THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI/DC: 127/2012

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Date of Decision: 17th January, 2013

Shri Ramhari Devrao Ganage ....Complainant

Vs

Shri Arun Madhukar Deshpande ....Respondent

1. A complaint dated 29th February, 2012 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 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 inter-alia alleged that the Respondent had signed / certified Forms 23AC, 23ACA and 20B of M/s. Automotive Metal Stampings Pvt. Ltd. (AMSPL) for the year ended 31st March 2011, carelessly, incorrectly and without exercising due diligence. The Complainant further stated that he has already brought the facts on record of the ROC by his letter dated 13th February, 2012. The Complainant also stated that the Respondent before signing the said Forms 23AC, 23ACA and 20B had failed to verify as to whether the annual accounts were in fact approved by the Board of Directors and whether the AGM was validly convened and conducted. He 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.

3. The Complainant further stated that the Respondent has certified the said Forms in a premeditated and prejudiced manner with hand in glove with AMSPL 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. The Complainant further stated that the Respondent has failed to examine the statements before certifying the...
said Forms. He further stated that such omissions constitute professional misconduct under the Company Secretaries Act, 1980.

4. 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.

5. The Respondent in his written statement dated 20th March, 2012 inter-alia stated that the complaint filed against him is false and frivolous with the intention to harass him in his professional life. He further stated that he has certified the Forms 23AC, 23ACA, 20B with respect to AMSPL for the financial year ended 31st March, 2011 after examining the various documents provided to him by the company.

The Respondent further stated that the Board of Directors approved the accounts and then those were sent to the statutory auditors for their report thereon. The Respondent further stated that in the case of AMSPL basic information is as follows:-

(i) Board of Directors approved accounts on 27th September, 2011 on urgent basis.
(ii) Auditors Report was issued on 7th October, 2011. Even Addendum to the Directors’ Report was issued on the same date.
(iii) Board of Directors as a matter of abundant precaution again on 9th October, 2011 placed the same account along with auditor’s report. The board did not sign documents on that date. The said meeting was attended by the Complainant.
(iv) The Board of Directors convened the AGM on 27th December, 2011 and members adopted accounts on that date.

The Respondent further stated that the AGM was held on 27th December, 2011 and the AGM held after 6 months does not make it 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 the AGM on or before 30th September, 2011 at a short notice. He further 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.

The Respondent 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 Statutory Auditors' for their Report. In turn the Statutory Auditors issued their Report on 7th October, 2011. The AGM notice draft was already approved in the Board meeting held on 27th
September, 2011. Therefore, the Respondent further stated that 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 27th September, 2011. No Board meeting was held on 7th October, 2011. The Respondent further denied commenting on the date of signatures of the Directors and Auditors. He further stated that the Complainant himself remained absent in the AGM and he had certified the documents attached to 23AC, 23ACA, 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 30th March, 2012 asking him to submit the rejoinder which he submitted vide letter dated 14th April, 2012 wherein he has reiterated the contents of his original 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 EOOGM held on 17th January, 2012.

7. Pursuant to Rule 9 of the Rules, the Director (Discipline) examined the complaint, written statement, rejoinder and other material on record and observed that the Respondent had certified an incomplete Form 23AC carelessly without exercising due diligence and has been grossly negligent in the conduct of his professional duties, hence, the Respondent is prima-facie ‘Guilty’ of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980.

8. The Disciplinary Committee at its meeting held on 30th October, 2012 had considered the prima-facie opinion dated 17th September, 2012 of the Director (Discipline) and the material on record and advised the Director (Discipline) to investigate the matter further.

9. Accordingly, the Director (Discipline) further investigated the matter and continued to hold his prima-facie opinion intact as the Respondent has certified a blank Form 23 AC which was submitted along with the complaint by the Complainant.

10. The Committee at its meeting held on 10th December, 2012 considered the matter and advised that the Respondent be called to appear before the Director (Discipline) for further investigation in the matter. Accordingly, the Respondent vide letter dated 26th December, 2012 was called upon to appear before the Director (Discipline) on 8th January, 2012.

11. Shri Milind B Kasodekar, FCS – 2756 (CP No.1681), the Authorized Representative of the Respondent appeared before the Director (Discipline) and submitted the authority letter dated 7th January, 2013 of the Respondent. The Director (Discipline) sought clarification on
certification of blank Form 23AC by the Respondent in question. The Authorized Representative informed that the Form 23 AC submitted by the Complainant along with the complaint is wrong. He informed that the Respondent has filed duly filled in Form 23 AC with the MCA. The Authorized Representative submitted a copy of the said Form 23AC which was taken on record.

12. The Director (Discipline) formed his revised *prima-facie* opinion dated 8th January, 2013 in which the Director (Discipline) opined 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 of the company and based on the documents supplied to him by the company. The Respondent had exercised due diligence while certifying the said forms of AMSPL and therefore, the Respondent is *prima-facie* not guilty of professional misconduct under the Company Secretaries Act, 1980. Accordingly, the *prima-facie* opinion dated 17th September, 2012 in the matter stands superseded by the revised *prima-facie* opinion.

13. The Disciplinary Committee at its meeting held on 17th January, 2013 considered the *prima-facie* opinion dated 8th January, 2013 of the Director (Discipline); the material on record and agreed with the revised *prima-facie* opinion of the Director (Discipline) 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.

(S Balasubramanian)  
Member

(S K Tareja)  
Member

(B Narasimhan)  
Member

Gopaldkrishna Hegde)  
Member

(Nesar Ahmad)  
Presiding Officer

New Delhi