

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

**IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

ICSI/DC/305/2015

Order reserved on : 19th November, 2018

Order issued on : **17 JAN 2019**

Mr. Nitin Mohanlal Lunkad

....Complainant

Vs

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

....Respondent

CORAM:

CS C Ramasubramaniam, Presiding Officer
CS Ashok Kumar Dixit, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Ms Anita Mehra, Assistant Director
Shri Gaurav Tandon, Assistant Director

FINAL ORDER

1. A Complaint dated 13th May, 2015 in Form 'I' 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 Mr. Nitin Mohanlal Lunkad (hereinafter referred to as the 'Complainant') against Mr. Mahesh Anant Athavale, FCS-2412 (CP No 1488) (hereinafter referred to as the 'Respondent').
2. The Complainant has *inter-alia* stated that he is one of the ex-members of the Managing Committee as well as one of the Life Members the Poona Club Ltd (PCL) is a company limited by guarantee as defined in clause No.21 of Section 2 of the Companies Act, 2013 incorporated on 31st August, 1931. The Complainant has *inter-alia* alleged that:-
 - i. The Respondent was appointed as a Company Law Consultant by the Poona Club Limited (PCL) for ensuring various compliances of all matters relating to the company law including providing professional advice in prudent manner from time to time.



- ii. that M/s. PCL had changed its Articles of Association various time during the period 26th August, 2000 to 31st March, 2015 by seeking approval from the members in various EOGM from time to time.
 - iii. The Respondent has carelessly, fraudulently, incorrectly, without due care and diligence wrongly advised to the PCL alterations made in Articles of Association by flouting Section 31 of the Companies Act, 1956/Section 14 of the Companies Act, 2013 in a repetitive manner on 04.01.2014 and 12.04.2014 without any mention thereof in Notice cum Agenda as well as Explanatory Statement convening the above meeting in breach of Articles of Association of the PCL and alterations made in Articles on 31.03.2015 to cover up the excess capital expenditure than budgeted one in a deceitful manner and failed to verify correctness of facts involved in above cases.
 - iv. The Respondent before advising the captioned alterations of AOA had failed to verify whether the grounds of proposed alterations in Articles of Association were legal or not.
 - v. Despite above alterations made by M/s. PCL, it had neither filed any prescribed Form 23 along with copy of special resolution(s) passed by members in the physical mode (before start of online filing) nor made any online filing of relevant MGT-14 e-form(s) and supporting document(s) on the MCA website.
3. The Respondent in his written statement denied the allegations levied against him in the complaint and inter alia stated as under:
- i. That he is a consultant to Poona Club Ltd (PCL) engaged to provide opinions, views and guidance regarding the conduct of members meetings and inspection of record as and when the Managing Committee through the President, Secretary or the Deputy Secretary of the club asks him to provide his opinion, views and guidance.
 - ii. That the scope of providing advisory services to the Club was limited to the matters referred by the Managing Committee of the club. The Respondent does not interfere /involve himself in the matters though relating to Company Law unless a reference was made to him by the Managing Committee.
 - iii. That an offer was made to the club on 23rd February, 2009 for rendering services to the club for issuing compliance certificate and ensuring compliances under the Companies Act, 1956. However this offer was not accepted by the Club.
 - iv. The he is not responsible for the allegation of the Complainant that Club has neither filed Form 23 nor made any online filings.



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- v. That he had a limited role and has discharged his duties to the entire satisfaction of the Management. He was not the compliance officer of the PCL and cannot be held responsible for whatever may be happening in the Club.
- vi. That Complainant was himself was a member of Managing Committee and was suspended from the same on March 28, 2015 for the period of one year commencing from March 28, 2015 to March 27, 2016 due to his misbehaviour, misappropriating confidential documents from the office of the Club, siphoning funds of the club without necessary approvals, misguiding and misleading and instigating members against the management through posts on face-book and other social media platforms defaming and spreading rumours and canards against the Managing Committee of the Club.
- vii. That the Complainant has failed to produce any documents in support of his allegations and the complaint so made is baseless and has been made in frustration. The Complainant has unnecessarily dragged an independent professional, who is a mere consultant in the fight between members and the Managing committee of the Club.
- viii. the Respondent was engaged only to the extent of for providing legal opinions on the matters which were referred by the Managing Committee of the Club. Email of 3rd July 2015 received from the Club can prove the same.

4. The Complainant in his rejoinder inter-alia stated as under:

- i. that it is surprising that the Respondent who used to attend various meetings, providing opinions, providing all kinds of services under Companies Act, 2013 including certification of various applications of the PCL, is himself raising objections that his appointment was not properly made? The so called offer and so called rejection of the Offer by the Club are imaginary and mere eyewash. The Respondent and his partners have been providing all kinds of company law services to the Company even after their proposal was rejected.
- ii. that the mail submitted by the Respondent is a fabricated mail. It does not have any legal sanctity. Unless specific resolution is passed in the Management Committee meeting, the Chairman is not supposed to issue such type of mail to any consultant. It is a fabricated mail created by the Respondents as self serving document. The mail is also not sent from the official email account from the office of M/s. PCL Chairman.



- iii. that the Professional Misconduct case is relating to wrong advice in preparation/ alteration of AOA and so called Bye laws in contravention of law.
- iv. that despite above alterations made by M/s. PCL, it is surprising to note that it had neither filed any prescribed Form 23 along with copy of Special resolution(s) passed by members in the physical mode nor made any online filing of relevant MGT-14 e-form(s) and supporting document(s) on the official website of Ministry of Corporate Affairs, when the same was introduced.
5. The Director(Discipline) on examination of the complaint, written statement, rejoinder & all the documents on record, vide her prima-facie opinion dated 25th August, 2017 observed that the Respondent is not 'Guilty' of Professional misconduct or other misconduct under the Company Secretaries Act, 1980 as the Respondent was apparently a consultant to Poona Club Ltd (PCL) to provide his advice / consultancy on company law matters/legal compliances as and when referred by the Club and not a Compliance Officer of the Club. Therefore, the Respondent cannot be held liable for the alleged non compliances, if any, of filing of statutory forms or any flaw in the alteration of Articles of Association of M/s PCL from time to time. The Director (Discipline) further observed that the Complainant himself is a managing committee member of the Club. Moreover, the Complainant has not produced any letter or contract which may substantiate his allegation(s) of misconduct against the Respondent.
6. The Board of Discipline after considering the material on record, prima-facie opinion of the Director (Discipline) and all the facts and circumstances of the case, agreed with the prima-facie opinion of the Director (Discipline) and held that the Respondent is "Not Guilty" of Professional or other misconduct under the Company Secretaries Act, 1980 for the acts and/or omissions alleged by the Complainant in his complaint.

Accordingly, the complaint stands disposed-off.


Member




Presiding Officer