not placed on record any evidence to substantiate the allegations which are general in nature.
- 4.2 In his written Statement, the Respondent has denied the allegations and has given proper explanation to show that the alleged delay in filing the returns with ROC could not be attributed to him. Moreover, the Respondent was not relieved by the management of the company subject to the filing to return in respect of which the last dates of filing are yet to approach.
- 4.3 The Respondent was appointed as a Company Secretary of the Company on 4th November, 2013 for two years. But the Respondent before completion of his tenure, has resigned from the post of Company Secretary of the Company and was duly relieved of his post on 13th October, 2015. By a letter dated 2nd July, 2015, the Complaint Company asked the Respondent to explain his conduct for not acting on certain decisions taken by the Board. In his reply dated 4th July, 2015, the Respondent tendered his explanation and requested the Company to withdraw the letter dated 2nd July, 2015.
- 4.4 The Complainant vide letter dated 9th July, 2015, called for the explanation of the Respondent on certain matters some of which are part of the allegations made in the complaint and gave an




opportunity to the Respondent to show cause as to why disciplinary action should not be taken against him. The Respondent in his reply dated 23rd July, 2015 gave a point wise explanation. In the last Para of his reply, the Respondent expressed his deep regret and apology for his non actions.

- 4.5 The Respondent submitted his resignation from the post Company Secretary before the expiry of his term of appointment. The resignation of the Respondent was duly accepted by the Complainant Company without any reservation rather he was thanked for his services. The Respondent was relieved of his duties with effect from 13th October, 2015. Thereafter, an Experience Certificate was issued by the Complainant Company to the Respondent.
- 4.6 The Respondent was an employee of the Complainant's Company and he was subject to Service Rules/Code of the Company. The Complainant Company could always take action against the Respondent for his alleged misconduct and after its findings could award punishment. There are no papers on record to show whether any disciplinary action was initiated, and if so, with what results. It seems that no disciplinary action was initiated and the matter ended there.
- 4.7 In view of the above and considering all the facts and circumstances of the matter, the Director (Discipline) is prima-facie of the opinion that the Respondent is 'not guilty' of professional misconduct as the act of Respondent does not come within the purview of any of the Item(s) of the First or Second Schedule(s) to the Company Secretaries Act, 1980.
- 5. The Board of Discipline at its meeting held on 31st July, 2018 after considering the aforesaid observations, material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with the prima-facie of Director (Discipline) that the Respondent is "Not Guilty" of Professional or other Misconduct under any of the Items of First and/or Second Schedule to the Company Secretaries Act, 1980.**


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

