

DC/413/2017

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/413/2015

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

Order issued on : 1<sup>st</sup> September, 2018

Shri Arun Kumar Singhal

.....Complainant

Vs.

CS Prabhakar Kumar

.....Respondent No.1

CS Shashi Kant Ranjan

.....Respondent No. 2

**Present:**

The complainant Arun Kumar Singhal, present in person

Both the Respondents, CS Prabhakar Kumar & CS Shashi Kant Ranjan, present in person.

**FINAL ORDER**

1. The Board of Discipline examined the Complaint, Written Statement, prima-facie opinion of the Director (Discipline) and all the material on record.
2. The Board of Discipline noted the following: -
  - i) A Complaint dated 18th September, 2017 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 Mr. Arun Kumar Singhal (the Complainant) against Company Secretary Mr. Prabhakar Kumar, Membership No. ACS - 5781 (Respondent No. 1) and Company Secretary, Mr. Shashi Kant Ranjan, Membership No. ACS - 44636 (Respondent No. 2) (Respondent No. 1 and 2 hereinafter collectively referred to as the Respondents).
  - ii) The Complainant has inter-alia alleged the following against the Respondents are:



*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*



- (a) That the Respondents CS Prabhakar Kumar and CS Shashi Kant Ranjan are part of conspiracy to remove the Complainant as the director from the company M/s IBS Infonet Private Limited (Company) in connection with the other director of the company. The Complainant has claimed that the details were shared with the Respondents.
- (b) That Mr. Ajay Kumar Singal along with his family members and number of proxies conducted a fake EGM where no resolution was passed. The company Auditor – M/s Ankur Aggarwal & Co was witness to that EGM held on 23<sup>rd</sup> February 2017.
- (c) That the Respondents tried to remove the Complainant as director of the company and fraudulently added two additional directors in the company at the behest of Mr. Ajay Kumar Singhal, the other director of the company.
- (d) That despite no resolution was passed at EGM, Mr. Ajay Kumar Singhal in connivance with CS Shashi Kant Ranjan added Two (2) directors in the company. He also tried to remove the complainant as the Director from the company but this was rejected by MCA in March 2017.
- (e) That The Respondent Mr. Shashi Kant Ranjan knowing that this is all fake conspired with Mr. Ajay Kumar Singhal and went ahead to perform illegal acts knowing very well that all the resolutions signed by Ajay Kumar Singhal are fake.
- (f) That since their sinister plan could not succeed; Mr. Ajay Kumar Singhal hired Respondent No. 1, Mr. Prabhakar Kumar (CS) to again try to remove the complainant as the Director in the first week of July 2017 where Prabhakar Kumar filed the form on MCA website again. This was again rejected by MCA. When the Complainant gained knowledge, he wrote to Prabhakar Kumar and asked for explanation.
- (g) That the Complainant spoke to Respondent No. 1 Mr. Prabhakar Kumar and asked him to check with the company auditor before he becomes party to the illegal activities by Mr. Ajay Kumar Singhal. The company auditor also explained and explicitly told Respondent No. 1 that no resolution was passed in the bogus EGM but all fell on the deaf ears. The Respondent No. 1 openly claimed that he does not care and that he has connections within ICSI and MCA and he will get all illegal activities legal performed by Mr. Ajay Kumar Singal and his associates.



*[Handwritten signature]*

*[Handwritten signature: CS Manning]*

*[Handwritten signature]*



- (h) That the Respondents did not verify the facts from him or the Auditor and illegally changed the governance structure of the company in conspiracy with Mr. Ajay Kumar Singhal with the motive of taking complete control of the company for carrying out illegal activities.
- (i) That there is a likelihood of Respondents being incentivised with hefty money by Mr. Ajay Kumar Singhal to get his illegal acts done.
- (j) That the Complainant had requested CS Mr. Prabhakar Kumar to talk to the company auditor, M/s Anku Aggarwal & Company to verify the facts as an independent and neutral party and even after speaking with to the Auditor, he continued to perform illegal activities in conspiracy with Mr. Ajay Kumar Singhal.
- (k) That the Complainant has prayed that strict action be taken against both the Respondents and punish them in accordance with law.
3. The Respondent No. 1, Shri Prabhakar Kumar, in his Written Statement dated 30.10.2017 through his letter dated Nil has denied the allegations made in the Complaint and contended as under:

