

**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/391/2017

Order reserved on: 10th July, 2018

Order issued on : 31st July, 2018

CS Anuj Kumar Tiwari, FCS-7285

....Complainant

Vs

CS Subhash Chandra Tiwari, FCS-6124

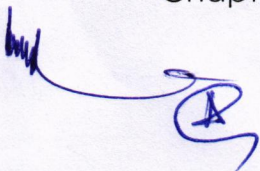
....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

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 CS Anuj Kumar Tiwari, FCS-7285, CP-15148 (hereinafter referred to as 'the Complainant') against CS Subhash Chandra Tiwari, FCS-6124 (hereinafter referred to as 'the Respondent').
2. The Complainant has inter-alia alleged that the Respondent was indulged in professional misconduct by the manner/act as given below: -
 - (1) He had misguided ICSI by putting up his employer as UPPCL, however, he is employed in M/s Purvanchal Vidyut Vitran Nigam Ltd. (UPPCL), having its registered office at Varanasi and violated the provision of Regulation 3 of the Company Secretaries Regulations 1982, hence done professional Misconduct under Clause (I) of Part II of the Second Schedule to the Act.
 - (2) He had brought disrepute to ICSI by making videos of Fellow Company Secretaries without their consent and then uploaded on various social sites and thereby violated Laws of Privacy and Defamation.
 - (3) He has continued to be in Management Committee of Lucknow Chapter though he has been appointed in Varanasi since 1.9.2015.



He continues to maintain that he is posted in Varanasi but lives in Lucknow. This is against his service and terms of employment as well. He did not resign from his Chairmanship in 2015 and thereafter has not resigned from Management Committee till now, hence violated Regulations as well as Chapter Guidelines, wherein he should have resigned.

3. Pursuant to sub-rule (4) of Rule 8 of the Rules read with the Act, a copy of the complaint was sent to the Respondent *vide* letter dated 13th April, 2017 calling upon him to submit the written statement. A written statement dated 1st May, 2017, was received from the Respondent *inter-alia* informing that the complaint filed against him is totally wrong and is with full of malice and prejudice. The Respondent further requested to consider it as null and void and an instruction should be issued to the Complainant as he tried to disturb the democratic election of office bearer and was also involved in various wrong acts.
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Respondent *vide* letter dated 22nd May, 2017 calling upon him to submit the rejoinder on written statement of the Respondent. A Rejoinder dated 29th May, 2017 was received from the Complainant. The Complainant requested therein to treat this matter separately with severe punishment, so that none of the fellow members do such things in future.
5. Pursuant to Section 21C of Chapter V of the Act read with the Rules, a letter dated 31st May, 2018 was sent to the Managing Director, M/s Purvanchal Vidyut Vitran Nigam Limited for providing the information/documents in respect of Respondent like his Place of Posting, Residential Address and any other information as deemed relevant in the matter. However, no information has been received from them.
6. In the mean time, a withdrawal letter through email dated 10th June, 2018 was received from the Complainant. The Complainant *inter-alia* stated that he unconditionally, wants to withdraw the complaint and he does not wish to pursue this case.
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, 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:

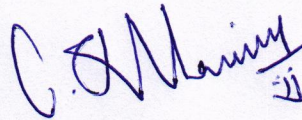
"The Director, on receipt of a letter of withdrawal of a complaint by the complainant shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant,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

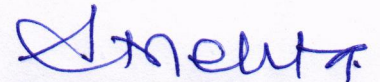
8. The Board of Discipline at its meeting held on 10th July, 2018 considered the matter; and observed that in the instant complaint, the Director (Discipline) has yet to form her prima facie opinion.
9. **The Board of Discipline after considering all the facts and circumstances in the case, decided to 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