

**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/317/2015

Order reserved on : 19 NOV 2018

Order issued on : 17 JAN 2019

Mr. Nitin Mohanlal Lunkad

...Complainant

Vs

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

....Respondent

**CORAM:**

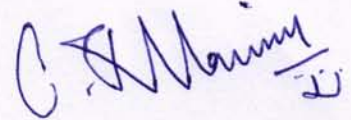
CS C Ramasubramaniam, Presiding Officer  
CS Ashok Kumar Dixit, Member

**Present:**

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

**FINAL ORDER**

1. A Complaint dated 5th June, 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 the Respondent has carelessly, incorrectly and without due care and diligence advised on various non-compliances under the Companies Act and acted in careless manner and failed to verify about the correctness of the facts. The Complainant has further alleged that:
  - i. it is obligatory on the part of the Practising Company Secretary to provide proper advice on suspension & compliance of provisions of the Companies Act, 1956 / Companies Act, 2013. Any provision contained in the AOA which is contrary to the Companies Act, 2013, then by virtue of Section 6 of the Companies Act, 2013 will be invalid and void ab initio as the Companies Act, 2013 will prevail over the AOA.





- ii. It is gross negligence on the Respondent's part as he has not advised properly in this regard. Since, it is a limited company; it must not have any provision relating to suspension of member of the company.
  - iii. The Complainant further stated that this has resulted into deprivation of fundamental rights of his membership of M/s. PCL. None of the provision of the Companies Act, 1956/2013 permit suspension of membership on any ground in case of public / as well as private limited company barring Section 25 / 8 companies under the Companies Act, 1956 / 2013.
3. On the other hand, the Respondent has inter-alia denied all the allegations levied by the Complainant upon him and stated that:
- i. The Respondent is a consultant to the club engaged to provide opinions, views and guidance regarding the conduct of member's 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 opinions, views and guidance.
  - ii. that the scope of providing advisory services to the Club by the Respondent is limited to the matters referred by the Managing Committee of the Club.
  - iii. That the Respondent does not interfere / involves himself in the matters though relating to Company Law unless a reference is made to him by the Managing Committee.
  - iv. that the Complainant has filed the present complaint for challenging the validity of the suspension of the membership of the Complainant.
  - v. that the Respondent was never involved in the process of suspension of memberships and was never consulted by the Club with respect to the suspension of members. Further, the Complainant has already filed a civil suit challenging his suspension and the matter is sub-judice.
  - vi. that the Institute of Company Secretaries of India (ICSI) is not the proper forum for challenging the validity of suspension of members from a limited company.
4. The Director(Discipline) on examination of the complaint, written statement, rejoinder & all the documents on record, vide her prima-facie opinion 27<sup>th</sup> September, 2017 observed that the Respondent is not 'Guilty' of Professional misconduct or other misconduct under the Company Secretaries Act, 1980 . The Director (Discipline) observed that the Complainant has alleged that the Respondent has wrongly advised to M/s. PCL regarding suspension of the Complainant from the Club whereas the Respondent has denied the





allegations and stated that he had no role in the alleged matter. Moreover, the suspension of the Complainant from the Membership of the Club is the decision of the management and not of the Respondent. Further, the Respondent has stated that if M/s. PCL was dissatisfied with his services; they may have filed a complaint against him. Even otherwise, the Respondent is not the compliance officer of the club but a consultant and the Complainant has not substantiated his allegation with any evidence that the Respondent was referred to advice on the suspension of the Complainant from the Club or related provisions thereto. Therefore, the Respondent is *prima-facie* "Not Guilty" of professional misconduct under Item o the Company Secretaries Act, 1980.

5. 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**