

**THE DISCIPLINARY COMMITTEE  
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT**

ICSI/DC/302/2015

Order Reserved on: 14<sup>th</sup> May, 2019

Order issued on: 3 JUN 2019

Shri Nitin Mohanlal Lunkad

.....Complainant

Vs.

Shri Mahesh Anant Athavale, FCS- 2412 (CP No.1488)

.....Respondent

**CORAM:**

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

**PRESENT:**


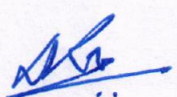
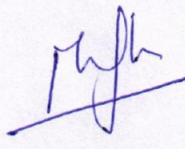
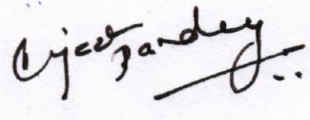
Mrs. Meenakshi Gupta, Director (Discipline)  
Shri Gaurav Tandon, Assistant Director  
None for Complainant  
Respondent in person

**FINAL -O R D E R**

1. A Complaint dated 13<sup>th</sup> May, 2015 in Form 'I' was filed by Shri Nitin Mohanlal Lunkad (hereinafter referred to as 'the Complainant') against Shri Mahesh Anant Athavale, FCS-2412 (CP No 1488) (hereinafter referred to as 'the Respondent') 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').
2. The Complainant *inter-alia* stated that M/s. Poona Club Ltd., (PCL) is a guarantee company with no share capital and was incorporated on 31<sup>st</sup> August, 1931. The Complainant further stated that he is one of the ex-members of the Managing Committee as well as one of the life members of M/s. Poona Club Ltd.
3. The Complainant *inter-alia* alleged that the Respondent certified Form 32 pertaining to cessation of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. PCL without exercising due diligence as the date of cessation of Shri

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Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. PCL is mentioned as 15<sup>th</sup> March, 2007 in Form 32. Whereas, as per the attached resignation letters of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devender Singh with the said Form 32 it reveals that Shri Chandrasen Vijaysinha Dabhade had resigned from the directorship of M/s. PCL with effect from 27<sup>th</sup> March, 2007 and Shri Jaspreet Devender Singh had resigned from the directorship of the PCL with effect from 22<sup>nd</sup> April, 2007.

4. The Complainant further stated that the Respondent who had also certified Form 21A i.e. Annual Return for the financial years 2005 to 2010 of M/s. PCL, no where mentioned about the aforesaid resignations of the concerned directors in relevant Annual Returns.
5. On the other hand, the Respondent denied all the allegations levelled upon him by the Complainant and *inter-alia* stated that he had a limited role in M/s. PCL as a consultant and he had discharged his duties strictly in accordance with the law and to the entire satisfaction of the management of the Club. The Respondent further stated that the Complainant has unnecessarily dragged an independent professional in the fight between the members *inter-se* or between the member(s) and the Managing Committee.
6. The Respondent further stated that the Club had approached him in December 2009 to file resignations of directors and Annual Returns with the ROC, Pune. The Respondent further stated that the Complainant has filed the present complaint for a typographical error in Form 32 by which nobody including the Complainant and the directors in respect of whom the form was filed has been affected. The complaint has therefore been, filed with the ulterior motive and mala-fide intentions and is liable to be dismissed without further action.
7. The Respondent further stated that before the certification of Form 32, the Respondent had requested the Club to provide him certain documents and the Club had provided copy of the minutes signed by the President of the Club in which the resignations were noted and original resignation letters were attached. The Respondent further stated that the resignations were actually given by Shri Dabhade and Shri Jaspreet Singh and were taken on record by the Managing Committee of the Club.
8. The Respondent further stated that at the time of certification of Form 32, he personally verified the resignation letters and found those to be legitimate and in order. The Respondent further stated that thereafter, the Form 32 was prepared, the resignation letters of the directors were attached and the form was digitally signed, however inadvertently the date of resignation was wrongly mentioned as



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15<sup>th</sup> March, 2007, this is purely a typographical mistake, however, no body including the Complainant was prejudicially affected by such typographical error.

