THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

ICSI/ DC/243/2014

Order reserved on: 4th June 2018
Order issued on: 2nd July 2018

Mr. S. Radhakrishnan

...Complainant

Vs

Ms. Gayathri Pasarakayala, ACS–24428 (CP No. 8947) **.... Respondent**

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Complainant and Respondent appeared in person
Dr S V Ramakrishnan , Advocate appeared on behalf of the Complainant

FINAL ORDER

1. A complaint dated 18th June, 2014 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 ('the Act') 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. S. Radhakrishnan (hereinafter referred to as 'the Complainant') against Ms. Gayathri Pasarakayala, ACS–24428 (CP No. 8947) (hereinafter referred to as 'the Respondent').

2. The Complainant has *inter-alia* alleged that the Respondent has issued three Compliance Certificates dated 12th December, 2013 for the three financial years 2010-11, 2011-12 and 2012-13 addressed to the Members of M/s. Hyderabad Pollution Controls Ltd. (HPCL), which are totally false and misleading. The Complainant has raised vital questions on the constitution of the Board of the company and the validity of the meetings of the company and also genuineness of the records of the company.

3. The Respondent in her written statement dated 30th July, 2014 has *inter-alia* stated as under:-

   (i) that she has been advised to state that the said claim of the Complainant is false as the Complainant does not hold that shareholding.
   (ii) that she has been advised to state that since 29th October, 2010, the Complainant has been absconding from the company after committing serious frauds, criminal acts and

from 15th December, 2011, the Complainant is deemed to have vacated the office of the director effective from 29th October, 2010, hence the claim of the Complainant that he has been acting as a whole-time Director of the company is also a false claim.

(iii) that she has also been advised to state further that on account of the de-facto Complainant's acts of defaming the company and other Directors/Professionals associated with the company; the company had initiated legal action in which Complainant is restrained from making such false claims.

(iv) that the statutory registers pertaining to those years are in place, maintained by the company duly verified by the Respondent and the Compliance Certificates issued accordingly for the Financial Years 2010-11, 2011-12 and 2012-13 cannot be termed as false as claimed by Complainant.

(v) that as per the records of the company, notices were dispatched to all the members. It is beyond comprehension from the allegations of Complainant as to how, the notices have been received by him in some cases and are not received by him in some cases, therefore, the claim of the Complainant are not credible.

(vi) that regarding quorum as cited under Article 40 of the Articles of Associations of the company, ever since number of directors of the company have fallen below the quorum prescribed therein, the said Article had become redundant and impractical to be followed, however since the company's acts are within the permitted statutory provisions, no violation is seem to have been committed, consequently the allegation itself is out of place.

(v) that in the Compliance Certificate for the year 2010-11, date of AGM mentioned as 30th October, 2012 is a typographical error.

(vi) that as per the records, AGM's/Board meetings were held and the certificates in question are issued as per those records.

4. The Complainant in his rejoinder dated 31st August, 2014 to the written statement has reiterated the allegations and *inter-alia* stated that there are 33 vital certified statements purported to be borne out of factual records, books, registers, documentary evidences are false and fabricated, except, one fact that M/s.

Hyderabad Pollution Controls Ltd. is having only 8 (eight) members representing 4 each from the family of the Complainant and 4 from the family of the Managing Director the company. The Complainant has alleged that the Compliance Certificates dated 12th December, 2013 are false and misleading on the following grounds:

(i) that the company never conducted any Board Meeting and AGM for the said three Financial Years 2010-11, 2011-12 and 2012-13 but the Respondent made false statements.

(ii) that in the Director's Report both dated 18th October, 2012 for the years ending on 31st March, 2011 & 31st March, 2012 it was stated that "The Secretarial Compliance Certificate for the year under review (31st March, 2011 & 31st March, 2012) is annexed hereto and forms part of this report".

(iii) that the Compliance Certificates were dated 12th December, 2013 i.e. 14 months post-dated and not in existence at the time of the so called Director's Report.

(iv) that in any case the Annual Returns for all the three years were fabricated and no AGMs and no Board meetings was conducted for these three years.

(v) that it may be observed from the uploaded Annual Returns on the MCA portal that some fabricated dates and notices showing as if some adjourned AGMs were also held at different venue at different dates from the originally fabricated notices uploaded.

(vi) that there is no mention about these so called adjourned AGMs in the Compliance Certificates issued by the Respondent. However, the fact remains that when not even a single AGM was held for the past three years, the question of adjourning such AGMs does not arise.

5. The Disciplinary Committee at its meeting held on 22nd July, 2015 considered the *prima-facie* opinion dated 23rd February, 2015 of the Director (Discipline) wherein the Director (Discipline) in his prima-facie opinion recommended that the matter may be kept in abeyance till Company Petition No. 40 of 2011 is finally decided by the Company Law Board, Chennai Bench and the Complainant be asked to provide a copy of Judgment/order as and when passed by the Company Law Board. The Committee agreed with the *prima-facie* opinion of the Director (Discipline) and decided to keep the matter in abeyance.

6. The Letter dated 28th March 2016 has been received from Joint Secretary to Govt. of India, MCA for early disposal of the case. Accordingly, the matter was placed before the Disciplinary Committee. The Disciplinary Committee after considering the material on record directed Director (Discipline) to form *prima-facie opinion* after examination of all facts based on record and given liberty to both the parties to file documents if any, within 2 weeks

7. The Respondent vide letter dated 15th December, 2016 submitted her written submissions in the matter stating that she has done proper due diligence before issuing Compliance Certificate based on explanation, information and the inspection of records and supporting documents furnished by the company person/management. She has submitted the proofs in details adopted for certification of documents. The Complainant vide letter dated 13th December 2016 has reiterated the allegations and requested to form *prima-facie* opinion in the matter on the baisis of the documents available on record.

