

**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/371/2016

Order reserved on : 31<sup>st</sup> July, 2018

Order issued on : 25<sup>th</sup> August, 2018

Shri Manjeet Singh Sodhi, Col (Retd.)

...Complainant

Vs

Shri Bhaskar Rao Vemuri, FCS-5939 (CP No. 4182)

...Respondent

**Present:**

Mrs. Meenakshi Gupta, Director (Discipline)

**FINAL ORDER**

1. The Board of Discipline examined the Complaint, Written Statement, Rejoinder, prima-facie opinion and Further Investigation Report of the Director (Discipline).
2. The Board of Discipline noted the following: -
  - 2.1 A complaint dated 16<sup>th</sup> November, 2016 in Form 'I' was 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 Shri Manjeet Singh Sodhi ('the Complainant') against Shri Bhaskar Rao Vemuri (FCS-5939)(CP No.4182) (hereinafter referred to as 'the Respondent').
  - 2.2 The Complainant alleged that the Respondent has contravened Item (8) of Part I of the First Schedule and Item (7) of Part I of the Second Schedule to the Act, as given below: -
    - 2.2.1 The Respondent has failed to exercise due diligence while certifying Form 32 for cessation of Shri Srinivas Rao Devavarapu as a Director and appointment of Shri J Sai Vara Prasad Rao as Director of M/s Terra Nova Township Pvt. Ltd., w.e.f. 24<sup>th</sup> July, 2013 whereas no meeting of Board of Directors took place on that date and no Notice was served on Shri Manjeet Singh Sodhi or Shri Honey Sachdeva who were directors of the company.



*CA Meenakshi Gupta*

*(Signature)*



- 2.2.2 The Respondent has failed to ensure whether Shri Ajay Jyothula, the Director was authorized to verify Form 32.
- 2.2.3 The Respondent has not obtained any concurrence from the erstwhile Company Secretary.
- 2.3 The Respondent *vide* written statement dated 19<sup>th</sup> December, 2016, *inter-alia* stated that: -
- 2.3.1 The complainant is neither director nor shareholder as on the date of incident of Board Meeting.
- 2.3.2 The Respondent has certified Form 32 on the basis of extract of minutes of the meetings of M/s Terra Nova Township Pvt. Ltd. held on 24<sup>th</sup> July, 2013.
- 2.3.3 The complainant has no right to question the subject matter of certification.
- 2.3.4 Shri Ajay Jyothula, Director of the company, has authorized him to file Form 32 with MCA and given his digital signature certificate (DSC).
- 2.3.5 The Company has not taken any alternative steps to file Form No 32, hence approached the Respondent to file the same.
- 2.3.6 The Respondent has requested that ICSI/MCA/ROC may depute for inspection of records/Registers/minutes of the Company to investigate the affairs of the company to find irregularities.
- 2.4 The Complainant *vide* his Rejoinder dated 13<sup>th</sup> January, 2017 reiterated the submissions already made in his complaint and has *inter-alia* stated that he is a director of M/s Terra Nova Township Pvt. Ltd. and the Respondent has colluded with Shri Srinivas Rao Devavarapu.
- 2.5 After examining the Complaint, Written Statement from the Respondent, Rejoinder from the complainant, related material on record and all the facts and circumstances of this matter, the Director (Discipline) formed her *prima-facie opinion* dated 6<sup>th</sup> July, 2017 and held that the Respondent is *prima facie* 'Guilty' of professional misconduct under Item (7) Part I of the Second Schedule to the Act under the Company Secretaries Act, 1980.
- 2.6 The Director Discipline in her *prima facie* opinion dated 6<sup>th</sup> July, 2017 has the following observations in this matter: -



