

**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/362/2016

Order reserved on: 26th April, 2019

Order issued on : 12 JUN 2019

M/s Nandi Highways Developers Ltd. Complainant
Through: Shri N Bala Krishna, Finance Manager

Vs.

Shri VKV Sarma, FCS-2939 Respondent

CORAM:

Shri Deepak Kumar Khaitan, Presiding Officer
Shri Manish Gupta, Member
Shri Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kumar Srivastava, Deputy Director

ORDER

1. A complaint dated 26th July, 2016 in Form-'I' has been filed by M/s Nandi Highways Developers Ltd. through its Finance Manager Shri N. Bala Krishna, ('the Complainant'), against Shri VKV Sarma, FCS-2939 ('the Respondent') 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'), wherein the Complainant has inter-alia alleged that:
 - (i) The Respondent has defalcated and embezzled money and is guilty of Clause (4) of Part II of the Second Schedule to the Company Secretaries Act, 1980.
 - (ii) The Respondent has brought disrepute to the profession or the Institute as a result of his action which falls under Clause (2) of Part IV of the First Schedule to the Company Secretaries Act, 1980.
 - (iii) The Respondent has joined M/s. Nandi Highways Developers Ltd., during July, 2010, as General Manager and Company Secretary.



AS

Manish Gupta

Deepak Khaitan

He was entrusted with the management of the complete finance and accounts of the Company. Initially, the Respondent did his job well and impressed the management of the Company and made it believe that he is honest and trustworthy and thus gained confidence. Later, the Respondent became irregular in his duties and despite warnings his behaviour did not change and consequently his services were terminated by the management. The Respondent was directed to hand over all the books of accounts, cash, ledgers, vouchers and documents etc. that were being maintained by him. Misappropriation of funds on large scale has come to the notice of the Complainant. The preliminary enquires revealed that huge funds of money were transferred by the Respondent from the Company Account maintained at the Indian Bank and Axis Bank into his Account which he has opened in the name of M/s Corporate Reminder at the State Bank of India.

- (iv) The Respondent has raised inflated bills, false and fictitious bills on non-existent Firms/Companies by forging and fabricating false invoices/bills etc. in furtherance of his acts of misappropriation. It has also been stated that the records are apparently false, forged and fabricated. The Respondent has also shown accounts for transfer of funds from the Company to other Group Company whereas there is no account of such transfer in the Group Companies or in the Bank records of the Company. The Company has not made any transactions whatsoever with M/s Corporate Reminder which *apparently* is being maintained and operated by the Respondent.
- (v) The preliminary inquiry made by the Complainant Company has also unearthed that between January, 2013 and July, 2015, the Respondent has, by way of Cheques/RTGS, transferred a sum of Rs. 10,49,66,350/- (Rs. Ten Crores Forty Nine Lacs Sixty Six Thousand Three Hundred and Fifty only) into the account of M/s Corporate Reminder.

2. A copy of the complaint was sent to the Respondent vide letter dated 30th August, 2016 for filing written statement. The Respondent vide his letters dated 17th March 2017, and 14th November, 2017 has stated that a Written Statement is not warranted from him as the matter is *sub-judice* at this stage. He further stated that the Complainant does not have any *locus standi* to file this complaint which could be checked from the authorization document. He further stated that any Reply or Statement in the matter at this stage will amount to the contempt of Court.
3. A copy of the reply of the Respondent dated 14th November, 2017 was sent to the Complainant to submit his Rejoinder, if any. In response, the Complainant has not submitted the Rejoinder but has sent a letter dated 29th January, 2018 wherein he has reiterated, the contents of the letter dated 22nd August, 2016, sending therewith original copy of Board



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Resolution of the Complainant and also a copy of the CFO Appointment letter of Shri N. Bala Krishna.

4. The Complainant was asked by the Disciplinary Committee vide letter dated 25th February, 2019 to furnish the following details:
- (a) Certified copy of English Translation of FIR filed against the Respondent.
 - (b) Status of the aforesaid FIR filed and whether the Challans have been filed by the Police in Court. If so, details of the further proceedings of the Court case.
 - (c) Copy of alleged fake bills claimed by the Respondent. How these alleged bills are fake? Please provide complete details.
 - (d) Details of alleged misappropriation of funds through transfer of funds from the Account of the Company to the personal Account by the Respondent.
 - (e) Copy of Auditors Report or any other Internal Investigation Report of the Company, if any in this matter.
 - (f) Any other particulars or documents you have relied upon to substantiate your allegations in the complaint.
5. The Complainant vide his letter dated 12th Mach, 2019 has submitted the documents which shows that the Complainant has filed six (6) criminal complaints against the Respondent in the Court of 1 ACMM, Bengaluru. It is seen that all these cases are at a preliminary stage and charges have not yet been framed. The Complainant has also filed two (2) Civil Suits for recovery of Rs. 19,38,50,771/- (Rs. Nineteen Crores Thirty Eight Lacs Fifty Thousand Seven Hundred and Seventy One only) in the Court of City Civil and Sessions Judge, Bengaluru. The Ld. Court has issued process and also granted the prayer restraining the Respondent from alienating, transferring, charging, mortgaging, pledging, encumbering or creating any third Party rights in and over the movable/immovable mentioned in the Schedule-I thereof.
6. In exercise of power conferred under Section 21 of the Company Secretaries Act 1980 the Director (Discipline) after considering the documents on record has formed prima-facie opinion dated 27th March 2019 and placed before Board of Discipline wherein Director (Discipline) is of the view that the allegations made in the complaint are vague and general in nature as allegations of defalcation through inflated, false, forged and fabricated bills and also transfer of money from the Accounts of the Complainant Company to the Accounts of M/s Corporate Reminder, alleged to be a proprietary concern of the Respondent have been made but no evidence substantiating the



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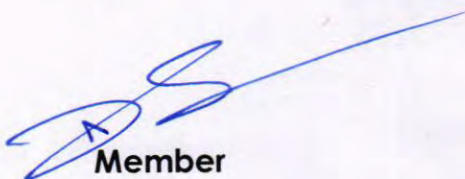
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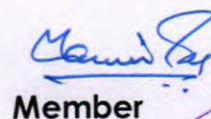
allegations have been adduced except a copy of complaint made to the police and copy of FIR No. 520/2015 registered by the Police. The Complainant did not furnish the specific details of the alleged misappropriations and transfer of funds which is alleged to be to the extent of Rs. 12,19,33,730/- (Rs. Twelve Crores Nineteen Lacs Thirty Three Thousand Seven Hundred and Thirty only). The Complainant only forwarded a copy of the complaint made by it to the Police and also a copy of FIR No. 520/2015 that's too is not accompanied with English translation as such no comments can be offered on it.

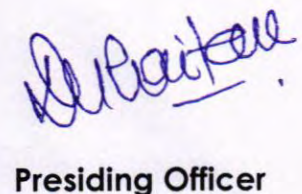
7. In view of the facts and circumstances of the case and observations of Hon'ble High Court of Delhi in the matter of Lalit Agarwal Vs. the ICAI and Ors., in its Order dated 11th February 2019 the Director (Discipline) opined that at this stage the Respondent cannot be held guilty of professional or other misconduct for the alleged defalcation or embezzlement of moneys received in his professional capacity on the basis of copy of FIR, since the matter is *sub-judice* as criminal proceedings are pending.

The Director (Discipline), therefore, *prima-facie* opined for the closure of the complaint at this stage with an advice to the Complainant to make a fresh complaint, if necessary, as per law after the outcome of criminal cases is known.

8. Pursuant to Sub-section (3) of Section 21 of the Company Secretaries Act, 1980, Director (Discipline) placed the matter before the Board of Discipline.
9. The Board of Discipline considered the allegations and after considering material on record and the totality of all the facts and circumstances of the matter, agrees with the *prima-facie* opinion of the Director (Discipline) that the Complainant failed to adduce sufficient evidence to substantiate the allegations against the Respondent and the criminal cases are pending before the competent Court and Respondent has not been held 'Guilty' by the competent court.
10. In view of the peculiar facts and circumstances of the case, the Board of Discipline at this stage is refraining from expressing any opinion or conclusion on the merit of the complaint.
11. Accordingly, the complaint stands closed and disposed off.


Member


Member


Presiding Officer

