

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

DC: 98/2011

IN THE MATTER OF COMPLAINT OF PROFESSIONAL OR OTHER MISCONDUCT

Shri Rajesh Jain

....COMPLAINANT

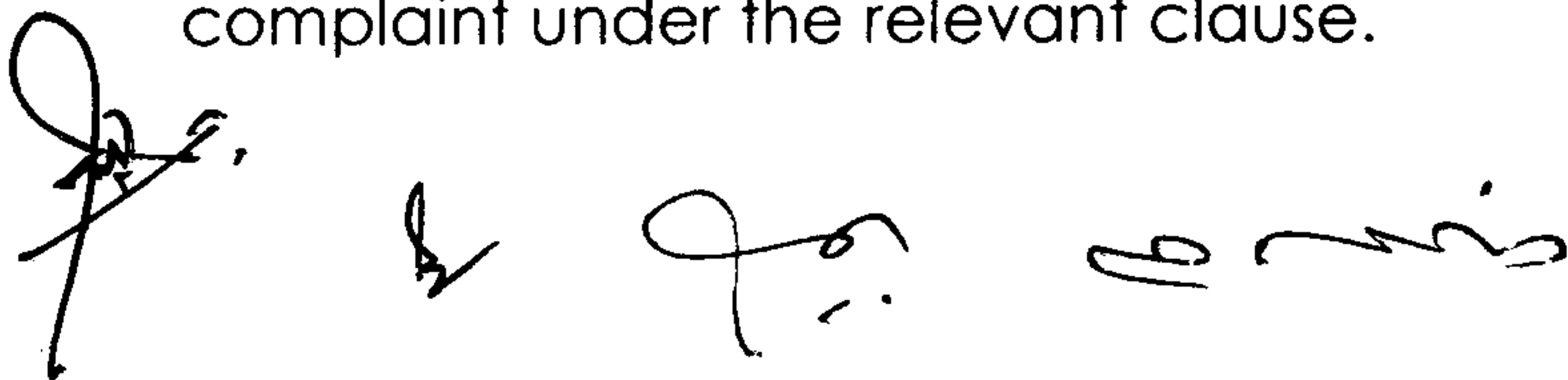
Versus

Shri Neelesh Gupta

.....RESPONDENT

ORDER

1. The Institute had received a complaint dated 4th July, 2011 from Shri Rajesh Jain (hereinafter referred to as 'the Complainant') against Shri Neelesh Gupta, FCS – 6381 (CP- 6846), (hereinafter referred to as 'the Respondent') *inter-alia* alleged as under:
 - a) that the Respondent has certified and filed the following e-forms without exercising due diligence and failed to check the legality of Notice, meeting and minutes from the Registered office of the company (M/s. Brilliant Institute of Professional Studies Pvt. Ltd.).
 1. Certified Form No. 23 and filed it on 17/03/2011
 2. Certified Form No. 2 and filed it on 6/6/2011
 3. Certified Form No. 23 and filed it on 6/6/2011
 - b) The Complainant has further alleged that the Form No. 2 was certified and filed back dated by the Respondent on the basis of alleged Board meeting dated 15th February, 2011 which had never taken place as per the Company's records.
2. The Complainant *vide* letter dated 8th July, 2011 was asked to specify as to under which clause of the First/Second Schedule of the Company Secretaries Act, 1980 he has filed the complaint. The Complainant *vide* letter dated 20th July, 2011 informed that he does not have any idea about the clauses under which the complaint should be registered and requested the Institute to register the complaint under the relevant clause.



