

**OFFICE OF THE ADJUDICATING OFFICER,
GOVERNMENT OF GUJARAT,
SCIENCE & TECHNOLOGY DEPARTMENT,
Block No: 7, 5th Floor, Sardar Patel Bhavan, Sachivalaya, Gandhinagar.**

Special Civil Complaint No: 01/2018

Date of Decision :02/01/2021

IN THE MATTER OF:

To,

M/s Galaxy Sivtek Private Limited

Plot No-1406, GIDC, Waghodia,
Vadodara, Gujarat-391760

Vs

1) Mr. Praveen Srivastava

Mota Pathak Faliya, Waghodia,
District-Vadodara-391760, **Gujarat**

2) Mr. Sanoj Jaiswal

B-503, Tulsi Aangan, Near Tulsi Height,
Opp L & T Knowledge City,
Waghodia Road, Vadodara-390019, **Gujarat**

3) M/s P S Vibro

80-49, Gujarat Industrial Development Corporation Estate,
Waghodia, Vadodara-391760, **Gujarat**

4) M/s Asha Engineering

Plot No-80, Waghodia,
Vadodara-391760, **Gujarat**



**MR. HAREET SHUKLA
ADJUDICATING OFFICER UNDER
INFORMATION TECHNOLOGY ACT, 2000**

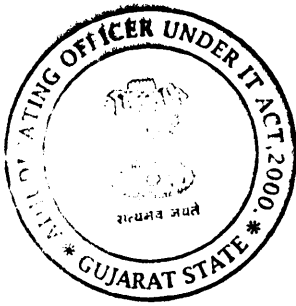
1. This matter has been filed by the petitioner under Section 43 and 43-A of the Information Technology Act, 2000.

2. The brief of the case as mentioned by the petitioner is as follows:

- a) The Applicant company is involved in designing, development and manufacturing of Vibro screening equipment, vibratory separators screeners, sieving machine, low profile separator, round separators, powder screening equipment, particle separation equipment, industrial sieves, gyro screens, amongst other products for a wide array of industries including without limitation, the pharmaceutical, Chemical, Mineral, Sugar Ceramic, paper, plastic, food industries.
- b) The Applicant company employed the Respondent no-1 with effect from 05.10.2009, in the position of Shift Supervisor, vide the appointment letter dated 05.10.2009.
- c) That the Respondent no 2 had joined the Applicant company in the position of Application Engineer-Business Development vide the appointment letter dated 15.09.2010.
- d) That before joining the Applicant company, the Respondent No 1 and 2 had made several representations to the Applicant company with regards to their work ethics and integrity. That relying on such assurances the Applicant company offered him a job in their organization. That further, the Applicant company also imparted technical training on the Respondent No 1 and 2. That due to the senior position of the Respondent no 1 and 2 in the applicant company, they had access to the Applicant company's confidential and proprietary information, which was of immense value to the Applicant Company, including without limitation, the details of their products, their production processes, technical knowhow, their pricing and marketing strategies, their flyers, their customer organizations etc. That all such information is 'data' within the meaning of section 2(o) of the IT Act, 2000
- e) It is pertinent to mention that all such confidential information was in electronic form and the custody of the same was given to the Respondent No 1 in light of his position with the Applicant Company. That certain confidentiality obligations were imposed on the Respondent No 1 vide the terms and conditions of employment.
- f) The said terms and conditions were a valid and binding contract and the Respondent No 1 was bound to honour the same. That vide the said terms and conditions, the Respondent No 1 categorically agreed to the following:



- a. Respondent no 1 agreed that all intellectual property such as trademarks, copyrights designs etc. developed by him during employment with the company either alone or with others pertaining to the operations or business of the company shall automatically belong to the Company absolutely and he shall not have and shall make no claims in respect thereto and shall not assert any moral rights whatsoever in respect of any such intellectual property.
- b. Respondent No 1 further acknowledged that the remuneration and all consideration paid to him by the Company included compensation for the assignment to the company of all intellectual property rights and that the rights and obligations shall continue in force after the cessation of his services with the company and shall be binding upon his legal representatives.
- c. Respondent No 1 also agreed that during the continuance of his employment with the company and thereafter, he shall observe strict secrecy as to the affairs, dealings and concerns of the company and shall not without the prior written consent of the Company, divulge to any person or third party any information pertaining to the business or operations including knowledge, know how, trade secrets, methods, security arrangements, plan etc of the Company.

