

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/DC/68

Order Reserved On: 12 SEP 2019

Order Issued On: 30 OCT 2019

Shri C. Ramachandran

.....Complainant

Vs.

Shri R. Mahalingam, FCS-7209 (CP No 8399)

.....Respondent

CORAM:

CS Ranjeet Pandey, Presiding Officer
Mrs. Meenakshi Datta Ghosh, Member
CS B Narasimhan, Member
CS Nagendra D Rao, Member

PRESENT

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Gaurav Tandon, Assistant Director, Disciplinary Directorate
CS Ramesh Singh, PCS for the Respondent
None for the Complainant

FINAL-ORDER

1. A complaint dated 29th April, 2010 in Form I was filed by Shri C. Ramachandran (hereinafter referred to as 'the Complainant') against Shri R. Mahalingam, FCS-7709 (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 *inter-alia* stated that he is one of the Promoter Directors of M/s. Sreenivaas Balaji Papers Pvt. Ltd., and has filed a petition before the CLB, Chennai under Section 397 and 398 of the Companies Act, 1956 for oppression and mismanagement against the Company and 8 others wherein he has challenged his resignation. The Complainant further stated that the Respondents in the said petition filed their counter before the Hon'ble Company Law Board, wherein they have attached the original copy of the Complainant's resignation letter which is a fabricated document attached as a proof of his resignation as he has never resigned from the Directorship of the Company.
3. The Complainant *inter-alia* alleged that the Respondent has certified Form 32 pertaining to his cessation w.e.f 27th February, 2010 from the directorship of



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[Handwritten signature: Ranjeet Pandey]

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M/s. Sreenivaas Balaji Papers Pvt. Ltd., without exercising due diligence as he failed to check whether the resignation letter produced before him is a copy of the Original letter or not . The Complainant further stated that he was surprised to note that the resignation letter attached with the Form 32 filed for his cessation is different from the resignation letter attached with the Counter filed in reply to his petition filed before the CLB, Chennai. The Complainant further stated that the Respondent might not have suspected any fraud in the representation made to him but has failed to check original resignation letter. The Complainant further stated that date of resignation letter as per the Form 32 is 27th February, 2010 and the Form 32 was filed on 1st March, 2010, even though the law allows 30 days' time for filing Form 32. The Complainant pointed out discrepancies between the resignation letter attached with the Form 32 and the resignation letter attached with the Counter filed before the CLB, Chennai.

4. On the other hand, the Respondent in his written statement dated 1st June, 2010 denied the allegations levied against him and stated that the controversy with respect to the resignation of the Complainant is admitted before the Hon'ble Company Law Board and until a decision is arrived as to whether the Complainant had actually resigned or not, the Council should keep any enquiry relating to the Complaint in abeyance. The Respondent further stated that while certifying the impugned Form 32 he had exercised due care and caution and had checked the resignation letter, Board resolution and connected books and papers. The Respondent further stated that the Chairman of the Company had signed Form 32 and from a scrutiny of facts and papers, there was no doubt in his mind that there would have been a fraud in the subject matter contained in the impugned Form 32. That a Company Secretary, as a qualified professional, is not expected to approach his certification work with suspicion and pre-determined notion that there is likely to be a fraud in relation to the subject matter. That the certification work was undertaken in relation to matter which usually happens in any Company did not require him to conduct a roving enquiry or a probe as the scope of the work undertaken by him does not warrant such enquiry or probe.
5. The then Director (Discipline) vide his Report dated Nil (Unsigned) had *inter-alia* opined that the Respondent is *prima-facie* Guilty of professional misconduct as he was expected to check the original copy of the resignation letter or the certified copy thereof. In the instant case, the Respondent had relied on a copy which is neither original nor a certified copy. The Respondent also made some lose remarks in his defence, which is not expected of a professional.
6. The Disciplinary Committee at its meeting held on 16th August, 2010 agreed with the *prima-facie* opinion of the then Director (Discipline) (Report of the Director (Discipline) and had decided to proceed further in the matter.
7. The Disciplinary Committee in its meeting held on 13th September, 2010 after hearing both the parties had decided to keep the matter in abeyance till the outcome of the petition filed before the Hon'ble Company Board as the Complainant had alleged that the Respondent had fraudently certified Form



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32 pertaining to his resignation from the directorship of M/s. Sreenivaas Balaji Papers Pvt. Ltd., and the Respondent had informed that the controversy with respect to the resignation of the Complainant is admittedly pending before the Hon'ble Company Law Board. Further the Respondent has also stated on Oath before the Disciplinary Committee that he had verified the resignation letter.

