

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

DC/372/2016

Order Reserved on: 3rd June, 2019

Order issued on: 21 AUG 2019

Shri Shaleen V. Vaid

.....Complainant

Vs.

Ms. Sandhya Rohit Malhotra, FCS-6715, CP No. 9928

.....Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer

Mrs. Meenakshi Datta Ghosh, Member (Govt. Nominee)

CS B Narasimhan, Member

CS Nagendra D Rao, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

Shri Vikash Kumar Srivastava, Deputy Director, Disciplinary Directorate

Shri Arjun D. Singh, Advocate on behalf of the Complainant along with the Complainant

Respondent in person

FINAL ORDER

1. A Complaint dated 23rd December, 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. Shaleen V. Vaid (hereinafter referred to as "the Complainant") against Ms. Sandhya Rohit Malhotra, FCS-6715, C.P. No. 9928(hereinafter referred to as "the Respondent").
2. The Complainant has *inter-alia* alleged that the Respondent has illegally, unlawfully, intentionally and fraudulently certified Form 20B along with Annual Return for the Financial Year 2013-14 made upto 30th September, 2014, MGT-14 and DIR-12 of M/s Offshore Hookup and Construction Services (I) Pvt. Ltd. (hereinafter referred to as the 'Company') wherein she has certified as under:-
 - (i) that in Form 20B transfer of 6000 shares have been shown on 12th June, 2014. However, there was no Board Meeting held on 12th June, 2014.



(ii) that in Form MGT-14, the date of transfer of 15,78,797 shares has been shown as 03rd December, 2014 whereas in the Register of Members, the date of transfer of the said shares has been shown as 18th October, 2014. There is no mention of Board Meeting held on 18th October, 2014.

(iii) that in the Register of Members, the date of transfer of 153 shares has been shown as 02nd December, 2014 whereas in Form MGT-14 the date of transfer of the said shares has been shown as 03rd December, 2014. There is no mention of Board Meeting held on 02nd December, 2014 and in the Notice dated 24th November, 2014 for convening Board Meeting on 03rd December, 2014 at 10:00 a.m. there was no Agenda for considering transfer of shares.

(iv) that on receipt of the Notice dated 24th November, 2014 the Complainant vide letter dated 25th November, 2014 intimated his inability to attend the Board Meeting due to pre-occupancy and also mentioned that he was not in favour of appointment of Mrs. Amrita Madhwani as Additional Director of the Company.

3. The Respondent in her written statement dated 23rd February, 2017 has *inter-alia* stated as under :-

(i) that transfer of 6000 shares is not a case of transfer of shares, between two living persons, but a transmission of shares from a deceased wife to her husband. The Complainant has suppressed most important material facts that the said transmission of 6000 shares from his mother, late Mrs. Meenakshi Vaid, to his father, Shri Vir Vikram Vaid took place only after the Complainant and his two siblings, Shri Abhishek Vaid and Ms. Carishma Vaid, have signed three separate 'No Objection Certificates' in June, 2014 which were duly notarized by a public notary, whereby all three persons consented to the transmission of these 6000 shares from the name of their deceased mother Mrs. Meenakshi Vaid to his father Shri Vir Vikram Vaid who also gave a separate Affidavit and Indemnity duly notarized Affidavits by all the legal heirs of late Mrs. Meenakshi Vaid.

(ii) that there was a Board Meeting on 3rd July, 2014 and the Respondent has certified Form MGT-14 on the basis of the records placed before her by the Company. The Company's statutory Register of Share Transfer has correctly noted in separate columns, "Date of Registration", that the document is of 12th June, 2014 and / or that it is received by the Company on that date; whereas in the separate column, "date of Board / Committee Meeting which approved the Transfer", it is correctly recorded that the same is approved on 3rd July, 2014. This has been supported by an affidavit of the Company's Chairman and Managing Director, Shri Abhishek Vaid dated 24th December, 2015. Hence, there is no illegality or fraud in transfer of 6000 shares.



