

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

ICSI/DC/306/2015

Order Reserved on: 24th April, 2019

Order issued on: 03 JUN 2019

Shri Nitin Mohanlal Lunkad

.....Complainant

Vs.

Shri Hrishikesh Wagh, FCS-7993 (CP No.9023)

.....Respondent

CORAM:

Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra Rao D, 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 along with Shri P M Athavale, Advocate

FINAL ORDER

1. A Complaint dated 13th May, 2015 in Form 'I' was filed by Shri Nitin Mohanlal Lunkad (hereinafter referred to as 'the Complainant') against Shri Hrishikesh Wagh, FCS-7993 (CP No 9023) (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* alleged the Respondent had wrongly certified Form 21A and contents of the Annual Return of Poona Club Ltd. (PCL) for the year ended 31st March, 2011 without proper examination of the documents of the company and made 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 4466, whereas Article 3 of the Articles of Association mentions that maximum 1000 members can be admitted as members of the company. The



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company cannot have members more than as restricted by the Articles of Association unless the Articles are suitably amended.

- iii. The Complainant further stated that PCL had reported that it had taken secured loans for more than Rs. 6.57 Crores (Rupees Six Crores fifty seven lakhs Only). 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.
- iv. M/s. PCL had failed to maintain the proper register of members in contravention of the provisions of Section 150, 151, 160(1)(aa) of the Companies Act, 1956.
3. The Respondent in his written Statement dated 11th July, 2015 has *inter-alia* denied all the allegations made against him in the complaint and stated that :
- i. that the Respondent had certified the alleged e-forms 21A in accordance with the documents and details provided by the Club (M/s PCL) under the signature of the Secretary of the Club.
 - ii. that the Respondent is a partner of Shri Mahesh Anant Athavale, who is a consultant to M/s Poona Club Limited (PCL) not the Compliance Officer of the club. Therefore, the Respondent cannot be held responsible for whatever may be happening in the club.
 - iii. that the Respondent 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. Had there been any deficiency on the part of the Respondent, the PCL would have filed a complaint against the Respondent.
 - iv. that the e-Form 21A for filing the contents of the Annual Return of the club for year ended 31st March, 2011 was 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 club 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.
 - v. That Article no.3 of the Articles of Association of the company (M/s. PCL) does not state that the maximum number of members for the Club is 1000. 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 club beyond 1000, amendment to the Articles is not at all required.



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- vi. that the club has provided the specific letter confirming amount of indebtedness and membership of the club on the basis of which, he has certified e-forms 21A.
4. Director (Discipline) in the *prima-facie* opinion dated 23rd September, 2017 after examination of the complaint, written statement, rejoinder and other material was *prima-facie* of the opinion that the Respondent is 'not guilty' of professional or 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 confirm from the ROC about the receipt of the letter of the Respondent along with CD containing a list of members of Poona Club Ltd., as claimed to have been sent to the ROC after filing of the Annual Returns (Form 21A) for the year ended 31st March 2011. The Board of Discipline further stated that the Director (Discipline) is at the liberty to call for any other documents, as deemed fit in the matter.
 5. As advised by the Board of Discipline, the Director Discipline asked the ROC, Pune vide letter dated 4th April, 2018 followed by reminders to clarify as to whether ROC has received letter 9th May, 2012 along with a CD apparently containing the list of members of M/s. PCL subsequent to the filling of the Annual Return for the year ended 31st March, 2011. The ROC, Pune vide its letter dated 2nd August, 2018 intimated as per their records and the information given by the Inward/Outward Cell of ROC, there is no entry of above referred letter of the Respondent (along with a CD apparently containing the list of member of M/s. PCL subsequent for filling of the Annual Return for the year ended 31st March, 2011) of the Respondent, traceable in their Inward register.
 6. The Director (Discipline) after considering the aforesaid letter dated 2nd August, 2018 from ROC and the material on record, in her Further Investigation Report observed that the Respondent had not certified the Form(s) properly as no letter apparently along with a CD containing the list of members of M/s. PCL subsequent to the filling of the Annual Return for the year ended 31st March, 2011 was sent to the ROC, Pune. Therefore, it is apparent that the Respondent has not exercised due diligence as required of him for certifying Form 21A for filing of the Annual Return for year ended 31st March 2011 as he has failed to attach the complete set of documents in each of those form(s), whereas in the certification clause of all the forms, the Respondent has stated that all required attachments have been completely attached to this form. Further, the Respondent has also not actually verified the record of the company for confirming amount of indebtedness and actual numbers of membership of the club before certifying Form 21A for filing of the Annual Return for year ended 31st March 2011 of M/s PCL. Hence, the Respondent is *prima facie* Guilty of Professional misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980.
 7. The Disciplinary Committee on 12th September, 2018 after considering the *prima-facie* opinion, dated 23rd September, 2017 alongwith Further Investigation Report dated 24th August, 2018 of the Director (Discipline) along with all material on record, 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.



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8. 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 24th April, 2019.
9. On 24th April, 2019, the Disciplinary Committee noted that the Complainant vide his letter dated 21st April, 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 along with Shri P M Athavale, Advocate appeared before the Disciplinary Committee and made their submissions in detail.
10. The Disciplinary Committee, after considering the written submissions of the Complainant, submissions made during hearing by the Respondent, the *prima-facie* opinion of the Director (Discipline); Further Investigation Report of the Director (Discipline); the material on record and after examining the totality of facts and circumstances in this matter, observed that the Respondent has rebutted all the allegations made against him by the Complainant. The first allegation is regarding the list of members were not attached with e-form 21A, for which the Respondent has clarified that the list of members was sent to the ROC separately in CD form as the same could not be uploaded on the website being a heavy file more than 1MB. Even the ROC in its letter dated 2nd August, 2018 has stated that the entries of the letters stated to be sent by the Respondent to the ROC is not traceable in the inward register but has not specifically denied to have received the same. The Second allegation of the Complainant is that the Company cannot have members more than 1000 as stated in the Article 3 of the Article of Association of the company for which the Respondent clarified that as stated in the 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, the same is clarified that there is no restriction on increasing the number of members. The third allegation is regarding indebtedness of the company, for which the Respondent has stated that the M/s. PCL has provided the specific letters addressed to the ROC, Pune confirming amount of indebtedness and membership of the club on the basis of which he has certified the e-forms 21A.
11. After hearing the submissions made and records submitted in support of their submissions, the Disciplinary Committee holds that the Respondent "Not guilty" of professional or other misconduct under the Company Secretaries Act, 1980 for any of the allegations made in the complaint against him by the Complainant.

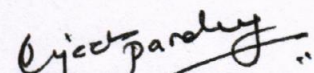
Accordingly, the Complaint stands disposed-off.


Member


Member




Member


Presiding Officer