

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

DC: 126/2011

**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 29<sup>th</sup> 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 alleged that the Respondent had signed / certified Form 23AC, 23ACA and 20B of M/s. Rojeetasha Stampings Pvt. Ltd., (RTSPL) for the year ended 31<sup>st</sup> March 2011 in respect of the AGM alleged to have been held on 27<sup>th</sup> December, 2011, which is illegal. He further stated that he had already brought the above facts on record of the ROC vide letter dated 13<sup>th</sup> 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 in respect of M/s. Ganage Pressings Pvt. Ltd., which is the holding company of RTSPL. He further stated that the Respondent before signing the said Forms 23AC, 23ACA and 20B has failed to verify whether the annual accounts were in fact approved by the Board of Directors of the company and whether the AGM was validly convened and conducted. He further stated that the Respondent has certified the said Forms in a premeditated and prejudiced manner with hand in glove with RTSPL and its Directors representing majority and failed to examine the statements before certifying the said forms in a careless manner not befitting to a professional. He further stated that while issuing/certifying the compliance certificate, the Respondent has failed to invite attention to the material departure from the generally accepted procedure relating to the secretarial practices and has grossly





contravened clause 9 of Part I of the Second Schedule of the Company Secretaries Act, 1980.

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 7<sup>th</sup> March, 2012 calling upon him to submit the written statement which he submitted *vide* letter dated 20<sup>th</sup> March, 2012.
4. The Respondent in the written statement has *inter-alia* stated that he is associated with M/s. Rojeetasha Stampings Pvt. Ltd. as a PCS and the Complainant is not a director of the company as on date of submission of this complaint. He further stated that he has certified the Forms 23AC, 23ACA and 20B with respect to M/s. Rojeetasha Stampings Pvt. Ltd. for the financial year ended 31<sup>st</sup> March, 2011, after examining the various documents provided to him by the company. He also stated that the Board approved the accounts and were sent to the statutory auditors for their Report.
5. The Respondent further stated that the AGM was held on 27<sup>th</sup> 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 which 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 30<sup>th</sup> September, 2011 at a shorter notice and as per the records, the notice with documents was circulated. The Compliance Certificate under section 383A of the Companies Act, 1956 was not applicable to the company as its' paid up capital was exceeding Rs, 5 crores. The cash flow statement is not a legal requirement. He also stated that according to the confirmation by the management of M/s. Rojeetasha Stampings Pvt. Ltd., the financial accounts were approved on 27<sup>th</sup> September, 2011 and were sent to Statutory Auditors for their Report and in reply the Statutory Auditors issued their report on 30<sup>th</sup> September, 2011. He also stated that the AGM Notice draft was already approved in the Board meeting held on 27<sup>th</sup> September, 2011. Therefore, he relied on the Statutory Auditors' Report date. As per records available with the company the draft Directors' Report was already approved in the Board meeting held on 27<sup>th</sup> September, 2011. No Board meeting was held on 30<sup>th</sup> September, 2011. He also 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.
6. 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 30<sup>th</sup> March, 2012 asking him to submit the rejoinder which he submitted *vide* letter dated 14<sup>th</sup> April, 2012.



*[Handwritten signature]*

*[Handwritten signature]*



7. 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 17<sup>th</sup> January, 2012. He further stated regarding the alleged signing of the accounts of the company on 27<sup>th</sup> September 2011 as under:-
- a. The Board meeting held on 27<sup>th</sup> September, 2011 did not consider the approval of annual accounts. Hence there is no question of the board having approved the accounts on 27<sup>th</sup> 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 27<sup>th</sup> 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 30<sup>th</sup> 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 9<sup>th</sup> 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 09<sup>th</sup> 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 27<sup>th</sup> September, 2011, there is no justification given for holding after three months on 27<sup>th</sup> December, 2011. The Annual General meeting ought to have been held at the first available opportunity to avoid delayed holding of meeting.
8. The Complainant further stated that in regard of holding the AGM on 27<sup>th</sup> December, 2011, the company had failed to hold the AGM within the stipulated statutory period and has not obtained approval of the ROC for AGM extension. He further stated that as regards to the application for AGM extension, if indeed the Annual Accounts were ready and approved on 27<sup>th</sup> September, 2011, there was no need for the company to make the application for extension of AGM. He also stated that the Respondent cannot avoid his responsibility by taking shelter of typographical error or by expressing his inability to comment on

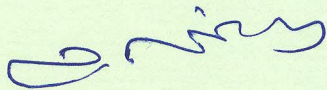


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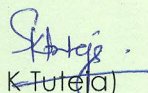


the dates of director or auditors signature. He has further stated that it is wrong to say that Cash Flow Statement is not a legal requirement. The company is required to furnish the cash flow statement under CARO. He has further stated that the Respondent has relied for making submissions and certification of forms 23AC, 23ACA and 20B itself contains anomalies and are back dated. He has further 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 in respect of M/s. Rojeetasha Stampings Pvt. Ltd.

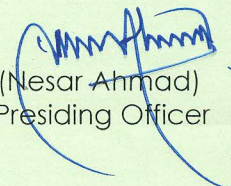
9. The Director (Discipline) pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and observed that the points of rebuttal advanced by the Respondent have substantiated and nullified the allegations of the Complainant. The duty of the Respondent 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. Rojeetasha Stampings Pvt. Ltd., and therefore, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980.
10. The Disciplinary Committee at its meeting held today considered the *prima-facie* opinion of the Director (Discipline) 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: 30<sup>th</sup> October, 2012

