

**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/374/2016

Order reserved on: 17th January, 2019

Order issued on : 18 JAN 2019

Shri Shaleen V. Vaid

.... Complainant

Vs

Shri Manish Laitchandra Ghia (FCS-6252)

... Respondent

CORAM:

CS Atul H Mehta, Presiding Officer
CS C Ramasubramaniam, Member
CS Ashok Kumar Dixit, Member

Present:

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

FINAL ORDER

1. The Board of Discipline examined the Complaint, Written statement of the Respondent, Rejoinder of the Complainant, material on record and prima-facie opinion of the Director (Discipline).
2. The Board of Discipline considered the following: -
 - 2.1 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 ('the Complainant') against Shri Manish Laitchandra Ghia, FCS-6252, C.P. No. 3531 (hereinafter referred to as 'the Respondent').
 - 2.2 The Complainant in his complaint dated 23rd December, 2016 has *inter-alia* alleged as under:
 - (i) That the Respondent is a Practising Company Secretary has illegally, unlawfully, intentionally and fraudulently certified certain Forms for removal of the Complainant as a Director from the Board of M/s Offshore Hookup and Construction Service Pvt. Ltd. (hereinafter referred to as 'the Company').
 - (ii) That the Respondent has certified two forms under his digital signatures:
 - Form DIR-12 for removal of the Complainant as Director of M/s Offshore Hookup at the adjourned Extra Ordinary General Meeting held on 12th June, 2015 and



- Form MGT-14 for removal of the Complainant as Director of M/s Offshore Hookup at the adjourned Extra Ordinary General Meeting held on 12th June, 2015.

- (iii) That in the declaration field of the Form DIR-12 and Form MGT-14, Shri Abhishek Vir Vikram Vaid, Director of the Company has declared that he has been authorized by the Board of Directors of the Company vide Board Resolution No. 1 at its Board meeting held on 12th June, 2015.
- (iv) That there was no Board meeting held on 12th June, 2015 as is evident from Directors Report dated 01st September, 2016 wherein at Serial No. 15 under the heading "Number of Meetings of the Board of Directors" it has been mentioned "the Board met 7 times during the year".
- (v) That the respondent while certifying Form DIR 12 and Form MGT 14 failed and neglected to check and verify the following documents / court orders and records of M/s Offshore Hookup and committed professional misconduct by falsely certifying the said Forms:
- a) That the Complainant had received a Special Notice under Section 115 of the Companies Act, 2013 from S/Shri Abhishek Vir Vikram Vaid and Vir Vikram Vaid both dated 3rd December, 2014 for removal of the Complainant as Director of the Company. Considering the representation and the clarifications sought by the Complainant, the Board adjourned the said Board Meeting to 20th January, 2015 at 11:30 a.m.
 - b) That the Complainant received a Notice of Board Meeting dated 31st December, 2014 for convening the Board Meeting on 20th January, 2015. At the said Board Meeting, the Complainant gave a detailed written representation in his defence against his removal as Director of the Company. At the said Board Meeting, it was unanimously decided that the Complainant shall continue as a Director of the Company.
 - c) That once again the Complainant received a Notice dated 28th April, 2015 for convening Board Meeting of the Company on 6th May, 2015. The Complainant also received a Special Notice dated 24th April, 2015 under Section 115 of the Companies Act, 2013 for removal of the Complainant as Director of the Company. The Complainant made a detailed written representation in reply to the said Special Notice by letter dated 6th May, 2015 stating therein that he was baffled to receive Special Notice under Section 169 of the Companies Act, 2013 proposing the removal of complainant as Director of the Company.
 - d) The Complainant had filed Civil Suit (L) No 531 of 2015 against the Company and S/Shri Abhishek Vir Vikram Vaid and Vir Vikram Vaid before the Hon'ble Bombay High Court. The Hon'ble Judge in his Order dated 28th May, 2015 was pleased to record the submission made by the Ld. Counsel who appeared for Shri Abhishek Vir Vikram Vaid, Defendant No. 3. Para 2 and Para 3 of the said Order are reproduced below:



[Handwritten signature]
[Handwritten signature]

"2.The learned counsel for Defendant No. 3 takes instruction from his client who is personally present before the Court and submits that the meeting which was proposed to held at 10:00 a.m. has been adjourned and it shall be held after a period of two weeks from today.

