

**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**

ICSI/DC/365/2016

Order reserved on: 10th July, 2018

Order issued on : 31st July, 2018

CS Nikita Agarwal, FCS 8894

....Complainant

Vs

CS Chandrika Prasad Shukla, FCS-3819

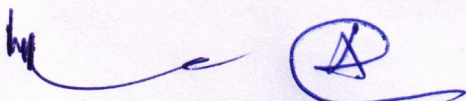
....Respondent

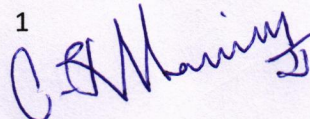
Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A complaint dated 19th September, 2016 in Form 'I' filed under section 21 of the Company Secretaries Act, 1980 ('the Act') read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 ('the Rules') by Ms Nikita Agarwal ('the Complainant') against Shri Chandrika Prasad Shukla, (FCS-3819) ('the Respondent'). The Complainant *inter-alia* alleged that the Respondent had accepted a position of Secretarial Auditor of M/s Master Chemicals Limited for the financial year 2015-16 without communication in writing of his appointment to the Complainant in contravention of Item (8) of Part I of the First Schedule to the Act.
2. The Respondent on the other hand denied the allegations levied against him and claimed a letter dated 20th April 2016 (due to typographical error shown as 2016 in place of 2015) was sent by him to the Complainant vide ordinary post, before accepting the position of Secretarial Auditor of M/s Master Chemicals Limited for the financial year 2015-16.
3. The Board of Discipline at its meeting held on 4th September, 2017 had considered and agreed with the prima-facie opinion dated 8th August, 2017 of the Director (Discipline) where she was prima facie of the opinion that the Respondent is 'Guilty' of professional misconduct under Item (8) of Part I of First Schedule of the Company Secretaries Act, 1980, as the



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Respondent has failed to provide any positive evidence on record about delivery of the communication i.e. letter dated 20th April, 2016 to the complainant, the previous Company Secretary by him prior to accepting a position of Secretarial Auditor of M/s. Master Chemicals Limited for the financial year 2015-16.

4. Accordingly, a copy of the prima-facie opinion of the Director (Discipline) was sent to the Respondents and the Complainant calling upon them to file their written statement and Rejoinder, respectively vide letters dated 28th September, 2017. However, no written statement or rejoinder was received from the parties.
5. The parties vide letter dated 18th May, 2018 were called to appear before the Board of Discipline on 9th June, 2018 at New Delhi.
6. In the mean time, a withdrawal letter dated 4th July, 2018 was received from the Complainant wherein she has inter-alia stated that she wants to withdraw the complaint.
7. The relevant provisions contained in the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 governing the withdrawal of the complaint read as under:

Section 21 (5) of the Act:

"Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."

Rule 6 of the Rules:

"The Director, on receipt of a letter of withdrawal of a complaint by the complainant shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the Complaint.


Provided that in case, the Director has not yet formed his prima facie opinion on such a complaint, he shall place the same before the Board of Discipline, and the Board of

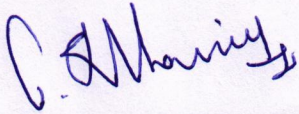


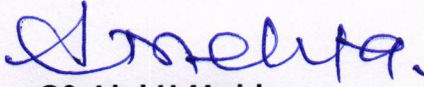
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Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal."

8. The Board of Discipline after considering all the facts and circumstances in the case, decided to permit withdrawal of the Complaint under Rule 6 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with Section 21 (5) of the Company Secretaries Act, 1980.


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer