

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

ICSI/DC/303/2015

Order Reserved on: 24 APR 2019

Order issued on: 15 MAY 2019

Shri Nitin Mohanlal Lunkad

.....Complainant

Vs.

Shri Gaurav Madan Bapat, ACS- 25993 (CP No. 9434)

.....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 the parties

**FINAL -ORDER**

1. A Complaint dated 13<sup>th</sup> May, 2015 in Form 'I' was filed by Mr. Nitin Mohanlal Lunkad (hereinafter referred to as the 'Complainant') against Mr. Gaurav Madan Bapat, ACS-25993 (CP No 9434) 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 gave a brief back ground of the Poona Club Ltd and inter-alia alleged that the Respondent had wrongly certified e-Form(s) 21A and contents of the Annual Return of M/s. Poona Club Limited (hereinafter referred to as "PCL") for the year ended 31<sup>st</sup> March, 2012 to 31<sup>st</sup> March, 2014 without proper examination of the documents of the company and further levied the following allegations against the Respondent:

- (i) The list of members mentioning their name, address and details of changes therein were not attached to the Annual Return.
- (ii) The number of members as mentioned in the Annual Return is 4000 plus, whereas Article 3 of the Articles of Association mentions that maximum 1000 members can be admitted as members of the company. The company cannot have members more than as restricted by the Articles of Association unless the Articles are suitably amended.



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*[Handwritten signature: Ranjeet Pandey]*

(iii) The PCL has reported that it had taken secured loans for more than Rs. 6.81 Cr. to Rs.8.98 Cr. during 2012 to 2013. However, the letter attached to alleged e-Form 21A is showing the amount of indebtedness, PCL had neither taken nor permitted to take any secured loans by the members during the period. The said letter attached to Annual Return stated that the PCL cannot give the required amount of indebtedness of the company, as it has no system of accounting to report the same in mid of the year. In case of any secured loan, a company is required to register a charge in prescribed form with the MCA. However, the search of records of the ROC do not show any charge created by the PCL.

3. The Respondent on the other hand, denied the allegations levied against him and *inter-alia* stated that he had a limited role in the company and he has discharged his duties strictly in accordance with the law and to the entire satisfaction of the management of the PCL. He further stated that had there been any deficiency on the part of the Respondent, the PCL would have filed a complaint against the Respondent. The Respondent further stated that the Complainant has also failed to produce any document in support of his allegation that the Respondent was an advisor to the PCL for all matters and was responsible for ensuring the compliances of each and every section of the Companies Act, 1956/2013. The Respondent further stated that the e-Forms 21A (3 numbers) for filing the contents of the Annual Return of the PCL have been uploaded on the website of the MCA. The web-portal accepts e-forms with the maximum file size of 2.5 megabytes (1MB) on its uploading portal. Considering this size constraint, it was not possible to upload the Form 21A with the details of all the 4,000 members of the PCL and thus, in order to ensure proper compliance of the provisions of the Companies Act, 1956, a separate CD containing the list of all members of the club was submitted to the ROC, Pune from time to time. The Respondent further stated that the Article No.3 of the Articles of Association of the company does not state that the maximum number of members for the PCL is 1000. The said Article No. 3 of the Articles of Association states that "For the purpose of registration the Club is declared to consist of 1000 members but any General Body Meeting may from time to time increase this number". Therefore, for increasing the members of the PCL beyond 1000, amendment to the Articles is not at all required. The Respondent further stated that the PCL has provided specific letter confirming amount of indebtedness and membership of the PCL, on the basis of which, he has certified the e-Forms 21A.
4. The then Director (Discipline) in his *prima-facie* opinion dated 14<sup>th</sup> December, 2015 after examination of the complaint, written statement, rejoinder and other material held that the Respondent is *prima-facie* not guilty of professional or any other misconduct under the Company Secretaries Act, 1980 and placed the same before the Board of Discipline for its consideration. The Board of Discipline advised the Director (Discipline) to further investigate the matter and call for further documents viz. copy of the Annual Return along with its annexure for the relevant years under investigation and any other document deemed fit by the Director (Discipline).
5. Accordingly, the requisite documents/information were sought and after examination of the same the Director (Discipline) observed that the Respondent had certified e-Form 21A and contents of the Annual Return of PCL for the year ended 31<sup>st</sup> March, 2012 to 31<sup>st</sup> March, 2014 but has not attached the list of members with the form and has clarified that the list was sent to the ROC separately in CD form as the same cannot be uploaded on the website being a heavy file more than 1MB. But on bare perusal of the