In view of this, there is no urgency. Place this matter after vacation."

- e) Subsequent to Order dated 28th May 2015, the Complainant received from the Company a communication dated 1st June, 2015 by way or circular resolution dated 1st June, 2015 containing draft of 2 Resolutions proposed to be passed under Section 175 of the Companies Act, 2013.
- f) That the Complainant also received purported Minutes of the adjourned EOGM held on 12/06/2015 by letter Reference No. OHCS/SV/004 dated 10th July, 2015. The Complainant was shocked and surprised to notice that S/Shri Abhishek Vir Vikram Vaid and Vir Vikram Vaid alongwith other members and Directors of the Company had committed Contempt of the Hon'ble Bombay High Court by making misrepresentation of the order dated 28/05/2015 as different versions were recorded in the purported Minutes of Extra Ordinary General Meeting held on 28th May, 2015, in the Draft Circular Resolution dated 01st June, 2015 and in the Minutes of the purported EOGM purportedly held on 12th June, 2015.
- g) That the purported EOGM held on 28th May, 2015 at 10:00 am at Registered Office of the Company at Chembur, Mumbai was illegal as no such meeting could be held as Shri Abhishek Vir Vikram Vaid and Ms. Neeta Bhal and the Complainant were present in the Vacation Court Room of Hon'ble Bombay High Court well before 11.00 am on that date and presence of Shri Abhishek Vir Vikram Vaid has been recorded by the Court in order dated 28th May, 2015.
- h) That S/Shri Abhishek Vir Vikram Vaid and Vir Vikram Vaid and other Shareholders have tried to illegally make alteration in the Draft Circular Resolution dated 1st June, 2015 by falsely recording in the Minutes of the EOGM held on 12th June, 2015 that "there was a typographical / inadvertent error in the proposed draft Resolution No. 1 contained in the said Circular Resolution dated 1st June, 2015.
- i) That the Complainant had received a Notice dated 1st June, 2015 for holding Board Meeting on 9th June, 2015. It is pertinent to mention that the said Notice did not contain any Agenda for rectification for any such typographical / inadvertent error as purportedly recorded in the Minutes of purported EOGM held on 12th June, 2015. The Complainant was present in the Board Meeting held on 9th June, 2015 and in the said Meeting no such rectification of typographical/inadvertent error in the draft circular resolution dated 1st June, 2015 was discussed.
- j) That the said Forms DIR-12 and MGT-14 were illegally and fraudulently certified by the Respondent and he has been negligent



(A) [Signature]

in not checking and verifying the relevant records of the Company which proves the Respondent's connivance with S/Shri Abhishek Vir Vikram Vaid and Vir Vikram Vaid, Directors of the Company.

- k) That the Respondent didn't check and point out that Shri Vir Vikram Vaid who is not a shareholder in the said EOGM had chaired the meeting as it is a violation of section 104(1).

