

BEFORE THE APPELLATE AUTHORITY
(Constituted Under The Company Secretaries Act, 1980)

APPEAL NO. 15/ICSI/2017

IN THE MATTER OF:

Praveen Kumar Kanungo

Versus

....Appellant

Disciplinary Committee

Institute of Company Secretaries of India

....Respondent No.1

Shri Pawan Kumar Shadija

....Respondent No. 2

CORAM

Hon'ble Mr. Justice M.C. Garg
Hon'ble Mr. Sanjay Grover
Hon'ble Dr. Navrang Saini

Chairperson
Member
Member

PRESENT

For the Appellant:

1. Mr. Praveen Kumar Kanungo, Appellant in person
2. Mr. Natwar Rai, Advocate appearing on behalf of Appellant

For the Respondents:

1. Mr. R.D. Makheeja appearing on behalf of ICSI
2. Mr. Gaurav Tandon, Assistant Director (Discipline) appearing on behalf of ICSI
3. Mr. Satish Kumar, Executive (Law) appearing on behalf of ICSI

ORDER
26.03.2018

1. Being aggrieved of the Order dated 26th September, 2017 passed by the Disciplinary Committee of the Institute of Company Secretaries of India under sub-section (3) of Section 21B of the Company Secretaries Act, 1980 (hereinafter referred to as the "Act") read with Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 (hereinafter referred to as the "Rules"), Mr. Praveen Kumar Kanungo, a Practicing Company Secretary, the Appellant herein, against whom a complaint was filed by Shri Pawan Kumar Shadija, one of the Promoter Directors of M/s AkruTi Trexim Private Limited (hereinafter referred to as the "Company"), in form (I) on 14th January, 2014 under Section 21 of the Act read with sub-rule (1) of Rule (3) of the Rules, has filed this appeal under Section 22E of the Act for seeking quashing of the aforesaid Order dated 26th September, 2017 against the

Institute of Company Secretaries of India (ICSI) and others, whereby, the Disciplinary Committee held him guilty of professional misconduct under clause (7) of Part-I of the Second Schedule of the Act and awarded punishment of removal of Appellant's name from the Register of members for a period of one year after expiry of 60 days from the issuance of the aforesaid order and also imposed fine of Rs.1,00,000/-(Rupees One Lakh Only). In case of failure of the appellant to pay fine of Rs.1,00,000/-(Rupees One Lakh Only) within the stipulated time period, his name shall be removed from the Register of Members of the ICSI for another period of one year, after 60 days from the date of issue of the aforesaid final order. The said clause (7) of Part-I of the Second Schedule of the Act reads as under:-

"Second Schedule

Professional misconduct in relation to Company Secretaries in Practice

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."

2. For the purpose of deciding the present Appeal, the brief facts of the matter, which we have noted from the records are that Mr. Pawan Kumar Shadija, Complainant before the Institute of Company Secretaries of India made a complaint under Section 21 of the Act read with Sub-Rule (4) of Rule 3 of the Company Secretaries (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 against the Appellant namely Mr. Praveen Kumar Kaunungo alleging the following:-
 - i. That Mr. Praveen Kumar Kanungo had not exercised due diligence while certifying two Forms 32, due to which name of four Directors, i.e., (a) Pawan Kumar Shadija, (b) Ms. Sandhya Shadija, (c) Mr. Akash Kumar Shadija; and (d) Mr. Neeraj Kumar Shadija of Akruti Trexim Private Limited were removed from the website of the Ministry of Corporate Affairs;
 - ii. That he has given wrong certification of Form 20(b) pertaining to M/s Akruti Trexim Private Limited for the financial year ending 31st March, 2012; and
 - iii. That he had also issued a wrong certificate to the Statutory Auditors regarding shareholding pattern of the company.
3. Pursuant to the receipt of the aforesaid complaint, the Director (Discipline) found Mr. Praveen Kumar Kaunungo Prima-Facie guilty of professional misconduct under clause (7) of Part-I of the Second Schedule of the Act for certifying two

Forms 32 pertaining to the removal of Directors of M/s Akruti Trexim Private Limited as Mr. Praveen Kumar Kaunungo did not exercise due diligence which is expected from a professional. However, he was not found guilty of professional misconduct regarding certifying Form 20 (b) for the financial year ended 31st March, 2012 of M/s Akruti Trexim Private Limited.

