

**THE BOARD OF DISCIPLINE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
UNDER THE COMPANY SECRETARIES ACT, 1980**

DC/321/2015

Order reserved on: 13th October 2016

Order issued on : 11th January 2017

M/s. Guardian Nutrition Health Supplements Pvt. Ltd.

...Complainant

Vs

Ms. Manju Ruhil, ACS-33945.

..... Respondent

Present:

Director (Discipline)

FINAL ORDER

1. Pursuant to Section 21 (5) of the Company Secretaries Act, 1980 ('the Act') read with Rule 6 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 ('the Rules') letters dated 29th April 2016 and 11th May 2016 along with Board of Resolution received from M/s. Guardian Nutrition Health Supplements Pvt. Ltd. (hereinafter referred to as the 'Complainant') for withdrawal of Complaint against) against Ms. Manju Ruhil, ACS-33945 (hereinafter referred to as the 'Respondent') was considered by Board of Discipline.
2. The Complainant had filed a complaint on 30th June, 2015 in Form 'I' against the 'Respondent' alleging therein that in a meeting of the Board of Directors of M/s. Guardian Nutrition and Health Supplements Pvt. Ltd. (GNHS), certain resolutions concerning *inter-alia* a further issue of shares of GNHS (Rights Issue) were passed by the Board of GNHS. The Complainant further stated that a CD containing an audio recording of the proceedings of the Board of GNHS along with audio transcripts is attached with the complaint. In the said audio recording and the



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transcripts, while the Board unanimously passed a resolution to approve the Rights Issue of GNHS to be opened on 16th May, 2015. The Respondent was Company Secretary of the company and she has not drafted the appropriate resolutions based on the discussions in the said board meeting but recorded a completely contrary resolution only in order to favour a former promoter and present minority director on the board of the company. That she delayed in drafting the Minutes of the said Board meeting. It is further alleged that the Respondent failed and refused to correct the minutes of the meeting dated 16th March, 2015 even after the same was pointed out to her by the Chairperson of the said meeting.


3. Pursuant to sub-rule (3) of Rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 3rd July, 2015 calling upon her to submit the written statement. The Respondent *vide* letter dated 15th July, 2015 submitted the written statement.
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 22nd July, 2015 asking to submit the rejoinder. The Complainant submitted the rejoinder dated 10th August, 2015.
5. The then Director (Discipline) had formed his *prima-facie* opinion dated 9th November, 2015 in the matter wherein he was of the view that there is a dispute amongst the management of M/s. Guardian Nutrition Health Supplements Pvt. Ltd., pertaining to the business transacted by the Board of the company on 16th March, 2015, more particularly to the resolutions concerning inter-alia a further issue of shares of GNHS (Rights Issue). In the stated circumstances it becomes difficult for the Company Secretary to act upon anything in the company more particularly when cross litigations have been filed by the rival parties. Therefore, in the absence of clearly passed resolutions by the Board of the company, the Respondent was definitely unable to act upon the resolutions related to the right issues of shares of the company. The Chairman's version on the business transacted in the alleged meeting was absolute; the litigations would not have been filed in various forums challenging the validity of the said minutes approved by Mr Vikram Agarwal, the Chairman of the company. Further, it is difficult to ascertain the authenticity of the attached CD pertaining to the alleged meeting. In these circumstances, it is *prima-facie* appears that the Respondent is not guilty of professional misconduct under the Act.




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6. The *prima-facie* opinion dated 19th November, 2015 of the Director (Discipline) was placed before Board of Discipline in its 65th meeting held on 6th January 2016. The Board of Discipline considered the *prima-facie* opinion of the Director (Discipline) and advised the Director (Discipline) to investigate the matter further; and if needed, to summon and hear the parties and witnesses related to the matter.
7. Pursuant to the decision of the Board, the matter was further investigated and parties were called vide letter dated 21st April, 2016 to appear before the Director (Discipline) on 3rd May, 2016. S/ Shri Sanyam Saxena and Aakarsh Narula, Advocates appeared on the behalf of M/s. Guardian Nutrition & Health Supplements Pvt. Ltd., and submitted letter for withdrawal of the Complaint. The Respondent also appeared in person before the Director (Discipline) and gave a brief background of the case. The Advocates appearing for the Complainant were advised by the Director (Discipline) to submit a copy of the Board resolution passed by the company authorising the withdrawal of the instant complaint.
8. The Complainant *vide* letter dated 29th April 2016 and 11th May, 2016 informed that the Board of Directors of M/s. Guardian Nutrition and Health Supplements Pvt. Ltd. have decided not to pursue the complaint in the light of the fact that the company is receiving fresh investments and the investor is not inclined to pursue the matter and thus, requested to dispose of the complaint as withdrawn.
9. The Board considered the request for withdrawal under Section 21 (5) of the Act, read with Rule 6 of the Rules and after considering; the material on record the provisions of the Act, the Rules supra governing withdrawal of a complaint; permitted the withdrawal of the instant complaint and decided to close the matter. Accordingly, the complaint stands disposed-off.


CS Dinesh Chandra Arora
Member


CS Ashish Doshi
Presiding Officer




CS C Ramasubramaniam
Member