

**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/364/2016

Order reserved on : 30<sup>th</sup> November, 2018

Order issued on : 17 JAN 2019

Ms. Shagun Kapur Gogia

.....Complainant

Vs.

M/s Mehta and Mehta, Company Secretaries  
(ICSI Unique Code P1996MH007500)

..... Respondent

**CORAM:**

Shri C Ramasubramaniam, Presiding Officer  
Shri Ashok Kumar Dixit, Member

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)  
Mrs. Anita Mehra, Assistant Director

**FINAL ORDER**

1. Shri Atul Mehta, Presiding Officer of the Board of Discipline recused from this case.
2. The Board of Discipline examined the Complaint, material on record and prima-facie opinion of the Director (Discipline).
3. The Board of Discipline considered the following: -
  - 3.1 A complaint dated 6<sup>th</sup> September, 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 Ms. Shagun Kapur Gogia, 'the Complainant', against M/s Mehta and Mehta, Company Secretaries (ICSI Unique Code P1996MH007500) (hereinafter referred to 'the Respondent').
  - 3.2 The Complaint has been made by the Complainant against the firm, M/s Mehta & Mehta, Company Secretaries. Pursuant to sub-rule 1(b) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and



 C. S. Meenakshi



Conduct of Cases) Rules, 2007, the firm M/s Mehta & Mehta, Company Secretaries, was requested to disclose the name or name of the Member/Member(s) concerned and to submit the written statement to the complaint. By its letter dated 10<sup>th</sup> November, 2016, the firm M/s Mehta and Mehta, Company Secretaries, stated that it had identified Shri Atul Mehta, a Partner of the firm, who will be responsible for answering the complaint and related matters. Accordingly, Shri Atul Mehta filed his written statement to the complaint vide his letter dated 10<sup>th</sup> November, 2016.

3.3 The Complainant has *inter-alia* alleged the following against the Respondent:

(A) FOR THE FINANCIAL YEARS 2013-14, 2014-15 and 2015-16:

- (i) The Board Report did not disclose the appointment policy of the Directors as required by Section 134(3)(e) of the Companies Act. The Secretarial Audit Reports signed by the Respondent did not comment on this requirement. This entails violation of Clauses (5) and (7) of Part 1 of Second Schedule of the Company Secretaries Act, 1980, as the Respondent failed to disclose a material fact known to him in a Report or Statement but the disclosure of which is necessary in making such Report or Statement in his professional capacity. He also did not exercise due diligence or was grossly negligent in the conduct of his professional duties.
- (ii) The Company had adopted the policy of Nominee Directors only at the instance of Mr. Rana Kapoor which is contrary to the Articles of Association of the Company. The Company appointed three (3) Directors and their appointments were challenged by the family of Mr. Ashok Kapur, a Co-Promoter Group of which the Complainant is a part (Suit No. 464/2013). The Mumbai High Court on 08<sup>th</sup> June, 2013 passed an order on the appointment of three (3) Directors, namely. Mr. Diwan Arun Nanda, Mr. Ravish Chopra and Mr. M. R. Srinivasan ("appointment subject to the further orders of the Court").
- (iii) The Secretarial Audit Reports did not disclose that the appointments of the aforesaid three (3) Directors were subject to the further orders of the Mumbai High Court. This entails violation of Clauses (5) and (7) of Part 1 of Second Schedule of the Company Secretaries Act, 1980 as the Respondent failed to disclose a material fact known to him in a Report or Statement but the disclosure of which is necessary in making such Report or Statement in his professional capacity. He also





did not exercise due diligence or was grossly negligent in the conduct of his professional duties.

(B) FOR THE FINANCIAL YEAR 2014-15:

- (iv) The Company had appointed Mr. Rajat Monga, Mr. Sanjay Palve and Mr. Pralay Mondal as Whole-Time Directors as on 27<sup>th</sup> June, 2013 under Article 127A of the Articles of Association. The information was sent to the Bombay Stock Exchange and National Stock Exchange. These three (3) appointments of the above three (3) persons as Whole-Time Directors were challenged in the Mumbai High Court on 17<sup>th</sup> July, 2013. However, no information was sent either to the Registrar of Companies or mentioned in the Annual Report. This entails violation of Clauses (5) and (7) of Part 1 of Second Schedule of the Company Secretaries Act, 1980 as the Respondent failed to disclose a material fact known to him in a Report or Statement but the disclosure of which was necessary in making such Report or Statement in his professional capacity. He also did not exercise due diligence or was grossly negligent in the conduct of his professional duties.
- (v) In the 10<sup>th</sup> Annual General Meeting held on 14<sup>th</sup> June, 2014, Mr. Ravish Chopra was re-designated as an Independent Director. Till then he was a Nominee Director of Mr. Rana Kapoor. The Secretarial Audit Report did not disclose this at all and, therefore, it entails violation of Clauses (5) and (7) of Part 1 of Second Schedule of the Company Secretaries Act, 1980 as the Respondent failed to disclose a material fact known to him in a Report or Statement but the disclosure of which was necessary in making such Report or Statement in his professional capacity. He also did not exercise due diligence or was grossly negligent in the conduct of his professional duties.

