

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

ICSI/DC: 230/2014

Date of Decision: 20th November, 2014

Mr. Santosh Kumar Jain

....Complainant

Vs.

Ms. Mamta Surange, ACS-15883 (CP No. 9085)

.... Respondent

ORDER

1. A complaint dated 27th March, 2014 in Form I was filed under Section 21 of the Company Secretaries Act, 1980 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 Mr. Santosh Kumar Jain (hereinafter referred to as the 'Complainant') against Ms. Mamta Surange, ACS-15883 (CP No. 9085) (hereinafter referred to as the 'Respondents'). The Complainant has *inter-alia* alleged that the Respondent has certified and filed Form 32 pertaining to his removal and removal of Mr. Naman Jain and Ms. Neha Khandelwal from the directorship of M/s. Mahalaxmi Agriculture Polytube Pvt. Ltd., under Section 284 of the Companies Act, 1956, without exercising due diligence.
2. Pursuant to sub-rule (3) of rule 8 of the Rules, a copy of the complaint was sent to the Respondent *vide* letter dated 1st April, 2014 calling upon her to submit the written statement. The Respondent submitted the written statement dated 20th April, 2014 wherein the Respondent on the other hand has denied the allegations levied against her and stated that she has taken due care and caution before certifying the alleged Form 32. She further stated that she had verified the relevant documents and had also taken a letter dated 10th February, 2014 from the company wherein the company has certified that they have complied with all





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the requirement of the Companies Act, 1956 with respect to removal of director under Section 284 of the Companies Act, 1956.

3. Pursuant to sub-rule (4) of rule 8 of the Rules, a copy of the written statement was sent to the Complainant *vide* letter dated 24th April, 2014 asking him to submit the rejoinder.
4. The Respondent *vide* letter dated 24th April, 2014 was asked to submit copies of all the documents relied upon by her while certifying Form 32 pertaining to cessation of Shri Santosh Kumar Jain, Shri Naman Jain and Ms. Neha Khandelwal from the directorship of M/s. Mahalaxmi Agriculture Polytube Pvt. Ltd. The Respondent *vide* letter dated nil submitted the copies of documents relied upon by her while certifying Form 32 pertaining to cessation of Shri Santosh Kumar Jain, Shri Naman Jain and Ms. Neha Khandelwal from the directorship of M/s. Mahalaxmi Agriculture Polytube Pvt. Ltd. The Complainant submitted the rejoinder dated 17th May, 2014.
5. Pursuant to rule 9 of the Rules, the Director (Discipline) after examination of the complaint, written statement, rejoinder and other material on record, formed his *prima-facie* opinion dated 16th September, 2014 wherein the Director (Discipline) observed that the Respondent is *prima-facie* 'Guilty' of professional misconduct under clause (7) of Part 1 of the Second Schedule of the Company Secretaries Act, 1980 as she did not exercise necessary due diligence while certifying the alleged Form 32 as the compliances apparently under Section 284 of the Companies Act 1956 were not done.
6. The Disciplinary Committee at its meeting held on 24th September, 2014 had considered the *prima-facie* opinion dated 16th September, 2014 of the Director (Discipline) and the material on record. The Committee agreed with the *prima-facie* opinion and decided to proceed further in the matter in accordance with the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, copy of the *prima-facie* opinion of the Director (Discipline) was sent to the Respondent and the Complainant *vide* letters dated 25th September, 2014 asking them to submit the written statement and rejoinder, respectively.



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7. An e-mail dated 8th October, 2014 was received from the Respondent attaching therewith certain documents. The Complainant *vide* letter dated 10th October, 2014 was asked to confirm as to whether he intends to withdraw the instant complaint filed by him against Ms. Mamta Surange, ACS -15883. The Complainant *vide* letter dated nil (received on 16th October, 2014) forwarded his affidavit-cum-declaration *inter-alia* stated that the dispute in the management of the company has been settled amicably and he wants to unconditionally withdraw his complaint. The Respondent *vide* her e-mail dated 13th October, 2014 also forwarded a copy of the letter and affidavit of the Complainant.
8. 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 are 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 or the Committee, and the Board of Discipline or the Disciplinary



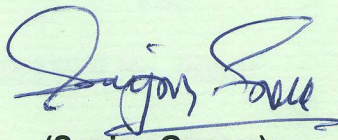
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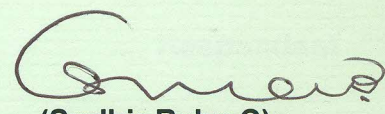
Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal”.

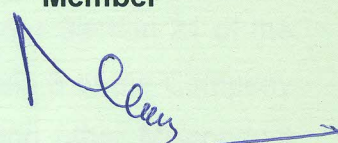
9. We, after considering the material on record; the nature of issues involved and in totality of the circumstances of this case *vis-a-vis* the provisions of the Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 governing withdrawal of complaint; permit withdrawal of the complaint; and close the matter.

Accordingly, the complaint stands disposed-off.


(S K Tuteja)
Member


(Sanjay Grover)
Member


(Sudhir Babu C)
Member


(R Sridharan)
Presiding Officer

Date: 12th Jan, 2015