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(iii) that with regard to the transfer of 15,78,797 shares (including 6000 shares of late Mrs. Meenakshi Vaid) in a Board Meeting purportedly held on 18th October, 2014, the Respondent has submitted that the transfer of shares was approved in the Board Meeting held on 3rd December, 2014. It is supported by an Affidavit dated 24th December, 2015 of the Shri. Abhishek Vaid Chairman and Managing Director of the Company, that there was an inadvertent clerical error whereby the documents submitted to the Company on 18th October, 2014 for transferring 15,78,797 equity shares was incorrectly recorded in the statutory Registers.

4. The Complainant has submitted rejoinder dated 5th April, 2017 wherein he has reiterated the allegations and inter-alia stated as under :

(i) that the Respondent in her written statement dated 23rd February, 2017 has reproduced an extract from the Affidavit of Shri Abhishek Vaid dated 24th December, 2015 in CP No.85 of 2015 wherein it is stated that "actually the said transmission took effect from the date of the Meeting of the Board of Directors of the Company held on 03rd July, 2014 which duly approved that said transmission." It is thus clear that the Respondent is in connivance with Shri. Abhishek Vaid has relied on the said Affidavit dated 24th December, 2015 in CP No. 85 of 2015.

(ii) that the complicity of the Respondent is manifest in her own admission that there was no Board Meeting held on 2nd December, 2014 whereas in the statutory register of Members and Registers of Directors and Key Managerial Personnel and their Shareholding, the transfer of 153 shares from Late Sardarilal Vaid to Ms. Neeta Bhal has been shown as on 2nd December, 2014. The Complainant has further submitted that by Respondent's own admission fraudulent entries were made in the Statutory Register which proves that the Respondent has actively connived with Shri. Abhishek Vaid in falsification of the said Registers.

5. In pursuance of Section 21 of the Act read with the Rules, the Director (Discipline) has formed *prima-facie* dated 26th March, 2018 wherein the Director (Discipline) is *prima-facie* of the opinion that the Respondent is "**Guilty**" of Professional and other misconduct under Item (7) of Part I of the Second Schedule to the Act as the Respondent has not done due diligence while certifying the Form 20B and MGT 14. The Disciplinary Committee in its meeting held on 4th June, 2018 agreed with the *prima-face* opinion of Director (Discipline) and decided to adjudicate the matter in accordance with Rule 18 of the Rules read with the Act to finally conclude as to whether the Respondent is guilty or not in the matter.



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6. The Respondent in her written statement dated 20th July, 2018 to the *prima-facie* opinion has *inter-alia* stated as under :

- (i) that for certification of Form 20B, the Respondent has relied on Register of Members, Register of Directors Shareholding and Register of Share Transfers, affidavit, NOC and indemnity Bond. Registers shows that the date of transfer of 6000 shares shown as 12th June, 2014. However, date of Board meeting is 3rd July, 2014. In Form 20B inadvertently date mentioned on the transfer deed instead of date of Board meeting has been mentioned.
- (ii) that regarding certification of MGT 14 for Resolution pertaining to transfer of shares, the Respondent submitted that date of execution of instrument is 18th October, 2014 and 2nd November, 2014 and approval of Board is on 3rd November, 2014 and on seeking clarification it was explained that the Register of Share Transfer contains two columns with heading date Registration and Date of Board/Committee meeting which approves transfer. Date of transfer has been entered in first column.

7. The Complainant in his rejoinder dated 9th August, 2018 to the written statement to *prima-facie* opinion reiterated his submissions made in the Complaint and rejoinder and *inter-alia* stated that the respondent has annexed a fabricated copy of Register of Members, Register of Directors and Key Managerial Personnel with " * " mark indicating the following :

"* 12/06/2014 is the date of transmission of document. This was approved in the board meeting held on 3/07/2014 "

"2/11/2014 is the date of transfer on the document. This was approved in the board meeting held on 3/12/2014"

"18/10/2014 is the date of transfer on the document. This was approved in the board meeting held on 3/12/2014"

8. The Complainant has further submitted that the statement of the Respondent that 12th June, 2014 is the date of transmission of document which was approved in the Board Meeting held on 3rd July, 2014 is incorrect as there was no Board meeting held on 3rd July, 2014. The Complainant has alleged that the Respondent has knowingly fabricated the documents with malafide intent.