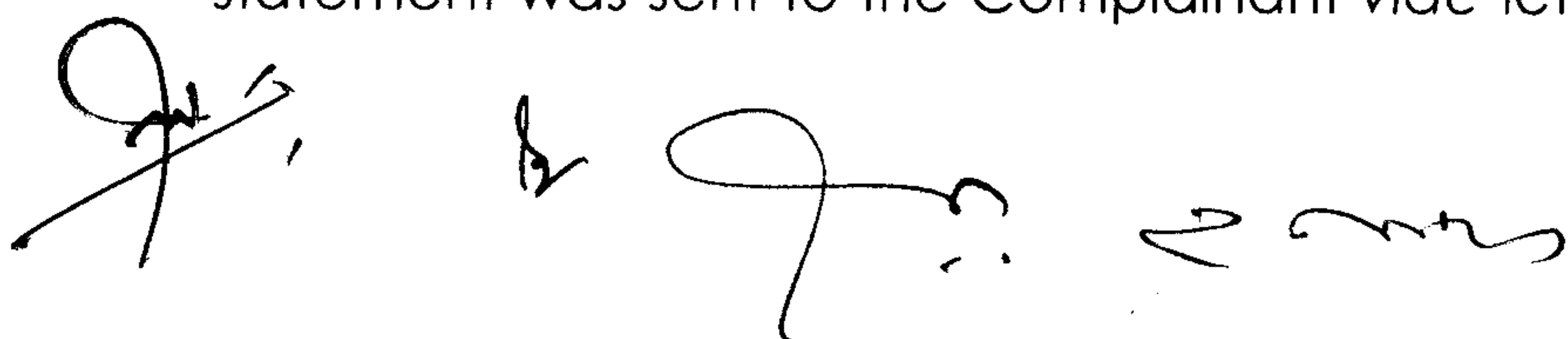
3. Pursuant to sub-rule (3) of Rule 8 of the Company Secretaries (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 (the Rules) a copy of the complaint was forwarded to the Respondent vide letter dated 8th July, 2011 calling upon him to submit his written statement. The Respondent vide letter dated 26th July, 2011 submitted his written statement wherein the Respondent has *inter-alia* submitted that he was approached by Shri Sanjeev Patni, representing the Board of directors of M/s. Brilliant Institute of Professional Studies Pvt. Ltd., for filing different e-forms with ROC, Madhya Pradesh.

The Respondent has further submitted that he was given the certified copies of the resolutions passed in the meeting along with the minutes of the meeting of the Board of Directors of the company held on 15th February 2011 and also of the Extra Ordinary General Meeting of the shareholders of the company held on 21st May 2011. Thereafter, the Respondent verified the procedure followed by the company in holding all these meetings and verified from on-line records of the ROC about the constitution of the Board of Directors and the authority of Shri Sanjeev Patni, Director, M/s. Brilliant Institute of Professional Studies Pvt. Ltd.

The Respondent has further stated that he had also spoken to Mr. Sanjeev Patni, Director, M/s. Brilliant Institute of Professional Studies Pvt. Ltd on this issue. Mr. Sanjeev Patni vide his letter dated 25th July, 2011 had informed that the meeting of the Board of Directors was called on 15th February, 2011 for which due notices were sent to all the directors including the Complainant. The Complainant had expressed his inability to attend the meeting. An explanation was called for from the Complainant for mis-appropriation of the funds of the company. However, the Complainant did not reply to the same and subsequently, as per the decision of the Board of Directors of the company, an Extra Ordinary General Meeting of the Shareholders was called for to decide the matter of mis-appropriation of funds of the company by the Complainant. In the said meeting, it was decided to take legal action against the Complainant and accordingly, a legal notice was sent to the Complainant.

The Respondent has stated that the charges levelled against him are totally false and nothing but to harass him.

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 1st August



2011 to submit his rejoinder. The Complainant submitted his rejoinder dated 10th August, 2011 wherein he has denied all the allegations and averments made by the Respondent in his Reply and has raised the following questions;-