- i. That the Respondent No. 1 pre-certified and filed the forms after proper verification of certified true copy of the documents submitted with authorization letter to use DSC for online filing with the Registrar. He further states that For DIR 12 along with all the papers/documents were filed by him on the basis of documents like copy of minutes, EGM shareholders attendance sheet, shareholders voting sheets, proxy form, requisition notice by shareholder, representation received from the Complainant, authority letters to file and sign the form which were provided to him by the company.
- ii. That on receiving the resubmission query raised by the concerned Registrar, Mr. Ajay Kumar Singhal submitted a clarification letter along with the affidavit of compliance of all the provisions under the Companies Act, 2013. The Respondent No. 1 has pointed out that the Complainant forwarded his grievances to the Registrar and after considering them; the Registrar accorded his approval by registering Form DIR-12 for removal of the Complainant.
- iii. Those other allegations are either not relevant or personal in nature and the Respondent No. 1 has expressed his inability to comment on them. The Respondent No. 1





claims that he received threatening calls after filing DIR-12 from the Complainant.

- iv. That the Respondent No. 1 has categorically stated that he spoke to the statutory auditor, Mr. Ankur Agarwal of M/s Ankur Agarwal and Company and he confirmed that the resolution as regards removal of the Complainant was passed in EGM held on 23<sup>rd</sup> February, 2017.

4. The Respondent No. 2 Shri Shashi Kant Ranjan has filed his written statement on 30.10.2017 through his letter of even date. His response is as follows:

- i) That E-Form DIR -12 along with all papers/documents were filed by him on the basis of documents such as Copy of Minutes, EGM Shareholders Attendance Sheet, Shareholders Voting Sheets, Requisition notice by shareholder, Representation received from Arun Kumar Singhal. Authority Letters to file and sign the e Form was also provided to him by the Company. The documents/papers given to me show that necessary resolutions were passed in EGM held on 23<sup>rd</sup> January, 2017. The consents of two new directors appointed were also provided to me along with their appointment letter.
- ii) That the Respondent has stated that after Filing E-form DIR - 12, he went to Vellore, Chennai as his mother was critical situation and her surgery was scheduled. In between the Registrar had sent mail for resubmission the eform DIR - 12. Due to medical exigency of his mother, he was unable to resubmit eform DIR - 12 with in prescribed time period and ROC declared that eform DIR - 12 as invalid. After that the Respondent had not been in contact with company.
- iii) That as regards the allegation of conversation with the company's auditor CA Ankur Aggarwal of M/s Ankur Aggarwal & Co., Respondent No. 2 denies of having received any mail.
- iv) That the Respondent No. 2 has denied all allegations claiming to be baseless and defamatory to the CS Profession. The Respondent No. 2 has specifically denied that he had any knowledge of any dispute between the Complainant and Mr. Ajay Kumar Singhal.



*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*



5. The Complainant submitted his rejoinder dated 21<sup>st</sup> November, 2017 to both the written statement of the Respondents. The Rejoinder contains following averments: -

- i. That Respondent No. 1 was aware that MCA has rejected the forms earlier also and that he conspired with Mr. Ajay Kumar Singhal to get it registered with the Registrar. The Complainant has questioned the due diligence in view of the fact that a dispute existed on the holding of EGM dated 23<sup>rd</sup> February, 2017.
- ii. That the Respondent No. 1 should have approached with caution as many Company Secretaries were engaged prior to him for filing the Form.
- iii. That Respondent No. 1 never replied to his e-mail nor did he submit any details to him. The e-mail communication with the auditor clearly indicates that no confirmation on the outcome of the EGM was provided by the statutory auditor.
- iv. That Mr. Ajay Kumar Singhal has been disqualified as a director by MCA w.e.f November, 2016 and that the Respondents were aware that he was involved in two shell companies.
- v. That the Respondents should have enquired as to why the Form was rejected earlier by the Registrar. The Complainant has claimed that all the papers submitted by Respondents with their replies is an eye wash and that all the papers have been created as an afterthought.