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letters sent to the ROC it is observed that no inward number was quoted on the acknowledgement given in any of the letters by the ROC, Pune. The Director(Discipline) sought it essential to seek a clarification from the ROC, Pune as to whether the said letter along with a CD claimed to have been sent by the Respondent to the ROC, Pune subsequent to filing of the forms have been received by the ROC or not . Accordingly, the ROC was asked to clarify as to whether it has received letters 9<sup>th</sup> December, 2013, 11<sup>th</sup> March, 2014 and 11<sup>th</sup> February, 2015 along with a CD *apparently containing the list of members of PCL* subsequent to the filing of the Annual Return for year ended 31st March, 2012 and 31<sup>st</sup> March, 2014 from the Respondent.

6. The ROC, Pune vide its letter dated 2nd August, 2018 inter-alia stated that the inward entry of letters dated 9<sup>th</sup> December, 2013, 11<sup>th</sup> March, 2014 and 11<sup>th</sup> February, 2015 along with a CD apparently containing the list of members is not traceable .
7. The Director(Discipline) after examination of material on record in her Further Investigation Report opined that it is apparent that the Respondent had not certified the e-Form(s) properly as the complete set of attachment have neither been uploaded by the Respondent nor the letters dated 9th December, 2013, 11<sup>th</sup> March, 2014 and 11<sup>th</sup> February, 2015 along with a CD apparently containing the list of members of PCL subsequent to filing of the Annual Return for year ended 31st March, 2012 and 31st March, 2014 have apparently been sent by the Respondent to the ROC, Pune. The Director(Discipline) further opined that the Respondent has stated that the PCL has provided specific letter confirming amount of indebtedness and membership of the PCL on the basis of which, he has certified the e-Form 21A rather than actually verifying the record of the company. Therefore, the Respondent is *prima-face* Guilty under Item (7) of Part-I and under Item (3) of Part II both of the Second Schedule to the Company Secretaries Act, 1980.
8. Further Investigation Report of the Director (Discipline) along with the material on record was placed before the Disciplinary Committee on 12th September, 2018 and the Disciplinary Committee after consideration of same 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. A copy of the Further Investigation Report of the Director (Discipline) along with the material on record was sent to the parties asking to submit their written statement and rejoinder respectively.
9. The Respondent submitted his written statement to the Further Investigation Report of the Director (Discipline) wherein he mainly reiterated his earlier submissions. However, no rejoinder was received from the Complainant. Thereafter, the parties were called upon to appear before the Disciplinary Committee on 24<sup>th</sup> April, 2019.
10. On 24<sup>th</sup> April, 2019 both the parties instead of appearing before the Disciplinary Committee on 23<sup>rd</sup> April, 2019 submitted their written submissions wherein they reiterated their earlier submissions. The Disciplinary Committee observed that the Respondent while certification of the alleged e-Form(s) 21A of M/s. Poona Club Limited (hereinafter referred to as "PCL") for the year ended 31<sup>st</sup> March, 2012 to 31<sup>st</sup> March, 2014 had attached a letter of the Poona Club with each of the forms clearly disclosing



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that the club does not have a system of accounting accurate indebtedness and about the membership of the Club . Further, with regard to the list of members are not attached with e-form 21A, for which the Respondent has clarified that the list was sent to the ROC separately in CD form as the same cannot be uploaded on the website being a heavy file more than 1MB. Even the ROC in its letter dated 2<sup>nd</sup> August, 2018 has stated that the entries of the letters allegedly sent to the ROC is not traceable in the inward register but has not specifically denied to have received the same. The other allegation of the Complainant is that the company cannot have members more than 1000 as stated in the Article 3 of the Articles of Association of the company for which the Respondent has clarified that as per Article 3 of the AOA of the company "For the purpose of registration the Club is declared to consist of 1000 members but any General Body Meeting may from time to time increase this number". Therefore, that there is no restriction on increasing the number of members.


11. In view of the above, the Disciplinary Committee after considering the *prima-facie* opinion of the then Director (Discipline); Further Investigation Report of the Director (Discipline); the material on record, the written submissions of both parties; and after examining the totality of facts and circumstances in this matter, holds the Respondent 'Not guilty' of professional or any other misconduct under the Company Secretaries Act, 1980.

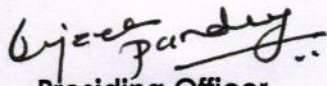
Accordingly, the Complaint stands disposed –off.

  
Member

  
Member



  
Member

  
Presiding Officer

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ADC(T)