

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

DC/361/2016

Order Reserved on: 3rd June, 2019

Order issued on: 19 AUG 2019

**Shri Bhalinder Singh Sodhi &
Shri Harjesh Kumar**

.....Complainants

Vs.

Shri Surjit Singh Puri, ACS-5554, CP No. 6881

.....Respondent

CORAM:

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

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kumar Srivastava, Deputy Director, Disciplinary Directorate
None for the Complainant
Respondent in person



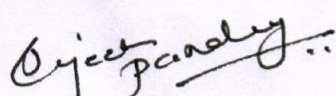


FINAL ORDER

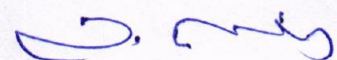
1. A complaint dated 19th August, 2016 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (hereinafter referred to as 'the Act') read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as 'the Rules') by S/Shri Bhalinder Singh Sodhi and Harjesh Kumar (hereinafter referred to as the 'Complainants') against Shri Surjit Singh Puri, ACS-5554, CP No-6881 (hereinafter referred to as 'the Respondent').
2. The Complainants have *inter-alia* stated that the Respondent has certified Form 23 on 13th March, 2014 in respect of M/s. Rajendra Gymkhana and Mohendra Club Limited, Patiala (hereinafter referred to as 'the Company')

and filed with Registrar of Companies, Punjab and Chandigarh on 13th March, 2014 and the Resolution was passed in Extraordinary General Meeting (EGM) held on 30th May, 2008. The Complainants have further submitted that passing of Resolution in EGM held on 30th May, 2008 was challenged in a Civil Suit 'Bhalinder Sodhi Vs M/s. Rajendra Gymkhana and Mohendra Club Limited' CS/8240/2013 in which Hon'ble Court of Civil Judge, Junior Division, Patiala in his Order dated 13th October, 2015 had *inter-alia* observed that the Resolution dated 30th May, 2015 of the Company had never seen the light of the day.

3. The Respondent in his written statement dated 23rd September, 2016 has *inter-alia* stated that he has certified Form 23 after verifying the relevant/necessary papers/records the Company produced before him. The Respondent on verification found the documents in order and in accordance with the law.
4. The Complainants in their rejoinder dated 17th October, 2016 to the written statement had *inter-alia* stated that the reply submitted by the Respondent is totally against the stand taken by the Company in civil suit filed by the Complainants against the Company i.e. CS/8240/2013 which was decided on 13th October, 2015 by the Hon'ble Court of Civil Judge, Junior Division, Patiala.
6. In pursuance of Section 21 of the Act read with the Rules, Director (Discipline) in the *prima-facie* opinion dated 1st July, 2017 relied on the Judgement dated 13th October 2015 of the Hon'ble Court of Civil Judge, Junior Division, Patiala in Civil Suit CS/8240/2013 wherein it was observed that the Resolution dated 30th May 2008 had never seen the light of the day and opined that the Respondent is guilty of professional misconduct under item (7) of Part I of the Second Schedule to the Act as he has certified Form 23 without exercising due diligence.
7. The Disciplinary Committee in its meeting held on 5th July, 2017 after considering the *prima-facie* opinion dated 1st July, 2017 of the Director (Discipline) that the Respondent is "Guilty" of professional misconduct under item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980, agreed with the *prima-facie* opinion of the Director (Discipline) and decided to proceed further in the matter in accordance with Rule 18 of the Rules.
8. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letter(s) dated 19th September, 2017 asking them to submit their written statement to *prima-facie* opinion and rejoinder to written statement to *prima-facie* opinion, respectively.





9. The Respondent in his written statement dated 30th September, 2017 to *prima-facie* opinion has *inter-alia* stated that the Company held its EGM on 30th May, 2008 which is evident from the of Notice and Minutes of the EGM. The Respondent further submitted that the Complainant has applied for becoming permanent member of the Company in the year 2011, as there was no vacancy when their request was made. But an endorsement to this effect was made on their applications. The enrolment fee of Non-voting Member was enhanced to Rs. 75000/- in the EGM held on 30th May 2008. The Respondent further submitted that his role is confined only to ensure that the EGM did take place on 30th May, 2008.
10. The Complainants in their rejoinder dated 27th October, 2017 to the written statement of the Respondent to the *prima-face* opinion of the Director (Discipline) has *inter-alia* stated that the submission of the Respondent is contrary to his earlier written statement and statement given by the Company before Hon'ble Civil Judge (Junior Division) Patiala w.r.t Resolution dated 30th May, 2008.
11. The parties *vide* letter dated 22nd February, 2019 were called upon to appear before the Disciplinary Committee on 12th March, 2019. The Complainants *vide* letter dated 27th February, 2019 submitted that the documents already submitted be treated as part of their arguments. The Disciplinary Committee after considering the email dated 11th March, 2019 of the Respondent wherein he has submitted that he has received the notice for appearance before the Committee just one day prior to the Disciplinary Committee meeting, has decided to adjourn the matter in the interest of natural justice.
12. The parties *vide* letter dated 16th May, 2019 were called upon to appear before the Disciplinary Committee on 3rd June, 2019. The Respondent appeared in person and made his submissions that he had done due diligence before certifying the impugned Form 23 and attached Copy of Resolution, Minutes of Meeting and Articles of Association therewith. The Respondent further submitted that he was not aware of the litigations in respect of membership fee hike of the Company.
13. After hearing the arguments of the Respondent, the Disciplinary Committee asked the Respondent to submit the copy of documents attached with the impugned Form 23.
14. The Respondent *vide* letter dated 9th June, 2019 submitted copy of Form 23, copy of Notice for convening the meeting of EGM on 30th May, 2008 and copy of Minutes of Meeting of EGM held on 30th May, 2008. Copy of attachments of impugned Form 23 has also been obtained from the MCA 21 portal.

