

BEFORE THE APPELLATE AUTHORITY

(Constituted under the Chartered Accountants Act 1949,
The Cost & Work Accountants Act 1958 & The Company Secretaries Act 1980)

APPEAL NO. 6/ICSI/2011

IN THE MATTER OF:

V. Subhash

.....Appellant

Through : Appellant in person

Versus

Director (Discipline)

The Institute of Company Secretaries of India

.....Respondent

Through: Shri R.D.Makheeja, Advocate for ICSI

AND

APPEAL NO. 7/ICSI/2011

IN THE MATTER OF:

K. Ramasamy

.....Appellant

Through : Appellant in person

versus

Director (Discipline)

The Institute of Company Secretaries of India

.....Respondent

Through: Shri R.D.Makheeja, Advocate for ICSI

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: 3rd September, 2011

Date of judgment: 12th November, 2011

JUDGEMENT

By the above two appeals, the Appellants assailed an order of the Board of Discipline of the Institute of company Secretaries(here in after called 'the Institute') dated 14th December, 2010 whereby the Board of Discipline held both the Appellants guilty of misconduct and punished them with reprimand.

2. The Appellants have submitted that the impugned order of the Board of Discipline was perverse and beyond jurisdiction; the Board had no authority to re-adjudicate the issue already considered by the Disciplinary Committee and the Board of Discipline also failed to consider that the only option available with the Council of the Institute or with the Director (Discipline) was to prefer an appeal against the order of the Disciplinary Committee. Apart from taking this ground about perversity of the order of the Board of Discipline, it has also been contended by the Appellant that the alleged professional misconduct had not taken place at all.

3. The Brief facts relevant for the purposes of deciding these two appeals are as under;

- i) On 14th December, 2008, 122nd meeting of the Regional Council of Southern India of the Institute (hereinafter called SIRC) had taken place at Tirupathi. After the meeting, the Council of the Institute received an information that the Appellants viz. Mr. K.R. Ramasamy and Mr. V.S. Subhash had used unparliamentarily

language and exhibited violent gestures at the meeting and they had denigrated the dignity of the Council;

- ii) On receipt of this information, the Council of the Institute of the Company Secretaries of India in its meeting held on 20th December, 2008 at New Delhi directed Chairperson of SIRC and Executive Officer (SIRO) to send a report of the proceedings of the meeting of SIRC. The report was received via e-mail on 20th December, 2008. The Council considered these two reports on 185th meeting held on 19th January, 2009 and was of the opinion that the conduct of the Appellants at Regional Council meeting was unbecoming of a member of the Institute and referred the matter to Director (Discipline) to make investigation to initiate disciplinary action against them under provisions of The Company Secretaries Act, 1980 (hereinafter the Act).
- iii) The Director (Discipline) investigated the matter and submitted his report to the Disciplinary Committee of the Institute constituted under Section 21B of the Act. Disciplinary Committee, after considering the report of the Director (Discipline) passed an order dated 23rd July, 2009 observing that though the alleged misconduct of the appellants was obstructive and unbecoming of a member of the Institute, however the alleged conduct did not constitute misconduct as defined under Section 22 read with First and Second Schedule of the Act. The Disciplinary Committee

however observed that the incident was unfortunate and should be viewed seriously. It was recommended that appropriate regulations should be framed by the Council in exercise of powers vested under Section 39 read with Clause 1 of sub-section 2 of Section 15 of the Act, so that such conduct of the members of the Institute at the meetings of the Councils/Regional Councils can be dealt with. A copy of this order was sent to Council of the Institute. The Council of the Institute being unhappy with the order, instead of directing the Director (Discipline) to prefer an appeal against it as provided under Section 22E (proviso one) of the Act, before the Appellate Authority, directed the Director (Discipline) to further investigate the matter.

- iv) The Director (Discipline) in obedience to the directions given to him by the Council, prepared a fresh report of the same incident and this time, instead of sending his report to the Disciplinary Committee, he sent his report for disciplinary action to the Board of Discipline constituted under Section 21A of the Act;
- v) The Board of Discipline passed the impugned order reprimanding the Appellants;
- vi) The Appellants are aggrieved and have approached this Appellate Authority.

4. There are two disciplinary authorities constituted under the Act – one Board of Discipline and other Disciplinary Committee. The Board of Discipline is constituted under Section 21A of the Act and Disciplinary Committee is constituted under Section 21B of the Act. While the Board of Discipline has powers to decide disciplinary matters of the members of Institute and has power to take disciplinary action if it finds that the member was guilty of a professional misconduct as defined under First Schedule of the Act, whereas the Disciplinary Committee has wider power than the Board of Discipline and Disciplinary Committee can punish a member if he is found guilty of a professional misconduct or other misconduct as mentioned in Second Schedule or both the First and Second Schedule of the Act.