4. The Director (Discipline) placed his report of the Prima-Facie guilty before the Disciplinary Committee for its consideration, wherein, the Disciplinary Committee agreed with the Prima Facie opinion of the Director (Discipline) and decided to proceed further in the matter in accordance with the Act and the Rules applicable in this regard. Accordingly, after hearing of all the related parties and examining of the complaint, written statement and various other documents on record, the Disciplinary Committee passed an Order dated 26th September, 2017 whereby, the Appellant was held guilty and awarded the punishment as mentioned in Paragraph (1) above of this Order.
5. Subsequent to noting of the facts of the matter as above and at the time of final hearing on 25th February, 2018, wherein the Appellant along with his Counsel Mr. Natwar Rai was present, submitted before us that the punishment awarded by the Disciplinary Committee to the Appellant is not justified considering the nature of the professional misconduct on the part of the Appellant as alleged and awarded by the Disciplinary Committee in other cases of the violation of the said clause or for the similar nature of Professional misconduct, wherein the Disciplinary Committee of the Company Secretaries of India awarded the punishment of either reprimand or reprimand with fine. Whereas, in this case the Disciplinary Committee awarded an exorbitant punishment of removal of the name of the Appellant from the Register of Members of the Institute for a period of one year along-with a fine of Rs.1,00,000/-.
6. The Learned Counsel further submitted that the Appellant does not want to argue in respect of the alleged professional misconduct, however, he wants to argue on the issue of quantum of punishment, without pressing on the merits of the case relating to professional misconduct. Therefore, the Learned Counsel appearing on behalf of the Appellant submitted that the punishment awarded to the Appellant is too harsh. The Disciplinary Committee has not been fair in awarding the punishment as it has taken a different view in this case and

therefore, by submitting few Orders passed by the Disciplinary Committee relating to similar nature of default (Certification of Form 32/DIR 12), submitted that the same requires consideration by this Authority.

7. We have noted the details of punishment awarded by the Disciplinary Committee in similar matters, as brought on record by the Learned Counsel appearing on behalf of the Appellant, as hereunder:

Case no.	Name of Parties	Date of Decision of Disciplinary Committee	Misconduct	Punishment awarded
ICSI/DC/311/2013 ICSI/DC/312/2013 ICSI/DC/314/2013 ICSI/DC/314/2013	Anil Kumar Agarwal Vs. Ms. Seema Sharma, ACS 25258 CP No. 11118	28-04-2017	Certified Form DIR-12	(Common order in four complaints) Reprimand, and Consolidated fine of Rs.10,000/- in all four complaints payable within 60 days from the date of issue of this final Order. In case of failure of the Respondent to pay the amount of Rs.10,000/- within the stipulated time period, her name shall be removed from the Register of Members of the ICSI for a period of 30 days.
ICSI/DC/313/2015	Sunil Kumar Agarwal Vs. Ms. Seema Sharma, ACS 25258 CP No. 11118	28-04-2017	Certified Form DIR-12	Reprimand
ICSI/DC/156/2012	Pramod Khosla Vs. Sital Prasad Swain	28-04-2017	Certified Form DIR-12	Reprimand and Fine Rs. 5,000/-

8. On the other hand, the Learned Counsel appearing on behalf of the Institute did not object for review of quantum of punishment and submitted before us that the Authority may decide the same considering the merit of the case.
9. From the perusal of Orders of the Disciplinary Committee in three cases referred in the table above, it appears that Disciplinary Committee has taken a different

view in this case though the nature of professional misconduct relates to

10. Accordingly, after perusing the documents on record and hearing the arguments of the Learned Counsel of the Appellant on the core issue of quantum of punishment, we are of the considered view that punishment awarded to the Appellant in the present matter is certainly on the higher side, enormous and harsh in comparison with the punishment awarded to the errant members of the Institute by the Disciplinary Committee for the violation of same professional misconduct in other cases. Further, we are of view that the interest of justice will be met out by reducing the punishment awarded to the Appellant. Therefore, in exercise of the powers conferred on this Authority under clause (b) of sub-section (2) of Section 22E of the Company Secretaries Act, 1980, we hereby reduce the punishment awarded and the fine imposed on the Appellant by the Disciplinary Committee of the Institute and passes the following order in this regard.

I. Reprimand and fine of Rs.50000/- payable within sixty days from the date of issue of this Order.

11. In case of failure of the Appellant to pay the fine of Rs.50000/- within the stipulated time, his name shall be removed from the Register of Members of the Institute for a period of one month, after sixty days from the date of issue of this order.

11. Needless to mention that in case the Appellant has already deposited that amount of fine of Rs. 1,00,000/- in the Institute, the balance amount of Rs. 50,000/- be refunded to him within a period of 45 days from the date of receipt of this Order.

12. The Authority also wishes to advise the Disciplinary Committee to keep uniformity in awarding the punishment in similar nature of professional misconduct in the interest of justice in future, of course the ultimate impact of the negligence caused by the Appellant be given the appropriate weightage besides considering other facts and circumstances involved in the matter for deciding the punishment for violation of any professional duty expected to be carried out by the members of the Institute.

13. A copy of this Order be sent to the Institute of Company Secretaries of India, as well as to the Appellant for information, records and compliance at their respective end.

14. With this, the present Appeal is disposed of. No cost to either party.

Justice M. C. Garg
Chairperson

Sanjay Grover
Member

Dr. Navrang Saini
Member