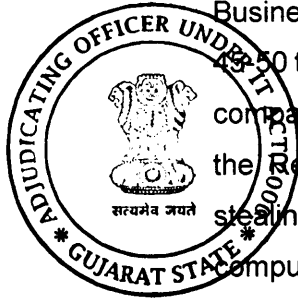


- g) In between it was found that Respondent No 1 was violating his contractual obligations and duties to the Applicant Company. That in light of serious lapses on the Respondent No 1's part, the Company also issued a show cause notice upon him. That vide his letter dated 28.05.2013, the Respondent no 1 admitted his lapses, and profusely apologized to the Applicant company, and promised them that the same shall not happen again.
- h) Vide the resignation letter dated 29.03.2017, the Respondent No 1 informed them that he was desirous of joining another job and therefore requested them to relive him of his duties as early as possible. Reposing immense faith in the Respondent No-1, with bonafide intensions, the Applicant company relieved him from his duties with effect from the same date i.e. 29.03.2017.
- i) That after the Respondent No 1 was relieved of his services, to the Applicant Company's shock and surprise, they learned that the



Respondent No 1 has hacked into their computer systems, and has stolen their confidential information which was in his custody during his employment with the Applicant company, and has disclosed the same to third parties and also has commenced his own business and is blatantly infringing the Applicant company's confidential information and intellectual property, in utter breach of his contractual obligations, and in violation of the law of the land. That the Respondent No 1 had commenced his own business under the names of the Respondent no 3 and the Respondent no 4, by stealing the confidential information of the Complainant.

- j) That during a routine check it was discovered that Respondent No 2 who was employed with the Company in the position of Application Engineer-Business Development had called the Respondent no 1 approximately 50 times from the phone and sim card provided to him by the Applicant company. That the same led the Applicant company to apprehend that the Respondent no 2 is also colluding with the Respondent no 1 in stealing the confidential information of the Applicant computer from their computer systems. That therefore, the email account of the Respondent No 2 was checked, and to the shock of the Applicant company, they discovered emails sent by the Respondent no 1 from his email id, psvibro@gmail.com and aevibro@gmail.com , to the Respondent no 2 on his personal email id i.e. sanoj_jaiswal50@yahoo.co.in , which emails contained the confidential information of the Company including without limitation, the customer details, produce details, drawings, designs, the after sales flyer, etc., mentioned the application of Complainant.
- k) It is stated that the confidential information that has been stolen by the Respondents by unauthorized access of the Applicant's computer systems, are literary works and are subject of copyright.
- l) That after the Respondent no 2 was terminated from the services of the Applicant Complainant, his phone was investigated, and to their shock and surprise, there were several audio recordings in which the collusion of the Respondent no 2 with the Respondent no 1 is clearly established.
- m) There is another audio clip in which the Respondent no 2 called up a customer of the Applicant company and identified himself as an employee of PS Vibro (while still being employed with the complainant", and tried to solicit such customer. Therefore, the collusion of the Respondent no 1 and 2 is abundantly clear. Further, after stealing the Applicant Company's



confidential information it is clear that the Respondent no 1 and 2 collectively run and operate the Respondent no 3, as can be seen from their marketing literature (which has also been stolen from the Applicant), and from the visiting card of the Respondent no 3.

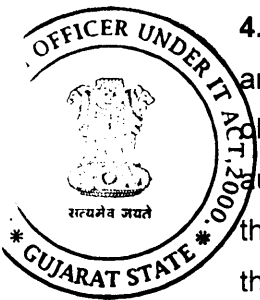
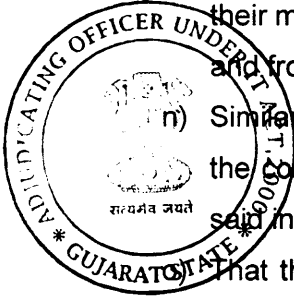
Similarly, the Respondent no 2 has also without authorization accessed the confidential information of the Applicant Company and has sent the said information outside the organization.

That the emails clearly evidence the fact that the Respondent persons have without the permission of the Applicant Company done the following acts:

- a. Accessed the Applicant Company's computers and computer systems;
 - b. Downloaded, copied, ad extracted data, data base and information from the Applicant Company's computer and computer system;
 - c. Facilitated each other in providing access to the Applicant Company's computers and computer systems in contravention of the IT Act, 2000;
 - d. Altered the information residing in the Applicant Company's computers with the intention to make unlawful gains of such information and thereby diminish its value and utility to the Applicant Company';
- p) Therefore, as on date of the Applicant Company has suffered quantifiable losses to the tune of Rs 26,00,000/- solely due to the contravention of the IT Act by the Respondents, and in light of the same, are liable to be compensated by the Respondents for the entire amount of Rs 26,00,000/-

3. This matter has been filed by the petitioner under Section 43 and 43-A of the Information Technology Act, 2000 to this office for the aforesaid case.

4. The matter was heard on 16th March, 2018; 06th July, 2018, 31st August, 2018 and 28th September, 2018. The respondent vide his affidavit dated 2/4/2018 has taken objection against the maintainability of the present civil complaint on the ground of lack of authorization for filing complaint by the petitioner. In the hearing held on 06th July, 2018, the Petitioner submitted this authorization to the signatories which was not agreed to and the petitioner was asked to submit Board Resolution Authorizing Director to in-turn authorize other.