Sections 21A and 21B of the Act read as under:

21A. Board of Discipline.—

- (1) *The Council shall constitute a Board of Discipline consisting of—*
 - (a) *a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;*
 - (b) *two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section (16);*
 - (c) *the Director (Discipline) shall function as the Secretary of the Board.*
- (2) *The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.*
- (3) *Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—*
 - (a) *reprimand the member;*
 - (b) *remove the name of the member from the Register up to a period of three months;*
 - (c) *impose such fine as it may think fit which may extend to rupees one lakh.*

- (4) *The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter*

21B. Disciplinary Committee.—

- (1) *The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:*

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

- (2) *The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.*
- (3) *Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—*
- (a) *reprimand the member;*
 - (b) *remove the name of the member from the Register permanently or for such period, as it thinks fit;*
 - (c) *impose such fine as it may think fit, which may extend to rupees five lakhs.*
- (4) *The allowances payable to the members nominated by the Central Government shall be such as may be specified*

Section 22E: Appeal to Authority

- (1) *Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:*

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

5. A perusal of Sections 21A and 21B of the Act would show that the Disciplinary Committee is a larger body consisting of President/Vice President of the Council as Presiding Officer, two elected members out of Council members and two nominated members by the Central Government, whereas Board of Discipline consists of three members – one person with experience in law, and out of other two members, one member has to be elected by the Council and other member has to be person designated by the Council of the Institute. The powers of the Board of Discipline are to consider disciplinary matters only falling under First Schedule. If an alleged misconduct falls under Second Schedule, the Board of Discipline has no power to proceed with the matter. Similarly, if the misconduct falls under both First and Second Schedule, only the Disciplinary Committee shall have power to deal with the matter. If the matter falls under only Second Schedule, then also only the Disciplinary Committee shall have the power to deal with the matter. Thus, the powers and authority of the Disciplinary Committee is larger in scope than the powers and authority of Board of Discipline.

6. It is strange that after the matter was considered by Disciplinary Committee and Disciplinary Committee had passed an order giving opinion that the conduct of the Appellants did not fall either under First or Second Schedule, the Council directed Director (Discipline) to reinvestigate the matter. The Council had no such power to give directions to Director (Discipline) to

reinvestigate the matter. Only the Board of Discipline or the Disciplinary Committee had the power to give directions to Director (Discipline) to reinvestigate or further reinvestigate the matter. This is clear from Section 21A (4) and is clear from Rule 9 of Chapter I prescribing Procedure for Investigation of Professional and Other Misconduct (Rules, 2007). This rule specifies that the Board of Discipline or the Disciplinary Committee, as the case may be, if disagrees with the prima facie opinion of the Director (Discipline), it shall either close the matter or advise the Director(Discipline) to further investigate the matter.

7. From the provisions of The Company Secretaries Act, 1980 and the Rules framed there under, it is clear that the Council of the Institute transgressed its jurisdiction and powers by directing the Director (Discipline) to further investigate /reinvestigate the matter and resubmit its report. Director (Discipline) also misconducted himself by reinvestigating the matter without any authority either from the Board of Discipline or from the Disciplinary Committee. He went a step ahead and after alleged reinvestigation, he filed his complaint before the Board of Discipline instead of filing it before the Disciplinary Committee.

8. We, therefore, consider that Board of Discipline had no power to reconsider the matter already considered by the Disciplinary Committee in respect of the same incident and in respect of the same members.

9. There is another aspect which is quite important. The procedure of filing complaints and investigation of complaints in respect of disciplinary matters is given in detail under the Act and rules. Disciplinary proceedings can be initiated either on complaint or on information. Whenever information is received by the Director (Discipline), he has to write a letter to the informant asking him that he should instead file a complaint because that is more appropriate mode of initiating disciplinary action. It is provided under the rules that if the complaint is from any statutory institute, or from the Government, then the Government or the statutory institute has to nominate and authorize a person to file such complaint (see Chapter II of Rules 2007 describing procedure of investigation of professional and other misconduct). Sub rule 2 provides that on receipt of information, when the source of information is Central Government, State Government or statutory authority, at first instance the Director of Discipline shall enquire whether the Institute would like to file a complaint and it is further provided that source of the information shall only be sent a copy of the final order. The Institute of Company Secretaries, no doubt, is a statutory body and The Institute of Company Secretaries cannot be above law and is governed by Company Secretaries Act and Rules framed there under. If the Institute had received information, it should have been sent to the Director (Discipline) in the form of a complaint. Moreover the Council of the Institute could not have taken upon itself the responsibility of punishing the members by itself violating the disciplinary proceeding procedure. In this case, this is what has been done. When the Disciplinary Committee gave a finding that the misconduct was not covered under existing rules and rules should be suitably modified, the Council,

it seems felt offended and instead of filing an appeal, directed the Director (Discipline) to file a fresh report before the Board of Discipline, instead of the Disciplinary Committee and the Board of Discipline obliged the Council by passing an order reprimanding the Appellants, perhaps as desired by the Council. The order of the Board of Discipline is contrary to law, beyond jurisdiction, perverse and liable to be set aside and these appeals are to be allowed along with costs quantified at Rs.20,000 per appeal. The Institute shall pay Rs.10,000 to each of the Appellant and Rs.10,000 ^{per appeal} shall be deposited with the fund of Appellate Authority within 30 days from the pronouncement of the Order.

10. We however make it clear that acceptance of above appeals should not be construed as an approval of alleged misconduct of the appellants.

Sd/-
S.N. Dhillon
(Chairperson)

Sd/-
Rakesh Chandra
(Member)

Sd/-
Ashok Haldia
(Member)

Sd/-
G. Gehapi
(Member)

Sd/-
Pavan Kumar Vijay
(Member)

TRUE COPY
[Signature]
DEPUTY REGISTRAR
APPELLATE AUTHORITY

16-11-2011