

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

DC: 102/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Shri Devinder Kumar Jain

....COMPLAINANT

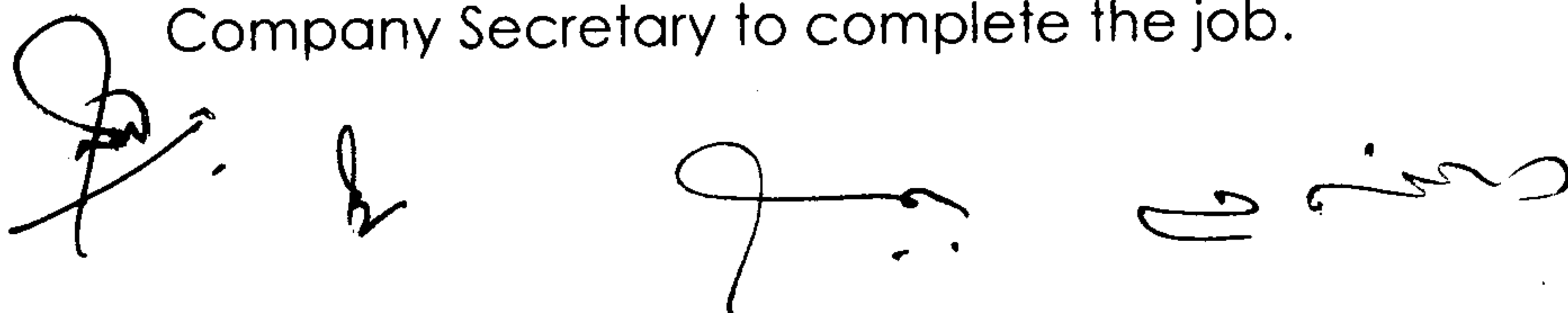
Versus

Shri Harish Khurana

.....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 Harish Khurana (FCS-4835) (hereinafter referred to as 'the Respondent' *inter-alia* alleging that the Respondent had instigated his subordinate (Shri Sumit Raj, ACS-27292) to file a wrong and false complaint before the BSE Ltd., against Dr. Wellman's Homoeopathic Laboratory Ltd., its directors and the shareholders in order to extract money.
2. The Complainant in support of his allegations had submitted that the Respondent was engaged on 28th January, 2008 by M/s. Trinity Global Enterprises Ltd., as retainer for carrying out statutory compliances with ROC. His services were terminated on 14th July, 2010 and his accounts were settled. The Respondent has given NOC on 4th August, 2010 for appointment of any other professional for executing the work.
3. The Complainant has further submitted that in the month of June, 2009, the Respondent had introduced him to Dr. G S Dhingra, the then CMD of Dr. Wellman's Homoeopathic Laboratory Ltd., wherein, he had sought his help for bailing him out from the difficulties faced by him in running the company. Dr. G S Dhingra had also shown his desire to off-load his shareholding in the company for consideration. The Respondent was the Company Secretary of Dr. Wellman's Laboratory Ltd., and was responsible for the compliances of all statutory requirements. Since, Dr. G S Dhingra found the Respondent incompetent; he had appointed another Company Secretary to complete the job.

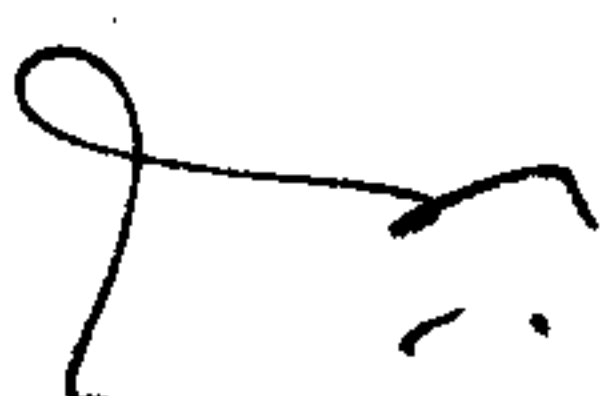
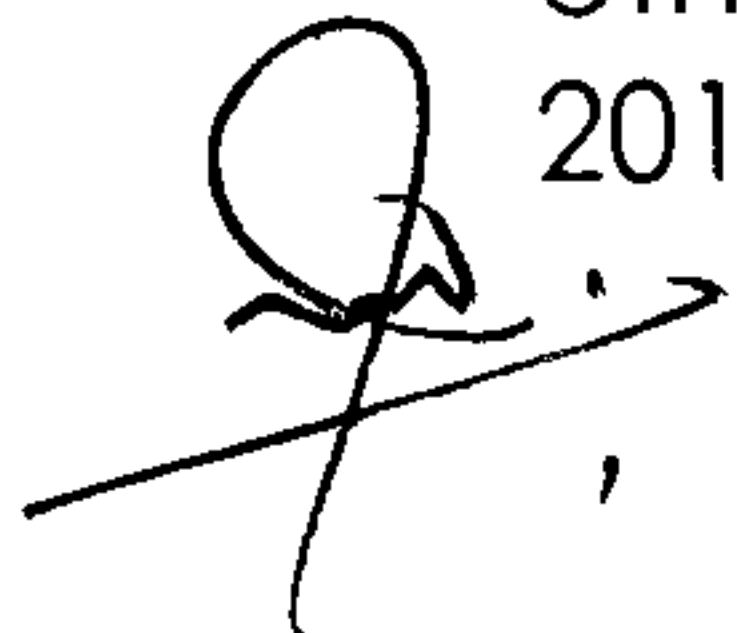


