

**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/384/2016

Order reserved on : 16th August, 2018

Order issued on : 25th August 2018

Shri Brijesh Natwarsinh Chauhan

....Complainant

Vs

CS Manish R Patel, ACS-19885, CP-9360

....Respondent

FINAL ORDER

1. A complaint dated 6th March, 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 Brijesh Natwarsinh Chauhan ('the Complainant') against CS Manish R Patel, ACS-19885, CP-9360 ('the Respondent').
2. The Complainant *inter-alia* alleged as under :-
 - (i) The Respondent has issued a Compliance Certificate for the year ended on 31.03.2012 of the M/s. Lords Oriental Resorts Developers (Silvassa) Private Limited without exercising due diligence.
 - (ii) The Respondent has certified Form PAS 3 for Allotment of Shares done on 23/01/2016 for which the Respondent has inserted a disclaimer with regard to the Attendance Register for the Board Meeting. However, the Complainant being one of the Directors has no knowledge of such meeting and is very sure that no notice is being served to him for Board Meeting.
 - (iii) The Respondent has not observed the Memorandum of Understanding entered into between the Complainant and Mr. Pushendra Bansal with regard to incorporation and subsequent share holding pattern of the Company.
 - (iv) The Respondent has wrongly certified the Annual Return filed for the F.Y. 2014-15 for M/s. Lords Oriental Resorts Developers (Silvassa) Private Limited.



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3. Pursuant to sub-rule (3) of Rule 8 of the Rules read with the Act, a copy of the complaint was sent to the Respondent vide letter dated 31st March, 2017 calling upon him to submit his written statement which he submitted after seeking extension of time wherein he inter-alia denied the allegations levied against him.
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement of the Respondent was sent to the Complainant vide letter dated 31st May, 2017 asking him to submit rejoinder which he submitted vide letter dated 9th June, 2017.
5. In the mean time, a withdrawal letter dated 24th July, 2018 was received from the Complainant inter-alia stating that he wants to withdraw the complaint dated 31st March, 2017 filed against the Respondent.
6. 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, reads 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 Discipline may, if it is of the view that the circumstances so warrant, permit the withdrawal."

7. The Board of Discipline at its meeting held on 16th August, 2018 considered the matter; and observed that in the instant complaint, the Director (Discipline) has yet to form her prima facie opinion.

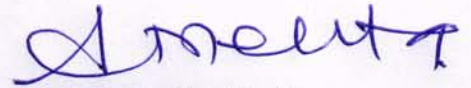


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8. The Board of Discipline after considering all the facts and circumstances in the case, decided to permit withdrawal of the Complaint under Rule 6 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct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



CS Dinesh Chandra Arora
Member



CS Atul H Mehta
Presiding Officer