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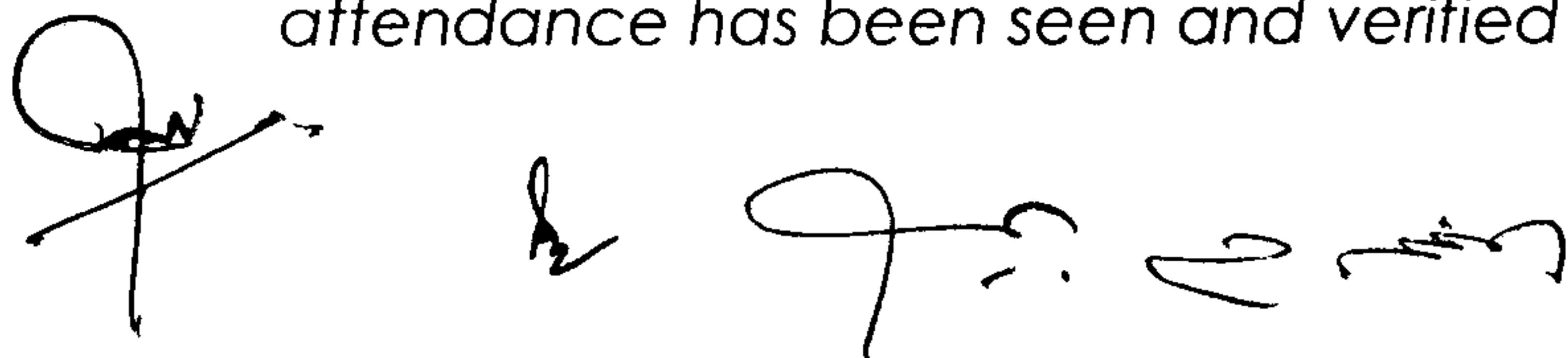
1. Neelesh Gupta has informed that he has gone through the online records of the company on MCA, then he must become aware that
 - a. none of the directors of the company are executive / Managing Director,
 - b. till that day some other professional is doing all compliances for the company,

Whether he has asked why the company is approaching him, to Mr. Patni and what was the answer given by Mr. Patni to him.

2. Whether he has taken NOC from previous professional.
3. Whether he has contacted company at its registered office before doing such work.
4. Mr. Neelesh Gupta merely stated that he has verified the procedure followed by company without answering following questions. **He should reply specifically on the following points to prove that he has performed due diligence while discharging his duties as practicing professional.**

For Form No.23 (filed on 17/03/2011)

- a. Whether proper and valid notice is given to all directors, complying with the requirements of companies act and articles of the company like date of dispatch, agenda and other statutory requirements.
- b. Whether he has seen the copy of notice of the meeting.
- c. Whether Proof of dispatch of notice at the official addresses of all directors has been seen by him and whether notice was in compliance with the provisions of the companies act and articles of the company
- d. Whether Statutory Attendance register for directors' attendance has been seen and verified by him.

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- e. Whether he has gone through the statutory minute book for the board meeting of the company
- f. Whether he has contacted company or any of its officers for details, Mr. Sanjeev patni being non executive director.
- g. How he has verified the signatures of all directors on the minutes and notice.

For Form No.23 (filed on 06/06/2011)

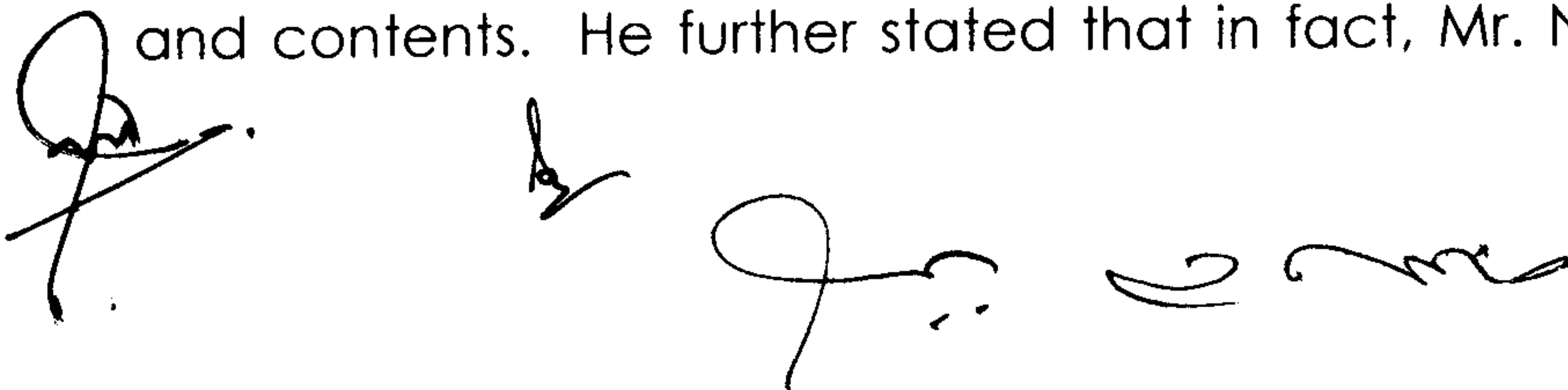
- a. Whether proper and valid notice is given complying with the requirements of the companies act and articles of the company like date of dispatch, agenda and other statutory requirements.
- b. Whether he has seen the copy of notice of the meeting.
- c. Whether Proof of dispatch of notice at the official addresses of all shareholders has been seen by him and whether notice was in compliance with the provisions of the companies act and articles of the company.
- d. Whether Statutory Attendance register for Shareholders attendance has been seen and verified by him.
- e. Whether he has gone through the statutory minute book for the members meeting of the company
- f. Whether he has contacted company or any of its officers for details, Mr. Sanjeev patni being non executive director.
- g. How he has verified the signatures of all members of the company for attendance.

