

**THE DISCIPLINARY COMMITTEE OF
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

DC: 101/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Shri Devinder Kumar Jain

....COMPLAINANT

Versus

Shri Sumit Raj

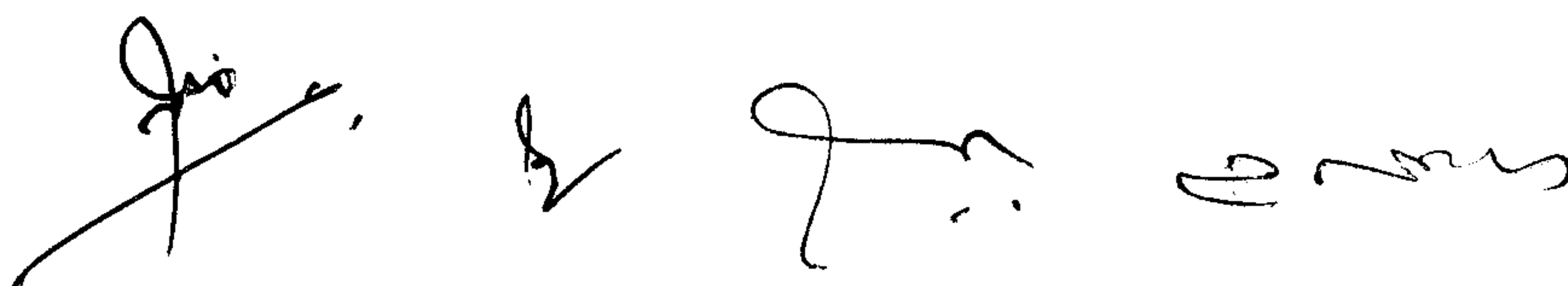
.....RESPONDENT

ORDER

1. The Institute had received a complaint dated 18th July, 2011 from Shri Devinder Kumar Jain (hereinafter referred to as 'the Complainant') against Shri Sumit Raj, (ACS-27292), (hereinafter referred to as 'Respondent') *inter-alia* alleging as under:
 - a) that the Respondent, in collusion with one Shri Harish Khurana, has filed a false and frivolous complaint with the BSE Ltd., against Dr. Wellman's Homoeopathic Laboratory Ltd., and its directors and shareholders in order to extract money from the Complainant, the Director of the company.
 - b) that allegations levelled by the Respondent against one Shri Anup Uberoi, Director and M/s. Trinity Global Enterprises Ltd., are with ulterior motive to spoil the reputation of the company and its directors before the BSE Ltd.

The Complainant further stated that the Respondent neither knows the Complainant nor the affairs of the Company and hence it is clear that the complaint made by him is in collusion with Shri Harish Khurana, with whom he is working as a Company Secretary.

2. Pursuant to sub-rule (3) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) a copy of the complaint was sent to the Respondent *vide* letter dated 25th July, 2011 followed by a reminder *vide* letter dated 5th October, 2011 asking him to submit his written statement. The Respondent *vide* letter dated 13th October, 2011 informed that he has not received

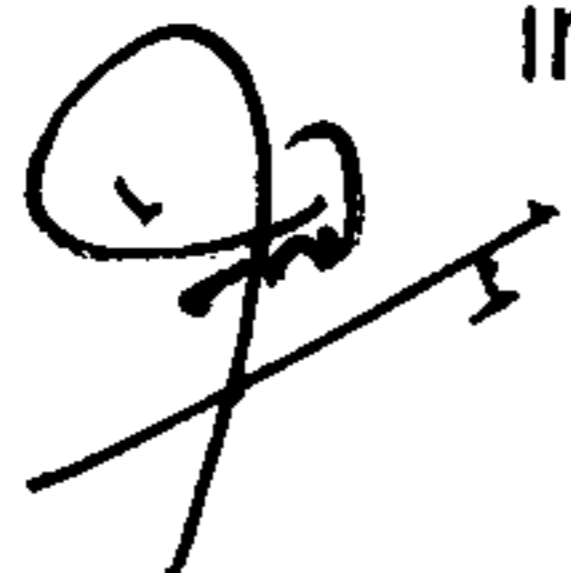


the letter dated the 25th July, 2011 and the complaint. A copy of the complaint was again sent to the Respondent vide letter dated 21st October, 2011.

