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**BEFORE THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF COMPANY  
SECRETARIES OF INDIA  
DC: 73/2010**

**IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER  
MISCONDUCT**

**Shri A K Bhatnagar**

**-Complainant**

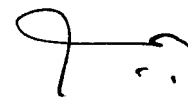
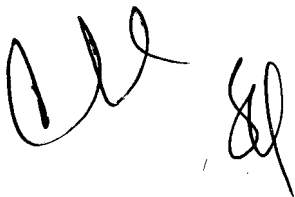
**Vs**

**Shri S K Garg, FCS-1345**

**-Respondent**

**ORDER**

1. The Institute had received a complaint dated the 23<sup>rd</sup> June, 2010 in Form 'I' filed by Shri A K Bhatnagar (hereinafter referred to as the 'Complainant') against Shri S K Garg, FCS-1345 (hereinafter referred to as the 'Respondent').
  
2. Pursuant to sub-rule (3) of Rule 8 of the (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (The Rules), a copy of the complaint was forwarded to the Respondent *vide* letter dated the 9<sup>th</sup> July, 2010. The Respondent submitted his written statement dated the 6<sup>th</sup> August, 2010. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was forwarded *vide* letter dated the 16<sup>th</sup> August, 2010 to the Complainant with a request to send the rejoinder to the same. A reminder *vide* letter dated the 24<sup>th</sup> September, 2010 was sent to the Complainant asking him to file his rejoinder. The Complainant submitted his rejoinder dated the 29<sup>th</sup> September, 2010.



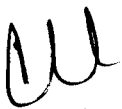
3. The Complainant has alleged that the Respondent had prepared his fake digital signatures and had filed various fake forms with the Registrar of Companies (ROC), Kanpur in respect M/s. UP Industrial Consultants Limited, Kanpur in collusion with Shri Vikram Hans, Chairman and Managing Director, M/s. UP Industrial Consultants Limited (the company).
4. The Respondent has submitted that the Complainant, in collusion with Shri Rajiv Kapoor, was involved in embezzlement of funds in M/s. U.P. Industrial Consultants Ltd. When this fact and the nexus between the Complainant and Shri Rajiv Kapoor came to the notice of the Comptroller and Auditor General of India (CAG), an FIR was lodged against the Complainant in December, 2009 by Shri Vikram Hans, the Chairman & Managing Director of the company. The Respondent has further submitted that Shri Vikram Hans, Chairman & Managing Director of the company had sought his opinion before filing the FIR. When the Complainant and Shri Rajiv Kapoor came to know about this, they started making false complaints.
5. The Respondent has further submitted that he is managing a Certified Filing Centre (CFC) approved by the Ministry of Corporate Affairs (MCA). One of the functions of the CFC is to procure digital signatures. An employee of the company came to his CFC and presented an application for obtaining digital signature of the Complainant. As a routine matter, this application was sent through email to digital signature Issuing authority and the digital signature issuing authority, after verifying the details, issued the digital signature. Since, Respondent did not know any applicant



personally; in the Certified Filing Centre the Respondent never verified or recommended any application for issue of digital signature. It is for the digital signature issuing authority to verify the details and, if satisfied, to issue the same.

6. The Respondent has alleged that the Complainant was the Managing Director of M/s. UP Industrial Consultants for about 15 years and during this period he embezzled crores of rupees from this Company. It is pertinent to note that during the course of statutory and CAG Audit, it came to notice that in the last three years the Complainant had siphoned off a sum of approx Rs. 75 lakh. The Complainant himself was guilty of non compliance with the provisions of the Companies Act, 1956. When, he resigned, there were six directors on the board of directors of this Company and the Complainant had not filed Form No. 32 in respect of any of the then existing directors. At that time, on the MCA Portal, there were names of three persons including the Complainant and out of these three; two persons had already ceased to be the directors of this company.
7. The Complainant in his rejoinder submitted that the Respondent had already been charge sheeted as per the FIR filed by him.
8. The Director (Discipline), pursuant to rule 9 of the Rules, examined the complaint, written statement, rejoinder and other material on record and *prima facie* opined that-

"The complainant has alleged that the respondent has obtained duplicate digital signature of the Complainant by misrepresentation of his name i.e., Mr. Anil Kr. Bhatnagar in



place of Mr. Anil Kumar Bhatnagar and the said signature were obtained through M/s. Balaji Associates with the email address \_\_\_\_\_ of \_\_\_\_\_ the Respondent ([gargassociates123@yahoo.co.in](mailto:gargassociates123@yahoo.co.in)). The said duplicate digital signature have been affixed on Form 32 filed in respect of appointment of Mr. Abhay kumar Bajpai as Director of the company.