4. The Complainant has further submitted that he has never engaged the services of the Respondent as a Company Secretary of Dr. Wellman's Laboratory Ltd., and hence had not agreed for any contractual amount. All the statutory requirements of the company were completed by a team of new Company Secretaries.
5. The Complainant further alleged that the Respondent might be having a personal grudge against him and hence, he conspired with his colleague Shri Sumit Raj who had falsely and fraudulently made the complaint on 24th June, 2011 to BSE Ltd., *inter-alia* stating as under—
 - i. That there is a matter pending before the Hon'ble Delhi High Court for winding up of Dr. Wellman's Laboratory.
 - ii. Shri Anup Uberoi holds shares in Dr. Wellman Laboratory and should be made as PAC.
 - iii. M/s. Trinity Global Enterprises Ltd. has invested lot of money in M/s. Neelkanth Steel.
6. The Complainant has further submitted that Shri Sumit Raj is not known to him and nor does know the affairs of the Company. However, at the instigation of the Respondent, he has levelled the false and frivolous allegations in order to satisfy their personal grudge and to extract money from the company by way of illegal means.
7. The Complainant has further submitted that the Respondent has given a legal notice to him and to all the directors of M/s. Trinity Global Enterprises Ltd., thereby making false claims to make false recovery of money. In the said notice, it is stated that the Respondent had raised a bill for Rs 1, 25,000/- plus service tax on 1st January, 2010 in favour of the company and the bill has not been cleared till the date of the said legal notice, whereas the Respondent has given NOC to the company when his settlements were made on 4th August, 2010.
8. 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, a copy of the complaint was sent to the Respondent *vide* letter dated 25th July, 2011 calling upon him to submit his written statement.

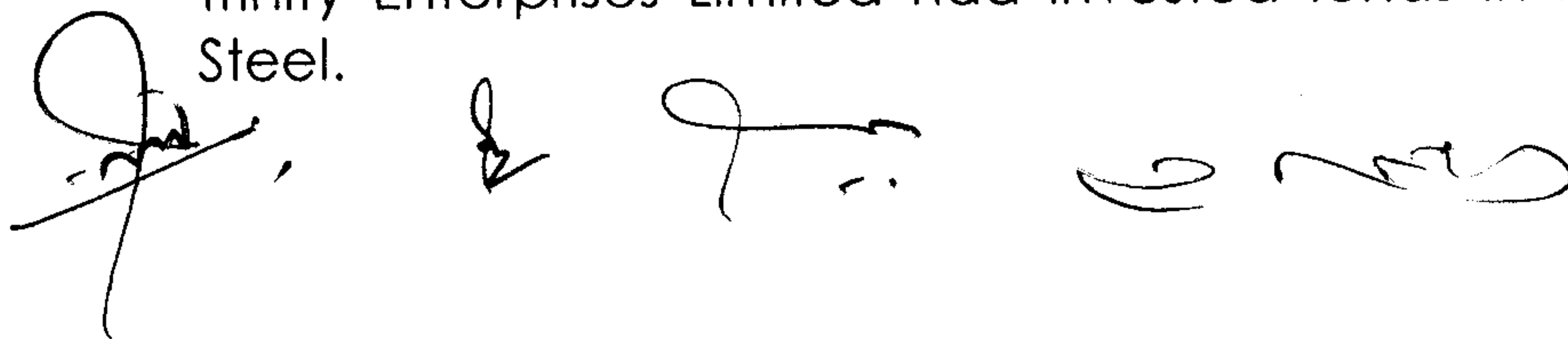


9. The Respondent submitted his written statement dated 18th August, 2011, wherein the Respondent has *inter-alia* submitted --