2.3 The Respondent in his Written Statement dated 27th February, 2017 has submitted the following:

- (i) That the Respondent was engaged by M/s Offshore Hookup and Construction Services (India) Pvt. Ltd. ('the company') for extending professional services relating to review, certification and uploading of various forms to be filed by the company from time to time vide engagement letter dated 14th April, 2015. The Respondent was not associated with the company prior to this date and besides the role of Respondent was solely restricted to review and certification forms and in no way was connected to or having any other role whether advisory or otherwise in the running of the company including rendering advices on the compliances etc.
- (ii) That neither has the Respondent certified anywhere that there was a board meeting held on 12.06.2015 nor has the signatory of the company to the said Form (Shri Abhishek Vir Vikram Vaid) has stated as aforesaid. It is the Complainant who is implying that there was a board meeting which is based on wrong inference drawn by him from the said Forms. The Resolution of the Board of Directors of the company for making the authorization in favour of the signatory was passed by circulation and not in a meeting and accordingly the references drawn to Directors' Report relating to meeting details etc. and the inference drawn upon such reference do not require any further response or comment from the Respondent. The statement that Shri Abhishek Vir Vikram Vaid Director of the company was authorised vide Board Resolution dated 12.06.2015 is factually correct and is borne out of records.
- (iii) that for the Certification of Forms DIR-12 and MGT-14, the Respondent had relied upon the following documents: a) the notice of member proposing to remove the complainant from the directorship; b) Notice along with the Explanatory Statement, convening the Extra-Ordinary General Meeting on 28th May, 2015; c) the minutes of the Extra-Ordinary General Meeting dated 28th May, 2015; d) the Notice of Adjourned Extra-Ordinary General Meeting convened on 12th June, 2015; e) the minutes of Adjourned Extra-Ordinary General Meeting dated 12th June 2015; f) the copy of the Board Resolution authorizing Shri Abhishek Vir Vikram Vaid for signing the Forms by the company director.
- (iv) That for removal of a director certain procedure has been prescribed under the provisions of Sec 169 of the Companies Act, 2013 and accordingly the Respondent was guided by the requirement in the said provisions while certification of the Form DIR-12. As evidenced from the records produced to the Respondent by the company, the procedure prescribed under Section 169 of the Act having been followed and the members of the company having resolved to remove the Complainant



(Handwritten signature)

as Director as evident from the minutes of the adjourned EOGM held on 12th June, 2015, the Respondent has certified the Form DIR-12. As regards filing of Form MGT-14 is concerned, the same is merely of information purpose and in any case, the said Form MGT-14 was not required to be filed by the company as the resolution passed for removal of the director was only an ordinary resolution which the company had decided to file it voluntarily and as a measure of good governance/disclosure.

- (v) That the reference by the complainant relating to previous board meetings and about the previous notice under Section 115 of the Act etc. are not relevant to the main matter of complaint.
- (vi) That it is judicially well settled position and also provided in Section 118 of the Companies Act, 2013 that minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein; Based on the records and supporting documents to the Respondent, the company was served with a notice of removal from a member of the company; and Both the Notice of Original extra-ordinary General Meeting and also the Adjourned Meeting Notice having been given to the members and also to the Complainant and the resolution for removal having been approved by the members at the said adjourned EOGM, the appropriate procedure was duly followed. Accordingly, the Respondent has not erred in any manner as has been alleged by the Complainant. As such the allegation of the Complainant that the Respondent has committed professional misconduct in certifying the Forms is completely motivated and the complaint is nothing short of abuse and misuse of the process of law.
- (vii) As per the well settled principle/ Doctrine of Indoor Management, the Respondent being a certifying professional and having no connection with the internal working or running of the company and its day to day events or be burdened with the claims and counter claims of either the Complainant or any other third party; the aforesaid position is already settled by this Hon'ble Board also in previous complaints relating to certification of similar nature (ICSI DC/222/2014).
- (viii) That as per his information drawn from the record of the Hon'ble Bombay High Court that the Complainant had thereafter withdrawn the said Notice of motion and Suit vide order dated 27th July, 2015.

2.5 The Complainant in his Rejoinder to Written Statement has *inter-alia* stated that:

- (i) That the Respondent failed and neglected to check and verify the Records and documents of the Company and connived with Shri Abhishek Vir Vikram Vaid, Director of the said Company and had illegally, unlawfully and fraudulently certified Form DIR -12 and Form MGT-14 under his Digital Signature and uploaded the said Forms for removal of the Complainant as Director of the said Company w.e.f. 12th June, 2015 at a fraudulent adjourned EOGM purportedly convened on 12th June, 2015.
- (ii) That the Respondent failed and neglected to go through the provisions of Companies Act, 2013 and rules made thereunder relating to removal of the Complainant as Director of the M/s Offshore Hook up and particularly



[Handwritten signatures and initials]

the Compliance of the Sections 100-104, 111, 115-118, 161, 169, 170, 173-175 of the Companies Act, 2013.