9. The Respondent further stated that immediately after realising the mistake in the date, a letter was written to the ROC, Pune on 5<sup>th</sup> February, 2010 asking for a remedy to correct the form. The officers in the office of the ROC informed that after the implementation of the MCA 21, Form 32 once submitted and taken on record cannot be changed nor fresh Form 32 can be filed as the system itself does not accept such form since the names of the directors would already get deleted from the MCA portal as directors of the Club. The Respondent further stated that it may be mentioned that he had no mala-fide intention in indicating a wrong date. Had there been a mala-fide intention, the Respondent would not have attached the resignation letters with different dates. Rather, he would have either fabricated the resignation letters dated 15<sup>th</sup> March 2007 or would have omitted to attach the resignation letters having different dates.
10. The Respondent further stated that it is also not out of place to mention that neither the club nor the persons in respect of whom the date has been wrongly mentioned had made any complaints for this typographical error.
11. The Respondent further stated that it is a settled principle of law that an innocent mistake does not constitute any misconduct. Misconduct presupposes deliberate conscious, and mala-fide intention which is completely absent in the present case. Even the Complainant has not made any allegations against the Respondent for having mala-fide intentions.
12. The Complainant in his rejoinder mainly reiterated his earlier submissions and raised questions on the letter dated 5<sup>th</sup> February, 2010 submitted by the Respondent to the ROC after uploading of alleged Form 32.
13. The then Director (Discipline) after examining the material on record and considering all the facts and circumstances of the matter, was *prima-facie* of the opinion that the Respondent is "Guilty" of professional misconduct under item (7) of the Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent did not exercise due diligence in certification of Form 32 pertaining to cessation of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. Poona Club Ltd., (PCL) as the date of cessation was mentioned as 15<sup>th</sup> March, 2007 in Form 32, whereas, as per the resignation letter of Shri Chandrasen Vijaysinha Dabhade as attached to the said Form 32, he had resigned from the directorship of M/s. PCL with effect from 27<sup>th</sup> March, 2007 and  
Shri Jaspreet



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Devender Singh had resigned from the directorship of the PCL with effect from 22<sup>nd</sup> April, 2007.

14. The Disciplinary Committee on 29<sup>th</sup> July, 2016 after considering the *prima-facie* opinion dated 11<sup>th</sup> December, 2015 of the Director (Discipline) and the material on record, advised the Director (Discipline) to investigate the matter further. Accordingly, the matter was investigated further investigated by the Director(Discipline) and certain information/ confirmations were sought from the ROC, Pune and the Respondent regarding the letter dated 5<sup>th</sup> February 2010 sent to the ROC by the Respondent and on the alleged Form 32. The Respondent provided the clarification sought.
15. The ROC, Pune vide letter dated 13<sup>th</sup> January 2017 informed that as per the records and documents available with this office and as per the information given by the Inward Outward Cell that "There is no entry of the above referred letter is traceable in the Inward Registrar. The ROC further informed that as per the provisions of the Companies Act, 1956, as prevalent during the period of filing of Form 32 dated 6<sup>th</sup> November 2009, Form 32 once approved could not amended as allegedly requested by the Shri Mahesh Athavale in his letter dated 5<sup>th</sup> February 2010 which was forwarded by the ICSI letter dated 30<sup>th</sup> December 2016 and Form 32 once registered is available in public domain of MCA Portal.
16. The Director (Discipline) after re-investigation of the material on record, clarifications received from the ROC & the Respondent and considering all the facts and circumstances of the matter, vide her Further Investigation Report dated 25<sup>th</sup> September, 2017 reiterated earlier *prima-facie* opinion dated 11<sup>th</sup> December, 2015 that the Respondent is "Guilty" of professional misconduct under item (7) of the Part I of the Second Schedule of the Company Secretaries Act, 1980 that the Respondent is "Guilty" of professional misconduct under item (7) of the Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent did not exercise due diligence in certification of Form 32 pertaining to cessation of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. Poona Club Ltd., (PCL) as the date of cessation was mentioned as 15<sup>th</sup> March, 2007 in Form 32, whereas, as per the resignation letter of Shri Chandrasen Vijaysinha Dabhade as attached to the said Form 32, he had resigned from the directorship of M/s. PCL with effect from 27<sup>th</sup> March, 2007 and Shri Jaspreet Devender Singh had resigned from the directorship of the PCL with effect from 22<sup>nd</sup> April, 2007. In addition the Director(Discipline) also held the Respondent *prima-facie* Guilty of item (3) of the Part II of the Second Schedule of the Company Secretaries Act, 1980 as though the Respondent has stated to have submitted a letter dated 5<sup>th</sup>



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February, 2010 to the ROC for rectification of alleged Form 32 but the ROC has negated the same.

