

## THE DISCIPLINARY COMMITTEE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

DC/377/2017

Order Reserved on: 12<sup>th</sup> September 2019

Order issued on: 22 OCT 2019

Shri Ram Swaroop Joshi

.....Complainant

Vs.

Shri Santanu Deka, ACS-27740, CP No. 14720

.....Respondent

## CORAM:

Shri Ranjeet Pandey, Presiding Officer  
Mrs. Meenakshi Datta Ghosh, Member  
Shri B Narasimhan, Member  
Shri Nagendra D Rao, Member

## Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

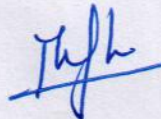
1. A Complaint dated 16<sup>th</sup> January, 2017 in Form 'I' was filed under Section 21 of the Company Secretaries Act, 1980 (the Act) read with sub-rule (1) of Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) by Shri Ram Swaroop Joshi (hereinafter referred to as 'the Complainant') against Shri Santanu Deka, ACS-27740, CP No. 14720 (hereinafter referred to as 'the Respondent').
2. The Complainant has *inter-alia* stated that he is one of the two Directors of M/s. Buildworth Pvt. Ltd. (hereinafter referred to as the Company). The Respondent has certified e-Form DIR-12 for appointment of Ms. Vidushi Singh D/o another Director as an Additional Director of the Company without exercising due diligence. As the Board meeting of the Company purportedly held on 26<sup>th</sup> October, 2015 in which the decision of such appointment was taken was invalid as the said meeting did not have adequate Quorum as the Complainant had not attended the same.
3. Pursuant to Section 21 of the Act, the Director (Discipline) has formed *prima-facie* opinion dated 15<sup>th</sup> June, 2017 wherein it is opined that the Respondent is guilty of professional misconduct under item (7) of Part I of the Second Schedule to the Act as he has certified



e-Form DIR-12 without exercising due diligence as only one Director was present in the meeting of the Board of Directors of the Company, purportedly held on 26<sup>th</sup> October, 2015 in which the decision of appointment of Ms. Vidushi Singh as Additional Director of the Company was taken.

4. The Disciplinary Committee at its meeting held on 1<sup>st</sup> July, 2017 agreed with the *prima-facie* opinion dated 15<sup>th</sup> June, 2017 of the Director (Discipline) and decided to adjudicate the matter in accordance with Rule 18 of the Rules, 2007 to finally conclude as to whether the Respondent is guilty or not in the matter.
5. A copy of the *prima-facie* opinion of the Director (Discipline) was sent to the parties *vide* letter(s) dated 11<sup>th</sup> September, 2017, calling upon to submit their Written Statement/Rejoinder on the same respectively. However, no Written Statement received from the Respondent.
6. The parties *vide* letter dated 16<sup>th</sup> May, 2019 were called upon to appear before the Disciplinary Committee on 3<sup>rd</sup> June, 2019.
7. The Complainant *vide* email dated 2<sup>nd</sup> June, 2019 submitted an application for withdrawal of the Complaint as the two Directors of the Company entered into MoU to settle their disputes and differences and consented to withdraw all cases/matters/proceedings.
8. The Complainant appeared through his authorised representative before Disciplinary Committee and requested to allow withdrawal of the Complaint, as the parties have amicably resolved all outstanding issues. The Disciplinary Committee after considering facts and circumstances of the matter and gravity of the allegations decided not to permit withdrawal at this stage; and decided to proceed the case on merits.
9. The parties *vide* letter dated 4<sup>th</sup> July, 2019 were called upon to appear before the Disciplinary Committee on 26<sup>th</sup> July, 2019. The Complainant appeared through his advocate and again requested to permit withdrawal. The Disciplinary Committee after considering the submission of the parties has asked the Complainant to submit a reasoned letter of withdrawal indicating the terms of an MoU pertaining to the complaint.
10. The Complainant has submitted letter dated 12<sup>th</sup> August, 2019 wherein he has stated that the captioned complaint has arisen out of differences and miscommunication between these two Directors of the Company. Now, they have entered into an MoU dated 26<sup>th</sup> December, 2018 wherein they have expressed their desire to amicably settle their disputes and differences with reference to the Company. The said MoU incorporates various terms of Agreements/Settlement between the parties. As per consensus arrived at, both the Directors have consented to withdraw all the cases /matter/proceedings instituted before any court/authority/forum with regard to their differences.
11. The Disciplinary Committee after considering all the facts and circumstances in the case, decided to permit the 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 with a word of caution to the Respondent to be careful in future and exercise due diligence in certification of forms and handling his professional assignments as a Company Secretary in Practice

Accordingly, the Complaint stands disposed off.



Member

  
Member

Member

  
Presiding Officer