(C) FOR THE FINANCIAL YEAR 2015-16:

- (vi) The Mumbai High Court passed the final orders on 04<sup>th</sup> June, 2015 striking down the appointments of the following persons as Directors:
- (a) Mr. M. R. Srinivasan
  - (b) Mr. Ravish Chopra
  - (c) Mr. Diwan Arun Nanda
  - (d) Mr. Ajay Vohra
  - (e) Mr. Rajat Monga
  - (f) Mr. Sanjay Palve
  - (g) Mr. Pralay Mondal



*C. M. Moring*



The Secretarial Audit Report and also Corporate Governance Report did not disclose the facts relating to the orders of Mumbai High Court dated 4<sup>th</sup> June, 2015 to the Shareholders. This entails violation of Clauses (5) and (7) of Part 1 of Second Schedule of the Company Secretaries Act, 1980 as the Respondent failed to disclose a material fact known to him in a Report or Statement but the disclosure of which is necessary in making such Report or Statement in his professional capacity. He also did not exercise due diligence or was grossly negligent in the conduct of his professional duties.

3.4 The Respondent in the Written Statement dated 25.11.2016 *inter-alia* stated as under:

- (i) The Respondent has denied all the allegations, averments and contentions raised in the complaint made by the Complainant against the Respondent save and except those that are expressly admitted. It has been stated that the complaint is false, baseless and without any merits or substance and is liable to be dismissed *in limine*.
- (ii) The Complainant is attempting merely to harass and humiliate the Respondent. The Complainant could not secure a satisfactory and meaningful verdict before the Bombay High Court both Single and Division Bench and is now indulging in a different Forum. The Complainant has not approached the Disciplinary Committee with clean hands.
- (iii) With regard to the contents of Para 1 of the complaint it has been stated that in so far as the allegation relating to the financial year 2013-14 is concerned, the Respondent was not appointed as the Secretarial Auditor of Yes Bank Limited. Moreover, the provisions of Section 204 of the Companies Act, 2013 relating to the Secretarial Audit were made applicable with effect from 1<sup>st</sup> April, 2014 and, therefore, the same were not applicable for the financial year 2013-14.
- (iv) In its General Circular No. 08/2014 dated 04<sup>th</sup> April, 2014 the Ministry of Corporate Affairs has specifically mentioned that the Financial Statements (and documents required to be attached thereto) and Auditor Report and Board Report in respect of financial year that commenced earlier than 1<sup>st</sup> April, 2014 shall be governed by the relevant provisions/ Schedules/ Rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1<sup>st</sup> April, 2014 the provisions of the new Act shall apply.





- (v) In response to allegation No. 2 for the financial year 2013-14, the Respondent has stated that the allegation is baseless and without any basis, as during the period mentioned in the complaint, the Respondent was not appointed as the Secretarial Auditor of the Yes Bank. Moreover, the provisions of Section 204 of the Companies Act, 2014 (should be 2013) relating to secretarial audit were made applicable with effect from 1<sup>st</sup> April, 2014 and, therefore, were not applicable for the financial year 2013-14.
- (vi) With regard to allegation No. 1 for the financial year 2014-15, the Respondent has stated that he was not appointed Secretarial Auditor of the Bank and therefore, the allegation No. 1 made by the Complainant for the financial year 2014-15 is not tenable either in law or facts of the case.
- (vii) In respect of the allegation No. 2 for the financial year 2014-15, the Respondent stated that no report or documents has been referred to in this allegation. Moreover, during this period, the Respondent was not appointed as the Secretarial Auditors of the Bank.
- (viii) In response to allegation No. 3 for the financial year 2014-15, the Respondent stated that he was not appointed as the Secretarial Auditors of the Bank and, therefore, the allegation is not tenable either in law or facts of the case.
- (ix) In regard to the allegation No. 1 for the financial year 2015-16, the Respondent has stated that the Section 134 (3) (e) of Companies Act, 2013, prescribes that in case of a Company covered under sub-section (1) of Section 178, Company's Policy on Directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a Director and other matters provided under Sub-Section (3) of Section 178 shall be attached to a statements laid before a Company in general meeting with the report of Board of Directors. It has been stated that the Bank, being Banking Company, in terms of the Banking Regulation Act, 1949, (BR Act) is required to comply with the provisions of the BR Act and extant RBI Regulations, Rules and Guidelines. Accordingly, the Bank has constituted the Nomination & Remuneration Committee with respect to appointments and remuneration of Directors and laid down its terms of reference which is reflected in its Annual Report.
- (x) The roles and responsibilities of the Nomination & Remuneration Committee of the Board can be found on Page No. 153 of the Annual Report for the financial year 2015-



