

**THE BOARD OF DISCIPLINE**

**THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

**ICSI/DC: 171/2013**

**In the matter of complaint of professional or other misconduct filed by Mr. Subhash Kamal against Ms. Disha Balchandani, ACS -21204.**

**Date of Decision: 24<sup>th</sup> October, 2013**

**Coram:** Sudhir Babu C, Presiding Officer  
Umesh H Ved, Member  
Sutanu Sinha, Member

**ORDER**

1. A complaint dated 2<sup>nd</sup> January, 2013 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 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. Subhash Kamal (hereinafter referred to as the 'Complainant') against Ms. Disha Balchandani, ACS-21204 (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* alleged that the Respondent as a Company Secretary has failed to exercise due diligence while conducting the Board Meetings of the company. The Complainant further alleged that the Respondent failed to invite attention to the material departure from the generally accepted procedure relating to the secretarial practice in conducting the meetings of the Board of Directors.



*Sudhir Babu C*

*Umesh H Ved*

*Sutanu Sinha*

The Complainant further alleged that the Respondent conspired with the Investors and allowed all illegal activities for reducing the promoters to miniscule minority.

3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 21<sup>st</sup> January, 2013 calling upon her to submit the written statement.
4. A letter dated 12<sup>th</sup> February, 2013 was sent to the Complainant asking him to specify the clause/clauses under the First schedule/ Second Schedule of the Company Secretaries Act, 1980 under which he has filed the complaint. A letter dated 16<sup>th</sup> February, 2013 received from the Complainant.
5. The Respondent submitted the written statement dated 12<sup>th</sup> February, 2013 wherein she denied all the allegations levied against her and stated that several issues raised in the complaint have also been raised in company Petition No. 44 of 2011, filed u/s 397 and 398 of the Companies Act, 1956 before the CLB, Mumbai Bench and the same is pending adjudication. The Respondent further stated that she cannot furnish her defense at this stage as prejudice would be caused to her as the investigations are pending.
6. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 25<sup>th</sup> February, 2013 asking him to submit the rejoinder. The Complainant submitted the rejoinder dated 18<sup>th</sup> March, 2013 wherein he has *inter-alia* stated that the statement made by the Respondent is not sustainable in law and facts. He reiterated and confirmed that the facts in the complaint are true and correct. The Complainant further stated that it is absolutely false to state that prejudice would be caused to her in giving her reply to the complaint



made by him as the Respondent is not a party to the said petition. It is pertinent to note that the petition filed before the CLB is related to mismanagement and operation of minority shareholders by the investor group. He further stated that as a Company Secretary, the Respondent has failed to discharge her duty and illegally called the meeting of the Board of Directors with a deliberate intention to facilitate the investor group to manipulate the events to oust the promoters from the management and affairs of the company.

7. A letter dated 12<sup>th</sup> April, 2013 was received from the Complainant enquiring about the status of the complaint. He was replied under letter dated 25<sup>th</sup> April, 2013.
8. A letter dated 15<sup>th</sup> July, 2013 sent to the Complainant asking him to submit the English translation of the FIR filed against the Respondent along with the status of the FIR and CLB Petition No.44/2011 filed before the CLB, Mumbai bench. A letter dated 15<sup>th</sup> July, 2013 sent to the Respondent calling upon her to specify the mode via which she has sent the Notices for convening the Board meetings held on 15<sup>th</sup> February, 2011 and 31<sup>st</sup> March, 2011 along with the proof of the delivery of the same, the Article of Association of the company and Minutes & Attendance sheet of the Board meeting held on 31<sup>st</sup> March, 2011. A letter dated 10<sup>th</sup> August, 2013 received from the Respondent along with certain documents.
9. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record; and prima-facie observed that the Respondent has stated that a Company Petition No. 44 of 2011 has been filed under Sections 397 and 398 of the Companies Act, 1956 before the CLB, Mumbai Bench and the Complainant has not denied the same. Though, the Complainant has stated that the Respondent has not been made a party in the said



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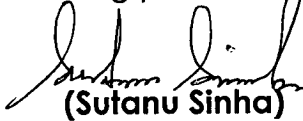
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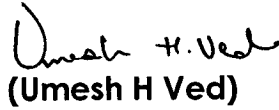
petition. It also appears that an FIR on the similar issues has also been lodged. Therefore, the complaint may be kept in abeyance, till it is established that the Respondent was involved in the alleged fraud and the concerned party (ies) file the copy of the order/judgement of the concerned Court in the Disciplinary Directorate of the ICSI.

10. The Board of Discipline at its meeting held on 24<sup>th</sup> October, 2013 considered the material on record and the *prima-facie* opinion dated 24<sup>th</sup> September, 2013 of the Director (Discipline). After detailed deliberations, the Board considering the nature of issues involved and in totality of the circumstances of this case, agreed with the *prima-facie* opinion of the Director (Discipline). The Board, thereafter decided to give liberty to the Complainant to file a fresh complaint along with the copy of the order/judgement of the concerned Court if any, passed against the Respondent in the alleged fraud.

Accordingly, the complaint stands disposed-off.

  
(Sufanu Sinha)

Member

  
(Umesh H Ved)

Member

  
(Sudhir Babu C)

Presiding Officer

Chennai.

Date: 08<sup>th</sup> November, 2013