- (iii) That the Respondent had not properly checked and verified the relevant Records and Documents of M/s Offshore Hook up while Certifying Form DIR-12 and Form MGT-14.
- (iv) That the Complainant was not aware of any Engagement letter dated 14th April, 2015 purportedly issued by M/s Offshore Hook up as the Complainant was Director of the said Company; and no such Engagement letter was ever placed in neither the Board Meeting nor any Director was authorized to issue such letter to the Respondent.
3. The Board of Discipline considered the following observations of the Director (Discipline) made in her prima facie opinion dated 9th January, 2019: -
- (i) That the Complainant has stated that adjourned EOGM held on 12th June, 2015 was unlawful as the earlier EOGM called on 28th May, 2015 was illegal. However, the allegation has not been supported by any cogent evidence. Until contrary has been proved, the meeting cannot be said to be invalid. The Complainant may take recourse before the appropriate forum such as NCLT or any Court of law challenging the validity of the said EOGM or his removal.
- (ii) That the Complainant has stated that alteration was made in draft circular resolution dated 1st June, 2015. The Complainant received a Notice dated 1st June, 2015 for holding Board Meeting on 9th June, 2015 and the said Notice did not contain any Agenda for rectification for any such typographical / inadvertent error as purportedly recorded in the Minutes of purported EGM held on 12th June, 2015. The Complainant has stated that the Respondent should have looked into this before certifying DIR-12 and MGT-14. The contention of the Complainant is not tenable as the Respondent, as a Practicing Company Secretary, has to consider the minutes whichin terms Section 118(7) of the Companies Act, 2013, minutes are evidence of proceedings at the meeting. The Respondent cannot be held guilty,only on this account.
- (iii) The Complainant has alleged that the Respondent didn't check and point out that Shri Vir Vikram Vaid chaired EOGM on 12th June, 2015 but he is not a shareholder of the Company. The Complainant has not supported his contention by any evidence. This allegation has no basis and the Respondent cannot be held guilty for this allegation also.
- (iv) The Complainant has alleged that in the declaration field of the Form DIR-12 and Form MGT-14, Shri Abhishek Vir Vikram Vaid, Director of the Company has declared that he has been authorized by the Board of Directors of the Company vide Board Resolution No. 1 at its Board meeting held on 12th June, 2015. That there was no Board meeting held on 12th June, 2015 as is evident from Directors Report dated 01st September, 2016 wherein at Serial No. 15 under the heading "Number of Meetings of the Board of Directors" it has been mentioned "the Board met 7 times during the year". On the other hand, the Respondent has denied the said allegation inter-alia stating that he has neither certified anywhere that ~~there is board meeting held on~~ 12th June, 2015, nor has



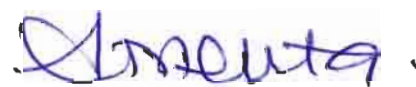
Handwritten signature and initials in blue ink.

Shri Abhishek Vir Vikram Vaid stated such. It is the Complainant who is implying that there was a board meeting which is based on wrong inference drawn by him. The Resolution of the Board of Directors of the company for making the authorization in favour of the signatory was passed by circulation and not in a meeting. The statements that Shri Abhishek Vir Vikram Vaid Director of the company was authorized vide Board Resolution dated 12th June, 2015 is factually correct and is borne out of records. It has been observed as additional fact that the Complainant has annexed a communication dated 1st June, 2015 sent by the Company to its Board of Directors for passing Resolution by circulation including 'Resolution for authority to Shri Abhishek Vir Vikram Vaid for representing the Company'. Moreover, the Complainant has failed to prove anything contrary. Hence, the Respondent cannot be held guilty only on this account.

4. Accordingly, the Director (Discipline) after examining the Complaint, Written Statement of the Respondent, Rejoinder of the Complainant, related material on record and all the facts and circumstances in the matter is prima-facie of the opinion that the Respondent is 'Not Guilty' of professional or other misconduct under any of the Items of the First and/or Second Schedule(s) to the Company Secretaries Act, 1980. However, the Complainant is free to take legal recourse before the appropriate forum such as NCLT or any Court of law challenging the validity of the said ECGM or his removal as director of the Company.
5. **The Board of Discipline after considering the Complaint, Written Statement, Rejoinder, related 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.**


Member


Member


Presiding Officer

