

**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/390/2016

Order reserved on : 27th February, 2018

Order issued on : 22nd March, 2018

Shri Sadanand Shervegar

....Complainant

Vs

Shri Prasad Rao Uppore Kukilaya

....Respondent

FCS-2855, CP No 6016

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 28th March 2017 in Form I filed under Section 21 of the Company Secretaries Act 1980 (hereinafter referred to as '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 (hereinafter referred to as 'the Rules') by Shri Sadanand Shervegar (hereinafter referred to as 'the Complainant') against Shri Uppore Kukilaya Prasad Rao, FCS-2855, COP 6016 (hereinafter referred to as 'the Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent was grossly negligent in certification of Form DIR-12 w.r.t M/s Hiranya Builders Pvt. Limited (hereinafter referred to as 'the Company') vide SRN dated 06th October 2016 for cessation of Additional Director, as the resolution passed in the Annual General Meeting held on 29th September 2016 was defective.
3. The Complainant has stated that he has filed a complaint with the Registrar of Companies Bangalore on 22nd November 2016 requesting to invoke Rule 10 of the Companies (Registration Officer and Fees) Rules 2014 on receipt of which the ROC had issued a show cause to the



Company seeking explanation to the complaint raised by the Complainant and intimated of the invalidation of the defective form DIR12.

4. The Respondent in his written statement 24th April 2017 has *inter-alia* rebutted the allegations and *inter alia* stated as under :
- (i) The Complainant and his son Mr. Abhishek S Shervigar were appointed as Additional Directors by the board of Directors of the Company which was to be regularized in the Annual General Meeting.
 - (ii) A dispute was going on between the Directors and the Company Management over the matter of providing funds by the above two directors. However, with the conclusion of the impugned Annual General Meeting dated 29th September 2016, the aforesaid Additional Directors were not appointed formally by the shareholders of the Company .The Complainant and his son failed to attend the Annual General Meeting .Before the Annual General Meeting, the Company received a mail from the son of the Complainant , namely Mr. Abhideep S Sarviar intimating the Company that he and the complainant were not interested to continue as directors.
 - (iii) At the Annual General Meeting of the Company held on 29th September 2016 neither the Complainant nor his son who were representing M/s Abhideep Developers Pvt. Limited having 40% share capital attended the meeting. The remaining two shareholders holding 60% of the share capital were present at the aforesaid meeting.
 - (iv) The meeting was conducted by the Chairman, Mr. Raghupathy Bhat. Shareholders holding 60% of share capital did not vote for the resolution which was proposed and seconded for appointment of Directors. Hence, the Complainant and his son were not reappointed. Therefore, Form DIR12 was filed by the Company vide SRN no. G13634803 dated 06th October 2016 intimating MCA of the cessation of the aforesaid directors.
 - (v) The Minutes of the Annual General Meeting was recorded by the Chairman and signed and entered in the Minute Book and the Practising Professional who certified the form DIR12 relied upon the said Minutes of the Annual General Meeting and the resolutions passed thereat apart from other documents.



[Handwritten signature]

2
[Handwritten signature: C. Manning]

[Handwritten signature]

5. The Respondent further stated that Registrar of Companies (ROC) Bangalore on receipt of complaint from the Complainant had issued a letter to the Company on 19th December 2016 calling for explanation. On being furnished with adequate explanation, the ROC had instructed for filing the form for cessation of the aforesaid directors afresh, which had been subsequently approved by the ROC Bangalore.
6. The Complainant in his Rejoinder dated 30th May, 2017 to the Written statement of the Respondent has reiterated the submissions made in the complaint and *inter-alia* submitted as under :-
- (i) That the complainants were Additional Directors. How the company received mail from nominee Directors of M/s Abhideep Builders Pvt Ltd. The Respondent does not know the difference between Additional Director and Nominee Director and removal thereof and certified and uploaded the form having defective resolution.
 - (ii) That it is very strange that another member of the ICSI has certified the DIR 12 afresh with same defective documents which were rejected by ROC Bangalore.
7. The Director (Discipline) vide letter dated 16th November 2017 has asked the Respondent to submit additional documents under sub-rule (5) of Rule 8 of the Rules, which he relied upon for the certification of impugned Form DIR 12. In response to the said letter, the following documents were received from the Respondent:
- (i) Copy of email as mentioned in the Annual General Meeting of M/s Hiranya Builders Pvt. Ltd. held on 29th September, 2016.
 - (ii) Copy of Attendance Register showing details of members attended Annual General Meeting of the company on 29th September, 2016.
 - (iii) Photo copy of the cover received by the courier on 9th September, 2016 containing letter received from the Complainant.
 - (iv) Copy of Letter containing allegations of the Complainant against the company and desire to quit the company.
 - (v) Copy of letter of settlement.
 - (vi) Copy of letter addressed to Secretary, Ministry of Tourism for withdrawal of complaint.







8. The Board of Discipline in its meeting held on 27th February 2018 considered the prima-facie opinion dated 18th December 2017 of the Director (Discipline) alongwith all material available on record wherein she is prima facie of opinion that the Respondent is "Not Guilty" of professional or other misconduct under any of the provisions of the Company Secretaries Act, 1980 as the Respondent has exercised due diligence as he has checked and verified the relevant records of the Company and adhered to provisions of law while certifying Form DIR 12 filed for cessation of additional directors of M/s Hiranya Builders Private Limited.
9. The Board of Discipline observed that the Respondent relied on the following provisions and documents which necessitated for certification of Form DIR-12 for cessation under the relevant provision of law:
- The Board resolution dated 14th March 2016 which appointed the Complainant and his son as Additional Directors in accordance with the provisions of section 161 of the Act.
 - The consent of the Directors so appointed in Form DIR2, pursuant to Rule-8 of Companies (Appointment & Qualification of Director) Rules, 2014, the fact of their Qualification in Form DIR8, in terms of Companies (Appointment & Qualification of Directors) Rules, 2014, the Disclosure of Interest made by the appointees in Form MBP-1 pursuant to Section 184(1) read with Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014.
 - The Notice of the Annual General Meeting containing the Proposed Resolutions for the regularization of the directors.
 - The Minutes of the Annual General Meeting in which the shareholders had not voted for the appointment of the Additional Directors as Regular Directors.
 - The letter of communication from the Former directors that is the Complainant and his son stating categorically that they would like to quit from the Company and from the Management due to the non-fulfillment of the promises which were laid down in the MOU and the Term Sheet .
10. The Respondent had checked the Articles of Association of the Company which had no provision for the appointment of Nominee Directors as required under section 161(3) of the Companies Act, 2013 and that ROC



4

[Handwritten signature]

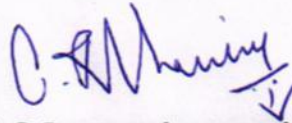
[Handwritten signature]

Bangalore after being furnished the explanation vide letter dated 7th April 2017 on filing of Form DIR12 for cessation had finally approved the Form.

11. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case and in view of observations made in paras 9 and 10 above agreed to 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 as alleged by the Complainant and accordingly decided to close the complaint.



CS Dinesh Chandra Arora
Member



CS C Ramasubramaniam
Member



CS Atul H Mehta
Presiding Officer