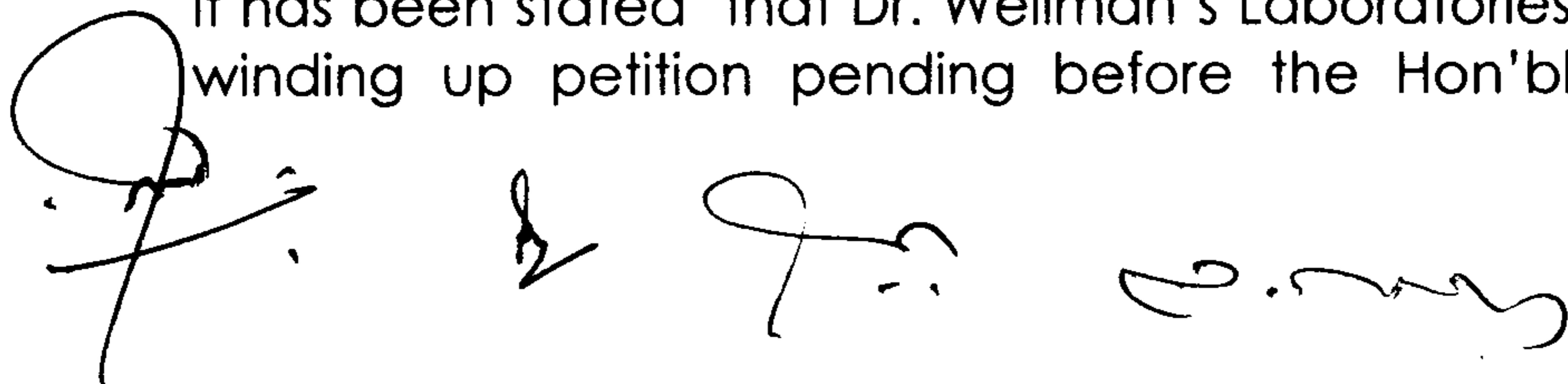
- a) that the instant complaint has been filed by the Complainant in order to avoid the payment of his professional charges. The Complainant has not specifically stated as to what professional misconduct has been done by me.
- b) that as per the Complainant, the services of the Respondent were engaged only by M/s. Trinity Group for routine maintenance of records of the said Group. Since, his services were not engaged by Dr. Wellman's Homoeopathic Laboratory Ltd., the complaint against him by the Complainant on behalf of Dr. Wellman's Homoeopathic Laboratory Ltd., is not maintainable.
- c) that he was engaged by the Complainant for the maintenance of Statutory Records of M/s. Trinity Group of Companies in the year 2008 and he continued to maintain the same till June, 2010. In the middle of the year 2009, he had introduced Dr. G S Dhingra to the Complainant. It is pertinent to note that the case of winding up against Dr, Welman's Homeopathic Laboratories Ltd., was filed by M/s. SIDBI in the year 2007.
- d) that the Complainant has admitted that the Respondent had introduced Dr. G S Dhingra to him but he has failed to state that after the said introduction whether he had done any transaction with Dr. G S Dhingra or not. Whether he or PAC had purchased the shares of Dr. Wellman's Homoeopathic Laboratory Ltd. What were the contents of the agreement with Dr. G S Dhingra and how much consideration was paid?
- e) that he was looking after the secretarial work till June, 2010 and the bill for Rs. 1,25,000 dated 1st January, 2010 was for the services rendered by him for facilitating the Complainant to enter into an agreement with Dr. G S Dhingra.
- f) that he had given the "No objection" only for engaging the services of another Company Secretary with regard to secretarial services of M/s. Trinity Group. The bill with regard to the agreement with Dr. G S Dhingra was pending and it had nothing to do with the secretarial work and it is for this reason that 'No Objection' was given to the M/s. Trinity Group. No objection with regard to the pending bill for agreement with Dr. Wellman's Homeopathic Laboratories Limited was never given, otherwise the notice would not have been sent on 2nd March, 2011.



