

APPELLATE AUTHORITY
(Constituted under The Company Secretaries Act, 1980)

Appeal No. 03/ICSI/2012

T.P. Sivadas Appellant
(through Shri Govind H Bharathan, Sr. Adv.
with Shri S. Chandrasekaran, FCS
& Shri Sanand Ramakrishnan,
Shri Rajeev Mishra, Advocates)

Vs.

The Institute of Company Secretaries
Of India and Another Respondent
(through Dr. K.S. Bhati, Shri Sarat Chandra, Advocates)

CORAM:

HON'BLE THE CHAIRPERSON
HON'BLE MR. RAKESH CHANDRA, MEMBER
HON'BLE MR. ASHOK HALDIA, MEMBER
HON'BLE MR. G.GEHANI, MEMBER
HON'BLE MR. PAVAN KUMAR VIJAY, MEMBER

Date of hearing: March 24, 2012.

Date of judgment: October 15, 2012.

ORDER

(per S.N.Dhingra, Chairperson, Rakesh Chandra, Ashok Haldia, G.Gehnai, Members)

This appeal has been preferred by the appellant against the order dated 5th January, 2012 of the Disciplinary Committee of the Institute of Companies Secretaries of India whereby the Disciplinary Committee held the appellant guilty of professional misconduct under clause (7) of Part I of Second Schedule of the Companies Secretaries Act, 1980 on the ground that the appellant did not perform his duties of Company Secretary with due diligence. As a punishment, the name of the appellant was directed to be removed from the register of members for a period of 270 days.

2. The complaint was filed on 4.11.2010 against the appellant by the complainant Mr. V.P. Abdul Kareem who was a Director and shareholder of M/s. Glosoft Technologies (P) Ltd. In his complaint, the complainant had stated that he was holding 50% equity shares of Glosoft while other 50% was held by Mr. Mehroof Manalody. Mr. Mehroof was Managing Director and he was Chairman. He was a resident of Dubai. He had invested money in this company at the instance of Mr.

Mehroof as Mr. Mehroof had problems with other shareholders sometimes in the year 2004. All other shareholders left the company and he and Mr. Mehroof were the only two shareholders and only two Directors of the Company. In the year 2009, he came to India for actively involving himself with the affairs of the company. He found lot of irregularities and found that the Company Secretary was mixed up with Mr. Mehroof. Mr. Mehroof also felt uncomfortable on his coming to India and getting involved into the business of the company and exercising his rights. He alleged that Mr. Mehroof and the Appellant, who was the practicing Company Secretary of the Company, both colluded against him and fabricated various documents. The appellant did not perform his professional duty and committed professional misconduct. He gave following instances of the collusion between Mr. Mehroof and the appellant:-

"a) Form No. 23AC for the year ended on 31.3.2008 was shown as approved at a Board Meeting held on 25.3.2010. He had never attended the Board Meeting of the Company on 25.3.2010. Mr. T.P. Sivadas had certified this Form No. 23AC without making any enquiry as to its genuineness especially when the date of the AGM was shown as 30.9.2008 and the accounts were approved on 25.3.2010. Though the Notice of AGM was attached along with Form No. 23AC, no notice of the adjourned Annual General Meeting in which the accounts could have been approved by the shareholders, was attached along with Form No. 23AC. An ordinary prudent person would have enquired into the genuineness of any document before signing the same. A professional should have taken more care and caution before attesting any document. This was a clear case of negligence and dereliction of duty on the part of Mr. T.P. Sivadas.

b) Mr. Mehroof Manalody, with the connivance of Mr. T.P. Sivadas filed a Form No. 32 on 31.7.2010, purporting to show that Mrs. Vaheeda Kizhakke Peerathil (wife of Mr. Mehroof Manalody) had been appointed as an additional Director of the Company on 30.9.2009. On 30.9.2009 there were only two directors namely Mr. Mehroof Manalody (Managing Director) and the complainant (Chairman). The extract of the resolution shows that the meeting was held at 10.30 A.M. at Calicut on 30.9.2009. I was not aware of any such meeting, nor was such meeting held on such date. There were no Minutes of the meeting signed by me, as the Chairman of the Company. Surprisingly, this Form was also certified by Mr. T.P. Sivadas. This Form was filed on 31.7.2010, after a lapse of more than eight months from the date of

the purported appointment. This is a clear case which shows that Mr. T.P. Sivadas had colluded with Mr. Mehroof Manalody, in an illegal act, knowing it to be illegal, false and fabricated.