5. With reference to the above para (4), the Petitioner filed the additional affidavit on 28th September, 2018 and put on record the letter of authority issued by the company by way of Board Resolution dated 1/10/2017 duly signed by the Managing Director of the company and submitted by way of affidavit that "The authenticity of such Board Resolution dated 01.10.2017 can not be doubted by the respondents, inasmuch as, the Company is a private limited Company and by way of such Board Resolution, the Company has authorized the deponent to file the present complaint."

6. Respondent during hearing dated 28/9/2018 objects to the maintainability of this Board Resolution with respect to

- i. Board Resolution signed by only one director
- ii. Post facto resolution for the complaint filing is not valid

7. Respondent also produced judgement of Hon Supreme Court in the matter of (2011) 11 Supreme Court cases 524 Civil Appeal no. 2014 of 2011 dated 22/2/2011 in support of his arguments.

8. The board resolution with authority and respondent's objection with reference to the board resolution are considered. The respondent's objections are not tenable as the authority by a board resolution has been provided. The board is competent to post facto endorse and authorize the action of filing the present complaint. In so far as the cited Judgement of Hon. Supreme Court is concerned it is not applicable in this case, since the said judgement was in relation to authority given by CEO and not by the board. Here by board resolution, the authority has been duly endorsed. In so far as the matter of validity of that board resolution in it being signed by only one director is concerned, this will be out of purview of the adjudicating officer, under the IT Act. Accordingly, complaint is admitted and respondent objection are disposed of.

The same was informed through Interim order dated 06th October, 2018.

9. Again the hearing of the said case was scheduled on 21st December 2018 but both the parties i.e. Complainant and Respondents were absent on 21st December, 2018.

10. Again the hearing of the said case was scheduled on 08th March, 2019 but both the parties i.e. Complainant and Respondents were absent on 08th March, 2019.

11. The matter was heard on 03rd May 2019, 07th June, 2019, 19th July, 2019, 23rd August, 2019, 15th October, 2019, 18th November, 2019 and 07th July, 2020.

12. In the hearing held on 03rd May, 2019, Complainant / Petitioner's Advocate was present and he seeks an adjournment for amicable resolutions by settlement.

13. In the hearing held on 07th June, 2019, Complainant / Petitioner's Advocate and Respondent Advocates were present and seeks an adjournment for amicable solutions.

14. In the hearing held on 19th July, 2019, Complainant / Petitioner's Advocate and Respondent Advocates were present and seeks an adjournment for last chance to work out amicable solutions.

15. In the hearing held on 23rd August, 2019, Complainant / Petitioner's Advocate and Respondent Advocates were present and seeks an adjournment for amicable solutions.

16. In the hearing of the said case scheduled on 15th October, 2019 both the parties Complainant Advocate sent request for Adjournment.

17. In the hearing scheduled on 18th November, 2019 both the parties i.e. Complainant and Respondent were absent on 18th November, 2019 and also Respondent Advocate sent request for Adjournment.

18. In the hearing of the said case scheduled on 07th July, 2020 vide letter dated 22.06.2020 wherein it was mentioned that "In the case of absence, the matter will be disposed and closed." Respondent advocate has sent email on 06th July, 2020, wherein he has mentioned that "the parties are amicably trying to resolve the issue, the either advocates appearing for the respective parties are requesting for 3 weeks time." And both the parties i.e. Complainant and Respondents were absent on 07.07.2020

19. Based on the request of 3-week time, the hearing of the said case was again scheduled on 25th August, 2020 vide letter dated 29.07.2020 wherein it was mentioned that "In the case of absence, the matter will be disposed and closed." Complainant advocate has sent email on 24th August, 2020, wherein he has mentioned that "the parties are exploring options of settlement and it appears that the parties are likely to settle the matter amicably" and seeks for an adjournment.

20. Based on the request of Complainant Advocate, Again the hearing of the said case was scheduled on 27th October, 2020 vide letter dated 29.09.2020 wherein it was mentioned that "In the case of absence, the matter will be disposed and closed." And both the parties i.e. Complainant and Respondents were absent on 27.10.2020 and as per power vested in Adjudicating Officer under IT Act Rules, 2003 notified by the Central Government on 17th March 2003, it was decided to disposed and closed the matter.

Accordingly, the following orders:

ORDER

Without getting into the merits of the case, since both parties are repeatedly absent and are not able to amicable settle the claim, also disinclined to pursue the matter, matter is closed and to be treated as disposed off.

(Hareet Shukla)

Adjudicating Officer & Secretary,
Department of Science and Technology,
Government of Gujarat.

