

IN THE OFFICE OF THE ADJUDICATING OFFICER

**SH. RAJESH AGGARWAL
SECRETARY, INFORMATION TECHNOLOGY
GOVERNMENT OF MAHARASHTRA**

Complaint No. 2 of 2013 dated 28/01/2013

IN THE MATTER OF

1. Arhan Technologies Pvt Ltd

..... **Complainants**

Versus

1. Endo Kogyo Co. Ltd Japan
2. Sh. Ashish Kalmegh
3. Endo Kogyo India Pvt Ltd, Pune

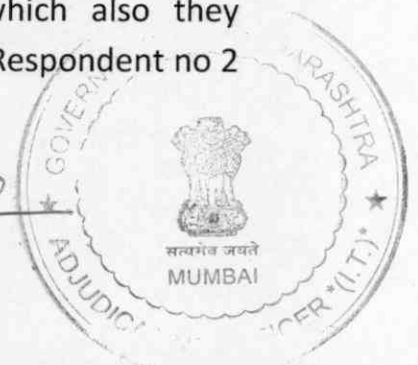
..... **Respondents**

This is proceedings of a complaint filed by the complainant for Adjudication under section 46 of the Information Technology Act, 2000. In keeping with the basic principles of natural justice and reasonable opportunity, detailed hearings were held in which both parties i.e. the Complainant and the Respondent were presented with equal and adequate opportunities to present and defend their case. Following the completion of hearing and response of both the parties, conclusion has been arrived at and the judgment is being delivered herein.



Order

1. The complainant is an engineering products company with which the respondent number 2 was working before he left the company and joined the client company of the complainant, Endo Kogyo which was using the services of the complainant to market their products in India. The respondent no. 2, Sh. Ashish Kalmegh later joined Endo Kogyo India Pvt Ltd which was set up by respondent no 1.
2. An earlier order was passed dated 06/03/2013 that the case could not be admitted, as prima facie, it appeared that the case pertained to use of personal email account by the respondent no 2 and thus was out of the purview of violations of provisions of IT Act 2000.
3. However, the police investigation report and the representation made by the complainant brought more facts in to the case. The complainant alleged that the case dealt with much more serious offence of corporate data theft, downloading, copying of information /data, denial of access to authorised persons to access computer system, computer network etc. It appeared that the case was beyond the mere use of a personal mail id and dealt with more serious offences covered under the Section 43 of the IT Act, 2000 (amended in 2008).
4. On the basis of the powers vested in me under Section 46 (5) read with subsection(2) (e) (Reviewing its decisions) of Section 58 the IT Act, 2000 and in keeping with the basic principles of natural justice, the case was admitted to be reviewed to provide equal opportunity to both the parties involved to present and defend their case.
5. Now, to cite brief facts of the case, Complainant, Arhan Technologies Pvt Ltd, is an engineering products marketing company which deals with several Japanese companies for marketing their products in India. Respondent no 1, Endo Kogyo Co. Ltd. were one such client of the complainant since the year 2003 till 2008, beyond which also they continued their business relationship. Sh. Ashish Kalmegh, Respondent no 2



- was an employee of complainant and was given the responsibility of handling the marketing of Respondent no 1 for which he was also sent to Japan in May 2010 by the complainant for a training.
6. The Respondent no. 2 handed over his resignation in July 2011 from the complainant and stopped attending office from Aug 2011 without serving the notice period of 45 days. The complainant has alleged that Sh. Ashish Kalmegh, even after resigning from the company kept resetting the password of the mail id he was given for official purpose and took with him a company provided pen drive which contained important business related information.
 7. While leaving the complainant, Sh. Ashish Kalmegh signed a settlement agreement dated 24th February 2012 with the complainant whereby he specifically agreed that he would not use the mail id. ashish.arhan@gmail.com which was created and provided for official purpose by the Complainant to the Respondent no. 2.
 8. Sh. Ashish Kalmegh joined Endo Kogyo India Pvt Ltd and the complainant was informed by Endo Kogyo Co. Ltd that they would no longer be continuing business with the complainant as they were establishing an office in India.
 9. The complainant alleges that Sh. Ashish Kalmegh was continuously using the company provided mail id. ashish.arhan@gmail.com without authorisation for accessing all the confidential official data and was using it for the benefit of the respondent no 1 and 3 even after signing an agreement as mentioned above.
 10. The complainant further has two official mail ids for receiving business enquiries viz. logistics1.arhan@gmail.com and stores.arhan@gmail.com, however complainant started getting calls from its clients that on sending enquiries to the abovementioned mail ids they were receiving replies from ashish.kalmegh@endo-india.co.in which was official email Sh. Ashish Kalmegh provided by Endo Kogyo India Pvt Ltd.