It may be mentioned that the Respondent along with Mr. Anil Kr. Bhatnagar, Managing Director has signed the said Form-32 for the appointment of Mr. Abhay Kumar Bajpai w.e.f. 6<sup>th</sup> November, 2007 vide Board Resolution No. Zero in Board meeting held on 6<sup>th</sup> November, 2007. The said form has been filed on 3<sup>rd</sup> March, 2009. The Complainant has alleged that he never filed/ signed the application for digital signature and he resigned on 7<sup>th</sup> February, 2009 and his resignation was accepted on 13<sup>th</sup> February 2009 in the board meeting held on 25<sup>th</sup> February, 2009. Therefore, there is no reason as to why he should sign Form-32 on 3<sup>rd</sup> March, 2009 for the appointment of Mr. Abhay Kumar Bajpai. Further he has mentioned that Mr. S. Babde was also appointed in the same Board Meeting held on 6<sup>th</sup> November, 2007 vide board resolution No.11. However, for the appointment of Mr. Abhay Kumar Bajpai at the same board meeting no board resolution No. has been mentioned. This smacks of the fraudulence on the part of the Respondent.

The matter was also discussed with the Regional Director (North) regarding possibility of the issuance of duplicate Digital signatures. He informed that recently a number of cases have been reported where the professionals have wrongly certified the particulars for issue of the Digital signatures.

In view of the foregoing, the Respondent is *prima facie* 'guilty' of professional or other misconduct under clause (6) and (7) of Part I of the Second Schedule."

9. The *prima facie* opinion of the Director (Discipline) was placed before the Disciplinary Committee in its meeting held on the 6<sup>th</sup> June, 2011. The Committee, while agreeing with the *prima facie* opinion of the Director (Discipline), decided to proceed further in

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accordance with Chapter V of the Company Secretaries (Procedure of Investigation of Professional and other Misconduct and Conduct of Cases) Rules, 2007.

10. Accordingly, a copy of the *prima facie* opinion of the Director (Discipline) was sent to the Respondent *vide* letter dated the 9<sup>th</sup> June, 2011 asking him to file his written statement along with supporting documents and list of witnesses, if any, to the Director (Discipline) with a copy to the Complainant by the 16<sup>th</sup> June, 2011.
11. The *prima facie* opinion of the Director (Discipline) was also sent to the Complainant *vide* letter dated the 9<sup>th</sup> June, 2011 asking him to submit the rejoinder to the written statement with a copy to the Respondent along with the supporting documents and list of witnesses, if any, by the 23<sup>rd</sup> June, 2011.
12. The Respondent *vide* letter dated the 24<sup>th</sup> June, 2011 requested extension of time up to the 31<sup>st</sup> July, 2011 to file the written statement. The request of the Respondent was considered and *vide* letter dated the 29<sup>th</sup> June, 2011 he was permitted to submit the written statement along with the supporting documents and list of witness, if any, by the 20<sup>th</sup> July, 2011.
13. The Complainant *vide* letter dated the 24<sup>th</sup> June, 2011 informed that he has noted the *prima facie* opinion of the Director (Discipline) and has nothing new to say and will wait for the decision of the Disciplinary Committee. He further *vide* letter dated the 25<sup>th</sup> June, 2011 informed that he has not received any copy of the document

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from the Respondent submitted to the Institute as per the letter dated the 9<sup>th</sup> June, 2011.

14. The Complainant *vide* letter dated the 29<sup>th</sup> June, 2011 was informed that the Respondent has been granted time till the 20<sup>th</sup> July, 2011 as against his request up to the 31<sup>st</sup> July, 2011. The Complainant was further informed that he may submit his rejoinder to the written statement with a copy to the Respondent along with the supporting documents and list of witnesses, if any, by the 30<sup>th</sup> July, 2011.

15. The Respondent *vide* letter dated the 8<sup>th</sup> July, 2011 had stated as under-

“the preparation of my written statement is mainly dependent on the following-

1. Receipt of required documents such as Minute Book, papers relating to appointment of Directors etc. from U.P. Industrial Consultants Ltd. Since they are not in my control, hence I am making them repeated requests.
2. Receipt of clarification of few points relating to filing and signing of Form 32 from MCA. Earlier, I had sent a request to MCA but they did not provide any proper reply. Now again on 25.6.2011, I have sent a letter to Secretary MCA for providing reply of my queries, but the reply is still awaited.

Since Institute is also the highest authority of Professionals, hence you are also requested to provide reply of my following queries so that I may be able to prepare my written statement. Clarification/reply on the following points is required from the Institute—

- i. In a company there are five Directors including Managing Director. The Managing Director has not filed Form 32 of any Director except himself.