8. The Disciplinary Committee in its meeting held on 28th April, 2017 considered and agreed with the the *prima-facie* opinion dated 24th April, 2017 of the Director (Discipline) wherein she is *prima facie* of the opinion that the Respondent *is* "GUILTY" of Professional Misconduct under Item (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 ('the Act') as the Respondent did not exercise due diligence while issuing the Compliance Certificates for M/s Hyderabad Pollution Controls Ltd. for the years 2010-11, 2011-12 & 2012-13. The Director (Discipline) in her *prima-facie* opinion has *inter-alia* observed as under :

   (i) that Respondent in the Compliance Certificate dated 2nd December, 2013 for the financial year ending on 31st March 2012, stated that one of the directors was removed from the Board in accordance with section 284, is a wrong statement.

   (ii) that the Annual returns of the company uploaded in the MCA reflect that some Annual General Meetings had been adjourned. But the Respondent has not mentioned about Adjourned Annual General meetings in the compliance certificates though the Respondent in her written statement admitted that as per records of the company, AGM was duly conducted and validly held on 27th September, 2012 and adjourned AGM on 25th October, 2012, she ought to

have mentioned the same in her compliance report and should have been more prudent in reporting.

(iii) Article 40 of the Articles Of Association of the company provides that, the quorum for the meeting of the Board shall be one-third of its total strength (any fraction rounded off as one) or five directors, whichever is higher. However, attendance sheet and minutes reflect that three directors were present at the meetings. Hence, the Respondent failed to report that the Board meetings were held without a valid quorum as mandated by the Articles of the Company.

(iv) the Respondent in Written Statement stated that "I am advised to state" shows she acted on the 'advice' of management and not acted as an independent professional who is supposed to verify the documentary evidences as available from the Statutory Books, Registers, Records, Returns etc.

9. The Complainant vide letter dated 25th April 2016 has forwarded a letter dated 30.12.2016 addressed to the Respondent by the Registrar of Companies, Hyderabad in relation to Inspection under Section 206(1) of Companies Act, 2013 in the matter of Hyderabad Pollution Control Ltd. On the basis of the inspection, the Registrar of Companies vide its letter dated 30th December 2016 sought clarificatins from the Respondent on 30 issues w.r.t the Compliance Certificates issued by the Respondent for the year 2010-11, 2011-12 & 2012-13 to M/s Hyderabad Pollution Control Ltd.

10. The Respondent has submitted her written statement to the *prima-facie* opinion of the Director (Discipline) dated 7th August, 2017 wherein she has not submitted any clarification on the charges levelled against her.

11. The Respondent vide letter dated 15th November 2017 has submitted Order dated 26th October 2017 of Hon'ble NCLT, Hyderabad Bench in the Company Petition No. 40/2011 wherein Hon'ble NCLT is of the considered view that affairs of M/s Hyderabad Pollution Control Ltd are being conducted in the manner prejudicial to and opperesive especially to the Complainant.

12. The Complainant in his rejoinder dated 5th September, 2017 has *inter-alia* stated that the observations of Registrar of the Companies made in the notice dated 30th December 2016 addressed to the Respondent are very serious in nature and majority of which falls under Section 447, 448 & 449 of the Companies Act, 2013 and the findings of the Registrar of

Companies confirms that the Respondent has made false certifications in three Compliance Certificates issued to the company.

13. The Complainant along with Dr. S V Ramakrishnan,Advocate and the Respondent in person appeared before the Disciplinary Committee on 4th June, 2018. At the outset before the commencement of the hearing itself, the Respondent pleaded guilty under Rule 18 Clause (7) of the Rules and admitted the inadequacies on her act with regard to not being diligent to the required levels.The Complainant also made some submissions and specifically drawn the attention of Disciplinary Committee to the notice of Registrar of Companies dated 30th December, 2016 to the Respondent whereby some 30 areas of non-compliance/ inadequacies were specifically mentioned against the Respondent surfaced during the inspection. The Respondent draw the attention of the Committee that this case happens in the very early part of her career and while admitting that she is guilty of not complying with the due standards, she requested the Committee to take a lenient view with the commitment to exercise due diligence as per requirement in all other cases in future to ensure that such a repeat situation does not arise.

14. The Disciplinary Committee after considering the material on record and the nature of issues involved and in totality of the circumstances of this case and in light of the Respondent pleaded guilty, is of the opinion that the Respondent is of guilty of professiona; mmisconduct under item (7) of part 1 of the second schedule to the Act which reads as under:-

"A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he-

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."

Accordingly, the Discilplinary Committee passes the following order against the under Section 21B(3) of the Company Secretaries Act,1980 read with under Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007: -

(i) fine of Rs. 35000/- payable within 30 days after expiry of 30 days of issue of this final order; and

(ii) removal of name of the Respondent from the Register of members of the Institute for a period of 60 days after expiry of 30 days of issue of this final order; and

In the event of the Respondent not paying the sum of Rs. 35,000/- within the stipulated time, name of the Respondent be further removed from the Register of members of the Institute for an another period of 30 days beyond the 60 days as already ordered.

15. At the instance of the Respondent, the punishment was also announced to her to save her from the effort and cost of making yet another visit to Delhi.

Santosh Kumar Agrawala
Member

Meenakshi Datta Ghosh
Member

Nalin Kohli
Presiding Officer