

**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/440/2018

Order reserved on: 30th August, 2019Order issued on : 30th August, 2019

**Shri Sunil Kewalramani, Director
M/s. Medilux Laboratories Pvt. Ltd**

....Complainant

Vs.

Shri Prateek Tripathi FCS-5812, CP-5358

.....Respondent

CORAM:

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

Present:

Shri Vikash Kumar Srivastava, Deputy Director, Disciplinary Directorate

ORDER

1. A Complaint dated 30th May, 2018 in 'Form-I' has been filed by Shri Sunil Kewalramani, (hereinafter referred to as 'the Complainant') Director M/s Medilux Laboratories Pvt. Ltd. against Shri Prateek Tripathi FCS-5812, CP-5358, (hereinafter referred to as 'the Respondent') 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')
2. The Complainant in his complaint inter-alia stated that the Respondent, while conducting the AGM of M/s Medilux Laboratories Pvt. Ltd. held on 30th December 2017, the Respondent has completely overlooked the provisions of the Companies Act, 2013, the Rules, Regulations and Circulation thereunder and Standards prescribed by the Institute of Company Secretaries of India (ICSI). Neither mandatory notice of 21 days has been given by the company to its shareholders nor consent by 95% of shareholders of the Company was given for calling and conducting AGM on a shorter Notice as provided under Section 101 of Companies Act, 2013. During the course of said AGM, the Complainant has inter-alia raised some queries and objections relating to finance / audit reports, etc. However, the Complainant being minority



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shareholder of the company was denied to reply any information or response / justification to the queries / objections raised by them. The Respondent allowed the Board to pass the Resolution at the said AGM without taking into consideration any of the Complainant's objections and queries, thereby prejudicing the rights of Complainant who is also a Director of the Company.

3. The Respondent has filed his Written Statement dated 6th August, 2018 to the complaint and inter-alia stated that Shri Deepak Kewalramani, Managing Director of the Company requested him to assist at the Annual General Meeting of the Company scheduled to be held on 30th December, 2017 and accordingly he only assisted the Chairman to conduct the AGM. The Respondent was not appointed for providing consultancy on proceeding of the meeting nor was he appointed by the Complainant to advise him on the matters related to AGM. The Complainant has asked question from the Respondent during the meeting which he replied and the same is being used by the Complainant in the instant case.
4. The Respondent has further stated that the responsibilities to comply the provisions u/s 101 and 109 of the Companies Act, 2013 lies on Board of Directors and the company and the Complainant is a part of the Board of the Company and he actively participated in the Board meetings in which Notice calling the AGM was approved on 22nd December, 2017 and as per the Minutes of the Board Meeting of the said date suggested that the Complainant has not objected length of the Notice calling AGM in the meeting of the Board. As per the notification dated 5.6.2015 issued by MCA, Private Limited Company can issue Notice for the General Meeting as per the Articles of Association. The company in the Complaint is a Private Limited Company and its Articles of Association also contained Clause No. 37 which suggests that any General Meeting can be held within seven days' Notice for calling AGM on 30th December, 2017 of the company was issued on 22nd December, 2017. Therefore, there was Notice of sufficient length in terms notification of 5th June, 2015 issued by the MCA and Clause No. 37 of the Articles of Association. Further, in terms of Notification dated 13th June, 2017 of MCA the Company was not in default in filing Annual Return and Balance Sheet as on date of issuance of Notice hence Notice was a proper Notice under Companies Act, 2013.
5. The Respondent has further stated that as per the provision of Section 109(5) of the Companies Act, 2013, Chairman of the AGM Dr. Satish Matkar has appointed two scrutinizers who have taken Ballot Box in their custody for counting E-vote and preparation of Scrutiniser Report for submission to the Chairman of the AGM. As per the proceedings of AGM and minutes, there was no declaration of result at the AGM and as per



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Shri Matkar

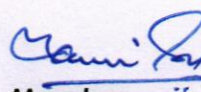
law also scrutinisers are required to submit their Report within 48 hours and not at AGM.

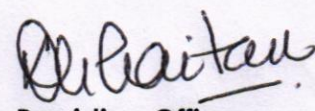
6. No rejoinder to the written statement has been received from the Complainant till date.
7. The Board of Discipline further observed that during the meeting, the Complainant demanded for poll as per the provisions of Section 109 of the Companies Act, 2013 for the resolutions proposed to be passed in the said AGM the request for the same was acceded to by the Chairman and poll was conducted during the meeting.
8. The Board of Discipline in its meeting held on 30th August, 2019 considered the prima-facie opinion dated 2nd August, 2019 of the Director (Discipline) that the Respondent is not guilty of professional misconduct under any of the Items in First and/or Second Schedule(s) to the Company Secretaries Act, 1980 as the Respondent was engaged by the Company for assisting the Chairman to hold AGM of the Company on 30th December, 2017 and there is nothing on record to show that the act of the Respondent has contravened any of the provisions of the applicable law. The Respondent was neither the Chairman of the meeting nor a Director of the Company and he did not sign any documents for the Company. The response in regard to the calling, holding and conducting of any meeting of a Company can be attributed to the Directors/Chairman/Management of that company and not upon consultants engaged by that Company as such duties are to be carried out as per the statute.
9. The Board of Discipline has not found anything contrary to the submission of the Respondent in the minutes of meeting of the AGM or in any other document on record to establish the allegation of the Complainant. Further, no Rejoinder to the Written Statement dated 6th August, 2018 has been received from the Complainant.
10. 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.

Accordingly, the Complaint is closed and stands disposed-off.




Member


Member


Presiding Officer