17. The Disciplinary Committee on 13<sup>th</sup> March, 2018 considered the *prima-facie* opinion dated 11<sup>th</sup> December, 2015 and Further Investigation Report dated 25<sup>th</sup> September, 2017 of the Director (Discipline) in the matter and agreed with the same. Accordingly, the Disciplinary Committee had decided to adjudicate the matter in accordance with Rule 18 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with the Company Secretaries Act, 1980, to finally conclude as to whether the Respondent is guilty or not in the matter.
18. A copy each of the *prima-facie* opinion of the Director (Discipline) and the further investigation report of the Director (Discipline) was sent to the Respondent/Complainant vide letter dated 15<sup>th</sup> May, 2018 calling upon to submit their Written Statement/Rejoinder on the same.
19. The Respondent vide his letter dated 25<sup>th</sup> May, 2018 requested to provide him extension of eight weeks time for submission of written statement in the matter, and thereafter vide his letter dated 12<sup>th</sup> June, 2018 raised certain objections relating to the Conflict of Interest of against the Presiding Officer of the Disciplinary Committee at the time of considering the *prima-facie* opinion of the Director (Discipline) and the further investigation report of the Director (Discipline) and requested to set aside the Order dated 25<sup>th</sup> April, 2018 passed by the Disciplinary Committee.
20. The Disciplinary Committee on 20<sup>th</sup> August, 2018, after considering the material on record and the objections raised by the Respondent in his letter dated 12<sup>th</sup> June, 2018 observed that there is no provision in the Company Secretaries Act, 1980 or the rules framed there under to review its own order and modify, revoke or set aside it. In view of this, the order dated 25<sup>th</sup> April, 2018 passed by the Disciplinary Committee need not be set aside, as requested by the Respondent in his letter dated 12<sup>th</sup> June, 2018. The Disciplinary Committee, in the interest of natural justice and after considering the full facts and circumstances of the case directed the Respondent to file his Written Statement along with their list of witnesses, if any, to the *prima-facie* opinion dated 11<sup>th</sup> December, 2015 & the further investigation report dated 25<sup>th</sup> September, 2017 of the Director (Discipline) within 14 days from the receipt of this Interim Order with a copy of the same to the Complainant. The Disciplinary Committee also directed the Complainant to file his Rejoinder to the Written Statement of the Respondent, within 14 days from the date of receipt of the said Written Statement from the Respondent. The



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Disciplinary Committee had further decided that no extension of time will be granted to either of the parties. A copy of the Interim Order reserved on 20<sup>th</sup> August, 2018 and issued on 11<sup>th</sup> September, 2018 was sent to the parties vide letter(s) dated 12<sup>th</sup> Septembers, 2018.