8. The Respondent has vide his letter dated 17th June, 2019 *inter-alia* informed that he had appeared before the Disciplinary Committee on 16th September, 2010 in the captioned matter and has cleared IBBI-IP exam on 2nd May, 2019. He further attached a copy of the Order of NCLT and a Forensic Report.
9. The Disciplinary Committee in its meeting held on 21st August, 2019 observed that the matter was kept in abeyance by it till the outcome of the aforesaid petition filed before the Hon'ble Company Board by the Complainant and the same has now been disposed-off vide order dated 11th April, 2019 passed by NCLT, Chennai in CP No 17/2010. The Disciplinary Committee after considering the material on record and all the facts and circumstances of the matter decided to call upon both the parties to appear before it. Accordingly, the parties were called upon to appear before the Disciplinary Committee on 12th September, 2019
10. The Complainant vide his email dated 5th September, 2019 *inter-alia* informed his inability to attend the hearing before the Disciplinary Committee on 12th September, 2019. The Complainant also attached NCLT, Chennai Order and a Status of FIR filed against Shri Mahalingam, Auditor Balakrishnan and Shri Velusamy family.
11. On 12th September, 2019, CS Ramesh Singh, PCS appeared as Authorised Representative of the Respondent before the Disciplinary Committee and mainly reiterated the submissions made by the Respondent in his written submissions earlier. He further stated that the matter was kept in abeyance by the Disciplinary Committee till the outcome of the petition bearing no CP No 17/2010 filed before the Hon'ble Company Law Board by the Complainant and the same has been disposed-off vide order dated 11th April, 2019 passed by NCLT, Chennai. He further stated that the Respondent was not made a party in the said petition and he also referred to a copy of the extract of the Forensic Report of Forensic Sciences Department, Chennai. He further while submitting his Written Statement dated 12th September, 2019 concluded by saying that the respondent had verified all the relevant documents before certification of the alleged Form 32.
12. The Disciplinary Committee after considering the material on record, submissions made by the parties and all the facts and circumstances, held that a Practising Company Secretary is not bound to be a detective, or as was required, to approach his work with suspicion or with a foregone conclusion that there is something wrong. Further, the doctrine of Indoor Management affords that persons dealing with a Company having satisfied themselves, are not bound to inquire into the regularity of any internal proceeding. In this case, the Respondent has certified and filed the said Form



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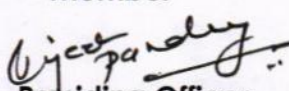
32 after verifying the aforesaid documents. It may be mentioned that the alleged resignation letter of the Complainant and the extracts of the Minutes of the meeting of the Board of Directors pertaining to the cessation of the Complainant are similarly worded. Therefore, the contention of the Respondent that there was no doubt in his mind that there would have been a fraud in the subject matter contained in the impugned Form 32 can be accepted in the instant case. Further, the Respondent has not only attached the alleged resignation letter of the Complainant but also the extracts of the Minutes of the meeting of the Board of Directors pertaining to the cessation of the Complainant. Further there is a certified copy of the Forensic Report reasoning sheet on record which does not dispute the Complainant's signature on the alleged resignation letter of the Complainant. The Disciplinary Committee also observed that it is the Respondent who has approached the Committee to reopen the case.

In view of the above, the Disciplinary Committee held the Respondent **NOT GUILTY** of professional or other misconduct under the Company Secretaries Act, 1980


Member

Member




Member

Presiding Officer