3. The Respondent submitted his written statement dated 9th November, 2011 wherein he has *inter-alia* submitted in his preliminary objections that the complaint is not maintainable as there is no part VI in the First Schedule as the complaint has been filed under Part VI of the First Schedule. He further stated that the complaint for professional misconduct does not specifically state as to what professional misconduct has been done against which company and how money has been extracted from the Complainant or Dr. Wellman's Homeopathic Laboratories Ltd., or M/s. Trinity Global Enterprises Ltd.

The Respondent in reply to the said two allegations has submitted that –

- (i) the Complainant has failed prove that how the Respondent on instigation and in collusion with Shri Harish Khurana, FCS – 4835 another Company Secretary filed a wrong and false complaint before the BSE Ltd., against Dr. Wellman's Homeopathic Laboratories Ltd., its directors and shareholders in order to extract money.
- (ii) the Complainant has failed to prove the fact how he had tried to extract money either directly from the Complainant or from any of his associates.
- (iii) he also stated that by saying that the complaint was filed merely to extract money that any common man is aware about the fact that if someone is willing to extract money based on some information / documents that can be done before filing of complaint before any authority and whether the complaint is true or false, let this be decided by the authorities concerned. It is matter of fact which is based on the interpretation of law and which require investigation. The Respondent also stated that the Complainant is not the adjudicating authority to decide the fate of the complaint made by him with the BSE Ltd. He said that after filing his complaint with the BSE, he has got several threaten calls from the Complainant for withdrawal of the complaint. He also stated that if the Complainant has not done anything wrong in this matter, then why he is so much worried. He also stated

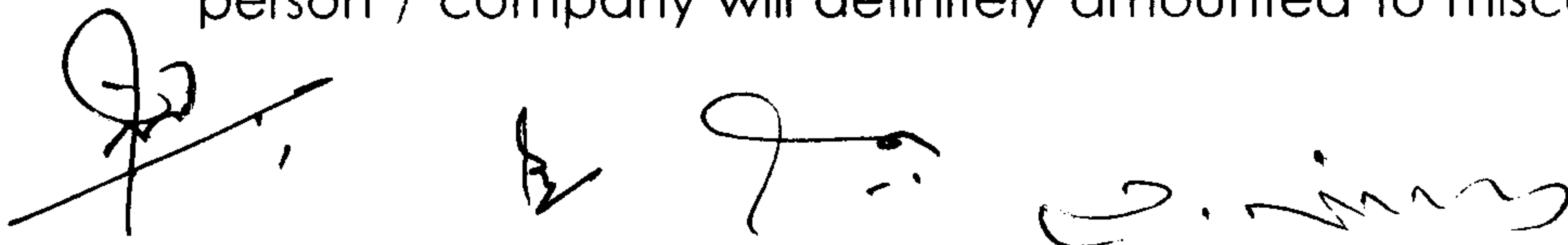


that in the facts of the case, he had stated that there is no such case of winding up against Dr. Wellman Homoeopathic Laboratories Ltd. He also drawn the attention that winding up petition was filed against Dr. Wellman Homoeopathic Laboratories Ltd. by SIDBI in C.P. No.192/2007 and the Complainant agreed to pay the liabilities of Dr. Wellman's Homeopathic Laboratories Ltd. to SIDBI and the same were paid by him and his company. The first installment was paid in November'2009, when the winding up petition was pending and the final payment was made to SIDBI sometimes in 2010, after which the winding up petition was withdrawn as compromised.

- (iv) While going through the Company Secretaries Act, 1980 as amended by the Company Secretaries (Amendment) Act, 2006, it may be straightaway stated that the complaint under Part VI (2) of First Schedule (See Section 21 (3), 21A (3) and 22) is not maintainable. The Company Secretaries (Amendment) Act, 2006 had substituted the previous First Schedule and incorporated the new First Schedule in its place. In the said new First Schedule has only Part I to Part IV and there is no Part VI in the First Schedule. Hence, the complaint is not maintainable for the said professional misconduct under Part VI of First Schedule.

