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COMPANY SECRETARIES: MORE THAN COMPLIANCE OFFICERS, TRUE GOVERNANCE PROFESSIONALS

Introduction:

In the year 1887, a significant case reached the Court of Appeal in England. The case was *Barnett Hoares & Co. v South London Tramways Co.*, and it involved a critical examination of the duties and authority of a company secretary. Lord Justice Esher, a prominent judge of the time, presided over the case and delivered a landmark judgment that would echo through the corridors of corporate history.

In his judgment, Lord Justice Esher articulated the prevailing view of a company secretary's role. He remarked, rudely that a company secretary could not be presumed to have authority for anything significant within a company. He compared the position of a company secretary to that of a mere servant, whose primary duty was to carry out orders given by their superiors. He famously stated, *"A secretary, is a mere servant; his position is that he is to do what he is told."*

For many years, this limited view of the company secretary's role persisted. It was not until the mid-20th century, almost 90 years later, that the judiciary began to recognize the evolving importance of the company secretary in the corporate world. An important moment came in 1971 with the case of *Panorama Developments (Gilford) Ltd v Fidelis Furnishing Fabrics Limited*. In this case, the celebrated judge Lord Denning, observed that the company secretary had become *"a much more important person nowadays than he was in 1887. He is no longer a mere clerk."* He provided a transformative observation about the role of the company secretary.

In this ever evolving world, Company secretary plays a very important role which is far more than a Compliance officer. They are true architects of Corporate Governance who ensures that governance is not just about compliance but about creating a culture of integrity and transparency throughout

the organization. This broader perspective aligns with the wisdom of the Bhagavad Gita, which highlights the significance of righteousness and duty.

In the Bhagavad Gita, Lord Krishna says,

"यद् यदाचरति श्रेष्ठः तद् तद् एवेतरो जनः।"

(Chapter 3, Verse 21)

which means, *"Whatever action is performed by a great person, common people follow."*

This highlights the influence of leaders in setting standards and ethical benchmarks. Company secretaries, as governance professionals, embody this principle by setting the tone at the top and guiding organizations towards ethical conduct.

In light of this conducting the business with utmost Code of Conduct and Ethics not only by the top management i.e. the board members but also each and every one in the organization which alone would take the organization from Good to Great in its journey and the corporate India would move forward towards excellence in corporate governance by adopting the best global practices and to ensure all of this is the duty of a Company Secretary.

More than Compliance officers a true Governance professional:

The National Company Law Tribunal (NCLT), Chennai Bench, addressed a significant matter on July 1, 2022, in the case of Mayank Agarwal vs. M/s. Technology Frontiers (India) Private Limited. In this case, a Company Secretary sought the Tribunal's intervention as a final recourse to ensure compliance with regulatory requirements.

Brief about the case:

The case involves compliance with the Significant Beneficial Ownership (SBO) provisions. Initially, Mr. Sriram Srivatsan, a Company Secretary, issued a notice to M/s. Technology Frontiers (India) Private Limited, a company whose holdings fell within the SBO threshold, requesting disclosure of the ultimate beneficial owner.

According to the SBO regulations, the company must disclose its ultimate beneficial owner upon receiving such a notice. When the company failed to comply with this requirement, the Company Secretary approached the National Company Law Tribunal (NCLT) for intervention.

In response, Mr. Mayank Agarwal, a nominee director of the respondent company, filed an Interlocutory Application. He contended that the Company Secretary lacked the authority to file the

petition, arguing that the board had not authorized such action and that the Companies Act, 2013 did not grant the Company Secretary the power to override the Board of Directors' decisions.

