

**THE BOARD OF DISCIPLINE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF INFORMATION OF PROFESSIONAL OR OTHER MISCONDUCT  
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/433/2018

Order reserved on: 30<sup>th</sup> August, 2019  
Order issued on : 30<sup>th</sup> August, 2019

Shri Sunil Kimar Surana

.....Complainant

Vs

Ms. Bijal Chandrakant Gada, ACS-26296, CP-13643

.....Respondent

**CORAM:**

Shri Deepak Kumar Khaitan, Presiding Officer  
Shri Manish Gupta, Member  
Shri Ashok Kumar Dixit, Member

**Present:**

Ms. Anita Mehra, Assistant Director, Disciplinary Directorate

**ORDER**

1. A Complaint dated 24<sup>th</sup> April, 2018 in Form 'I' was filed by Shri Sunil Saroj Kumar Surana (hereinafter referred to as 'the Complainant') against Ms. Bijal Chandrakant Gada, ACS-26296, CP-13643 (hereinafter referred to as 'the Respondent') 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'). The Complainant is one of the Directors of M/s. Bhutoria Refrigeration Private Ltd. ('the Company') during the year 2014-15.

1.1 The Complainant *inter-alia* alleged against the Respondent as under:

- That the Respondent while certifying Annual Return in Form MGT-7 for the Financial Year 2014-15 of M/s. Bhutoria Refrigeration Private Ltd. ('the Company'), has shown the Complainant present in the meeting of Board of Directors dated 12th November, 2014, 24th January, 2015 and 2nd March, 2015, whereas no notices of Board meeting ever received by the complainant, thus, the Complainant never attended the said meetings of Board of Directors of the Company.
- That the Company, has admitted before NCLT, Mumbai Bench, Mumbai in Company Petition No. 228 of 2017 that mistakenly the Complainant was marked as present in the said meeting.



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*(Signature)*



- That the Company, has admitted before NCLT, Mumbai Bench, Mumbai in Company Petition No. 228 of 2017 that mistakenly the Complainant was marked as present in the said meeting.
  - Thus, the Respondent has not verified minute books of the said company and certified presence of the Complainant in the Board meeting.
- 1.2 The Complainant further stated that in the alleged Annual Return the Company is required to fill dates of Board Meeting and presence and attendance of the Directors against respective dates when the said Board Meeting is conducted.
- 1.3 That the Company in the Annual Return has mentioned at Para IX (B) with regard to Meetings of Board of Directors are conducted on 1<sup>st</sup> April, 2014, 2<sup>nd</sup> May, 2014, 16<sup>th</sup> June, 2014, 2<sup>nd</sup> September, 2014, 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015.
- 1.4 That the company in the Annual Return has mentioned at Para IX (D) with regard to Attendance of Directors in the aforesaid Meeting of the Board of Directors.
- 1.5 That the complainant was shown as present in all the 7 (Seven) Board Meetings conducted by the Company, based on the original documents maintained by them, thus as per this form, the Complainant was present in all the said meetings of Board of Directors conducted on 1<sup>st</sup> April, 2014, 2<sup>nd</sup> May, 2014, 16<sup>th</sup> June, 2014, 2<sup>nd</sup> September, 2014, 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015.
- 1.6 That in actual, the Complainant never received any notice calling for meeting of Board of Directors dated 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015, and never attended the said Board meetings of the Company.
- 1.7 That the Company is required to maintain Register of Attendance, and the said Register is required to be examined by the Practicing Professional before making any certification in the Annual Return.
- 1.8 That the Company has illegally removed the Complainant from the Directorship of the Company by invoking the provisions of Retirement by Rotation, by following certain pre-steps/events which clearly demonstrate that the said events/ actions are pre-planned to illegally remove the Complainant from Directorship of the Company and deprive him from the rights of being a shareholder of the company and the Complainant has already preferred a Company Petition number 228 of 2017 before the Hon'ble NCLT, Mumbai Bench. In response to the said Petition Number 228 of 2017, the Company has



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affirmed before the Hon'ble NCLT, Mumbai Bench towards absence of the Complainant in the said Board Meeting of the Company.