Thus in the "Directors details" available on MCA Portal, the name of Managing Director only is available. After some time this Managing Director also resigns. Thus, after his resignation on MCA Portal the name of none of the existing Director exist. As per existing system of filing Form 32, the Form 32 can be digitally signed by a Director other than the Director in respect of whom the Form 32 is being filed. In the instant case after the resignation of Managing Director, to update the information on MCA Portal, who shall digitally sign the Form 32 in respect of this out going Managing Director and the other existing Directors whose Form 32 were not filed by the Managing Director during his tenure.

ii. If in a company there are 2 directors and under change of Management both the Directors resigns and on the same day two new Directors are appointed. Whether these outgoing Directors can digitally sign the Form 32 in respect of appointment of two new Directors after their resignations. If no, then who shall digitally sign Form 32 in respect of appointment of these newly appointed Directors."

16. The Complainant *vide* letter dated the 1<sup>st</sup> August, 2011 conveyed that even after providing one month time to the Respondent to submit his reply, he has not received any communication on the complaint filed by him. He further requested for suitable action as per the Institute's rules and inform him.
17. The Respondent *vide* letter dated the 8<sup>th</sup> September, 2011 conveyed that he has authorized Ms. Smita Dikshit, Advocate, Supreme Court of India, Chamber No.461, Patiala House Courts, New Delhi to appear and file written statement, documentary evidence, exchange affidavits and participate in any other

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necessary incidental process required on his behalf in the above matter and requested to send necessary correspondence in this regard to her with a copy to him.

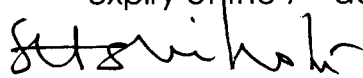
18. The Committee at its meeting held on the 3rd October, 2011 decided to provide 15 days time as a final measure to the Respondent to file his written statement to the *prima facie* opinion of the Director (Discipline). The Respondent and the Complainant were asked to appear before the Disciplinary Committee at its meeting on the 9th December, 2011 vide letter dated the 23rd November, 2011. The Respondent and the Complainant put in appearance before the Committee and made oral submissions. The Complainant submitted a copy of the certified copy of the Form No. 32 dated the 6th November, 2007 pertaining to appointment of Shri Sudhir Mahdeo Bobde as a Director of M/s. UPICO Ltd. The Respondent submitted a copy of Form No. 32 dated the 6th November, 2007 pertaining to appointment of Shri Abhai Kumar Bajpai as a Director of M/s. UPICO Ltd., along with (i) a copy of Form No. 32 dated the 6th November, 2007 pertaining to the appointment of Shri Sudhir Mahdeo Bobde as a Director of M/s. UPICO Ltd., along with copy of relevant Board Resolution; (ii) a copy of the letter dated the 1st June, 2011 of Shri Balaji Associates addressed to the Respondent; and (iii) a copy of letter dated the 23rd May, 2010 of Shri Vikram Hans, Chairman & Managing Director of M/s. UPICO Ltd., addressed to the Registrar of Companies, UP & Uttarakhand.

19. The Committee heard the both the parties and took on record the above mentioned documents. The Committee considered the

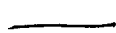




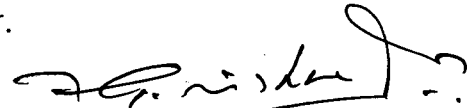
*prima facie* opinion of the Director (Discipline), submissions made by the parties, other material on record and came to the conclusion that the Respondent is 'guilty' of Professional Misconduct under clauses (6) and (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent failed to report a material fact known to him and with which he was concerned in a professional capacity and also did not exercise due diligence. He was grossly negligent in the conduct of his professional duties as he, knowing very well, that Shri Anil Kumar Bhatnagar had resigned as the Managing Director from M/s. U P Industrial Consultants Limited w.e.f the 7<sup>th</sup> February, 2009, certified Form No. 32 for the appointment of Shri Abhai Kumar Bajpai as director w.e.f the 6<sup>th</sup> November, 2007 and filed the same on the 3<sup>rd</sup> March, 2009 with Registrar of Companies by using the digital signature of Shri Anil Kr. Bhatnagar. After providing an opportunity of hearing to the Respondent pursuant to sub-section (3) of section 21B of the Company Secretaries Act, 1980, the Committee decided to remove the name of Shri S K Garg, FCS-1345, the Respondent, from the Register of Members of the Institute, for a period of 30 (Thirty) days. The said period of 30 (thirty) days will be effective after the expiry of the 7<sup>th</sup> day of issue of this order.



**S K Agnihotri, IAS (Retd.)**  
Member



**Dr. S P Narang**  
Member



**Gopalakrishna Hegde**  
Member

**P K Mittal**  
Member

Date: 5<sup>th</sup> January 2012



**Anil Murarka**  
Presiding Officer