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16 wherein the process for appointment of Directors including scrutinizing the nominations and identifying the persons who are qualified to become Directors, validation of the fit and proper criteria of Directors and other related information has been provided. Disclosure about the Board Remuneration Policy of the Bank has been made on Page 161 of the Annual Report. Adequate compliance has been made about the Bank's Policy on appointment and remuneration as applicable to the Directors of the Bank. Therefore, the allegation No. 1 for the financial year 2015-16 is not tenable either in law or facts of the case.

- (xi) With regard to the allegation No. 2 for the financial year 2015-16 it has been stated that as per the Secretarial Audit Report i.e. Form MR-3 as prescribed in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the Secretarial Auditors are required to report on the compliance of the provisions of various laws mentioned in Form MR-3.
- (xii) Further, as per Clause 36 of the Listing Agreement, the Company was required to promptly inform after the event to the exchange of developments with respect to any dispute, conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials. In terms of the aforesaid disclosure requirements, Bank had made appropriate disclosures to the Stock Exchange (s) vide its letters dated 17<sup>th</sup> June, 2015 and 18<sup>th</sup> June, 2015 to update the Exchanges as well as other Stakeholders about ongoing litigation and order dated 04<sup>th</sup> June, 2015 of the Mumbai High Court. Therefore, the allegation No. 2 for the financial year 2015-16 is not tenable either in law or facts of the case.
- (xiii) The Respondent has sought an opportunity of personal hearing and to adduce additional documents and evidence, if required, to make oral submissions to substantiate the contentions raised in the Written Statement and to appoint any Representative to appear on its behalf.

3.5 The Complainant in her Rejoinder dated 13.01.2017 has stated that:

- (i) The Written Statement of the Respondent reveals an extraordinary approach by the Respondent in deliberately misleading the Hon'ble Committee with numerous obfuscations and incorrect and misleading distortions of the facts. The duties and obligations of highly qualified





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professionals in the scheme of law and regulations is to ensure full and complete disclosures with transparency so that the Stakeholders have an objective perspective of Yes Bank and its affairs.

- (ii) The Respondent has relied only on the Statements of Yes Bank as filed with the Stock exchanges and/or issued to its members or Statements made in the Annual Report. The adverse findings, strictures and orders are not reflected in the Yes Bank's report as required by law and corporate governance norms and yet, the Respondent has gone to the extent of justifying the non-compliance with the mandatory requirement in letter and spirit of the regulations by alleging that the Complainant had not secured a satisfactory or meaningful verdict of the High Court. The findings of the judgment of the Single Judge dated 04<sup>th</sup> June, 2015 continued to be operative. The Bombay High Court observed *inter-alia* that both Rana Kapoor and Yes Bank have vis-à-vis the Plaintiffs chosen to adopt a course that is unsupported by the Articles or any fair reading of the relevant statutes.
- (iii) That none of the above observations, findings and strictures of the Court has been reflected in the letters of Yes Bank to Stock Exchanges or in the Annual Report. The Corporate Governance Certificates or the Secretarial Audit Report of the Respondent annexed to the complaint does not comply with the corporate governance norms and guidelines. The Respondent in its Secretarial Audit Report dated 27<sup>th</sup> April, 2016 certified that the Bank is fully compliant with the applicable law and corporate governance norms, without as much as even the faintest mention of the detailed findings of the Hon'ble Court.
- (iv) Had the Respondent fairly and objectively seen the judgment it would be clear that the letter dated 17<sup>th</sup> June, 2015 of Yes Bank was nothing short of a publicity statement from the Management. In its attempt to water down and gloss over the serious findings of the Hon'ble Court against the Bank and its Management.
- (v) Corporate Governance Certificates for the previous two (2) years financial year 2013-14 and 2014-15 issued by the Respondent are also no better than the said partisan Secretarial Audit Report. These Certificates have been issued in complete disregard of its professional duties. The Respondent has glossed over the abdication of its responsibilities and attempted to disassociate itself from Yes Bank by taking advantage of an obvious inadvertent mistake



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in which nomenclature made by the Complainant to the Corporate Governance Certificate as the Secretarial Audit Report for the financial year 2013-14 and 2014-15.

