

APPELLATE AUTHORITY  
(Constituted under the Company Secretaries Act, 1980)

APPEAL NO. 04/ICSI/2012

IN THE MATTER OF

Sunil Kumar Garg, (M No.82378)  
E-133, Greater Kailash part -I,  
New Delhi -110 048.

.....Appellant

(through Ms. Smita Dikshit, Advocate)

versus

Institute of Companies Secretaries of India & anr

.....Respondent

(through : Shri K.S.Bhati and Shri Sarat Chandra Advocates for R-1)

Shri Anil Kumar Ehatnagar R-2 in person

**CORAM:**

**HON'BLE THE CHAIRPERSON**  
**HON'BLE MR. RAKESH CHANDRA MEMBER**  
**HON'BLE MR.PAVAN KUMAR VIJAY, MEMBER**

Date of Hearing: 2<sup>nd</sup> June, 2012

Date of Judgment: 15<sup>th</sup> October, 2012

**ORDER**

The appellant by way of this appeal, has assailed order of Disciplinary Committee dated 5.1.2012 (passed by majority) whereby the appellant was held guilty of professional misconduct under clause (6) & (7) of Part-I of Second Schedule to the Companies Secretaries Act, 1980 holding that the appellant failed to report a material fact known to him that he was concerned in professional capacity and also did not exercise due diligence in discharge of his professional duties. He was awarded punishment of removal of his name from Register of Members for a period of 30 days. Shri P.K. Mittal, Member gave dissenting opinion.

2. The complaint against the appellant was made by one Shri A.K. Bhatnagar who alleged that the appellant had prepared his fake digital signature and filed various fake forms with Registrar of Companies, Kanpur in respect of M/s. UP Industrial Consultants Ltd. (UPICL), Kanpur in collusion with Mr. Vikram Hans,

Chairman & Managing Director. The complainant submitted that he resigned from the Board on 7<sup>th</sup> February, 2009 and his resignation was accepted w.e.f. 13<sup>th</sup> February, 2009 in the Board Meeting held on 25<sup>th</sup> February, 2009. There was no reason for him to sign Form No.32 on 3<sup>rd</sup> March, 2009 in respect of appointment of Shri Abhay Kumar Bajpayee who was allegedly appointed as Director on 6<sup>th</sup> November, 2007. He submitted that the fact that he had resigned from Directorship was in the knowledge of the appellant who was the practicing Company Secretary of UPICL and still his digital signatures were forged by the appellant and were illegally used by the appellant.

3. It was submitted by complainant that appellant signed Form No.32 on 3<sup>rd</sup> March, 2009 showing him as Managing Director while he was not even a Director on 3<sup>rd</sup> March, 2009 to the knowledge of appellant. It is also submitted that Mr. S. Bobde was appointed vide resolution No.11 of 6<sup>th</sup> November, 2007 and his Form 32 was filed immediately thereafter but in case of Mr. Abhay Kumar Bajpayee, no Board resolution number appointing him as Director has been mentioned. This showed fraudulent behavior of the appellant.

4. It is a case of the appellant that he was also managing a certified filing centre for procuring digital signatures. An employee of UPICL came to his office and presented an application for obtaining digital signature of the complainant and in a routine manner this application was sent through e-mail to digital signature issuing authority and the digital signature issuing authority after verifying the details, issued digital signature. He did not know any of the applicants personally and never verified or recommended any application for issuance of digital signature. He had no role to play in issuance of digital signature. He also took the stand that complaint was filed against him malafidely by the complainant since he, during his tenure with

UPICL had committed several financial irregularities and embezzlement and there were number of complaints pending against him. He was forced to resign as Managing Director in February, 2009. Later one Mr. Vikram Hans was appointed as Managing Director. There were 5-6 Directors on the Board of UPICL and the complainant being the Managing Director at the relevant time did not file Form No.32 in respect of any of those Directors nor any form was filed in respect of appointment of Mr. Vikram Hans. IDBI Bank had advised the company to complete all legal formalities, including filing of Form-32. Therefore using digital signatures of complainant, a Form -32 in respect of appointment of Shri A.K. Bajpayee appointed in the Board meeting held on 6<sup>th</sup> November, 2007 (when the complainant was MD) was filed with the ROC. He stated that there was no dispute about the appointment of Mr. Abhay Kumar Bajpayee as a Director of UPICL but the dispute was only in respect of filing of Form-32 filed under TAC of the by complainant. The appellant had done no wrong by filing the form No.32 using TAC of the complainant.

5. The Disciplinary Committee after considering the entire facts came to conclusion that the complainant had already obtained digital signature valid for a period of two years. His name was 'Anil Kumar Bhatnagar'. The appellant obtained his duplicate digital signature by misrepresenting his name as 'Anil Kr. Bhatnagar'.

6. A perusal of the record would show that the complainant had obtained his digital signature from Tata Consultancy Services through Innovative Law Solutions Pvt. Ltd. on 6<sup>th</sup> September, 2007 valid for a period of two years ending on 5<sup>th</sup> September, 2009. These signatures could be verified by anyone by downloading from MCA site. This would have been in the knowledge of appellant as well since he was practicing Company Secretary of UPICL since 2009. The appellant's contention that someone from the company came to his consultancy firm and applied for digital

signature of the complainant and same was forwarded appears to be patently false. A person already having digital signature would not apply for new digital signature and there was no reason for complainant to apply for new digital signature through appellant, as he considered him inconvenient.

7. It is quite possible that the complainant had not done his duty while working as Managing Director and had not forwarded Form -32 of different Directors to ROC Office. However, two wrongs do not make one right. The wrong of complainant could not have been set right by the appellant by doing another wrong of getting his forged digital signature procured at the instance of new Chairman & Managing Director. The complainant had already resigned from the company and as per the contention of appellant, he was forced to resign from the post because of various irregularities allegedly committed by him. The appellant was practicing Company Secretary of the UPICL. He being Company Secretary was very well aware of the fact of resignation of complainant and his status in the Company. There was no reason for the applicant to forward Form No.32 allegedly digitally signed by the complainant and himself, after resignation of complainant. If the appellant was having a centre for forwarding applications for digital signatures that does not mean that he was at liberty to forward application for digital signature of any person without knowledge of that person and obtain the same on his own e-mail address. In this case, the appellant forwarded a forged application requesting digital signature of complainant with slight change in name of the complainant. The complainant used to write word 'Kumar' in his name and the appellant change 'Kumar' to 'Kr' and forwarded the application. It is apparent from the conduct of the appellant that he got mixed up with Mr. Vikram Hans and obtained forged digital signature of complainant and thereafter used the same to forward Form-32. This conduct of the appellant was a disgrace to the profession of Company Secretaries

The appellant was earlier also held guilty of professional misconduct by the Board of Discipline vide order dated 19.4.2010 and was awarded punishment of 'Reprimand'.

8. We find no force in the appeal. The appeal is hereby dismissed.

Sd/-  
Justice S.N. Dhingra (Retd.)  
Chairperson

Sd/-  
Rakesh Chandra  
Member

Sd/-  
Pavan Kumar Vijay  
Member

New Delhi

Dated this 15<sup>th</sup> day of October, 2012

TRUE COPY  
  
DEPUTY REGISTRAR  
APPELLATE AUTHORITY