9. The matter came for hearing before the Disciplinary Committee on 3rd June 2019. The Complainant appeared along with his advocate, the Respondent appeared in person. The Complainant has reiterated the submissions already made. The Respondent had requested to provide



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- copy of the Rejoinder to written statement to the prima-facie opinion, which was provided to her.
10. The Disciplinary Committee after hearing the submissions, asked the Respondent and the Complainant to submit their further submissions/arguments within two weeks of hearing.
 11. The Respondent has submitted written submissions vide letter dated 14th June, 2019 which in she has submitted that in the prima-facie opinion of Director(Discipline) there are two charges against her i.e. mentioning of wrong date of one of the Board Meetings in Form 20B and wrongful certification of the Form MGT 14. Regarding mentioning of wrong date in Form 20 B and transmission of shares from Late Mrs. Meenakshi Vaid to Mr. Vir Vikram Vaid wherein the date of execution of the document which was also stated in the Register of Members, Register of Directors and KMP and Register of Share transfer i.e. 12th June, 2014 was mentioned instead of 3rd July, 2014 which was date of Board meeting. The Respondent has submitted that she has done certification of Form 20B after verification of the following documents:(i) Last filed Annual Returns (ii) Register of Members (iii) Register of Directors and KMP (iv) Register of Share Transfer (v) NOC given by all three children of Mrs. Meenakshi Vaid and Shri Vir Vikram Vaid in favour of Shri Vir Vikram Vaid, Minutes of the meeting dated 3rd July 2014, which was the date of the Board Meeting in which the transmission was approved. The date of 12th June, 2014 which has been contested by the Complainant, has been inadvertently mentioned and the error of inadvertence crept is because of the fact that the NOC carried that date and likewise Register of Members and Register of Share Transfer and Register of Directors and KMP all carried the respective date being the date of Registration. The Respondent prayed that this error of misquoting of dates, which does not jeopardise the interest of the Complainant in any way, be not considered as Professional Misconduct.
 12. Regarding wrong certification of Form MGT 14, the Respondent has submitted that filing of resolutions passed by the Board was required to be filed under Section 117 of the Companies Act, 2013 and this requirement was subsequently omitted vide amendment dated 25th May, 2015. As a matter of Good Governance, company chose to file this resolution with the ROC and again hired Respondent's services to certify this particular Form MGT-14. Filing of resolution in MGT-14 is merely for information purpose and does not change the composition of the company's shareholding structure. Allegation of mentioning of wrong dates in the Registers maintained by the company does not give rise to cause of action against the Respondent as entries in the Registers were done by the Company and not by the professional. The Respondent has further submitted that Shri Abhishek Vaid, one of the Directors of the



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Company in his affidavit submitted to NCLT has already clarified regarding the mentioning of wrong date in the registers inadvertently.

13. The Respondent has quoted judgement of the Supreme Court in State of Punjab and Others Vs Ram Singh Ex Constable {1992(4) SCC54} and prayed to the Disciplinary Committee, that this error of misquoting of dates, does not jeopardise the interest of the complainant in any ways, therefore, it should not be not considered as Professional Misconduct.

"In State of Punjab and Othrs. Vs. Ram Singh Ex. Constable {1992(4) SCC 54} it was stated:

"Misconduct has been defined in Black's Law dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense but not negligence or carelessness.'

In P. Ramanatha Aiyar's Law Lexicon, 3rd Edition at page 3027, the terms 'misconduct' has been defined as under:

"The term 'misconduct implies a wrongful intention, and not a mere error of judgement."

14. The Respondent further submitted that as alleged by the Complainant that Notice of the meeting did not specify the agenda for the transfer of shares, is correct. However, the company in question being a closely held company, any agenda with the permission of the Chairman of the meeting can be considered and cannot be questioned by the Professional whose services have been hired for certification, especially when, all other related documents have been satisfactorily provided.