- c) On 30.9.2009, Mrs. Vaheeda K.P. was not holding a Director Identification Number (DIN). Rule 3 of the Companies (Director Identification Number) Rules, 2006 clearly specifies that every person indenting to be appointed as a Director of the Company shall hold a valid DIN at the time of appointment. Mrs. Vaheeda K.P. obtained a DIN only on 30.7.2010 and immediately thereafter a Form No. 32 was filed on 31.7.2010. This clearly shows that the document, pertaining to the appointment of Mrs. Vaheeda K.P. as a Director of the Company was fabricated and a professional like Mr. T.P. Sivadas did not feel any shame to be a party to such a most irregular, illegal, falsified and unauthorized activity, presumably for monetary gain.
- d) Again a Form No. 2 was filed showing Allotment of 50 equity shares to Mrs. Vaheeda K.P. w/o Mr. Mehroof Manalody on 30.9.2009. As stated earlier, there was no such meeting on 30.9.2009 and the document pertaining to the allotment of shares was fabricated with the connivance of Mr. T.P. Sivadas.
- e) The Company has filed Form No. 20B in respect of the AGM held on 30.9.2009. The registered Office of the company is situated at Chennai. Therefore, the AGM should be and would have been held at Chennai on 30.9.2009. The Board Meeting for the appointment of Mrs. Vaheeda K.P., and for allotment of 50 shares to her was shown as held on 30.9.2009 at 10.30 A.M. at Calicut. While the Company has only two Directors and two Shareholders (who are the same persons), it is humanly impossible to have two meetings on the same day at two different locations being a distance of about 600 kilometers apart. Strangely, all the forms pertaining to these meetings were certified by Mr. T.P. Sivadas. It may be possible that in the lure of money, he might have lost his commonsense, prudence, ideology and professional commitment of being a member of a prestigious institute."

3. On receipt of information, the Director (Discipline) of the Institute sent a letter to the appellant seeking his response by way of written statement. The appellant instead of giving clear cut response to the allegations made by the complainant made counter allegations that the complainant had a grudge against him and had filed the complaint because Mr. Mehroof had engaged him to represent him before Company Law Board. He also denied that he had indulged in any collusion with Mr. Mehroof. He asserted that he had performed his duties with due diligence. He took another plea that the proceedings against him should be stayed as

the matter was sub judice since the complainant had filed a petition before Company Law Board and had also filed a criminal complaint against him.

4. The Director (Discipline) formed a prima facie opinion that appellant was guilty of professional misconduct and sent it to the Disciplinary Committee for taking appropriate action. The prima facie opinion formed by the Director (Discipline) was placed before the Disciplinary Committee and the Disciplinary Committee considered it a fit case for initiation of disciplinary proceedings. The appellant was sent a copy of the prima facie opinion and was asked to respond. The appellant sought extension of time for his response to the Disciplinary Committee which was allowed.

5. The Committee fixed the matter for hearing at Chennai on 20th August, 2011. The appellant did not appear on 20.8.2011 and sent his authorized representative Shri S. Eshwar. Shri Eshwar informed the committee that the appellant was not able to come as he had met with some accident and sought adjournment. Since the Disciplinary Committee had specially moved to Chennai to conduct the proceedings and complainant was also summoned to Chennai, the adjournment was granted subject to cost and this was agreed by the representative of the appellant.

