

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.27396 of 2015

ORDER:

Heard.

The petitioner filed a complaint before the Institute of Company Secretaries of India, alleging professional misconduct against the Company Secretary. On the complaint of the petitioner, the Board of the Disciplinary Committee registered Disciplinary Case No.243/14 and as per the procedure prescribed to be followed in matters of disciplinary enquiry, the matter was examined by the Director (Discipline) and he was of the prima facie opinion under order dated 23-02-2015, that in view of Company Petition No.40 of 2011 filed under Sections 397 and 398 pending before the Company Law Board, Chennai Bench, recommended that the matter may be kept in abeyance till it is finally decided by the CLB, Chennai Bench, and the complainant-petitioner was to provide a copy of the order of the CLB. The said prima facie opinion was communicated to the petitioner-complainant under proceedings of the Institute of Company Secretaries of India bearing No.DC/243/2014, dated 24-07-2015. Aggrieved by the same, the present writ petition is filed. However, the said Company Secretary is not impleaded in this writ petition.

Learned counsel for the petitioner states that the proceedings before CLB have no nexus with the allegations in the complaint of the petitioner and as such, the respondents have erroneously declined to investigate into the said complaint and committed error in keeping the same in abeyance. Learned counsel also states that the issue involved in the complaint is not covered by the proceedings before the CLB and hence, it is unnecessary for the respondents to wait for the final disposal of the said Company Petition before the CLB.

Since I was not satisfied with the existing legal right of the petitioner to question the said order of the Disciplinary Committee of the respondent, I have requested the learned Counsel to enlighten as to what legal right the

petitioner has in a matter of this nature apart from filing of a complaint.

I am unable to receive any satisfactory answer to the query. In my view, a third person who is affected by the acts of omission or commission of a Company Secretary is entitled to give a complaint if such acts of omission or commission relate to professional misconduct by such Company Secretary; and thereafter, it is a matter for the Institute of Company Secretaries of India to consider and satisfy itself as to whether a prima facie case of professional misconduct is made out, and if so, to proceed further in the matter. The manner in which the Institute takes up such an enquiry is, therefore, entirely left for the said Institute and the petitioner, as a complainant cannot insist that the disciplinary proceedings must be conducted in a particular manner. In the present case, the Institute has decided to wait in the matter till a final decision is taken in the proceedings pending before the CLB, Chennai Bench. Hence, the petitioner cannot question the said order of the Disciplinary Committee and seek to maintain the present writ petition.

I am, therefore, not satisfied as to the maintainability of the writ petition and I am left with no option except to dismiss the writ petition.

Hence, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 27-08-2015

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.27396 of 2015

-
27-08-2015

Prv

