

**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/419/2017

Order reserved on : 3rd May 2018

Order issued on : 9th June 2018

Shri Manoj Maheshwari, FCS-3355

...Complainant

Vs

Shri Tara Chand Sharma, FCS-5749

....Respondent

Present:

Mrs. Meenakshi Gupta, Director (Discipline)

FINAL ORDER

1. A Complaint dated 16th November, 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 Manoj Maheshwari, FCS-3355 (hereinafter referred to as the 'Complainant') against Shri Tara Chand Sharma, FCS-5749 (hereinafter referred to as the 'Respondent').
2. The Complainant inter-alia stated that the Respondent has accepted a position of a Company Secretaries previously held by him, without prior communicating to him in writing. The Complainant was scrutinizer of M/s Mayur Leather Product Limited for the year 2016 AGM. The Respondent has accepted the assignment for 2017 in contravention of the code of conduct applicable on Practicing Company Secretaries i.e without prior communicating to the Complainant in writing. The Respondent is guilty under Clause (8) & (11) of the First Schedule and clause (2) of part IV of the Act.
3. A withdrawal letter dated 3rd January, 2018 was received from the Complainant. The Complainant in his withdrawal letter has stated that after meeting/discussion held with Respondent; he would like to withdraw the Complaint against the Respondent.



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4. The Board of Discipline considered the request of the Complainant for withdrawal and the relevant provisions contained in the Act and the Rules governing withdrawal of the Complaint as under :-

Section 21 (5) of the Company Secretaries Act, 1980:


"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 Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007:

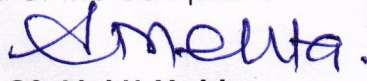
"The Director, on receipt of a letter of withdrawal of a complaint by the complainant shall place the same before the Board of Discipline or the Committee, as the case may be, and the Board of Discipline or the Committee, as the case may be, may, if it is of the view that the circumstances so warrant,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

5. The Board of Discipline also noted that in the instant complaint, the Director (Discipline) has not yet formed his prima facie opinion.
6. The Board of Discipline after considering the material on record; vis-a-vis the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 supra governing withdrawal of a complaint; permitted the withdrawal of the complaint


CS Dinesh Chandra Arora
Member


CS C Ramasubramaniam
Member


CS Atul H Mehta
Presiding Officer