C. S. Manning  
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2.6.1 Regarding allegation of non-communication to the previous incumbent, it is pertinent to note that the need for sending a prior communication arises only in relation to exclusive area of practice of PCS under the Companies Act, 1956/ 2013. The Council of ICSI, while clarifying the scope of the words "accepting a position of Company Secretary in practice" has expressed a view that need for sending a previous communication to the earlier incumbent arises only in relation to exclusive area of practice under the Act, such as, signing /certification of Annual Return, Issuance of Secretarial Audit Report, Conduct of Internal Audit of Operations of the Depository Participants & Certification under Clause 49 of the Listing Agreement, etc. However, the same shall not be mandatory (*though desirable*) to send a prior written communication to the earlier incumbent in respect of certifying e-forms, issuing search reports, giving legal opinion, etc. Accordingly, the Respondent is not guilty of professional misconduct under Item (8) of Part I of the First Schedule to the Act.

2.6.2 Further, the Respondent has certified Form 32 for cessation of Shri Srinivas Rao Devavarapu as a Director and appointment of Shri J Sai Vara Prasad Rao as Director of M/s Terra Nova Town Ship Pvt. Ltd. w.e.f 24<sup>th</sup> July 2013 only on the basis of extract of minutes of meeting of M/s Terra Nova Township Pvt. Ltd. held on 24<sup>th</sup> July, 2017.

2.6.3 It seems that the Respondent has presumed that Shri Ajay Jyothula, Director of M/s Terra Nova Town Ship Pvt. Ltd., is authorised to verify Form 32 and failed to ascertain from the records of the Company. It is apparent from the submissions of the Respondent that he had failed to ascertain and verify the records of the company, such as: -

2.6.3.1 Notice date & Agenda;

2.6.3.2 Tracking Receipt for Delivery of Notice to the concerned Director;

2.6.3.3 Attendance Sheet;

2.6.3.4 Letter of cessation of Shri Srinivas Rao Devavarapu as a Director



*C. S. Manning*

*[Signature]*



- 2.6.3.5 Consent letter of Shri J Sai Vara Prasad Rao for appointment as Director of M/s Terra Nova Town Ship Pvt. Ltd.
- 2.6.3.6 Whether Board of Directors of M/s Terra Nova Town Ship Pvt. Ltd. authorised Shri Ajay Jyothula, Director to verify Form 32.
- 2.6.3.7 The Director (Discipline) observed that It is apparent that the Respondent has not exercised due diligence in certification of Form 32 as he has not checked and verified the relevant records of the company as stated above and the Director (Discipline) is prima-facie of the opinion that the Respondent is 'Guilty' of professional misconduct under Item (7) Part I of the Second Schedule of the Act under the Company Secretaries Act, 1980.
- 2.7 The Disciplinary Committee at its 87<sup>th</sup> meeting held on 14<sup>th</sup> December, 2017 considered the *prima-facie* opinion dated 6<sup>th</sup> July, 2017 of the Director (Discipline) and the material on record. The Disciplinary Committee while going through the *prima-facie* opinion of Director (Discipline) observed that Form 32 in issue regarding cessation and appointment of Director is not available on record.
- 2.8 The Disciplinary Committee vide its Interim Order dated 14<sup>th</sup> December, 2017 issued on 18<sup>th</sup> January, 2018 directed the Director (Discipline) to call the requisite form 32 and other relevant documents, if any, from the parties, examine the matter carefully and accordingly, place the *prima facie* opinion before the Disciplinary Committee along with the said document(s).
- 2.9 Accordingly, the Complainant and the Respondent vide letter(s) dated 19<sup>th</sup> /23<sup>rd</sup> April, 2018 were asked to submit the certified copy of the Form 32 in respect of the said appointment and cessation of directors in the matter.
- 2.10 In response, the Respondent vide letter dated 11<sup>th</sup> May, 2018 informed that he has applied for certified copies on 28<sup>th</sup> April, 2018 and the same are awaited. He will submit the same as and when received from the Registrar of Companies, Bangalore.
- 2.11 The Complainant vide emails dated 15<sup>th</sup> May, 2018 & 18<sup>th</sup> May, 2018 *inter-alia* stated that the Respondent was not a Company Secretary who was ever nominated by the Company. The Company has its offices in Bangalore while the Respondent is



*C. R. Manjunath*

*A*



located at Hyderabad and he has never visited the offices of the Company.

