

**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**

DC/375/2016

Order reserved on: 26.09.2017

Order issued on : 18.01.2018

Shri Ramabhadran Sivaraman

.....Complainant

Vs.

Shri V. S. Subash, FCS-3907

.....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint in Form 'I' dated 22nd November, 2016 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 Ramabhadran Sivaraman (hereinafter referred to as 'the Complainant') against Shri V. S. Subash, FCS-3907 (hereinafter referred to as 'the Respondent')
2. The Complainant *inter-alia* stated that the Respondent while pre-certification and filing of e-form DIR 12 (for appointment of the Complainant as Director of M/s. Star Quarry and Aggregates Pvt. Ltd. did not care to examine whether proper notice was served to all the shareholders under section 101 of the Companies Act, 2013 and the Respondent did not comply with the provisions of section 152(5) of the Companies Act, 2013 of taking consent of the concerned director before filing e-form DIR 12 dated 3rd August, 2016.
3. The Respondent in his written statement dated 1st February, 2017 *inter alia* stated that the Complainant himself had approached the Hon'ble Company Law Board for preventing the company to remove him from the directorship of M/s. Star Quarry and Aggregates Pvt. Ltd and that due to lack of timely communication of the Interim Order of Hon'ble Company Law Board, the company had removed the Complainant from the directorship of M/s. Star Quarry and Aggregates Pvt. Ltd., but as soon as



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the aforesaid order was communicated, the company has complied with the order by making re-appointment of the Complainant, in order to rectify the mistake done by the directors of the company and the Complainant was re-instated. Further, when the Hon'ble Company Law Board's order was being executed then in that case there was no requirement of taking consent.

4. After considering the Complaint, Written Statement from the Respondent, material on record and all the facts and circumstances in this matter, the Director Discipline has observed that this is a case where the Complainant has been reinstated by the company in order to rectify the mistake done by the company due to lack of communication of the interim order passed by the Hon'ble Company Law Board. The Interim Order of Hon'ble Company Law Board states that, "*The Company may go ahead with the conducting the EOGM scheduled to be held on 29.04.2016 however, the resolution passed with respect to Item No. 1 of the notice dated 05.04.2016 shall not be given effect until further orders*". The Respondent has, in the instant case, relied on the order dated 28/04/2016 passed by Hon'ble Company Law Board for reinstatement of the Complainant as a director of the Company rather than for his appointment.
5. Accordingly, the Director (Discipline) was prima facie of the opinion that the Respondent is "Not Guilty" of Professional or other misconduct under the Act.
6. The Board of Discipline noted the following observations made by the Director (Discipline) in her prima-facie opinion dated 13th September, 2017:
 - (ii) Though it has been alleged that the Respondent has not complied with the provisions of section 101 and 152(5) of the Companies Act, 2013. As proper notice was not served to the Complainant, also consent to hold the office as director in Form DIR 2 was not taken from the complainant which was the mandatory for the appointment of director.
 - (iii) But the fact is that in the instant case, the Complainant himself had filed the CP/31/2016 inter-alia requesting Hon'ble Company Law Board to stay the EOGM scheduled to be held on 29.04.2016 failing which he would be removed from the post of director and great prejudice will be caused.
 - (iv) This is a case where in the Complainant has been reinstated by the company in order to rectify the mistake done by the company due to lack of communication of the interim order passed by the Hon'ble Company Law Board.
 - (v) The Respondent has in the instant case relied on the order dated 28/04/2016 passed by Hon'ble Company Law Board for




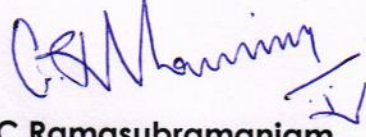
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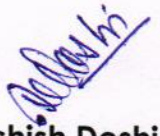
Accountant

reinstatement of the Complainant as a director of the Company rather than for his appointment.

7. After considering the aforesaid observations, material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances in the case, the Board of Discipline 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 and accordingly decided to close the complaint.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Ashish Doshi
Presiding Officer

