

**THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

DC: 125/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

SHRI RAMHARI DEORAO GANAGE

....COMPLAINANT

V/s

SHRI ARUN MADHUKAR DESHPANDE

....RESPONDENT

ORDER

1. A complaint in Form I dated 29th February, 2012 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 Shri Ramhari Devrao Ganage (hereinafter referred to as the 'Complainant') against Shri Arun Madhukar Deshpande, FCS-5135 (CP No. 2905) (hereinafter referred to as the 'Respondent').
2. The Complainant has alleged that the Respondent had signed / certified Form 23AC, 23ACA and 20B of M/s. Poona Tools Pvt. Ltd., for the year ended 31st March 2011, carelessly, incorrectly and without exercising due diligence on the basis of the AGM held on 27th December, 2011 which is invalid. He further stated that he had already brought the above facts on record of the ROC vide letter dated 13th February, 2012. He also stated that the Respondent is well aware of the ongoing dispute between the parties as a result of which a petition under Section 237, 397 and 398 of the Companies Act, 1956 has been filed before the CLB, Mumbai. He further stated that the Respondent had failed to verify before certifying the said Forms as to whether the annual accounts were approved by the Board and as to whether the AGM was validly convened/conducted. The Complainant further stated that the Respondent omitted to take note of the fact that there were various anomalies as listed above and that the said annual accounts were never approved by the Board of Directors and he had certified the said e-forms in a pre-meditated and prejudiced manner with hand in glove with M/s. Poona Tools Pvt. Ltd. and its directors representing majority. He further stated that the Respondent has failed to examine the statements before certifying Form 23AC and 20B of M/s. Poona Tools Pvt. Ltd.



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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 7th March, 2012 calling upon him to submit the written statement which he submitted *vide* letter dated 20th March, 2012.

4. The Respondent in the written statement has *inter-alia* stated that he is associated with M/s. Poona Tools Pvt. Ltd., as a PCS and denied the allegations of the Complainant. He further stated that in regard to certification of Form 23AC, 23ACA, 20B for the submission of Annual Accounts and Returns of the aforesaid company for the FY ended 31st March, 2011, he has taken due care while examining various documents provided to him before certification of Forms. He further stated that the Board of Directors of the company approved the Accounts on 27th September, 2011 on urgent basis. The Auditors' Report was issued on 30th September, 2011. Even addendum to Directors' Report was issued on the same date. The Board as a matter of abundant precaution again on 9th October, 2011 placed the same Account along with Auditors Report. The Board did not sign the documents on that date wherein the said meeting was attended by the Complainant. The Board convened the AGM on 27th December, 2011 and members adopted the Annual Accounts. He further stated that the AGM was held on 27th December, 2011 and an AGM held after 6 months does not make the same illegal. He further stated that the company had filed a letter with the ROC seeking extension for the AGM, the same was denied by the ROC on the basis of the letter submitted by the Complainant as it was impossible to hold AGM on or before 30th September, 2011 at a shorter notice. He also stated that as per the records, notice with documents was circulated. The compliance certificate was filed *vide* Form 66 dated 9th February, 2012, whereas cash flow statement is not a legal requirement. He further stated that according to the confirmation by the management of the company, the financial accounts were approved on 27th September, 2011 and were sent to the Statutory Auditors' for their Report. In turn the Statutory Auditors' issued their Report on 30th September, 2011. The AGM notice draft was already approved in the Board meeting held on 27th September, 2011. The Respondent further stated that he relied on the Statutory Auditors' Report date. As per the records available with the company the draft Directors Report was already approved in the Board meeting held on 27th September, 2011. He further stated that the Complainant himself remained absent in the AGM and stated that he had certified the documents attached to form 23AC, 23ACA and 20B on the basis of its existence.



5. 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 30th March, 2012 asking him to submit the rejoinder which he submitted vide letter dated 14th April, 2012.
6. The Complainant has reiterated the contents of his complaint and has stated that he has been illegally removed from the directorship of the company along with his wife Mrs. Sangeeta Ganage in the EOGM held on 17th January, 2012.
7. The Complainant has further stated regarding the alleged signing of the accounts of the company on 27th September 2011 as under:-
 - a. The Board meeting held on 27th September, 2011 did not consider the approval of annual accounts. Hence there is no question of the board having approved the accounts on 27th September, 2011. In fact, the Agenda of the Board meeting contained the matter of making application to ROC for extension of AGM.
 - b. Even if for the sake of arguments it is assumed that the accounts were indeed approved on 27th September, 2011, there was no reason for the company to again place it before the Board of Directors as a matter of 'abundant precaution'. It is the case of Mr. Arun Deshpande that the Auditors have signed the financial statement on 30th September, 2011. Thus the question does not arise for exercise of abundant precaution for placing the same accounts along with the auditor's report on 9th October, 2011 again. There is no provision in the Companies Act, 1956 which require or allows such 're-approval' of the annual accounts in the board meetings.
 - c. As stated by Mr. Deshpande, I attended the said Board meeting on 09th October, 2011; however even in that meeting there was no discussion on the annual account, even as a matter of 'abundant precaution'!
 - d. If accounts were indeed signed on 27th September, 2011, there is no justification given for holding after three months on 27th December, 2011. The Annual General meeting ought to have been held at the first available opportunity to avoid delayed holding of meeting.
8. Regarding holding the AGM on 27th December, 2011, the Complainant has stated that the company had failed to hold the AGM within the stipulated statutory period and has obtained approval of the ROC for AGM extension.

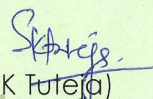


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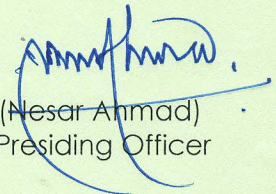
9. The Complainant has further stated that if indeed the annual accounts were ready and approved on 27th September, 2011, there was no need for the company to make the application for extension of AGM. He further stated that the Respondent cannot avoid his responsibility by taking shelter of typographical error or by expressing his inability to comment on the dates of director or auditors signature. He has further stated that the Compliance Certificate and the cash flow statement were not circulated along with the financial statement as required by law. He also stated that the Respondent's relying on a statement/ document certified/ verified by the Auditors' does not absolve him from any of his obligations. He further stated that the Respondent is aware of the disputes amongst the directors of the company and he is a party to the matters before the CLB.
10. The Director (Discipline) pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and observed that the points of rebuttal advanced by the Respondent have substantiated and nullified the allegations of the Complainant. The duty of the Respondent in this case was limited to the extent of certifying and filing of Form 23AC and 20B which he had done upon the instructions and the documents supplied to him by the company. The Respondent had exercised due diligence while certifying the said forms of M/s. Poona Tools Pvt. Ltd., and therefore, the Respondent is *prima-facie* not guilty of professional misconduct.
11. The Disciplinary Committee at its meeting held today considered the *prima-facie* opinion of the Director (Discipline) dated 14th September, 2012 and the material on record; agreed with the *prima-facie* opinion of the Director (Discipline) and came to the conclusion that the Respondent is not guilty of Professional or other Misconduct under the Company Secretaries Act, 1980 and closed the matter. Accordingly, the complaint stands disposed-off.



(B Narasimhan)
Member



(S K Tuteja)
Member



(Nesar Ahmad)
Presiding Officer

New Delhi
Date: 30th October, 2012