11. The complainant also alleges that on further enquiry it was found that someone had hacked in to their official mail ids and set an auto forward mail to these ids to patil.parag901@gmail.com and set patil.swapnil901@gmail.com and a phone number for password recovery.
12. Based on the facts gathered, the complainant filed a complaint with the Hadapsar Police Station, Pune. The Hadapsar police, during the investigations found that the IP address from which the email accounts of complainant was accessed and hacked were belonged to Endo Kogyo India Pvt Ltd. Based on the investigation, charge sheet was filed against Ashish Kalmegh under relevant sections of IT Act, 2000.
13. As per the charge sheet filed by police, all the above facts alleged by the complainant were found to be true, and the Respondent no 2 had after leaving the complainant company had hacked in to their official mail ids, accessed company confidential information in an unauthorised way and used this information to the benefit of Respondent no 1 and 3. The Police charge sheet refers to a loss of more than Rs. 60 lakh due to this to the complainant. The Respondent 2 used the network and the premises of Respondent no 3 for carrying out these illegal activities and used this information for the benefit of Respondent no 1 and 3.
14. The respondents 1, 2 and 3 all represented through their Advocate, raised the issue of the power of the adjudicating officer to re-open/review its decision during the hearing. However, through a written order dated 8th May 2013, the case was considered, to provide equal opportunity to both the parties involved to present and defend their case and summons were issued to both the parties to present their case. The Advocate of the Respondents 1, 2 and 3 was present during the final hearing but chose not to argue the case on merits and submitted that they were looking to file an appeal against the order dated 8th May 2013.
15. I find that the police report dated 11th March 2013 filed before me is categorical about the crime committed by Respondent No. 2 in connivance



with other two respondents. I must appreciate the thorough investigation done by the police in this case. They have seized the hard discs, pen drive, SIM cards etc. used by the respondents to commit the crime, got them analysed, got the details of the SIM card etc., and reached the conclusion. The officials of Respondent No. 1 and 3 have not at all cooperated with the police authorities. The police and investigating team also found that the Respondents tried to destroy and tamper the evidence by deleting emails and other related data. They tried to hamper the process of the law by getting someone by the name of Mr. Tiwari to threaten the complainant to withdraw the case, the police team traced the calls and Sh. Tiwari admitted to having made such blackmailing calls to the complainant on the behest of the Respondents. The respondents have been also allegedly trying to affect the complainant indirectly by spreading rumours to the clientele of the complainant, thereby causing further loss to the complainant. The Respondents have not only committed a crime under different sections of the IT Act, however have made themselves liable for punishment for trying to derail the law and justice mechanism by adopting illegal means.

16. Though the respondents have chosen to not fight the case on merit, and instead try to block it by citing technical reasons repeatedly, this is a case where facts gathered by the police are strong and judgment can be based on these facts. It is clear from the evidence gathered by the police that the Respondent 2 was disloyal to the company (i.e. the Complainant) where he was working, and conspired with Respondent No. 1 (i.e. the Japanese company) to sell the secrets of his existing employer, put forwarder on the emails of the company, and lured its customers away by misrepresentation. Respondent No. 1 in turn rewarded the Respondent 2 by opening an Indian branch (Respondent 3), and employing the Respondent 2. Police evidence strongly suggests complicity between all three respondents to hack into and steal the data of Complainant in an unauthorised fashion. Thus they are in breach of provisions of the IT Act, and liable for giving compensation to the Complainant. Though the Complainant has asked for compensation



of Rupees 1.20 crores, the police report suggests a loss of Rupees 60 lacs.

17. In light of the foregoing discussions, in my considered view:

(a) All three Respondents are in breach of provisions of Section 43 as well as sections 66B, 66C of the IT Act. As they have collectively conspired to steal into the emails of the Complainant in an unauthorised fashion, they are liable to make good the loss of the complainant. As Respondent No. 3 is the Indian branch of Respondent No. 1, I hereby order Respondent No. 1 to pay a compensation of Rupees 40 lacs to the Complainant within a month of this order, failing which compound interest of 12 percent compounded monthly will also be chargeable. Similarly, I order the Respondent No. 2 to pay a compensation of Rupees 20 lacs to the Complainant within a month of this order, failing which compound interest of 12 percent compounded monthly will also be chargeable.

(b) No order as to costs.



Rajesh Aggarwal
18.6.2013

Rajesh Aggarwal
Secretary (Information Technology)

Government of Maharashtra,
Mantralaya , Mumbai- 32