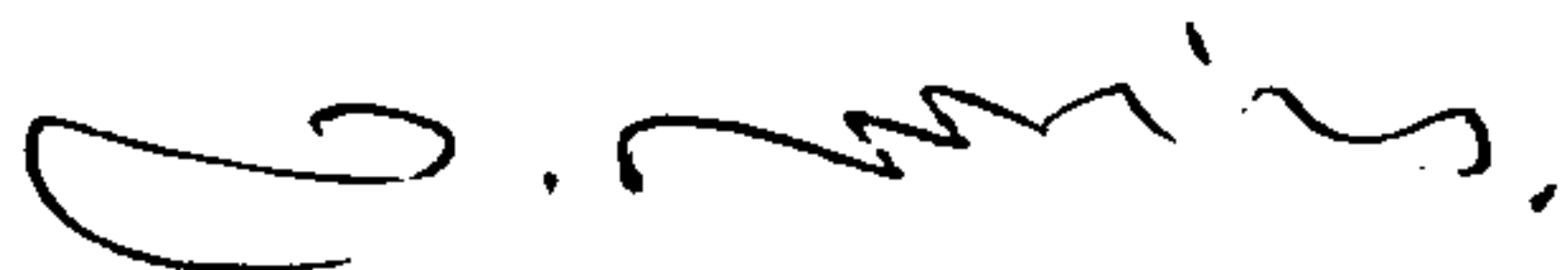
4. Pursuant to sub-rule (4) of Rule 8 of the Rules, a copy of the written statement was sent to the Complainant vide letter dated 9th November, 2011 to submit his rejoinder. The Complainant submitted his rejoinder dated 21st November, 2011 in which he had *inter-alia* stated as under:

- a) that the Respondent is only twisting the facts and changing his contentions every now and then to divert the attention of the Institute from the core point of the complaint.
- b) that the Respondent was working as a colleague of Shri Harish Khurana and has made complaint to BSE "On instigation and in collusion with Mr. Harish Khurana, another Company Secretary (FCS - 4835), with false and frivolous complaint against Dr. Wellman's Homoeopathic Laboratory Ltd. and its directors and shareholders in order to extract money". Colluding one-self or submitting oneself for collusion with the other in making a false complaint against unknown person / company will definitely amount to misconduct of



professionalism, particularly in the profession of a Company Secretary. In this case, it is the Respondent who has submitted himself for collusion with Shri Harish Khurana in making the false complaint.

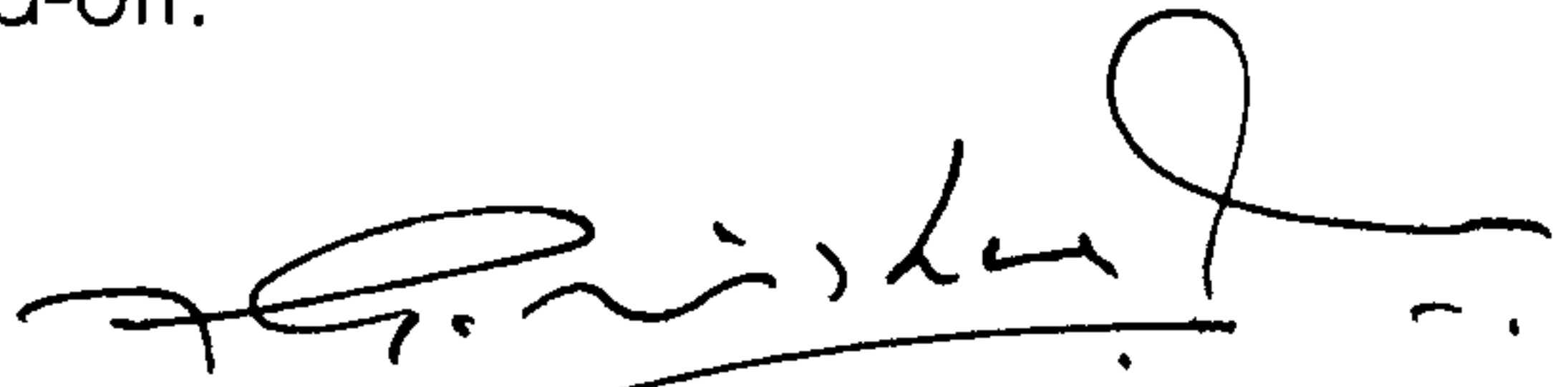
5. The Director (Discipline) pursuant to Rule (9) of the Rules examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that the Respondent is not guilty of professional or other misconduct under the First and the Second Schedule of the Company Secretaries Act, 1980. Further, since the Complainant has stated that a false complaint has been made to the Bombay Stock Exchange Limited by the Respondent, it is for the BSE Ltd., to decide as to whether the complaint made before the BSE Ltd., is false or frivolous.
6. The Disciplinary Committee at its 32nd meeting held on 1st June, 2012 considered the *prima-facie* opinion of the Director(Discipline) and the material on record, came to the conclusion that the Respondent is not guilty of Professional or other Misconduct and closed the matter. Accordingly, the complaint stands disposed-off.