21. In the meantime, a Writ Petition was filed before the Hon'ble High Court of Bombay by the Respondent inter-alia challenging the orders dated 25<sup>th</sup> April, 2018 & 11<sup>th</sup> Septembers, 2018 issued by the Disciplinary Committee. However, Honourable High Court of Bombay vide its order dated 20<sup>th</sup> December, 2018 did not intervene in the matter and disposed of the petition.
22. The parties vide letter dated 29<sup>th</sup> April, 2019 were called upon to appear before the Disciplinary Committee on 14<sup>th</sup> May, 2019.
23. On 14<sup>th</sup> May, 2019 the Disciplinary Committee noted that the Complainant vide his letter dated 5<sup>th</sup> May 2019 expressed his inability to be present before the Committee due to his preoccupation and made his written submissions in writing reiterating what he has already stated in the various communications already exchanged. The Respondent appeared before the Disciplinary Committee and made his submissions wherein he gave a brief back ground of the case and stated that at the time of certification of the alleged Form 32 pertaining to cessation of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. Poona Club Ltd., (PCL), he had personally verified the resignation letters and found those to be legitimate and in order. The Respondent further stated that thereafter Form 32 was prepared, the resignation letters of the directors were attached and the form was digitally signed, however inadvertently the date of resignation was wrongly mentioned as 15<sup>th</sup> March, 2007, this is purely a typographical mistake, more so, no body including the Complainant was prejudicially affected by such typographical error. The Respondent emphasised on that it is a settled principle of law that an innocent mistake does not constitute any misconduct. Misconduct presupposes deliberate conscious, and mala-fide intention which is completely absent in the present case.
24. The Respondent further stated that immediately after realising the mistake in the date, a letter was written to the ROC, Pune on 5<sup>th</sup> February, 2010 asking for a remedy to correct the form. The Respondent on being asked that no inward number is endorsed on the said letter on which the Respondent showed certain other letters were in no inward number was mentioned. He further laid emphases that the Club / the directors removed have not filed any complaint against him and that the Complainant has unnecessarily dragged an independent professional in the fight between the members inter-se or between the member(s) and the Managing Committee.





25. The Respondent has quoted the following citations of cases in support of his contentions -

- (i) the Disciplinary Committee of the Institute of Chartered Accountants of India in the case of THE GENERAL MANAGER (BANK OF BARODA), MUMBAI VS. CA SATISH SOMANI held that the test of Professional Misconduct is not fully satisfied only on the bare non performance of a duty by the Professional but a failure to act honestly is also essential. Accordingly, the case against the professional was dismissed since no dishonesty was proved.
- (ii) In the case of Shri Harish M. Mankodi vs. State of Gurjarat, (2003) 1 SLR 484, it was held that procedural mistake does not amount to misconduct. Misconduct presupposes deliberate, conscious and *mala-fide* intention.
- (iii) In the case of Shri Surinder Singh vs the Secretary decided on 13<sup>th</sup> January, 2012, the Central Administrative Tribunal Principal Bench held that there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.
- (iv) In the case of Union of India & ors. Vs. J. Ahmed, 1979 (2) sec 286, and Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors., (2007) 4 SCC 566 where it was held that innocent mistake does not constitute any misconduct.

26. The Respondent further stated that "Misconduct" has been defined in Black's law Dictionary, Sixth Edition at page 999 thus: 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its, synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but does not include negligence or carelessness.

27. After considering the written submissions of the Complainant, oral submissions made by the Respondent; aforesaid citations of cases referred by the Respondent, material on record and totality of all the facts and circumstances, the Disciplinary Committee holds that the Respondent is "Not guilty" of professional or other misconduct under the




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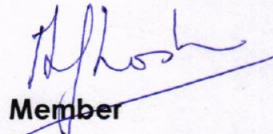


Company Secretaries Act, 1980 for any of the allegations made in the complaint against him by the Complainant as the Respondent has been able to negate the allegations levelled against him. The Disciplinary Committee observed that both the resignations letters of Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh from the directorship of M/s. Poona Club Ltd., (PCL), are attached with the said form so the contention of the Respondent that it was a typographical mistake while entering the date of cessation in the alleged Form 32 can be accepted in the circumstances of the case. Moreover, neither the club(PCL) nor the persons (Shri Chandrasen Vijaysinha Dabhade and Shri Jaspreet Devinder Singh )in respect of whom the date has been wrongly mentioned in the alleged Form 32 has made any complaints for this typographical error. The Disciplinary Committee noted that there has been a typographical error although it does not impact any of the persons who have resigned or the Poona Club, where they were the Directors. The Disciplinary Committee accordingly advises the Respondent to exercise caution in all statutory filings in future.

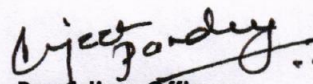
Accordingly, the Complaint stands disposed-off.

  
Member

  
Member

  
Member



  
Presiding Officer