6. The next hearing was fixed on 19th September, 2011 when both the appellant and complainant appeared and made their submissions. The matter was again heard on 3rd October, 2011 and the hearing was concluded on that day. Thereafter, the appellant was heard on question of punishment on and a composite order was passed by the Committee on 5th January, 2012.

7. The complainant had made five specific allegations against the respondent. The respondent had not categorically denied some of the facts and had given vague answers.

8. It is not disputed that form no. 23AC for the financial year ending on 31st March, 2008 was shown approved at a board meeting held on 25th March, 2010 and this was certified by the appellant. The allegation of the complainant is that he never attended board meeting of 25th March, 2010 nor the accounts were approved at alleged board meeting. The appellant did not make inquiry about the genuineness of the proceedings of board meeting held on 25th March, 2010 or of the AGM proceedings shown to be held on 30th September, 2008. The documents in respect of the alleged board meeting and AGM were forged.

9. A perusal of the hand written minutes of AGM and Board meeting available on record would show that these meetings are shown to have taken place at

Registered/Admin. Office. The Company was having its Registered Office at Chennai and Admn. Office 600 kms. away at Kozhikode in Kerala. The meetings could not have taken place at two places i.e. at Registered Office as well as Admn. Office. A meeting of the board or AGM could have taken place either at Chennai or at Kozhikode, Kerala. The date of one meeting is shown as 3.4.2000 instead of 2009. The resolution passed at the meeting makes no sense and reads as under :-

“Resolved that the audited balance sheet as on 31.3.2008 and P/L account approved be Board of Directors at their meeting held on 25.3.2010. The resolution was carried unanimously.”

The above resolution itself is incomplete and does not show what was carried, whether the accounts were approved or disapproved.

10. The accounts for the financial year ending 31st March, 2008 were filed by the Appellant who was the practicing Company Secretary of the Company, with the authorities in form 23AC after March, 2010. As per Companies Act, section 220, a company is supposed to file balance sheet and profit & loss account as approved at AGM with the Registrar within 30 days from the date on which the balance sheet and Profit & Loss accounts were laid before the AGM and in case the AGM is not held for any reason, they are to be filed with the Registrar within 30 days from the latest date on or before which AGM should have been held. It is obvious that the accounts for the financial year 2007-08 were to be laid before the AGM within the year 2008 and if for any reason AGM was not held, the accounts were to be filed within 30 days of the latest date by which AGM could have been held. An Annual General Meeting is to be held within one year of the last AGM or at the most within 15 months of the last AGM as per provisions of the Companies Act. A Company Secretary is a professional, specially trained in Company Law and is engaged by company to advise it on compliance of the provisions of the Companies Act. It is not the case of the appellant that he had advised filing of the balance sheet and Profit & Loss Account dated 31st March, 2008 within the period prescribed by law.

11. The second allegation is about filing of form no. 32 by the appellant on 31.7.2010 purporting to show Mrs. Vaheeda K.P., wife of Mr. Mehroof having been appointed as Additional Director of Company on 30.9.2009. It is an undisputed fact that Vaheeda K.P. had no DIN (Director Identification Number) on 30th September, 2009. She had obtained DIN on 30th July, 2010. The provisions of Companies Act (section 266A to 266G) make it abundantly clear that after the amendment of Companies Act in 2006, nobody could be appointed as a Director in a company

without first obtaining DIN. The law requires that when a person is intended to be appointed as a Director, he should first apply for allotment of DIN and only after allotment of DIN, he can be appointed as a Director. It is hoped that the appellant, a practicing Company Secretary, was aware of Companies Act. However, he had shown appointment of Mrs. Vaheeda K.P. as Director from 30th September, 2009 when she was not holding DIN and she could not have been appointed as a Director. Any resolution passed by the Board contrary to the provisions of the law is non est. This would have been known to the appellant. The Appellant's act of filing form no. 32 in respect of Mrs. Vaheeda K.P.'s appointment as additional director w.e.f. 30th September, 2009 despite her not having obtained DIN on 30.9.2009 only shows connivance of the appellant with Mr. Mehroof in showing appointment of his wife as Additional Director from a back date. The minutes of the meeting of 30th September, 2009 of the Board of Directors (photo copies of which are placed on record) again are hand written. The meeting is stated to have been held at Registered/Admn. Office i.e. at two places. In this meeting, it is also allegedly resolved that Mrs. Vaheeda K.P. be allotted 50 number of equity shares and be appointed as Additional Director. AGM of 30th September, 2007, minutes of which are on record was also held at Regd./Admn. Office i.e. at two places.

