

**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/358/2016

Order reserved on: 04.09.2017

Order issued on : 26th September, 2017

Shri Pinakin N. Ghadiyali

.....Complainant

Vs

**Shri BhupendraKaushik
(ACS - 33558 & CP No.4247)**

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. The Board of Discipline considered the complaint dated 22nd July, 2016 in Form 'I' of Shri Pinakin N. Ghadiyali (the 'Complainant') against Shri Bhupendra Kaushik, (ACS - 33558) (hereinafter referred to as the 'Respondent') 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).
2. The Board noted that the Complainant *inter alia* stated that that:-
 - (i) the Respondent has wrongly certified Form DIR -12 for the removal of the Complainant from Directorship of M/s Touchwoods Weaves Private Ltd under Section 167 of Companies Act, 2013.
 - (ii) the Respondent has submitted Form MBP-1 at Registered office address much before meeting. However, the reason for removal stated in the form is stated as non- submission of MBP-1.
 - (iii) nowhere it is stated that non - submission of MBP -1 is the reason for vacation of office of Director.
 - (iv) that the Respondent has certified the said form subsequent to his filing CLB petition for oppression and mismanagemen.
3. The Respondent submitted in his written statement dated 20th August, 2016; denied the allegations levied against him and *inter-alia* stated that:-

- (i) whether the Company has received MBP-1 or not at its registered office, is not required to be checked at the time of certification. The Respondent further stated that since the Company had provided the Board Resolution mentioning that MBP-1 has not been received and the resolution is of the



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meeting in which the complainant was present, it was sufficient for him to certify the form in good faith.

- (ii) that Section 167 of the Companies Act, 2013 applies when there is a contravention of Section 184 of the Companies Act, 2013.
- (iii) that when a director does not disclose his concern or interest under Section 184 of the Companies Act, 2013, he comes under the clutches of Section 167 of the Companies Act, 2013 and is liable to vacate his office as director of the Company.
- (iv) that the said provisions of the Companies Act, 2013 were also explained to the Registrar of Companies, Gujrat (ROC) and the ROC was also satisfied about the aforesaid interpretation of Section 167 of Companies Act, 2013 as explained in the clarification letter attached with Form DIR-12.
- (v) that the order was not in public domain even when the Form was resubmitted on 20.06.2016 with requisite documents as required by concerned ROC and approved by concerned ROC after due procedure on 20.06.2016 itself.
- (vi) that he had relied on the following documents for certification:
 - i. Board Resolution ;
 - ii. Notice & Agenda;
 - iii. Tracking Receipt for Delivery of Notice to Concerned Director;
 - iv. Attendance Sheet.

4. The Complainant submitted his rejoinder dated 10th September, 2016 to the written statement wherein he reiterated his earlier submissions and made few additional submissions as under:-

- (i) that as per MCA records, the Respondent was not associated with the Company before certifying this form DIR-12. Further he is residing at Delhi & Company is at Surat. This is something abnormal as Statutory Auditors are from Surat and the Company Secretary certifying the Annual Return is from Surat.
- (ii) that no director attending the board meeting will allow and vote in favour of any resolution for his own vacation of office.
- (iii) that the Respondent knew that Form DIR-12 for removal of Complainant under section 167 of the Companies Act. Removal is under section 167(1)(c). The Complainant further stated that nowhere in section 167 it is stated about submission and filing of form MBP-1.

5. The Board also considered the *prima-facie* opinion dated 12th August, 2017 of Director (Discipline) in the matter and noted the following observations:-

- (i) The Respondent had verified the following documents before certification of the alleged DIR 12:

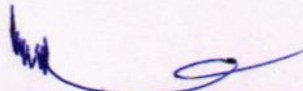
- a) Board Resolution;
- b) Notice date & Agenda;
- c) Tracking Receipt for Delivery of Notice to Concerned Director;
- d) Attendance Sheet.

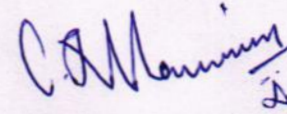



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- (ii) There is no evidence to show that Order dated 20th June 2016 of the CLB petition for oppression and mismanagement filed by the Complainant against M/s Touchwoods Weaves Private Ltd., was within the knowledge of the Respondent. Further, the Complainant has not put on record any evidence to prove that Form MBP-1 was sent by him at the registered office of the company.
- (iii) In view of the aforesaid, the material available on record and all the facts and circumstances of the matter, it is apparent that the respondent has exercised due diligence in certification of DIR 12 as he has checked and verified the relevant records of the company as stated above and hence the Director (Discipline) is prima-facie of the opinion that the Respondent is "**Not Guilty**" of professional misconduct under the Company Secretaries Act, 1980.
6. **The Board of Discipline after considering the complaint, written statement, rejoinder and other material on record, aforesaid observations of Director (Discipline) and her prima-facie opinion and all the facts and circumstances of the case, 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 for the acts and/or omissions alleged by the Complainant in his complaint.**


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