6. The Board of Discipline at its 75<sup>th</sup> meeting held on 27<sup>th</sup> February, 2018 considered the prima-facie opinion dated 15<sup>th</sup> January, 2018 of the Director (Discipline) that the Respondents 1 & 2 are 'Not Guilty' of professional or other misconduct under the Company Secretaries Act, 1980. The observations of the Director (Discipline) are as under: -

- i) The present case, briefly, the allegations of Complainant in the complaint filed by him are as follows -
- ii) That the Respondents are part of conspiracy to remove him as director of the company in connivance with other directors of the company.



*C. R. Mani*

*A*



- iii) That without verifying the facts and without checking with the Auditor, illegally Forms were filed by the Respondents for his removal and appointment of two other directors.
- iv) That the Respondents were probably incentivized with hefty money by the director of the company for filing incorrect forms.
- v) That papers supporting the removal and holding of EGM were created as an afterthought.
- vi) That the Respondents have not carried out their professional duties with due diligence.
- vii) As regards the first allegation that the Respondents are part of conspiracy with other directors of the company to remove him, no evidence has been submitted by the Complainant except a bald statement of connivance. The Respondents have vehemently refuted the allegation of connivance. Neither of the Respondents were present at the EGM, which is claimed to be disputed by the Complainant. The Respondents were hired to file the forms in their professional capacity. Hence, the allegation of connivance does not hold well against the Respondent.
- viii) That as regards non verification of facts and non-checking with the auditor by the Respondents, the documents filed by the Respondents along with their reply and particularly, minutes of the EGM of the company held on 23<sup>rd</sup> February, 2017, attendance sheet of EGM dated 23.02.2017, voting sheets of shareholders in EGM of 23.02.2017, copy of requisition for holding of EGM by the shareholders, certified copy of resolution passed in EGM of 23.02.2017 for removal of the Complainant, Explanatory statement, Attendance/Proxy Forms, Form DIR 2 of two directors appointed at EGM, Letters of appointment of two directors, Letter of the complainant dated 4.2.2017, Copy of Form DIR-12 and Reply of the company dated 7<sup>th</sup> June, 2017 to the Registrar in response to his query dated 28.06.2017 along with affidavit of Mr. Ajay Kumar Singhal indicate that the Respondents relied upon them while pre-certifying the e-Forms relating to removal of the Complainant and appointment of two directors in EGM held on 23.02.2017. The Complainant has not been able to point out any discrepancy in these documents but has



*[Handwritten signature]*

*C. S. Menon*

*A*



stated that these documents are a case of an afterthought. It is hard to believe that the communication from the Registrar of Companies and its reply dated 28.06.2017 by the company is a case of an afterthought as these documents cannot be created now by the Respondents. The e-Form DIR-12 in respect of removal of the Complainant was approved by the Registrar on 26<sup>th</sup> July, 2017 after considering the objections filed by the Complainant. The conduct of Respondents does not seem to be improper as they have seemingly relied upon the documents commonly required for pre-certifying Form DIR-12 by a Company Secretary. As regards obtaining confirmation from the auditor of the company, there is no such requirement under the law. Moreover, Respondent No. 1 has stated that he did speak with the Auditor who confirmed holding of EGM and passing of resolutions. The allegation seems to be bereft of any credibility in view of the supporting documents filed by the Respondents along with their written statements. Hence, the allegation has no basis.