12. The appellant had filed form no. 20B in respect of the AGM held at Chennai on 30th September, 2009. The Board Meeting for appointment of Mrs. Vaheeda K.P. is alleged to have been held at Calicut around 600 kms. away from Chennai. This fact that the board meeting was allegedly held at Calicut is not denied. If the board meeting was held at Calicut and AGM was held at Chennai on same day one after another, it was humanly impossible to hold two meetings at two different places 600 kms. away. If both meetings were held at Calicut, there was no reason to record that the AGM and Board meeting were held at the Regd. Office. In the minutes itself, it would have been recorded that the meetings were held at Calicut office. The minutes also do not disclose identity of Mrs. Vaheeda K.P. as wife of Mr. Mehroof Manalody but record her parents name and Kerala address.

13. In order to justify that the AGM could be held at Calicut also, the appellant has relied upon a Board Resolution of the Company passed on 1st June, 2004 in an Extra Ordinary General Meeting of Glosoft. This Board Resolution states that the EGM had taken place at the Admin. Office at Calicut and the -EGM authorized the M.D. to convene an AGM at any place within Kerala as the members were of the opinion that holding of meeting outside Kerala would be inconvenient. The difference between the minutes dated 1.6.2004 and the other minutes of AGM and

Board Meeting produced on record is clear. In the minutes dated 1.6.2004, the place of meeting is categorically stated whereas in all other minutes placed on record of 30th September, 2009, 3rd April, 2000 etc., the place of meeting has been deliberately recorded as Regd./Admn. Office. Whether the meeting was held in Chennai or in Calicut is not mentioned and this seems to have been done deliberately in order to use the minutes as per convenience. It is thus apparent that the allegations made by the complaint of the connivance of the appellant with Mr. Mehroof regarding back dated allotment of shares to Mrs. Vaheeda K.P. as well as appointing her Additional Director without DIN and filing of form no. 32 with the Registrar of Companies to that effect by the appellant were fortified by documentary evidence.

14. The appellant's contention is that the Balance Sheet and Profit & Loss Accounts dated 31.3.2009 were signed by the Managing Director and the Complainant and Finance Manager and the minutes of the board meeting held on 25.3.2010 were duly signed by the Chairman of the Company. Filing of balance sheet with the ROC was a requirement under Section 220 of the Companies Act and he was not supposed to make inquiries whether the documents placed before him were correct or not and, therefore, he only performed his duty of filing the returns as required under law with Registrar of Companies. Since he was not supposed to attend either the board meeting or the AGM, he was not supposed to see whether the resolutions per se were correct or not and whether the accounts were properly adopted or not. He was only to see if the balance sheet was signed and it was laid down before the AGM.

15. On the other hand, it is submitted by the counsel for the Institute that the Appellant, a practicing Company Secretary was engaged as a Company Secretary to the company right from 2004 onwards. It was his duty to advise the Company on all aspects of Company Law and it was also obligatory on him to ensure that what he was filing was in accordance with the law and the records of the company. He could not have kept his eyes closed about the genuineness of the documents being relied upon by him and verification of the same from the record. The Institutions of Chartered Accountants, Company Secretaries and Cost Accountants are being run to train and produce professionals equipped with knowledge. If the professional has only to act as a post office or as a clerk of filing the documents and appending signatures, then there is no necessity of these institutes. A Company Secretary is specially trained to ensure that the company complies with all the requirements of the Companies Act. The appellant herein was supposed to ensure that the Company was acting as per the provisions of the Companies Act. He, however, seems to have

connived in violating the provisions of the Companies Act. This was reflected from the forged minutes of the AGM and Board Meeting and violations in respect of filing the annual accounts and form no. 32 for Mrs. Vaheeda K.P.

