

**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: 15th May 2019

Order issued on : 27 JUN 2019

Shri S. Radhakrishnan

Vs

...Complainant

Ms. Gayathri Pasarakayala, ACS-24428 (CP No. 8947)

.... Respondent

CORAM:

Shri Ranjeet Pandey, Presiding Officer
Shri Nagendra D Rao, Member
Shri B Narasimhan, Member
Mrs. Meenakshi Datta Ghosh, Member

Present:

Mrs. Meenakshi Gupta, Director (Discipline)
Shri Vikash Kumar Srivastava, Deputy Director
Dr. S V Ramakrishnan, Advocate on behalf of the Complainant
Shri Saurabh Jain, Advocate on behalf of the Respondent

ORDER

1. The Appellate Authority vide its Order dated 4th April, 2019 in the Appeal filed by the Respondent against the order of the Disciplinary Committee dated 4th June, 2018 (issued on 2nd July, 2018) remanded the complaint of Shri S Radhakrishnan, Complainant to the Disciplinary Committee of the ICSI with a direction to hear both the parties afresh on account of guilt as well as in respect of quantum of punishment in accordance with the applicable provisions of the Act and the Rules and pass a fresh order in the matter within 60 days from the date of receipt of this Order.
2. Accordingly, the Disciplinary Committee heard the matter afresh. In pursuance of the Order dated 4th April, 2019 of the Appellate Authority



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parties were called vide notice dated 11th April, 2019 to appear before the Disciplinary Committee on 24th April, 2019.

3. On the basis of material on record, the Disciplinary Committee noted the following :-

3.1 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 Shri S. Radhakrishnan (hereinafter referred to as 'the Complainant') against Ms. Gayathri Pasarakayala, ACS-24428 (CP No. 8947) (hereinafter referred to as 'the Respondent').

3.2 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. (hereinafter referred to as 'the Company'), 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.

3.3 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 as mentioned by him.

(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



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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.
- (vii) that in the Compliance Certificate for the year 2010-11, date of AGM mentioned as 30th October, 2012 is a typographical error.
- (viii) that as per the records, AGM's/Board meetings were held and the certificates in question are issued as per those records.

3.4 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 of 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 nor held any AGM for the said three Financial Years 2010-11, 2011-12 and 2012-13 and therefore, the Respondent has 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".



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- (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, since as a shareholder and a Director, he has not received any notice of these meetings.
- (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.
- 3.5 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.
- 3.6 Later a letter dated 28th March, 2016 was received from Joint Secretary to Govt. of India, MCA for early disposal of the case. Accordingly, the matter was once again placed before the Disciplinary Committee. The Disciplinary Committee after considering the material on record directed the 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.
- 3.7 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 basis of the documents available on record.

3.8 The Disciplinary Committee in its meeting held on 28th April, 2017 considered and agreed with the *prima-facie* opinion dated 24th April, 2017 of the Director (Discipline) wherein Director (Discipline) 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 the *prima-facie* opinion has *inter-alia* observed as under :

- (i) that Respondent in the Compliance Certificate dated 12th December, 2013 for the Financial Year ending on 31st March 2012, stated that one of the director was removed from the Board in accordance with section 284 of Companies Act, 1956, 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) That the Respondent in her Written Statement has stated that "I am advised to state", which only 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.

3.9 The Complainant vide letter dated 25th April, 2017 has forwarded a letter dated 30th December, 2016 addressed to the Respondent by the Registrar of Companies, Hyderabad in relation to Inspection



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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 clarifications 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.

- 3.10 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.
- 3.11 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 oppresive especially to the Complainant.
- 3.12 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.
- 3.13 The Complainant along with Dr. S V Ramakrishnan, Advocate and the Respondent in person appeared before the Disciplinary Committee on 4th June, 2018. 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 Respondent drew 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 would not arise.
- 3.14 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 and requested the Committee for a lenient view in the matter, is of the opinion that the Respondent is guilty of professional



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misconduct under item (7) of Part I of the Second Schedule to the Act.

3.15 Accordingly, at the volition of the Respondent to save her from the effort and cost of making another visit to Delhi, the Disciplinary Committee passed the following order against her under Section 21B(3) of the Act read with under Rule 19 (1) of the Rules:-

- (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.

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."