- 1.9 That the Respondent has failed to perform his duties and acted in gross negligent manner being hand in glove with the other Directors towards conspiracy against him by creating documents towards showing him illegally present in the said Board Meetings for the sole purpose of gaining some unlawful gains and causing him removed from the Directorship of the Company along with causing loss to minority shareholders of the Company.
2. The Respondent in her Written Statement dated 19<sup>th</sup> June, 2018 has *inter-alia* stated that –
  - 2.1 The details of Para IX (B) and Para IX (D) regarding meetings of Board of Directors and Attendance of Directors in the Board meeting respectively of Annual Return (e-Form MGT-7) for the F.Y. 2014-15 of the Company has been verified by the Respondent on the basis of Board meeting minutes maintained by the company.
  - 2.2 The Board meeting minutes dated 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015 show presence of the Complainant in the said meetings. Also, as per the reply submitted before NCLT by the Company in Company Petition No. 228 of 2017, the Company as a Respondent has denied that the Complainant was wrongly marked present at the Board meeting held on 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015.
  - 2.3 The Respondent has also submitted the relevant Para of the said petition.
3. The Complainant in his Rejoinder dated 13<sup>th</sup> July, 2018 has *inter-alia* stated as under: -
  - 3.1 That the Respondent has affirmed certification in the MGT 7 for the Financial Year 2014-15 of the Company. Further the Respondent is also affirming that she has gone through the Minutes Book maintained by the company and found presence of the Complainant as Director in the said Board Meetings.
  - 3.2 That the Company has affirmed before the Hon'ble National Company Law Tribunal, Mumbai Bench in response to the Company Petition No. 228 of 2017 that it was a clerical mistake in showing Shri Sunil Surana as Director to be present in the said Board Meeting dated 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 02<sup>nd</sup> March, 2015.



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- 3.3 That the Company has never furnished any documentary evidence before Hon'ble National Company Law Tribunal, Mumbai Bench in the Company Petition 228 of 2017, towards justification of clerical mistake claimed by the Company. The Company has never shown any Minutes Books before the NCLT, nor submitted any Attendance Register of the Company.
- 3.4 The Complainant has stated that it is abundantly clear that the Respondent and the Company are colluding with each other and may have possibly destroyed evidence in possession of them. Hence, neither of them is producing the documents. It is an abundant possibility that the Complainant's signature may have been forged on these documents.
4. Pursuant to sub-rule (5) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 ('the Rules') read with the Company Secretaries Act, 1980 (the Act), certified copies of the minutes, attendance register, Notices with proof of dispatch were called from the Respondent vide letter dated 7<sup>th</sup> January, 2019.
- 4.1 The Respondent vide letter dated 15<sup>th</sup> January, 2019 sought time to submit the certified true copies of Minutes, Attendance Register for Board Meeting and notices of Board Meeting with proof of dispatch for the Board Meetings held from 1<sup>st</sup> April, 2014 to 31<sup>st</sup> March, 2015, as the Respondent has requested the Board of Directors of the Company vide letter dated 15<sup>th</sup> January, 2019 sent through Speed Post (copy of Speed Post receipt also provided). Further, the Respondent has stated that details of Meeting of Board of Directors and Attendance of Directors in the Board Meeting for the FY 2014-15 of the Company was verified on the basis of Board Meeting Minutes maintained by the Company; and the Minutes of Board Meetings dated 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015 shown presence of the Complainant in the said meetings.
- 4.2 Further, the Respondent vide letter dated 23<sup>rd</sup> January, 2019 stated that the Company is unable to provide the desired documents. The Company in its reply to the Respondent vide letter dated 15<sup>th</sup> January, 2019, stated that the desired documents are confidential records and no person other than the Directors of the Company can have access to these records nor entitled to a copy of the same.
5. Pursuant to sub-rule (5) of Rule 8 of the Rules, the Company vide Disciplinary Directorate's letter dated 8<sup>th</sup> July, 2019 was asked to submit



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certified copies of the Minutes, Attendance Register, Notices with proof of dispatch, for the relevant Board Meeting.