16. The contention of the appellant is that the minutes of the AGM and Board of Directors' meeting were to be considered as authentic evidence of proceedings recorded therein as per section 194 of the Companies Act unless the contrary was proved. He as a practicing Company Secretary of the Company was not supposed to question the minutes and could only act according to minutes of the meeting as provided to him.

17. There is no doubt that the minutes of the meeting are authentic record of the conduct of proceedings, however, no meeting can take place simultaneously at two places, i.e. at Chennai, the Registered Office of the Company and at Calicut, the Admn. Office of the Company. In all hand written minutes placed on record, every AGM and Board meeting has taken place at two places i.e. at Chennai and at Calicut. Obviously, there was sufficient intrinsic evidence to show that the minutes were doubtful. However, a benefit of doubt can be given to the appellant regarding the place of holding the meeting as it is quite possible that he might not have minutely gone into this aspect. But his submission regarding appointment of Mrs. Vaheeda K.P. and filing of form 32 that a person can be appointed as a Director by the Board of Directors and the Company Secretary has nothing to do with appointment of the Additional Director is baseless. Filing of form 32 with ROC is now not a mere requirement of reporting a fact. The responsibility of a Company Secretary while filing form 32 is also to verify that the person appointed as a Director of the Company on the date mentioned in that form had DIN. Even if the Chairman had signed the minutes of the meeting, he could not have ignored the fact that no DIN was applied on behalf of Mrs. Vaheeda nor DIN was obtained before her appointment.

18. Since the appellant was a practicing Company Secretary of the Company, the Company had to ask the appellant to obtain DIN of Mrs. Vaheeda K.P. so that the company could appoint Mrs. Vaheeda K.P. as Additional Director. Even if the company had not asked the appellant about DIN, it was the responsibility of the appellant to inform the company that Mrs. Vaheeda K.P. could not be appointed as a Director unless her DIN was obtained and that appointment of a Director without obtaining DIN attracted penalty of Rs.5,000/- and it being a continuing offence, a fine of Rs.500/- was leviable for every day of default. In fact, section 264 of the Companies Act mandates that every person who was proposed to be a candidate for

office of Director has to give his consent in writing and this consent is to be filed with ROC. It is apparent that there was no consent filed in this case, no DIN was obtained before appointing Mrs. Vaheeda K.P. as Director. Thus the allegation of complainant that she was appointed with back date in connivance with the appellant stands fortified and substantiated.

19. Another plea taken by the appellant is that charge of professional misconduct is in the nature of quasi criminal charge and must be proved beyond reasonable doubt and that the Disciplinary Committee ignored this crucial aspect and the charge against the appeal was not proved beyond reasonable doubt. The concept of beyond reasonable doubt has been debated for quite long by the judges in their academic discussions as well as in judgments. 'Beyond reasonable doubt' is not something which can be measured on a scale and someone can say that the proof of a particular fact was not as per the scale. The adjudicating authority, after considering the evidence before it, has to see whether the evidence was convincing enough to consider the existence of a fact. If the evidence was convincing enough of the existence of a fact, the fact is considered proved beyond reasonable doubt. In this case, the Disciplinary Committee rightly came to a conclusion about the existence of facts on the basis of evidence before it.

20. In view of the above discussion, we find that the charge of connivance of the appellant in filing form 32 showing the appointment of Mrs. Vaheeda K.P. as Additional Director from back date of 30.9.2009 while she had obtained DIN on 30.7.2010 stands proved. The conduct of the appellant was unprofessional, contrary to law and gave an impression of his being in league with one of the directors. This certainly amounted to professional misconduct on the part of the appellant, though on other counts a benefit of doubt can be given to the appellant.