3.16 Despite pleading guilty and on her own volition seeking Orders from the Disciplinary Committee, to avoid travelling to Delhi for being heard on the quantum of punishment. The Respondent preferred an appeal before the Appellate Authority against the Order dated 2nd July, 2018 passed by the Disciplinary Committee under sub-Section (3) of Section 21B of the Company Secretaries Act, 1980 read with rule 19 (1) of the Rules.

3.17 The Appellate Authority after hearing the parties and also perused the records available in this matter observed that the final hearing of this matter took place and completed on 4th June, 2018 but the final order was issued on 2nd July, 2018 by the Disciplinary Committee. The said Order itself contains on the top that order reserved on: 4th June, 2018, order issued on: 2nd July, 2018. Additionally, Para (15) of order dated 2nd July, 2018 itself speaks as hereunder:-

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

4. The Appellate Authority after going through the provisions of the Act and the Rules, particularly sub-section (3) of Section 21B of the Act and Rule 19 (1) of the Rules, was of the view that the Disciplinary Committee has not followed the due procedure as prescribed statutorily as no opportunity of being heard was provided to Respondent on the



question of quantum of punishment irrespective of her admission of guilt conveyed *vide* her aforementioned letter dated 4th June, 2017(sic). Further, the provisions of the 'Act' as well as 'Rules' do not empower the Disciplinary Committee to dispense with the mandatory requirements of providing an opportunity of being heard on account of quantum of punishment on the ground of saving effort and cost of the respondent in the matter of Disciplinary proceedings.

5. The Appellate Authority after considering the facts and circumstances of the case remanded the complaint back to the Disciplinary Committee of the Institute of Company Secretaries of India with the directions to hear both the parties afresh on account of guilt as well as in respect of quantum of punishment in accordance with the applicable provisions of the Act and the Rules and pass a fresh order in the matter within 60 days from the date of receipt of this Order. Accordingly, the Impugned Order was set aside. Interim orders, if any stand vacated.
6. In pursuance of the direction of the Appellate Authority, the notices were issued on 11th April, 2019 to both the parties for appearing before the Disciplinary Committee for hearing on 24th April, 2019. The Complainant appeared on 24th April, 2019 with his Advocate Dr. S V Ramakrishna. Shri Saurabh Jain, Advocate appeared on the behalf of the Respondent. Advocate of the Respondent *inter-alia* has raised preliminary objection regarding the ongoing proceedings before the Disciplinary Committee in the matter on the ground that the Complainant has filed petition before NCLT wherein the issue raised in the compliant is under adjudication. He has further submitted that arguing counsel for Respondent is unable to appear before the Disciplinary Committee due to demise of a member in his family and requested for adjournment. At the request of the Advocate of the Respondent the Disciplinary Committee adjourned the hearing. The Disciplinary Committee directed Respondent to submit his submissions in writing including his objections, if any, within 10 days with a copy to the Complainant. Thereafter, the Complainant may submit rejoinder to the submissions of the Respondent within 7 days on receipt of submissions of the Respondent with a copy to the Respondent.
7. Written submissions of the Respondent dated NIL received on 20th April, 2019 wherein the Respondent has raised the following preliminary objections:
 - (i) That the Complainant lacks locus to file the complaint before the Disciplinary committee.
 - (ii) The Disciplinary Committee while passing the Order dated 2nd July, 2018 seem to have relied on the Order dated 26th



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October, 2017 of NCLT Hyderabad in CP 40/2011 against which an appeal has been preferred before NCLAT.

- (iii) That the complainant has filed a petition No.225/241/HDV/2019 before NCLT, Hyderabad on the very subject matter of the Complaint in which the Respondent has also been made a party. When comprehensive issues are ceased by a judicial forum higher than the Disciplinary Committee, the Disciplinary Committee should refrain from doing anything in the Complaint.
- (iv) The Disciplinary Committee in its Order dated 2nd July 2018 has taken note of the notice issued by ROC Hyderabad after conducting inspection of M/s. Hyderabad Pollution Control Ltd. under Section 206 of the Companies Act 2013 in violation of principles of natural justice. The proceedings of ROC under section 206 is under challenge in the Writ petition No. 10201 of 2017.
- (v) Since there are several cases before various authorities, the Disciplinary Committee should not proceed against professional misconduct of the respondent as per the complaint till all the other cases are settled.
8. The Complainant filed his rejoinder to the written submissions *vide* letter dated 8th May, 2019 wherein he has rebutted the preliminary objections raised by the Respondent. The Complainant in his rejoinder has *inter-alia* stated as under:-