| Sr. No | Applicant (Mr. Mayank Agarwal) Contentions in this Case: | Written Submissions by the Respondent Company Secretary (Mr. Sriram Srivatsan): |
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| 1. | The Company {M/s. Technology Frontiers (India) Private Limited} alone is empowered to apply to NCLT under section 90(7) of the Companies Act, 2013 and the company acts through its board of directors and Company Secretary has not taken any approval from the board of directors to file the present petition and there is no Board Resolution nor has any delegated authority to present the present petition. | It was submitted that he has the locus standi on account of board resolution duly passed by the board of directors at the time of his appointment which states that he is appointed as the Compliance Officer of the company and he is required to perform the duties as required under the Companies Act, 2013 and any duties assigned by the board of directors from time to time. |
| 2. | That any suit or any other legal proceedings can be instituted by a director or officer of the company such as Company Secretary only on the strength of valid Board Resolution duly passed authorizing them to do so and in absence of such board resolution if any suit or legal proceedings is instituted then there has to be a board resolution ratifying the defect, failing which the suit or legal proceedings cannot be maintained. | <p>– The respondent also quoted Order 29, Rule 1 of the Civil Procedure Code, 1908 which states that in suits by or against a corporation, any pleading may be signed and verified on behalf of the Corporation by the security of by any director or other principal officer of the corporation who is able to dispose to the facts of the case.</p> <p>– That the Company Secretary being an officer as per the above quoted rule have the authority to enter into pleadings on behalf of the Company in absence of a formal authorization from the Board of the company more significantly to ensure compliance by or on behalf of the Company in which he has been appointed in that capacity.</p> |
| 3. | That the Company Secretary has no locus standi to file a petition under section 90 and is not empowered by section 205 or | The respondent also refer the provisions of the Companies Act and the rule wherein he submits that by virtue of Section 205 of the Companies |

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| | any other provisions of the Companies Act, 2013 to bypass or supersede the Board of Directors of a company and substitute the authority and powers of the Board of Directors in Company Secretary's own wisdom. | Act, 2013 he is authorized to represent and it is his duty to do so. Section 205 states the Functions of Company Secretary which include that it is his duty to report the board about compliance with the provisions of this Act, rules made there under and other laws applicable to the company and to ensure that the company complies with the applicable secretarial standards. |
| 4. | | The respondent also states that Rule 10 (4) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that Company Secretary can represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act. |

NCLT Observations and Pronouncement:

The Bench observed that the Company Secretary is the secretary of the Company and not the Secretary of the shareholders. He is appointed under the Companies Act, 2013 pursuant to a board resolution in respect of which appointment is given effect by filing the prescribed form with the Registrar of Companies so as to ensure statutory compliances failing which he is the only Officer who receives the Show Cause notice from the Registrar of Companies so also the Company. He would be required to face the penal consequences in the event of failure of compliances. He is answerable to the violations of the compliance requirement.

“Company Secretary are the watchdog of protecting corporate governance principles and ensuring the interest of all stakeholders and not a bloodhound. He has to ensure that the company complies with all regulations, and in case of any failure on the part of the board, he should approach the competent authority.”

The bench further stated that the era in which the Company Secretary occupied the position of a glorified clerk in Companies has expired consequent upon evolution of corporate governance and

the various compliance requirement in a complex regime so as to protect the interest of the company as well as its various stakeholders. The bench also noted that the Company Secretary acted diligently by approaching the appropriate authority.

Pronouncement: The Bench dismissed the Interlocutory Application and held that being Company Secretary falls under the definition of the Key Managerial Personnel (KMP) under Section 2(51) of the Act, and officer in default under Section 2 (60) of the Act and power enshrined to them under Section 205 (1)(c) of the Act, read with Rule 10 clause 4 of the Companies (Appointment and Remuneration of the Managerial Personnel) Rules, 2014, he has the power to represent the company before various regulators and other authorities in the discharge of the various duties under the Act and has locus standi in present case to file such application. NCLT being a quasijudicial authority the Company Secretary can very well represent before the same.

Conclusion

As the modern business continues to progress, the significance of company secretaries will only intensify. Their strong commitment to ethical leadership and governance will be of great importance in fostering a future where businesses achieve economic prosperity while also making a positive and lasting contribution to society and the global community.

In the Bhagavad Gita, Lord Krishna says,

"कर्मण्येवाधिकारस्ते मा फलेषु कदाचन।"

(Chapter 2, Verse 47),

which translates to, **"You have a right to perform your prescribed duties, but you are not entitled to the fruits of your actions."**

This famous Bhagavat Gita's Verse aligns with the company secretary's role in upholding ethical and Corporate governance without seeking personal gain. The level of Commitment a Company Secretary should have towards his work and the importance of focusing on one's duties with integrity and commitment is reflected in this verse.

In line with this,

"To make the corporate world a better place and Corporate Governance a top most priority, a Company Secretary has to thrive to ensure that governance is not just a concept but a living, breathing practice."