21. The appellant has also argued that the quantum of punishment imposed on him was harsh. However, we consider that looking at the manner in which the appellant connived with one of the Directors out of the two directors and in spite of being the practicing Company Secretary of the Company, he became party to the interest of one of the Directors. It is not a case where punishment awarded was harsh. It is the duty of the Institute of Company Secretaries to maintain high professional and ethical standards. Looking at the the professional standards and the way in which some some professionals are selling their conscience, we consider that removal of the name of the appellant for 270 days was not a harsh punishment.

Per Pavan Kumar Vijay, Member

By the above appeal, the Appellant challenges the order of the Disciplinary Committee of the Institute of Company Secretaries (hereinafter called 'the Institute'), dated 05.01.2012, whereby the Disciplinary Committee held the Appellant guilty of misconduct and directed for the removal of name of the Appellant from the Register of Members of the Institute, for a period of 270 (two hundred & seventy) days.

2. The Appellant has contended that while passing the impugned order, the Disciplinary Committee has not considered the averments of the Applicant and has not taken into account the preliminary objections raised or the oral evidence and documents produced and without considering the submissions, imposed very harsh punishment on the Appellant. The Appellant has further contended that no professional misconduct has occurred and that the passing of the impugned order is erroneous.

3. The brief facts relevant for the purposes of deciding the Appeal are as under:

- i) The Appellant is a practicing Company Secretary with FCS 4791 (CP No. 6449) engaged by M/s. Glosoft Technologies Pvt. Ltd. (hereinafter the Company), a Company having its registered office at Erulappan Street, Chennai.
- ii) The Complaint dated 04.11.2010 was filed against the Appellant by Mr. V.P. Abdul Kareem (hereinafter Complainant), one of the Directors of the Company for alleged negligence in professional duties, false certification of forms/returns, fraudulent and unethical practices. That the allegations so made were on basis of following:
 - a. Filing of Form No. 23AC for the year ended 31.03.2008
 - b. Filing of Form No. 32 on 31.07.2010, showing appointment of Mrs. Vaheeda Kizhakke Peerathil as Additional Director w.e.f. 30.09.2009.

- c. Illegal appointment of Mrs. Vaheeda Kizhakke Peerathil as Additional Director without holding Director Identification Number.
 - d. Filing of fabricated Form No. 2 showing allotment of 50 Equity Shares to Mr. Mrs. Vaheeda Kizhakke Peerathil on 30.09.2009.
 - e. Filing of Form No. 20B in respect of the AGM held on 30.09.2009.
- iii) As against the allegation of the Complainant, the Appellant had filed a detailed written statement dated 28.08.2011 denying the charges and submitting annexure in support of its contentions. In his written statement, the Appellant had challenged the competency of the Complainant to file the Complaint and has also raised issues with respect to ongoing disputes between the Complainant and the other director of the Company namely Mr. Mehroof Manalody and also averred of various suits pending between the parties at different forums and contending that the Complainant in his attempt to take charge of the Company has been filing false complaints against other directors as well as the Appellant.
- iv) Subsequent to the filing of the written statement by the Appellant, the Complainant filed a rejoinder dated 07.01.2011.
- v) That on perusal of the complaint, written statement and other documents on records, the Director of Discipline, formed a prima facie opinion that the Appellant was guilty of professional misconduct.
- vi) The proceedings were initiated by the Disciplinary Committee and which after listening to both the parties and considering the documents on record passed the impugned order dated 05.01.2012 holding the Appellant guilty of professional misconduct.
- vii) The Appellant aggrieved by the order has approached this Appellate Authority.

4. Without going in details as to the maintainability of the Complaint and the legality of the order of the Disciplinary Committee, I restrict my observation only to the issues pertaining to Professional Misconduct and the role of Appellant in this regard.