- (i) CP 40/2011 is a case by shareholders of the company and against the company between Company and its management and the Respondent is nowhere in the Picture. She has nothing to do with the outcome of the case as she is neither director nor share holder of the Company. The Order dated 26th October, 2017 passed by NCLT declaring and directing the Respondent in this Company Petition to maintain 50:50 % in the company. This order has nothing to do with the professional misconduct which is subject handled by Disciplinary committee.
- (ii) Civil Suit in OS No. 896 of 2015 before VIII Addl. Dist. Judge, RR Distt, and Hyderabad is a false case filed by the management of the Company and not by the Respondent in the Year 2015 i.e. after 4 years of filing of CP No. 40/2011 before CLB, Chennai. CLB passed order dated 18.5.2011 to maintain status quo regarding the share holding pattern as well as the capital of the company until further order. The suit seeking cancellation of agreement dated 08.04.2010 and Share Certificate is in violation of and utter contempt of CLB order.



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(iii) Company Petition No. 225/242/HDB/2019 before NCLT Hyderabad filed by the Complainant against the Respondent is pending adjudication. One of the reliefs sought in the petition is to declare the fabricated and falsely certified FORM 66 filed along with 3 years Compliance Certificates all issued on 12.12.2013 for the years 2010-11, 2011-12 and 2012-13 as null and void *ab initio*. The prayer before Disciplinary Committee is different and the outcome of Company Petition cannot influence the decision of Disciplinary Committee. Fabrication and false certification of documents are covered u/sec. 628 of the Companies Act, 1956 and 447 and 448 of the Companies Act, 2013 which are independent criminal proceedings.

9. Notice dated 29th April, 2019 were issued to the parties for appearing before Disciplinary Committee on 15th May, 2019 for hearing. The Disciplinary Committee after hearing the arguments/submissions of the Complainant and the Respondent asked the Respondent to submit reply on the merit within 10 days from the date of hearing against the allegations made in the *prima-facie* opinion of the Director (Discipline) dated 24th April, 2017. The Disciplinary Committee also made it known to both the parties, that based on the submissions to be made by the respondent, the Disciplinary Committee will frame its opinion in the matter and if found guilty, an opportunity will be given to the Respondent on the quantum of punishment before Final Orders are passed by the Committee.
10. A written submission dated 27th May, 2019 on the behalf of the Respondent through Shri K Rajendra & Saurabh Jain, Advocates of the Respondent was received where in the Respondent has reiterated the preliminary objections already made. The Respondent alleged that the Disciplinary Committee initially decided to keep the matter in abeyance until disposal of the CP 40/2011. However, due to pressure exerted by the complainant through MCA, the *prima-facie* opinion has been taken up for expeditious disposal of the matter. The Respondent has submitted that the Complainant has placed on record the Order dated 26th October, 2017 of NCLT Hyderabad in CP No. 40 of 2011 and Disciplinary Committee seem to have relied on the said order although the Respondent was not put on notice of the said order in violation of principles of natural justice.
11. The Respondent has denied the allegations levelled against her in the *prima-facie* opinion of the Director (Discipline) and submitted as under:

11.1 On the matter for Quorum the Articles provides for the following:



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"40. The quorum for a meeting of Board shall be one third of its total strength (any fraction being rounded off as one) or five Directors whichever is higher"

- (i) Clause 40 of the Articles of Association never mandated a single Quorum but it has prescribed a multiple quorums suiting the requirements of the organisation.
- (ii) Quorum of 5 directors shall apply only when the total number of directors are more than 5.
- (iii) The quorum of 5 directors should not be confused with minimum directors of the company.
- (iv) If the number of directors in the company are reduced below the minimum directors, the company would be required to appoint the required number of minimum directors in the General meeting.
- (v) If conditional higher Quorum is prescribed it can always go back to feasible quorum when such higher quorum cannot be achieved.
- (vi) As the Company is limited Company where minimum mandatory directors are 3 and alternate quorum is available as 1/3 of total directors. Quorum of this company is not less than 3 directors. The Respondent has raised serious objections with regard to citation made by the Complainant on Amrit Kaur Puri Vs Kapurthala Flour, Oil and General Mills 1982 SCC Online P&H518(1984)56 COMP CAS194 as the said citation does not apply to the case in hand for the simple reason that the facts and circumstances of the case are entirely different."