- (vi) Despite serious lapses by Yes Bank in complying with corporate governance norms and making inadequate disclosures, the Respondent has certified that Yes Bank has complied with the corporate governance norms without making any qualifications or comments on the several Directors whose appointments had been made subject to further orders by the Hon'ble Court. It is clearly and manifestly evident professional misconduct.
- (vii) By a Certificate on Corporate Governance dated 23<sup>rd</sup> April, 2014 addressed to the members of Yes Bank Limited the Respondent had certified that it has examined "*all relevant records*" of Yes Bank and thereafter certified the Bank to be corporate governance conditions-complaint under the relevant Listing Agreements. However, despite the fact that the Board Report had omitted the policy of appointments particularly of appointing "Nominee Directors" the Respondent did not disclose/make any qualifications in its Certificates in this regard. The Respondent also did not disclose/make any qualifications in its Certificates in this regard to the ad-interim orders dated 10<sup>th</sup> June, 2013 and 1<sup>st</sup> July, 2013.
- (viii) Despite the purported appointments of three (3) Whole-Time Directors being challenged in the Bombay High Court on 17<sup>th</sup> July, 2013, no information was sent either to the Registrar of Companies or mentioned in the Annual Report by the Bank and the Respondent did not disclose/make any qualifications in its Certificates in this regard.
- (ix) The Respondent skirted around the issues raised in the complaint and tried to disassociate himself from the Yes Bank by stating that it was not the Secretarial Auditors but suppressing that it had issued the said Certificates on Corporate Governance in the financial year 2013-14 and 2015-16. The Respondent has literally paid a mere lip service and mechanically certified the Yes Bank to be observing corporate governance. But the requirement of Practicing Company Secretary to certify compliance of corporate governance norms of such Companies is to ensure a robust mechanism of internal controls and effective monitoring of performance and otherwise is in place.



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- (x) In this particular case the Company is Banking Company, a Public Trust Institutions, the Respondent owed a higher standard of duty and care and due diligence and it hopelessly fell short as demonstrated above.
- (xi) The Banking Regulation Act is in addition to and not in derogation of the Companies Act. The Hon'ble High Court has observed that the Banking Act does not deal with the subject of appointment or removal of a Director generally. It merely prescribed certain qualifications for the Board of Directors as a whole. The appointment or removal of a Director of a Banking Company as much as any other Company is governed by the Companies Act.
- (xii) A bare reading of the Page 153 annexed as Annexure 'A' to the Written Statement established the same does not satisfy the requirement under Section 134 (3) (e) of the Companies Act, 2013. It does not lay down the criteria but talks of formulating the same for determining the qualifications positive attributes and independence of a Director. Despite the same the Respondent failed to comment or make any qualifications in its Secretarial Audit Report for the financial year 2015-16.
- (xiii) The Respondent had issued a Secretarial Auditor Report to the members of Yes Bank dated 27<sup>th</sup> April, 2016 after conducting a purported secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices where is reported that the Bank had during the audit period covering the financial year ended on 31<sup>st</sup> March, 2016 complied with statutory provisions listed there in the Companies Act, 2013 there under and the Rules made there under and the provisions of the relevant Listing Agreement based on its verification of the Banks books, papers, minutes books, forms and returns filed and other records maintained by the Bank, its Officer, Agents and authorized Representatives during the conduct of secretarial audit.
- (xiv) However, the Annual Return for the financial year 2015-16 was completely silent as also the Secretarial Audit Report did not make any comment/qualification on declaration of appointments of seven (7) Directors of the Banks Directors as invalid by the judgment dated 04<sup>th</sup> June, 2015 of the Hon'ble High Court of Bombay.