5. Firstly, with respect to the allegation of wrong filing of Form 23AC for the year ended 31.03.2008, a copy of the Company's Balance Sheet and Profit and Loss Account for the year ended 31.03.2008 is perused and it is observed that the documents are duly signed by the Managing Director and the Complainant and the Finance Manager of the Company. The minutes of the board meeting held on 25.03.2010, duly signed by the Chairman of the Company, are also on record. Filing of approved balance sheet and profit and loss account with the Registrar is a statutory requirement under Section 220 of the Companies Act, 1956. As per the relevant provisions of Section 220, read with the provisions of Section 215 of the Act, the balance sheet and profit & loss account must be signed by two directors including Managing Director (if any). From the documents on record, it is evident, that the Appellant herein has relied upon the duly signed balance sheet by two Directors and the Finance Manager and the extract of the signed minutes of the Company and has verified and uploaded the Form 23AC. More importantly, from the documents placed on record, it is observed that the Complainant himself has signed the balance sheet in the capacity of Director as on 25.03.2010 and collectively the signed balance sheet and the signed minutes corroborate the conduct of the Board Meeting on 25.03.2010 and approval of balance sheet by the board on the said date. As a professional, the Appellant had relied on duly signed documents including the signed document by the Complainant himself and there has been nothing on record to prove the contrary and thereby the Appellant has performed his duty in the normal course.

6. Further, before taking cognizance of any other issues, it is pertinent to take into relevance the observation of the Hon'ble Supreme Court in the matter of M.S. Madhusoodhanan and another Vs. Kerala Kaumudi (F) Ltd. and others (2003) 4 Comp LJ 185 (SC), wherein the Hon'ble Court was pleased to observe that 'Furthermore, under section 194 of the Companies Act, 1956, minutes of meeting kept in accordance with the provisions of section 193 shall be evidence of proceedings recorded therein and, unless the contrary is proved, it shall be presumed under section 195 that the meeting of Board of Directors was duly called and held that all proceedings thereat to have duly taken place.'

7. Thus, from the governing provisions of the Companies Act, 1956, as well as the rulings of the Hon'ble Supreme Court of India, it is well settled that minutes of a board meeting duly kept and signed are conclusive evidence of the meeting so held and business duly transacted. In light of this, where the other allegations against the Appellant as to filing of Form 32 for appointment of Mrs. Vaheeda Kizhakke Peerathil as additional director in a board meeting held on 30.09.2009 as well as filing of Form 2 for allotment of 50 Equity Shares of the Company to Mrs. Vaheeda Kizhakke Peerathil in the same board meeting are concerned, the minutes of the Board Meeting so held on 30.09.2009 signed by the Chairman are on record. The minutes show Mr. Mehroof Manalody, Mrs. Vaheeda Kizhakke Peerathil as well as the Complainant in attendance of the meeting. The minutes also record the appointment of Mrs. Peerathil as additional director and allotment of 50 equity shares of the Company to her. The Appellant, herein, has relied upon the duly signed Minutes of the Board Meeting which are conclusive evidence of the transactions undertaken.

8. With respect to the AGM held on 30.09.2009 as well filing of Form No. 20B of Annual Return of the Company, the Minutes of the AGM held on 30.09.2009 are also on record. It is further submitted by the Appellant that the Annual Return of the Company is duly signed by its directors including the Complainant himself and the

Annual Return confirms the appointment of Mrs. Vaheeda Kizhakke Peerathil as additional director, allotment of shares to her, as well as showing the Complainant as director and not chairman. Considering the duly signed minutes on record, it is apparent that the Appellant had relied upon the minutes, duly signed by the Chairman and has filed form No. 20B relying on the available documents and had been prudent in performing his duties.