11.2 Regarding mentioning of Section 284 in place of Section 283(1)(g) of the Companies Act, 1956, it is submitted that the time of issuance of the Compliance Certificate., the Respondent was a young professional and could not appreciate enough the blurred difference between Section 283(1)(g) and Section 284. It was a minor unintentional variation in reporting does not make any difference as it caused no prejudice to anyone.

11.3 Regarding date of Annual General meeting, it is submitted that the Respondent as a young professional was keen in reporting the date of Annual General Meeting but inadvertently mentioned about adjournment meeting but there was strict reporting about the date of Annual General Meeting.

11.4 Regarding statement of the Respondent that she issued the certificates on the advice of the management and Managing Director, it is submitted that being a practicing professional she is concerned about the things that needs a definite explanation but otherwise in another matter the respondent is not expected to act as Blood Hound to



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probe and dig with a suspicion and thereby presuming that there was malfeasance or conspiracy behind or that the same was brewing.

- 11.5 There are minor inadvertent errors may have crept in the Compliance Certificate for the year 2011-12 and such errors are purely inadvertent but not as a part of conspiracy or cause /facilitate undue favour to one share holder at the cost of another shareholders or much less at the insistence/influence of the management.
12. Having heard the parties at length, considering their written submissions and perused the records in the matter, the Disciplinary Committee observed that Respondent has raised preliminary objection that the Complainant has no locus to file the complaint, when there are several other cases which are filed before different Courts on the same matter is not tenable. The Disciplinary Committee observed that the disciplinary proceedings against the member of the Institute of Company Secretaries of India is governed by the provisions of the Company Secretaries Act, 1980 read with the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct Cases) Rules, 2007, under Section 21 of the Act, provides as under :

“[21. Disciplinary Directorate

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct

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13. The Disciplinary Committee is of the considered view that Section 21 does not put any qualification as to who can file a complaint against the member of the Institute. According to provisions of the 'Act' any person / body can file a complaint against the member of the Institute for professional or other misconduct. Hence, the contention of the Respondent that the Complainant has no *locus standi* for filing the complaint is not tenable.
14. The Disciplinary Committee observed that the contention of the Respondent that the complainant has filed a petition before NCLT, Hyderabad on the very subject matter of the Complaint in which the Respondent has also been made a party is placed before a judicial forum higher than the Disciplinary Committee, therefore the Disciplinary Committee should refrain from proceeding in the matter, is



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misconceived. The matter before Disciplinary Committee is against a member of the Institute for professional or other misconduct for which jurisdiction under the 'Act' lies exclusively with the Disciplinary committee or the Board of Discipline as the case may be.

15. Reference was made to Company Petition No. 225/242/HDB/2018 before NCLT Hyderabad filed by the Complainant wherein the Respondent has also made a party. One of the reliefs sought in the petition is to declare the fabricated and falsely certified FORM 66 filed along with 3 years Compliance Certificates issued on 12.12.2013 for the years 2010-11, 2011-12 and 2012-13 by the Respondent as null and void abinitio.
16. However, the prayer before Disciplinary Committee is to decide whether the Respondent has performed her duty diligently while issuing the Compliance Certificate or not.
17. Further, Director (Discipline) in the *prima-facie* opinion dated 24th April 2017 has clearly mentioned that the proceedings of the Disciplinary Committee is limited only to the specific issues of alleged lack of due diligence by the Respondent while certifying and issuing the Compliance Certificates and in the process carrying out due diligence of the affairs of the company. Cases of fabrication and false certification of documents are covered under Section 628 of the Companies Act, 1956 and 447 and 448 of the Companies Act, 2013 which are independent criminal proceedings.

Further, Disciplinary Committee also put reliance on the Judgement (1996) 6 SCC 417 (**State of Rajasthan v/s. B.K Meena**), where in it was held that the criminal proceeding and disciplinary proceedings are independent proceedings.

"We must make it clear that we have not cast, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him.