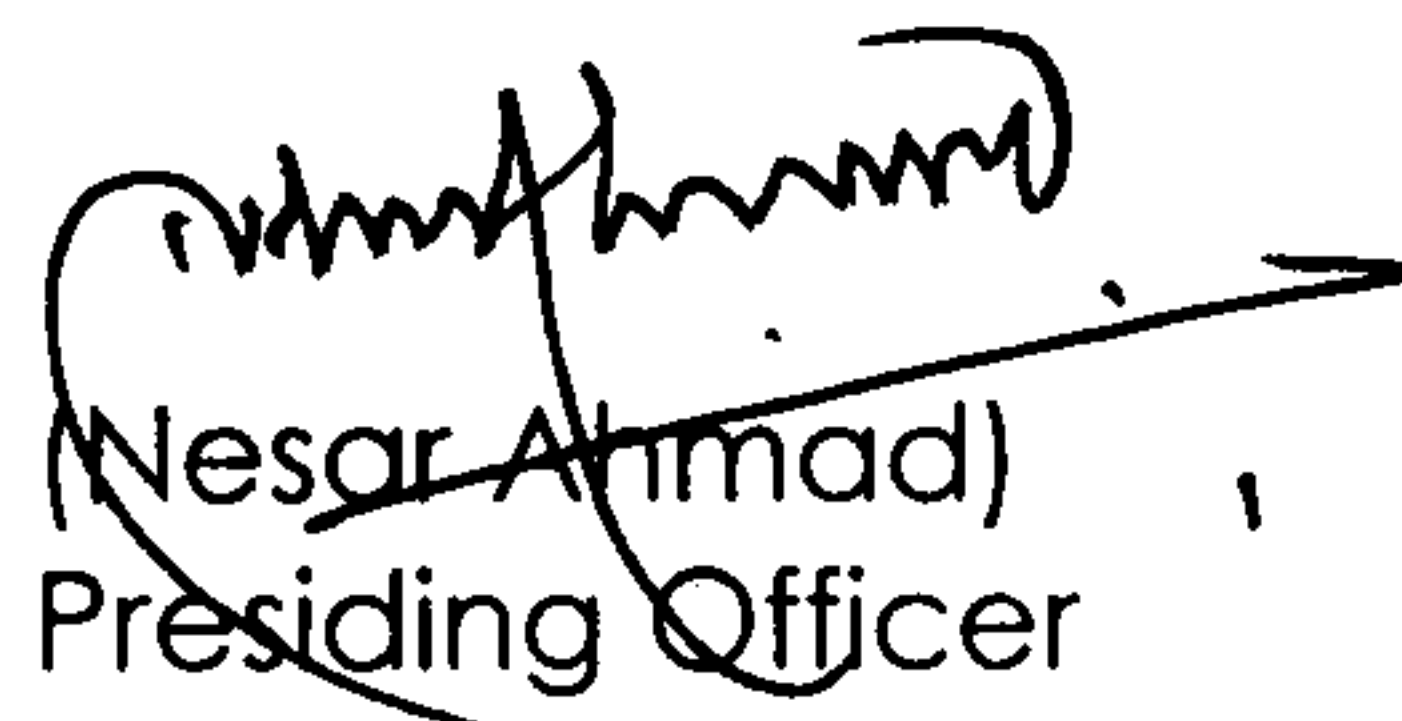
(B Narasimhan)
Member



(S K Tuteja)
Member



(Gopalakrishna Hegde)
Member



(Nesar Ahmad)
Presiding Officer

New Delhi
Date: 9th July, 2012