2.12 The Complainant also stated that the Respondent has certified Form 32 in a so called Board Meeting whereas no notice was ever served amongst others. There is a Shareholder Agreement which specifies that Shri Srinivas Rao Devavarapu cannot resign as a Director without agreement from their side. The Complainant also presumed that the Respondent has an old collaborative and collusive relationship with Shri Srinivas Rao Devavarapu, as the Respondent has acted as Company Secretary for various companies. The Directors belong to two distinct groups and the Respondent has acted for one group of directors.

2.13 The Complainant has also provided copy of Form 32 for appointment of Shri Jyothula Sai Vara Prasad Rao as Additional Director and cessation of Shri Srinivas Rao Devavarapu as a Director of M/s Terra Nova Town Ship Pvt. Ltd. certified by the Respondent.

2.14 Pursuant to the directions of the Disciplinary Committee, the Director (Discipline) examined the Form 32 provided by the Complainant and prepared her Further Investigation Report dated 24<sup>th</sup> July, 2016.

3. The Board of Discipline at its meeting held on 31<sup>st</sup> July, 2018 considered the Further Investigation Report of the Director (Discipline) dated 24<sup>th</sup> 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 Three documents are found attached with the Form 32 certified by the Respondent: -

4.1.1 Certified true copy of the Extract of Minutes of Board Meeting of the company held on 24<sup>th</sup> July, 2013 indicating two resolutions passed for the appointment and cessation of the directors of the Company, respectively.

4.1.2 Consent letter dated 24<sup>th</sup> July, 2013 of Shri Jyothula Sai Vara Prasad Rao to act as Director of the Company.

4.1.3 Resignation letter dated 24<sup>th</sup> July, 2013 of Shri Srinivas Rao Devavarapu as Director of the Company.

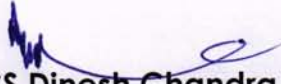



C. S. Narayana

A



- 4.2 It has also been observed from the two resolutions passed at the Board Meeting of the Company held on 24<sup>th</sup> July, 2013 for the appointment of Shri Jyothula Sai Vara Prasad Rao as Additional Director and cessation of Shri Srinivas Rao Devavarapu as a Director of M/s Terra Nova Township Pvt. Ltd. that Sri Ajay Jyothula, Director was authorised by the Board of Directors of the Company to file necessary Statutory Return with the ROC for intimating the change in the Board.
- 4.3 It has also been observed from the Written Statement of the Respondent dated 19<sup>th</sup> December, 2016 that the Respondent was not aware about the any agreement between parties, as it was not disclosed to him. He also contended that resignation depends on ones wishes and no one can prevent it. Further the Respondent has not denied his association with Shri D Srinivasa Rao Devavarapu and he has rendered various secretarial services.
- 4.4 In view of the observation made above and considering all the facts and circumstances of the matter, the Director Discipline is held that the Respondent is 'Not Guilty' of professional misconduct under any of the items of First and/or Second Schedule to the Act as the Respondent has seen and verified the necessary documents while certifying Form 32 in question as the Resolution passed by the Board of Directors of the Company for appointment and cessation of the Directors along with authorization of Sri Ajay Jyothula, Director to file necessary returns with the ROC; Consent letter of Shri Jyothula Sai Vara Prasad Rao to act as Director, and Resignation letter of Shri Srinivas Rao Devavarapu as Director, are found attached with the Form 32 of the Company, certified by the Respondent. Moreover, a dispute is apparent amongst the two groups of Directors of the Company.
5. **The Board of Discipline at its meeting held on 31<sup>st</sup> July, 2018, after considering the aforesaid observations, material on record, prima-facie opinion & further investigation report of the Director (Discipline) and all the facts and circumstances of the case, agreed to the further investigation report 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.**

  
CS Dinesh Chandra Arora  
Member

  
CS C Ramasubramaniam  
Member

  
CS Atul H Mehta  
Presiding Officer