For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. "



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The aforesaid judgment of the Hon'ble Supreme Court of India was relied on by the Hon'ble Supreme Court of India in another case **(1999)3 SCC 679 Capt. M. Paul Anthony v/s. Bharat Gold Mines Ltd** wherein it was held that the Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

18. In view of the aforesaid judgement of the Hon'ble Supreme Court and keeping in view the provisions of the Act and the Rules made there under, the contention of the Respondent that when comprehensive issues are ceased by a judicial forum higher than the Disciplinary Committee, should refrain from proceeding further in the Complaint is devoid of any merit.
19. The Disciplinary Committee observed show cause notice dated 30th December 2016 of ROC has come on record subsequent to formation of *prima-facie* opinion dated 24th April, 2017 which as per the statement of the Advocate of the Respondent, the Respondent has not preferred to reply to the showcase notice till the date of hearing on 15th May, 2019. The opinion of Director (Discipline) is independent of the issues raised in the show cause notice.
20. The contention of the Respondent that the matter has been taken up for expeditious disposal is baseless allegation on the functioning of Disciplinary Committee which is independent adjudicating forum constituted under the Company Secretaries Act, 1980. It is clear from the record that on the request of the Complainant, the decision to give direction to the Director (Discipline) for formation of *prima-facie* opinion was taken by the Disciplinary Committee after considering the matter in its meeting held on 9th July, 2016, 27th July, 2016 and after hearing the parties on 7th October, 2016.
21. The existence of Order dated 26th October, 2017 in CP No. 40/2011 which was filed prior to issuance of the Compliance Certificate has no bearing on the instant complaint as it relates to dispute between the management of the company and its shareholders.
22. In the submission dated 27th May, 2019, the Respondent has justified that Board meeting with 3 Directors constitutes valid meeting in terms of Article 40 of Articles of Association which however provides that

"40 .The quorum for a meeting of Board shall be one third of its total strength (any fraction being rounded off as one) or five Directors whichever is higher"



The submissions made on the matter are incorrect and therefore does not merit consideration.

23. The Respondent in her written statement dated 30th July 2014 has stated that ever since number of Directors of the Company have fallen below the quorum prescribed in Article 40, the said Article had become redundant and impractical to be followed. However, since the quorum of the Board under Companies Act are within the permitted statutory provisions, no violation is seen to have been committed.
24. The Respondent was aware of the fact that the quorum as per the Article 40 is "5" and made an incorrect presumption to suit her client that the article has become redundant and impractical to follow and therefore, conduct of Board meeting with 3 directors is justified. The Disciplinary Committee is of the considered view that there is no ambiguity in Article 40 of the Articles of Association regarding quorum and minimum number of directors required to conduct Board Meeting is 5 only. The interpretation of Article 40 as advanced by the Respondent is not correct and misleading.
25. The submission of the Respondent that at the time of issuance of the Compliance Certificate, the Respondent was a young professional therefore, could not appreciate enough the blurred difference between Section 283(1)(g) and Section 284 cannot be accepted from a qualified Company Secretary even at the early stage of professional career.
26. Regarding date of Annual General meeting, it is submitted that the Respondent as a young professional was keen in reporting the date of Annual General Meeting but inadvertently mentioned about adjournment meeting but there was strict reporting about the date of Annual General Meeting. An inadvertent error of the nature which leads to misstatement is not expected from a member of the Institute who is issuing the Compliance Certificate.
27. Further statement of the Respondent in Written Statement that "I am advised to state" shows she acted on the 'advice' of the 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.
28. In view of paras 12 to 27 above, the Disciplinary Committee after considering all the material available on record, the written and oral submissions of the parties and in totality of the facts and circumstances of the case and the arguments adduced before it by both the parties, is of the opinion that Respondent is "Guilty" of professional misconduct under Item (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980 for not exercising due diligence while issuing

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Divya Pandey



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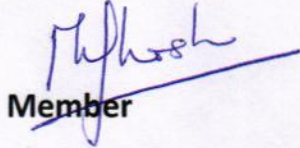
Divya Pandey

Compliance Certificate for M/s Hyderabad Pollution Controls Ltd. for the years 2010-11, 2011-12 & 2012-13.

29. The Disciplinary Committee further decided to afford an opportunity of being heard to the Respondent before passing any order under Section 21B (3) of the Act in terms of sub-rule (1) of Rule 19 of the 'Rules'.
30. The Disciplinary Committee further advised Director (Discipline) to make an application before the Appellate Authority for seeking extension of further 60 days to enable the Disciplinary Committee to adjudicate the matter in accordance with the provisions of the 'Act' and the Rules made there under.



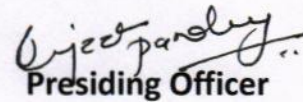
Member



Member



Member



Presiding Officer