

BEFORE THE APPELLATE AUTHORITY
(Constituted under the Company Secretaries Act, 1980)

APPEAL NO. 13/ICSI/2018

IN THE MATTER OF:

Gayathri Pasarakayala

....Appellant

Versus

**Disciplinary Committee
(The Institute of Company Secretaries of India)**

....Respondent No. 1

S. Radhakrishnan

....Respondent No. 2

CORAM

Hon'ble Mr. Justice M.C. Garg
Hon'ble Mr. Praveen Garg
Hon'ble Mr. Shyam Agarwal

Chairperson
Member
Member

PRESENT:

For the Appellant:

Mr. K. Rajendran along-with Mr. Saurabh Jain, Advocates appearing on behalf of Appellant

For the Respondents:

1. Mr. R. D. Makheeja, Advocate along-with Mr. Gaurav Tandon, Assistant Director, Law and Mr. Rasbihari Tiwari, Executive Law appearing on behalf of Respondent No.1
2. Dr. S.V. Ramakrishna along-with Mr. S. Radhakrishnan appearing on behalf of Respondent No.2

ORDER

Date: 04.04.2019

1. Being aggrieved by the Order dated 2nd July, 2018 (Impugned Order) 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"), Ms. Gayathri Pasarakayala has filed this appeal under Section 22E of the Act challenging the Impugned Order, whereby she was awarded punishment as hereunder:-

- (i) ***Fine of Rs. 35, 000/- (Rupees Thirty Five Thousand Only) payable within 30 days after expiry of 30 days of the issue of the final order, and***
- (ii) ***Removal of name from the Register of Members for a period of 60 days after expiry of 30 days from the date of issue of the Order, and***
- (iii) ***In the event not paying Rs. 35, 000/- (Rupees Thirty Five Thousand Only) fine within the stipulated time, name be further removed from the Register of Members for another period of 30 days beyond the 60 days as already ordered.***

2. The original proceedings in this matter were initiated before the Disciplinary Authorities of the Institute of Company Secretaries of India pursuant to receipt of a complaint in Form-I dated 18th June, 2014 against Ms. Gayathri Pasarakayala, a practicing Company Secretary from Mr. S. Radhakrishnan, Director, Hyderabad Pollution Controls Limited, wherein the complainant *inter-alia* alleged that Ms. Gayathri Pasarakayala has issued three Secretarial Compliance Certificates all on a single day, i.e., 12th December, 2013 for the three previous Financial Years i.e., 2010-11, 2011-12 and 2012-13 to Hyderabad Pollution Controls Limited, Hyderabad in gross violation of the facts, records, law and in gross violation of Article (40) of the Articles of Association of the said Company in respect of the quorum for Board Meetings and in violation of Companies Act, 1956 in respect of the quorum prescribed for any AGM for a public limited company and thus the complainant stated that she is guilty of Professional Misconduct.
3. The said complaint was examined by the Director (Discipline) as well as by the Disciplinary Committee in detail. 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 the in the light of the Respondent pleaded guilty vide her letter dated 4th June, 2017 (sic), was of the opinion that Ms. Gayathri Pasarakayala is guilty of Professional Misconduct under item (7) of the Part-I of the Second Schedule to the Act. The said item (7) reads as under:-

"A company Secretary in practice shall be deemed to be guilty of professional misconduct, if he –

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

Accordingly, the Disciplinary Committee passed the final order dated 2nd July, 2018 awarding the punishment as aforesaid under Para (1) of this Order.

4. Mr. K. Rajendran, the Learned Counsel appearing on behalf of the Appellant submitted that Ms. Gayathri Pasarakayala had admitted her guilt after receipt of an advice from the Members of Disciplinary Committee to plead guilty so as to get rid of proceedings in this matter further under impression that she will be awarded only lighter monetary punishment. However, there is nothing on record which reveals that she was advised by any of the Members of the Disciplinary Committee to plead guilty so as to get rid of proceedings further.
5. We have heard the parties and also perused the records available in this matter. We have 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."

6. Besides above, we have also gone through the provisions of the Act and the Rules more particularly sub-section (3) of Section 21B of the Act and Rule 19 (1) of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 under which the Impugned Order was passed. The referred provisions of the Act and the Rules reads as hereunder:-

"21B Disciplinary Committee:

(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.*

Rule19: Orders of the Committee:-

(1) On arriving at a finding under sub-rule (8) or sub-rule (17) of rule 18 that the respondent is guilty of professional or other misconduct, the Committee shall give the respondent an opportunity to be heard before passing any order under sub-section (3) of section 21B of the Act:

Provided that if the respondent does not appear before the Committee at time directed to do so when given such an opportunity to be heard, the Committee shall presume that he has nothing more to represent before it and shall pass orders under sub-section (3) of the section 21B of the Act."

7. Having noted as above, it is clear that the Disciplinary Committee has not followed the due procedure as prescribed statutorily as no opportunity of being heard was provided to Ms. Gayathri Pasarakayala 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 Disciplinary proceedings.

8. Thus, in view of the above, we are of the considered view that this matter requires to be remanded 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 Company Secretaries Act, 1985 and the Company Secretaries (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and pass a fresh order in the matter within 60 days from the date of receipt of this Order.
9. Accordingly, the Impugned Order is set aside. Interim orders, if any stand vacated.
10. This appeal is disposed of in terms of the above directions.

Justice M. C. Garg
Chairperson

Praveen Garg
Member

Shyam Agarwal
Member