

THE DISCIPLINARY COMMITTEE
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT
ICSI/ DC/276/2014

Order reserved on: 19th September, 2016

Order issued on: 12.11.2016

Mr. Gaurav Kashyap

...Complainant

Vs

Mr. Vipul Seth, FCS- 6656 (CP No. 7335)

...Respondent

Present:

Director (Discipline)

Complainant

Respondent and his Advocate Mr. Jitender Chaudhary

Ms. Preeti Saraswat

ORDER

1. The Disciplinary Committee at its meeting held on 14th September, 2015 after considering the *prima-facie* opinion dated 28th February, 2015 of the Director (Discipline) and the material on record, agreed with the *prima-facie* opinion of the Director (Discipline) that the Respondent is *prima-facie* 'Guilty' of Professional misconduct under Clause (7) of Part I of the Second Schedule to the Company Secretaries Act, 1980 ('the Act') as he did not exercise due diligence in the conduct of his professional duties 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 ('the Rules').



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2. On 8th July, 2016, the Complainant appeared in person before the Disciplinary Committee and made oral submissions while reiterating his submissions made in his complaint and rejoinder, he denied to have given any authority letter to his wife Ms. Preeti Saraswat to get his DSC made. He further stated that he is in a matrimonial dispute since year 2009 and the Respondent has obtained his digital signature on the basis of his forged and fabricated documents. The Complainant further alleged that the Respondent has hacked his income tax e-filing account.
3. On 8th July, 2016, the Respondent along with his Advocate Mr. Jitender Chaudhary also appeared before the Disciplinary Committee and while denying the allegations levied by the complainant against the respondent, stated that Mrs. Preeti Saraswat, wife of the Complainant had come to his office for applying DSC of the Complainant. He further stated that Mrs. Preeti Saraswat had an authority letter of the Complainant authorizing her to apply for a DSC on Complainant's behalf. Advocate of the Respondent further stated that the Respondent had seen the original document(s) before verifying the same which were presented by the wife of the Complainant who was having the authority of the Complainant. Advocate of the Respondent further stated that the Respondent was not aware of the matrimonial dispute between the complainant and his wife.
4. The Disciplinary Committee after considering the material on record; vis-a-vis the 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, was of the view that ~~since~~, Mrs. Preeti Saraswat is having matrimonial dispute with the Complainant and that she had apparently shown the original PAN Card of the Complainant to the Respondent in the year 2014 and had also shown him the authority letter of the Complainant. Therefore considering the nature of issues involved in the matter and in totality of the circumstances decided to summon Ms. Preeti Saraswat, wife of the Complainant to appear before the Committee and produce the Original PAN card of the Complainant which logically be in her custody based on her defence and the other documents which she had shown to the Respondent for applying the DSC of the Complainant which are apparently under her custody.
5. The Disciplinary Committee after hearing the matter on 8th July, 2016 passed an Interim Order dated 29th July, 2016 directing the Complainant to give an undertaking as to whether- (i) he has ever made a complaint to any authority stating he has lost his PAN Card between years 2009 to 2014. In case, yes to provide the details. (ii) he continues to hold his PAN



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Card since year 2009 (iii) he has ever applied for a duplicate PAN card (iv) present his original PAN Card before the Committee. The Disciplinary Committee further directed the Respondent to make efforts to place on record the original affidavit of Mrs. Preeti Saraswat and original authority letter of the Complainant authorising his wife to apply the DSC. Accordingly, the Committee adjourned the matter for summoning of Ms. Preeti Saraswat and the production of documents as stated above by the Respondent.

6. Accordingly, the Complainant, the Respondent along with his Advocate Mr. Jitender Chaudhary and Mrs. Preeti Saraswat appeared before the Disciplinary Committee on 19th September, 2016. The Disciplinary Committee recorded the following statements signed by the Complainant, the Respondent and Mrs. Preeti Saraswat :-

"Disciplinary Committee has met and heard the complainant Mr. Gaurav Kashyap, the respondent Mr. Vipul Seth along with his advocate Mr. Jitender Chaudhary and also Ms. Preeti Saraswat, wife of Mr. Gaurav Kashyap.

With regard to order dated 8th July, 2016 of the 59th meeting of the Disciplinary Committee wherein specific information as well as documents were sought from the respondent, from Ms. Preeti Saraswat and from the complainant, the following statements have been made by all three of them before the Disciplinary Committee.

- 1. The Respondent Mr. Vipul Seth reaffirms that he undertook the application for the DSC form after physically verifying the PAN card which was provided to him by Ms. Preeti Saraswat. The Respondent also stated that at that point of time, the filing of application of DSC was such that he used his personal mobile number for all such applications and it is only recently that prescribed norms have been changed. The Respondent has also expressed his willingness to confirm on an affidavit his contention that one Mr. Nand Kishore Upamanyu, Advocate of the complainant had asked him to help in resolving the matrimonial dispute between the complainant and his wife which he said that he is not in a position to do so. The Respondent reaffirms that he has acted in good faith by exercising due caution and reaffirms that he is the hopeless victim in this matrimonial dispute between the two parties.*
- 2. Ms. Preeti Saraswat has confirmed that she showed the original PAN card to Mr. Vipul Seth. However, with regard to the request of the Disciplinary Committee in its order dated 8th July, 2016 to physically produce the original PAN card, Ms. Preeti Sarawat states that she had in 2014 itself returned the original PAN card to Mr. Gaurav Kashyap.*



3. Mr. Gaurav Kashyap on his part has submitted a signed statement wherein in response to the queries of the Disciplinary Committee he has reaffirmed that he and his wife Ms. Preeti Saraswat are not living together since May, 2009, that he had not authorised her to create the DSC and that he had never given his original PAN card to her and it is still in his custody.
4. In support of his contention Mr. Gaurav Kashyap has also physically shown his PAN card in original to the members of the Disciplinary Committee."

5. The Disciplinary Committee after considering the material on record, totality of all the facts and circumstances held that the Respondent is "GUILTY" of professional misconduct Clause (7) of Part I to the Second Schedule of the Company Secretaries Act, 1980, as the Respondent did not exercise due diligence in the conduct of his professional duties as he submitted the form for DSC of the Complainant without his knowledge and consent. The Respondent had merely relied on the authority letter provided to him by Mrs. Preeti Saraswat, wife of the Complainant, having matrimonial dispute with the Complainant. The Respondent had not verified the facts from the Complainant.

7. The Disciplinary Committee in terms of sub-rule (1) of Rule 19 of the Company Secretaries (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007, decided to afford to the Respondent an opportunity of being heard before passing final orders under Section 21B(3) of the Company Secretaries Act, 1980.



Ahalada Rao V
Member

Santosh Kumar Agrawala
Member

Nalin Kohli
Member

Meenakshi Datta Ghosh
Member

Mamta Binani
Presiding Officer