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(xv) The Bank accepted the unseating of six (6) Directors. In the Appeal filed by the Bank against the said order dated 4<sup>th</sup> June, 2015, only unseating of Mr. Ravish Chopra and others. However, none of the unseated Directors preferred an Appeal against the said order dated 4<sup>th</sup> June, 2015. The conduct of the Respondent in omitting to comment or make a qualification in his Secretarial Audit Report is a gross misconduct and should be dealt with sternly. The disclosures to the Stock Exchanges are not a substitute for disclosures required to be made in the Annual Report.

(xvi) The Complainant has also made a request for personal hearing.

4. The Board of Discipline at its meeting held on 30<sup>th</sup> November, 2018 considered the prima facie opinion of the Director (Discipline) dated 24<sup>th</sup> September, 2018, along with material on record, that the Respondent is 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980.

5. The Board of Discipline further considered the following observations of the Director (Discipline) in this matter:

(i) The Complainant in her complaint has alleged that the Respondent in his Secretarial Audit Report on Yes Bank for the Financial years 2013-14, 2014-15 and 2015-16 did not comment on the failure of the Board of Directors of Yes Bank to disclose the appointment policy of the Directors as required by Section 134(3)(e) of the Companies Act.

(ii) The Respondent did not disclose that the appointment of three (3) Directors, namely, S/Shri Diwan Arun Nanda, Ravish Chopra and M. R. Srinivasan was subject to the further orders of the Mumbai High Court in Suit No. 464 of 2013. The Secretarial Audit Report did not disclose that the appointment of three (3) Directors, namely, S/Shri Rajat Monga, Sanjay Palve and Pralay Mondal as Whole-Time Director on 27<sup>th</sup> June, 2013 were under challenge in the Mumbai High Court.

(iii) The Secretarial Audit and Corporate Governance Report for the year 2015-16 did not disclose that the Mumbai High Court by its order dated 4<sup>th</sup> June, 2015 has struck down the appointments of the following Directors:

S/Shri

- a) M. R. Srinivasan
- b) Ravish Chopra
- c) Diwan Arun Nanda
- d) Ajay Vohra





- e) Rajat Monga
- f) Sanjay Palve
- g) Pralay Mondal

- (iv) The Complainant alleged that the Respondent failed to disclose a material facts known to him in report and is, therefore, guilty of Clause (5) of Part I of Second Schedule and also under Clause (7) of Part I of Second Schedule as he did not exercise due diligence in the conduct of his professional duties.
- (v) The Respondent in his Written Statement stated that he was not appointed as a Secretarial Auditor of Yes Bank Ltd. for the years 2013-14, 2014-15 and, therefore, the allegations for the aforesaid two (2) financial years are not tenable either in law or facts of the case.
- (vi) The Banking Company is required to comply with the provisions of the Banking Regulation Act, 1949 and RBI Regulations, Rules and Guidelines. Accordingly, the Bank has constituted the Nomination & Remuneration Committee with respect to appointments and remuneration of Directors and has laid down its terms of reference which is reflected in the Annual Reports of the Bank. In support of the aforesaid averments, the Respondent has annexed extracts of Page Nos. 153 and 161 of the Annual Report of the Bank for the financial year 2015-16.
- (vii) It has also been stated that in terms of disclosure requirements of Clause 36 of the Listing Agreement, the Bank had made appropriate disclosures to the Stock Exchange (s) vide its letters dated 17<sup>th</sup> June, 2015 and 18<sup>th</sup> June, 2015 to update the Exchanges as well as other Stakeholders about ongoing litigation and order dated 04<sup>th</sup> June, 2015 of the Bombay High Court.
- (viii) In her Rejoinder, the Complainant has not rebutted the statement of the Respondent that he was not appointed as a Secretarial Auditor for the financial year 2013-14 and 2014-15 but has only stated that in her complaint, she had inadvertently referred to the Corporate Governance Report for the financial year 2014-15 and 2015-16 as Secretarial Audit Report.
- (ix) It is pertinent to note that the Complainant has not annexed with her complaint copies of the Secretarial Audit Report for the years 2013-14, 2014-15 and 2015-16 referred by her in her complaint.