- 5.1 The Company in its reply dated 15<sup>th</sup> July, 2019 submitted that the Company is a closed held private limited company with just 6 shareholders who are relatives and family friends. The Company followed informing the directors orally about the Board Meetings and the requirement of serving notices were waived by the Directors. Therefore, the Company is unable to provide copy of Notices calling Board Meetings held on 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015. Further, till the FY 2014-15, the Complainant and his colleague Shri Ravikant Verma, Accounts Manager were looking after the day to day affairs including regulatory compliance and maintenance of various records of the Company and they are unable to find the secretarial records for the relevant period and hence, the Company shown its inability to provide copy of the documents called for.
6. The Director (Discipline) in the prima-facie opinion dated 17<sup>th</sup> August, 2019, after considering the Information, Written Statement from the Respondent, material on record and all the facts and circumstances of the matter, opined that the Respondent is 'Not Guilty' of professional misconduct under the Company Secretaries Act, 1980, as: -
- 6.1 The Company in its reply dated 15<sup>th</sup> July, 2019 submitted that the Company is a closed held private limited company with just 6 shareholders who are relatives and family friends. The Company followed informing the directors orally about the Board meetings and the requirement of serving notices were waived by the Directors.
- 6.2 The Company is unable to provide copy of Notices calling Board Meetings held on 12<sup>th</sup> November, 2014, 24<sup>th</sup> January, 2015 and 2<sup>nd</sup> March, 2015. Further, till the FY 2014-15, the Complainant and his colleague Shri Ravikant Verma, Accounts Manager were looking after the day to day affairs including Regulatory Compliance and maintenance of various records of the Company and they are unable to find the secretarial records for the relevant period and hence, the Company shown its inability to provide copy of the other documents called for.
- 6.3 The Company in its Affidavit dated 7<sup>th</sup> August, 2017 in Petition No. 228 of 2017 before Hon'ble NCLT submitted that the Complainant had always orally been informed about all meetings but they chose not to attend the same. This petition is still pending before the NCLT, Mumbai Bench. Relevant extract is given below: -



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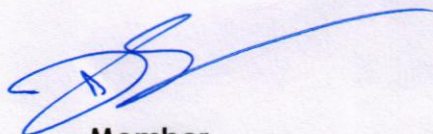
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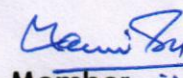
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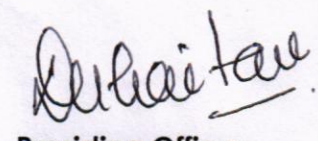


"14. With reference to paragraph no 6.1.4 it is denied that Respondent No. 2, 3 and 4 have time and again taken adverse decision on behalf of the Company without serving mandatory notice calling for Board Meetings as per provision prescribed under the law as alleged or at all. It is further denied that it has been deliberately done to restrain the Petitioner No.1 to cast vote in affair of the Company and to use their own discretion in fulfilling their own malafide objective with regard to operations of the Company as alleged or at all. **The Petitioners were always orally informed about all meeting but they chose not to attend the same. The error in recording the presence of Petitioner No.1 at the Board of Directors meetings held on 25<sup>th</sup> May, 2015 and 28<sup>th</sup> March, 2016 was on account of an inadvertent mistake.** It is denied that the Respondents have ever behaved in a high handed manner. It is denied that the petitioners have ever expressed their purported concerns to the Respondent. The Petitioner in fact took no interest in the Company as they were more concerned about Kubic LLP and in diverting the Company's business to their own LLP. **It is denied that Petitioner No.1 was wrongly marked present at the Board of Directors meetings held on 12<sup>th</sup> November, 2014, 2<sup>nd</sup> March, 2014 and 24<sup>th</sup> January, 2015 was on account of clerical mistake. It is denied that no notice calling EGM has ever been given to the Petitioner No.1 for the EGM of Respondent No. 1 to give oral notice to all the Directors about the Board Meeting and the same was also given to the Petitioner No.1."**

- 6.4 The Respondent has become an escape-goat between the management dispute, which is pending before NCLT, Mumbai Bench.
7. The Board of Discipline after considering the materials on record, prima-facie opinion of the Director (Discipline), all the facts and circumstances of the case, the nature of issues involved and given the totality of the circumstances of the case agreed with the prima-facie opinion of the Director (Discipline), that the Respondent cannot be held Guilty of Professional or other misconduct under the Company Secretaries Act, 1980.
8. Accordingly, the matter stands closed and disposed off.

  
Member

  
Member

  
Presiding Officer