15. The Complainant submitted his written submissions vide letter dated 20th June, 2019 wherein he has reiterated the submissions already made in his Complaint and rejoinder that there was no Board Meeting held on 12th June, 2014. However, the Respondent in Form 20B has certified a Board meeting on 12th June, 2014. It is further submitted that a few more transfers of shares in the Financial Year 2014-15 can be witnessed from Register of Members and Register of Key Managerial Personnel which are not in consonance with the facts and dates as there were no Board meetings on 18th October, 2014 and 2nd December, 2014 as well. It is further submitted that Form MGT-14 has been filed by the Company with the ROC for filing certain resolutions which were passed in the Board



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Ajaya Pandey

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meeting held on 3rd December, 2014 and the said Form MGT-14 has been certified by the Respondent which states that it has been filed for 2 no. of Resolutions while the attachments to the Form MGT-14 shows it has been filed for 3 no. of resolutions and no transfer took place on 3rd December, 2014. The Complainant has further added that there was no agenda for transfer of shares in the Notice dated 24th November, 2014 issued for the meeting of Board of Directors to be held on 3rd December, 2014.

16. The Disciplinary Committee after considering the submissions of the Complainant and the Respondent, material on record and all the facts and circumstances of the matter, has observed that the Complainant has alleged illegal, unlawful, intentional and fraudulent certification of Form 20B, MGT-14 and Form DIR 12. The allegation in FORM 20B and MGT-14 relate to mentioning of dates of the Board meetings on 12th June, 2014, 18th October, 2014 and 2nd December, 2014 in respect of transfer of shares. The records of the Company show that there were no Board meetings on these dates. The Respondent has admitted her mistake in mentioning of wrong date in Form 20B and clarified the circumstances due to which error crept in and prayed the Disciplinary Committee to treat it as inadvertent error or oversight which has not affected any rights of proprietary of any of the parties involved or cause any harm to any of the parties. The Respondent has further clarified that in Form MGT-14 with which one of the Resolutions for Transfer of Shares was also filed the date 18th October, 2014 and 2nd December, 2014 are the dates of registration of transfer and transfer took place in the meeting of the Board of Directors held on 3rd December 2014.

17. Regarding certification of Form DIR 12 for appointment of Additional Director, the Disciplinary Committee noted that the Complainant has raised objections to the appointment of Mrs. Amrita Madhwani as Additional Director of the Company. However, resolution to this effect was passed in the Board Meeting held on 3rd December 2014 but the Complainant has failed to produce any document contrary to the same. The Disciplinary Committee on the issues of certification of the DIR 12 for appointment is of the view that mere objecting to the appointment would not make the appointment illegal. Hence this allegation has no merit.

18. The Disciplinary Committee after considering all the material available on the record, the written and oral submissions of parties and the above observations is of the opinion that the error in Form 20 B is inadvertent error of oversight which does not cause any prejudice to any of the parties. The date of Board Meeting as mentioned in MGT-14 certified by the Respondent shows the date as 3rd December 2014 only. Hence, charge of lack of due diligence against the Respondent does not arise.



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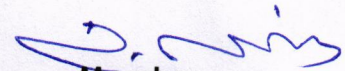
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19. After considering the material on record and in totality of the facts and circumstances of the case, the Disciplinary Committee held that the Respondent is "Not Guilty" of professional or other misconduct under the Company Secretaries Act, 1980 for the allegations made by the Complainant in the Complaint. The Disciplinary Committee noted that there has been an inadvertent error although it does not impact any of the persons including the Complainant. However, the Disciplinary Committee cautions the Respondent to be more careful and diligent in future in all statutory filings.

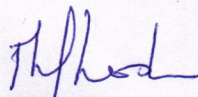
20. Accordingly, the complaint is disposed off.



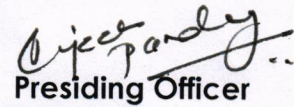
Member



Member



Member



Presiding Officer