- (x) In regard to the Certificate of Compliance of Conditions of Corporate Governance for the year 2013-14 and 2015-16, it is observed that the Respondent in his report has stated that he had examined the compliance of conditions of corporate governance of Yes Bank Ltd. as stipulated in Clause 49 of the Listing Agreement and stated that the compliance of conditions of Corporate Governance is the responsibility of the management and his examination was limited to procedure and implementation thereof adopted by the Bank for ensuring the compliance of the conditions of the Corporate Governance. It is neither an audit nor an expression of opinion on the financial statements of the Bank. It was further stated that to the best of his information and according to the explanations given to him, the Bank has complied with the conditions of Corporate Governance as stipulated in the above mentioned Listing Agreement.
- (xi) In regard to compliance with the provisions of Section 134 (3) (e) of the Companies Act, 2013, it has been stated by the Respondent that the Bank, being a Banking Company, is required to comply with the provisions of the Banking Regulation Act, 1949 and extant RBI Regulations, Rules and Guidelines. In this context it is stated that in Section 1 (4) of the Companies Act, 2013, it is provided that the provisions of the Act shall apply to the Banking Companies except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949. Similarly, Section 2 of the Banking Regulation Act, 1949, provides that the provisions of the Act shall be in addition to and not, save as expressly provided, in derogation of the Companies Act, 1956 and any other law for the time being in force.
- (xii) The provisions of Section 134 of the Companies Act, 2013, correspond to Sections 215, 216 and 217 of the Companies Act, 1956, which deals with the contents of the Report of the Board of Directors of a Company. Clause (e) of Sub-Section (3) of Section 134 the Companies Act, 2013, is a new provisions and provides that in case of a Company covered under Sub-Section (1) of Section 178 (Listed Company or such other class or classes of Company as may be prescribed) the Company's policy on Directors appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a Director and other matters provided under Sub-Section (3) of Section 178 of the Companies Act, 2013, shall be attached with the Board of Directors report attached to the statement laid before the Company in general meeting.



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- (xiii) Sub-Section (3) of Section 178 of the Companies Act, 2013, provides that the Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a Director and recommend to the Board a policy relating to the remuneration for the Directors, key managerial personnel and other employees.
- (xiv) Section 29 of the Banking Regulation Act, 1949, contains the provisions relating to the accounts and Balance Sheet of Banking Company. Sub-Section (3) of Section 29 of the Banking Regulation Act, 1949, provides that notwithstanding that the Balance Sheet of a Banking Company is under Sub-Section (1) required to be prepared in a form other than the form set out in Part 1 of Schedule VI of the Companies Act, 1956, the requirements of that relating to the Balance Sheet and Profit and Loss Account of a Company shall, in so far as they are not inconsistent with the Act, apply to the Balance Sheet or Profit and Loss Account, as the case may be, of a Banking Company.
- (xv) Sections 10-A, 10-B, 10-BB and 10-C of the Banking Regulations Act, 1949, contain provisions relating to the appointment of Chairman, Whole Time Directors, Directors of a Banking Company, notwithstanding anything to the contrary in the Companies Act, 1956, the powers of the Reserve Bank of India to appoint Chairman and Managing Director of a Bank, requirement as to the qualification of Chairman and certain Directors.
- (xvi) The Complainant's allegations relating to the non-compliance of the provisions of Section 134 (3) (e) of the Companies Act, 2013, for FY 2015-16 are not sustainable. The complainant has not refuted the statement of the Respondent that he was not appointed as a Secretarial Auditor of the Yes Bank for the years 2013-14 and 2014-15.
- (xvii) The Respondent has stated that as per the Secretarial Audit Report i.e. Form MR-3 as prescribed in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the Secretarial Auditors were required to report on the compliance of the provisions of various laws as mentioned in Form MR-3.

It has been observed that the Annual Report for the year 2015-16, which also contains MR-3, is available on the website of Yes Bank Ltd.





(xviii) Further, as per Clause 36 of the Listing Agreement the Company was required to promptly inform after the event to the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a Party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials. In terms of the aforesaid disclosure requirements, the Bank had made appropriate disclosures to the Stock Exchange (s) by its letters dated 17<sup>th</sup> June, 2015 and 18<sup>th</sup> June, 2015 to update the Exchanges as well as other Stakeholders about ongoing litigation and order dated 04<sup>th</sup> June, 2015 of the Bombay High Court. Therefore, the allegation No. 2 for the financial year 2015-16 is not tenable either in law or facts of the case.

(xix) In view of the above, the Complainant has failed to bring home the allegations that the Respondent is guilty of Professional misconduct either under Item (5) or Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980, as amended.

(xx) Having regard to the documents of the case, material on record and 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 under Item (5) or Item (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980, as alleged by the Complainant in her Complaint.

6. The Board of Discipline at its meeting held on 30<sup>th</sup> November, 2018, after considering the material on record, *prima-facie* opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with 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. Accordingly, the complaint is closed.

  
Member

  
Presiding Officer