- g) that the Complainant had agreed to pay the liabilities of Dr. Wellman's Homeopathic Laboratories Ltd., to SIDBI and the same were paid by the Complainant and his companies and during the course of payment to SIDBI by the complainant, winding up petition was pending with the High Court of Delhi. The Complainant and his associates/friends and relatives purchased the shares of Dr. Wellman's Laboratories Limited and the monies were paid directly to the banks/SIDBI and the share certificates along with the transfer deeds were handed over to the Complainant and his relatives. The entire transaction was completed after the formal agreement was entered into between the Dr. G S Dhingra and the Complainant.
- h) the services of the Respondent were discontinued in June, 2010 by the Trinity Group and the Respondent gave no objection for engaging the services of another Company Secretary. As the transaction of facilitating the agreement with Dr. G S Dhingra was entirely a separate transaction, the fact of pending bill in respect to that transaction was not stated in the no objection certificate.
- i) when the Respondent informed the Complainant that the entire transaction was complete with Dr. Dhingra, he requested the Complainant to clear his bill. The Complainant refused to clear the said bill for his professional charges and as such the Respondent sent a legal notice for recovery of his professional bill.
- j) the Complainant had stated that a complaint had been made by the Respondent to BSE that the winding up petition is pending before the Delhi High Court. On the date of complaint, though the petition was not pending but the first transaction of payment of money was made during the course of winding up petition.
- k) In the chain of events, the Complainant had stated that the complaint has been made by the Respondent to BSE that the winding up petition is pending before the Delhi High Court. In this regard the Respondent has submitted that on the date of complaint, though the petition was not pending but the first transaction of payment of money was made during the course of winding up petition. Secondly, the Complainant and his relatives hold shares in Dr. Wellman's Laboratories Ltd., is a fact and not a grievance. Thirdly, there is no complaint that M/s. Trinity Enterprises Limited had invested funds in M/s. Neelkanth Steel.



- l) The instant complaint has been filed by the Complainant in order to avoid the payment of his professional charges.
10. 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 24th August, 2011 to submit his rejoinder. The Complainant submitted his rejoinder dated 7th September, 2011. The Complainant in his rejoinder dated 21st November, 2011 has *inter-alia* stated as under:
- a. The Complainant has submitted that the Respondent has misrepresented and twisted the facts in the complaint in order to divert the attention from the core point.
 - b. The Complainant has further submitted that the Respondent in his written statement has mentioned that he was engaged by the Complainant for the maintenance of statutory records of the Trinity Group and he was issued an appointment letter by the Complainant and hence the Respondent's contention that there is no question of acquiring any knowledge by him about M/s. Trinity Global Enterprises Ltd., is untrue. The complaint to BSE and SEBI in respect of Dr. Wellman's Laboratories Limited made by the subordinate of the Respondent is just to hamper and obstruct the working of the company which will affect directly to the Complainant who is the Group Chairman of Trinity Group. The services of the Respondent were engaged by Dr. G S Dhingra, the promoter of Dr. Wellman's Laboratories Limited. The Respondent has referred to the comments of Dr. G S Dhingra vide letter dated 6th July, 2011 which have been brought on record.
 - c. The Complainant further submitted that merely raising of a bill does not amount to commitment but are to be supported by written order or agreement. The Complainant confirmed that there is no agreement between the Complainant and the Respondents and the claim of the Respondent.
 - d. The Complainant further submitted that no professional gives NOC unless he gets his full due payments. If the Respondent has given NOC that means his full and final settlement has been made. The bill is an afterthought.
 - e. The Complainant has further submitted that in the complaint made by Shri Sumit Raj on instigation of the Respondent wherein it has been stated that Dr. Wellman's Laboratories Limited has a winding up petition pending before the Hon'ble High Court



whereas the Respondent in his written statement has stated that the winding up petition was disposed off in 2007.

