

Professional Misconduct - Signing on behalf of a Company Secretary in Practice



The two Schedules to the Company Secretaries Act, 1980 viz. First Schedule and Second Schedule provides acts or omissions of professional and other misconduct by the members of the Institute.

Part I of the First Schedule to the Company Secretaries Act, 1980 containing 11 clauses as well as Part I of the Second Schedule to the Company Secretaries Act, 1980 containing 10 clauses deals with the acts or omissions of professional misconduct, which are applicable specifically to a Company Secretary in Practice.

The expression “*professional and other misconduct*” as defined in Section 22 of the Company Secretaries Act, 1980 shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

As per Clause (11) of Part I of the Second Schedule to the Company Secretaries Act, 1980, a member of the Institute in practice shall be deemed to be guilty of Professional Misconduct, if he allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.”

This clause prohibits a Company Secretary in Practice from allowing a person who is not a Company Secretary in Practice or a member who is not his partner, to sign anything on his behalf or on behalf of his firm, which he is required to certify as a Company Secretary or any other statements relating to it.

Due care has to be taken by the Company Secretaries in Practice that their digital signatures are used only by them or by the person allowed to do as per clause (11) of Part I of Second Schedule to the Company Secretaries Act, 1980. It is the duty and obligation of a Company Secretary in Practice to prevent any unauthorized use of his or her Digital Signatures/DSC.

CASE STUDY

1. Information of professional or other misconduct was received against one Practicing Company Secretary (Respondent) *inter-alia* alleging of lending digital signature in the market which is being used by fraudsters for incorporating companies. The digital signature of the Respondent was available in the market to be used by the brokers for incorporation of various types of companies and for filing of e-documents with the MCA portal against commission, which was being paid to the Respondent, who being a non-practicing Company Secretary has lent own digital signature to the brokers in the market. Accordingly, the Respondent was earning commission by releasing digital signature in the market, which was also being used for shell companies.

2. The Respondent has contended that the DSC was made through one of the known persons; and at the time of applying for DSC, the specially required email id was of that person irrespective of the email id of the Respondent. This may be done with a fraudulent intention of affixing digital signature. It came to the knowledge of the Respondent when summon was received from Government. The Respondent has stated that at the time of receiving the DSC its seal was broken; and the Respondent thought that it has been done for registering the DSC in the MCA site; the Respondent was unaware that time of the fact that DSC can be copied and used later; and it was not OTP protected.
3. The Respondent did not give any explanation on the use of DSC for the company for which this Information has been filed. From the records of MCA21, it was found that few forms of the various companies also contain the digital signatures of the Respondent. It is observed that there are repeated instances of use of digital signatures of the Respondent on various forms of various companies. The Respondent has stated of having filed FIR/complaint with police/cyber cell after the Respondent got summons from Government. At the time of getting DSC, it was broken as per the Respondent. But the Respondent did not take any corrective measures after getting broken DSC. The ownership of the digital signatures is always with the person who procures it. However, the Respondent did not initiate any corrective measures till the Respondent got summons from the regulators.
4. The Respondent contended that the DSC was misused and any permission or access to anyone for usage of DSC was never given; and proper action was also taken by the Respondent at appropriate time as and when it came into knowledge. The Respondent denied and disputes giving permission to the alleged company to use the DSC. The Respondent denied and disputes the alleged lending of DSC. The Respondent denied of not taking any corrective measures. Information was shared to the person from whom it was obtained immediately on receipt of broken seal on DSC. No one can presume that it will be misused. The Respondent has stated that it is undisputed responsibility of the DSC owner to ensure the safe custody of the DSC. However, in circumstances it is being handed over to others for usage; situation needs to be seen. The Respondent denied and disputed the irregularities in the forms and laxity on part of the Respondent. The Respondent has stated that no plausible evidence is forth coming from the Informant and the Informant has not registered any formal complaint against the Respondent even after being given opportunity to do so; infact and effect the faults by not controverting the contentions as proved by the facts and figures.
5. It is observed that the Informant has alleged lending of DSC by the Respondent. While the Respondent has mentioned few instances of misuse of DSC in the year 2013 for which FIR was filed. The Respondent has also filed a complaint with Cyber Cell, regarding misuse of DSC by another company. The Respondent acquired DSC in January, 2013. The Respondent has referred about received broken seal of DSC, which was made through a known person.
6. On being asked by the Disciplinary Committee, the Respondent could not give satisfactory answer as to why the Respondent has not taken any corrective action regarding DSC and informed about misuse of DSC of the Respondent to the Police in the year 2018, while the DSC was taken by the Respondent in the year 2013 with validity of 2 years. The Respondent confirmed that the Respondent did not take/apply for any DSC thereafter. The Disciplinary Committee observed that the Respondent approached the Police only after the Respondent was summoned and questioned by the regulators in the year 2017/ 2018. The Disciplinary Committee is of considered view that only the Respondent was responsible for the use of own DSC.
7. The Disciplinary Committee after considering the material on record and all the facts and circumstances of the case, held the Respondent 'Guilty' of Professional Misconduct under Clause (11) of Part I of the First Schedule and Clause (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980. The Disciplinary Committee passed an order of Reprimand and imposed a Fine of Rs. 25000 (Rupees Twenty-five thousand) against the Respondent.



YOUR OPINION MATTERS

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