- ix) That as regards the allegation of Respondents being incentivized with hefty money by the director of the company for filing incorrect forms without verifying the facts and without checking with the Auditor, the allegation is unsupported and seems to be hearsay. No reliance on such bald statements can be placed unless accompanied with proof. The onus lies on the Complainant and he has failed to discharge it. The allegation holds no water.
- x) That as regards creation of papers supporting the removal and holding of EGM as an afterthought, the Complainant has not provided any evidence. He has failed to explain the letter of the Registrar raising a query and the reply by the Company. On resubmission of the Form, Respondent No. 2 has stated that since he left for Vellore to attend his ailing mother, the query of the Registrar relating to re-submission went unanswered. When the Form was filed again by Respondent No.1, the query was duly answered and on that basis the Registrar approved the Form. The reply of the company completely corroborates with the documents filed by the Respondents with their written statement and there does not seem to be any reason of not accepting them. Hence, this allegation is without any basis.



C. S. Nair

Ⓟ



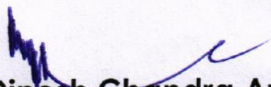
xi) That as regards the allegation of the Respondents signing the forms without due diligence, there is no evidence to the same. On the contrary, the documents submitted by both the Respondents match and these documents indicate that the Respondents proceeded with due care and diligence while certifying the e-Forms. If the Complainant has any grievance as to non-holding of EGM or any other personal grievance against other directors of the company, he should have approached appropriate court or Tribunal under legal advice. The present complaint has no legs to stand and it seems that the Complainant has chosen the Respondents to vent his frustration who have seemingly done their job diligently.

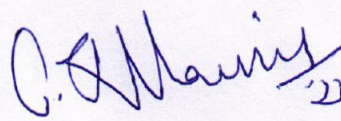
7. After considering the prima facie opinion of the Director (Discipline), the Board of Discipline at its 75<sup>th</sup> meeting held on 27<sup>th</sup> February, 2018 advised the Director (Discipline) to call both the Respondents, in person, in next meeting of the Board of Discipline.
8. Accordingly, both the Respondents vide letter dated 19<sup>th</sup> April, 2018 have been called upon to appear before the Board of Discipline on 3<sup>rd</sup> May 2018 at New Delhi. The both Respondents appeared and made oral submissions before the Board of discipline.
9. The Board of Discipline, after hearing both the Respondents decided to hear the Complainant in person before taking any decision on the *Prima Facie opinion* of the Director (Discipline) and accordingly, advised the Disciplinary Directorate to call the Complainant to appear before it.
10. Accordingly, the Complainant vide letter dated 28<sup>th</sup> June, 2018 have been called upon to appear before the Board of Discipline on 10<sup>th</sup> July, 2018 at New Delhi. The Complainant appeared and made oral submissions before the Board of discipline.
11. The Board of Discipline, after hearing the submissions of the Complainant decided to call upon the parties, in person, before taking any decision on the *Prima Facie opinion* of the Director (Discipline) and accordingly, advised the Disciplinary Directorate to call the parties to appear before it. The Board has advised the Complainant to provide all the documents and evidences supporting his averments in the complaint within 10 days with a copy to both the Respondents. The Board further advised the Complainant to file the status of his petitions filed before the Hon'ble High Court of Delhi.

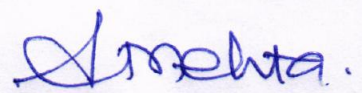




12. Accordingly, the parties vide letter dated 1<sup>st</sup> August, 2018 were called upon to appear before the Board of Discipline on 16<sup>th</sup> August, 2018 at New Delhi. The Complainant has provided a copy of the Petition he has filed before the Hon'ble High Court of Delhi for reference. The Board of Discipline deferred the matter.
13. Accordingly, the parties vide letter dated 17<sup>th</sup> August, 2018 were called upon to appear before the Board of Discipline on 25<sup>th</sup> August, 2018 at New Delhi.
14. **The Board of Discipline at its meeting held on 25<sup>th</sup> August, 2018, after considering the aforesaid observations, 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 No. 1 and the Respondent No. 2, are "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