9. Also, with respect to the Board Meeting as well as the AGM, both being held on the same day, i.e., 30.09.2009 at Calicut and the AGM being held at a place other than the Registered Office of the Company, the Appellant has produced the minutes of the Extraordinary General Meeting held on 01.06.2004 resolving that the AGM of the Company could be held anywhere in Kerala. Further, it is observed that there is no evidence on record to show that the Complainant was the Chairman of the Company and should have signed the minutes to validate them. The form DIN 2, dated 26.10.2009, duly signed by the Complainant himself is placed on record by the Appellant which shows the appointment of Complainant as Non-Executive Director and not as Chairman. Also the Balance Sheet for the period ended 31.03.2008 is signed by the Complainant as on 25.03.2010 in the capacity of the Director only and not as Chairman. Thus, in absence of any proof evidencing the appointment of the Complainant as Chairman and given the availability of duly signed minutes of the Board Meeting as well as AGM as on 30.09.2009, the conduct of the meetings and business executed therein cannot be invalidated.

10. Lastly, so as to the appointment of Mrs. Vaheeda Kizhakke Peerathil as director without having DIN, it is observed that section 253 of the Companies Act 1956, prohibits a Company to appoint or re-appoint any individual as Director of the Company unless he has been allotted a DIN. The provision of the section is reproduced as below:

253. Only individuals to be directors.—

*No body corporate, association or firm shall be appointed director of a [***] company, and only an individual shall be so appointed:*

Provided that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B.

11. To determine whether a person is eligible to be appointed as Director or not is the responsibility of the Company and the Board of Directors of the Company. Filing of Form 32 with the Registrar of Companies is the post facto reporting requirement and the responsibility of a professional while signing or filing Form 32 is to verify that the person is actually appointed as a Director of the Company on the date as being mentioned in the Form. The evidence of appointment of a person as an Additional Director under section 260 of the Companies Act, 1956 could be the proceedings of the Board Meeting in which the matter is considered. The minutes of the meeting duly signed by the Chairman are the conclusive evidence of the proceedings in the meeting. Here, in the present case, the Appellant had relied upon the duly signed Minutes of the Board Meeting for the appointment of Mrs. Peerathil as well as the Annual Return which was signed by both the parties including the Complainant. We have also noted that there is nothing in the impugned order to suggest any mala fide intent or connivance or any ulterior motive of the Appellant. In the absence of any such observation in the impugned order, it is observed that a person can be expected to observe only as much care as a person of reasonable prudence would take under the same or similar circumstances. Herein, the Appellant could not be expected to be investigative before signing and filing the form 32, though he could have been more careful by checking whether Mrs. Peerathil held a DIN at the time of appointment or not as the form was being filed after undue delay.

12. Furthermore, I am of the view that the impugned order, dated 05.01.2012, awarding punishment of removal of name of the Appellant from the Register of Institute of Company Secretaries for 270 days is a non speaking order and has not placed any argument or material on record to establish the misconduct and to justify the penalty imposed. The order has merely dealt with the factual details of

submissions made and proceedings held and no clinching evidence or arguments have been placed on record to sustain the impugned order so passed. The Disciplinary Committee has further not considered that a professional cannot be expected to act as an investigator while rendering his professional services.

13. It is also observed by that the impugned order was directed to be effective within a period of 7 days from passing of the order, which again is unreasonable as the same does not accord the party to adopt any legal remedy by way of appeal, especially where there is no immediate requirement of any preventive steps. The Disciplinary Committee is hereby directed to accord reasonable time in effectuating any order in future so as to give adequate time to the parties to prefer an appeal if required.

14. In regard to the impugned order, considering the documents and arguments on record, the order is too harsh and liable to be set aside. Although with respect to filing of form 32, undue delay without checking the date of obtaining DIN no. is an oversight and the Appellant could have been more vigilant in his act. Thus, I am of the view that a warning may be issued to the Appellant to be more cautious in future.

Accordingly the impugned order dated 05.01.2012 is set aside.

Conclusion

In view of the majority order, the appeal stands dismissed.

Sd/-
Justice S.N. Dhingra(Retd.)
Chairperson

Sd/-
Rakesh Chandra
Member

Sd/-
Ashok Haldia
Member

Sd/-
G. Gehani
Member

Sd/-
Pavan Kumar Vijay
Member

TRUE COPY
[Signature]
DEPUTY REGISTRAR
APPELLATE AUTHORITY