Thh
AK
 Bijet Pandey



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15. The Disciplinary Committee after considering the submissions of the Complainant and the Respondent, all material on record and the facts and circumstances of the matter, has observed that Respondent has certified and filed Form 23 on 13th March, 2014 in respect of the Company with Registrar of Companies, Punjab and Chandigarh for registration of Resolution passed in EGM held on 30th May, 2008 attaching therewith the following documents: (i) Notice for Convening the EGM on 30th May, 2008 , (ii) Copy of Minutes of the Meeting of EGM held on 30th May, 2008 and (iii) Articles of Association of the Company.
16. The Respondent has verified Notice for convening the meeting of EGM held on 30th May, 2008 and Minutes of Meeting of the EGM held on 30th May, 2008 for certification of the impugned Form 23. The Complainant has filed Complaint with Registrar of Companies, Punjab and Chandigarh in respect of the said certification on which Asst. Registrar, Registrar of Companies, Punjab and Chandigarh vide letter dated 10th September, 2015 expressed his view to RD (NR) that the impugned Form 23 has been taken on record based on procedural compliance made by the Company, necessary fee and additional fees were paid and the form was certified by the PCS who has certified correctness of events in Form 23 in respect of passing Resolution after verification of the record of the company.
17. The Disciplinary Committee further observed that the EGM held on 30th May, 2008 was challenged in a Civil Suit Bhalinder Sodhi Versus M/s. Rajendra Gymkhana and Mohendra Club Limited' CS/8240/2013 in which Hon'ble Court of Sh. Jagmeet Singh, Civil Judge, Junior Division, Patiala had passed an order dated 13th October, 2015 that Resolution dated 30th May, 2008 had never seen the light of the day. The Complainant had filed another petition before Hon'ble Civil Judge, Junior Division, Patiala for permanent injunction restraining the Company from cancelling membership of the Complainant and pressuring the Complainant to deposit more amount towards membership fee of the Company. Hon'ble Civil Judge (Junior Division), Patiala vide order dated 4th February, 2015 denied injunction as prayed by the Complainant. The Complainant preferred appeal against the Order and Hon'ble Additional District Judge, Patiala in its Order dated 10th September, 2015 had upheld the order dated 4th February, 2015 of Hon'ble Civil Judge, Junior Division, Patiala. Pursuant to Section 21 of the Act read with the Rules, Director (Discipline) formed the *prima-facie* opinion dated 1st July, 2017 wherein reliance was placed on the order dated 13th October, 2015 of Hon'ble Civil Judge, Junior Division, Patiala in the matter of CS/8240/2013, on the observation of the Court that the Resolution dated 30th May, 2008 had never seen the light of the day. The Director (Discipline) *prima-facie* opined that Respondent is guilty of professional misconduct under item (7) of Part I of the Second Schedule to the Act. The Disciplinary Committee further observed that the Complainant has not filed any other Complaint against the Respondent except this Complaint.

[Handwritten signatures]
 Rajendra Sodhi
 Jagmeet Singh
 Ojoo Pandey

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18. The Disciplinary Committee after considering all the material available on record, the written and oral submissions of parties and in view of the above observations is of the view that the Complainant has filed complaint of false certification of Form 23 in respect of the Company by the Respondent. However, the material on record shows that the said certification has been done based on verification of Notice of EGM, Minutes of EGM and the same has been filed with late fee as permissible under the Companies Act 1956. The *prima-facie* opinion of Director Discipline is primarily based on the observations of the Hon'ble Civil Judge, Junior Division, Patiala in the matter of CS/8240/2013 vide order dated 13th October, 2015, the Hon'ble Judge has observed that the Resolution dated 30th May, 2008 never seen the light of the day as the company officials could not produce the requisite papers for establishing the hike of membership fee of the Company. However, the instant Complaint before this Committee is limited to certification Form 23 by the Respondent which he has done after verification of Notice and Minutes of Meeting of EGM held on 30th May 2008 and other relevant record. Accordingly, the same has been found in order by the Registrar of the Companies, Punjab and Chandigarh.
19. In view of the aforesaid and considering in totality of the facts and circumstances of the case, the Disciplinary Committee is of the opinion that the Respondent is "**not guilty**" of professional or other misconduct under the Company Secretaries Act, 1980.

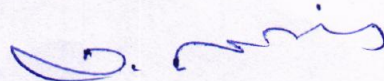
Accordingly, the complaint is disposed off.



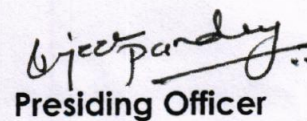
Member



Member



Member



Presiding Officer