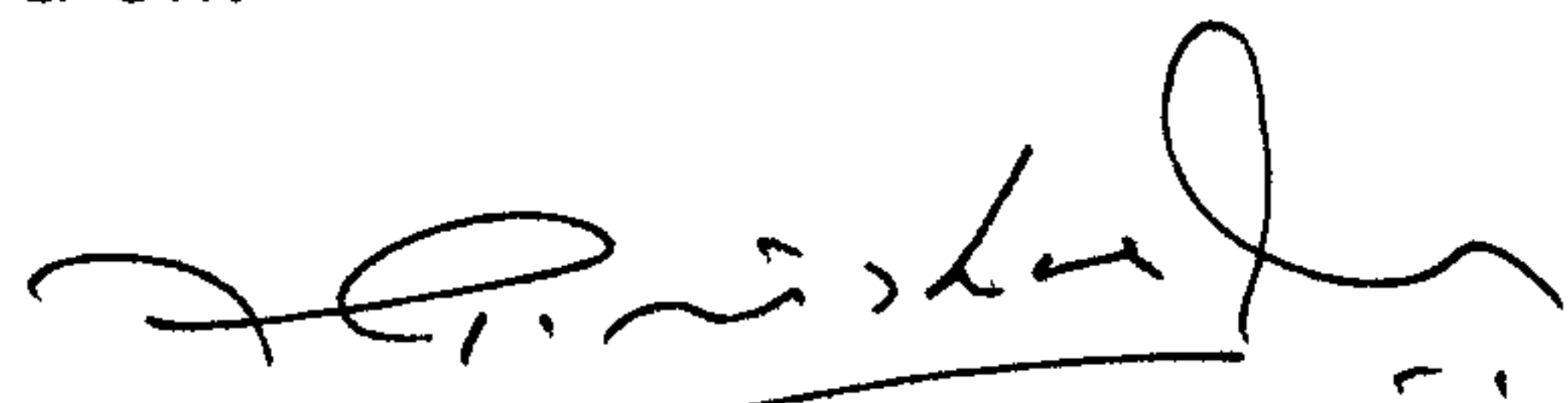
- f. As per the complaint of the subordinate of the Respondent to the BSE and SEBI, that there is a winding up petition pending before the court, which is totally false and shows their *mala-fide* intention. Shri Jaswinder Singh, Advocate, Delhi High Court vide his letter dated 6th September, 2011 informed that the company petition was dismissed as withdrawn on 16th July, 2010.
- g. The Complainant has further alleged that the Respondent was aware that if he had made the complaint himself directly to BSE Ltd., he would have been caught in the eyes of the Institute and hence, he has chosen his subordinate Shri Sumit Raj as a scapegoat and instigated to file the complaint through him.
11. 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 BSE Ltd., by the subordinate of the Respondent, it is for the BSE Ltd., to decide as to whether the complaint made before it, is false or frivolous.
12. 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.



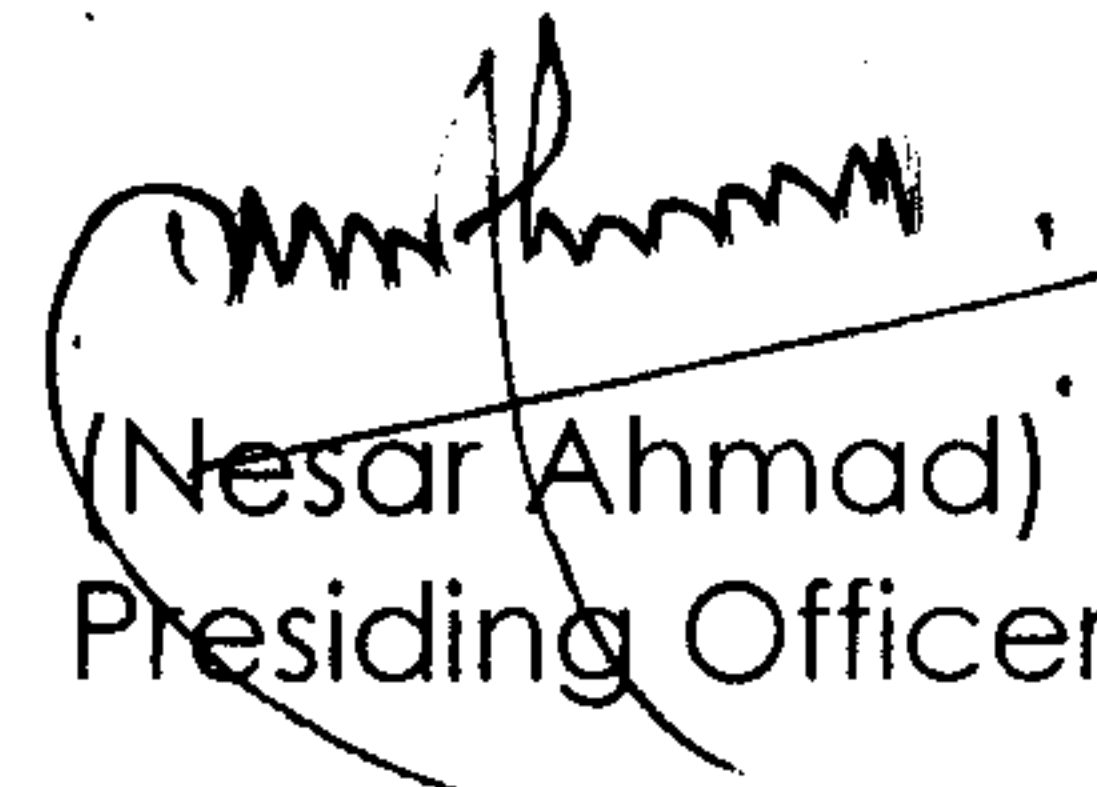
(B Narasimhan)
Member



(S K Futeja)
Member



(Gopalakrishna Hegde)
Member



(Nesar Ahmad)
Presiding Officer

New Delhi
Date: 9th July, 2012