For Form No.2 (filed on 06/06/2011)

- a. Whether he has verified the share applications received for the allotment of shares for details like no. of shares applied for, amount paid on application, date of application etc.
- b. Whether he has verified that the company has actually received payment against the issue of share from prospective allottees.
- c. The allotment of shares was done in the board meeting dated 15/02/2011 for which Mr. Neelesh Gupta has filed one form 23 on 17/03/2011. Whether he questioned Mr. Sanjeev Patni that why form no. 2 is being filed by such delay.

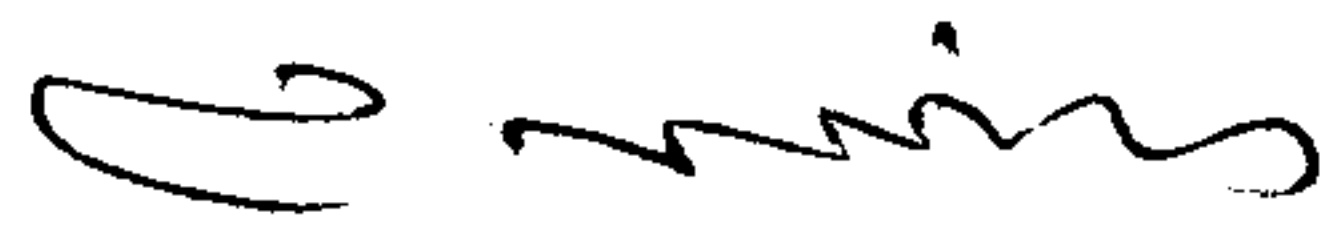
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- d. Whether delay filing has caused any suspicion in his mind as the allotment of shares was to the brother of Mr Sanjeev patni and his residential address is the same as Mr Sanjeev Patni's.
- e. The minutes of board meeting (copy of which supplied by Mr. Neelesh Gupta) does not contain the names of allottees of shares. How he has filed form no. 2 based on such minutes.
5. Mr. Neelesh Gupta has stated that after the receipt of complaint from ICSI he has contacted Mr. Sanjeev Patni. Regarding this he has to answer the following:
- a. Whether he has contacted company or not, if he has contacted the company with whom he had discussions the name of the person, gist of the discussion and time of discussion.
- b. Where he has contacted Mr. Patni
- c. When he has contacted Mr. Patni
- d. How he has contacted Mr. Patni
6. The minutes of board meeting dated 15/02/2011 indicate that minutes of the previous meeting could not be confirmed, because Mr. Rajesh Jain was absent. Whether this recording arose any doubt in his mind for the genuineness of the minutes. Whether absence of one of the director becomes an excuse for the board not to approve the minutes of the last meeting.
5. The Complainant has further stated that he is the director and shareholder of the company and confirmed that he has not received any valid and legal notice for Board meeting dated 15/02/2011 and Extra Ordinary General Meeting dated 21/05/2011.
6. He has further stated that the practicing professionals to perform the duty diligently and their scope of work is not merely filing the papers. They have to verify the details contained in those papers, their genuineness and correctness. He also stated that the Practicing professional is merely not a postman to deliver papers to Registrar of Companies but have legal responsibility thrust upon them under the Companies Act and ICSI to verify the procedure and contents. He further stated that in fact, Mr. Neelesh Gupta in



the referred case has been hand in glove with Mr. Sanjeev Patni, to help to achieve the mischievous goals of Mr. Sanjeev Patni.

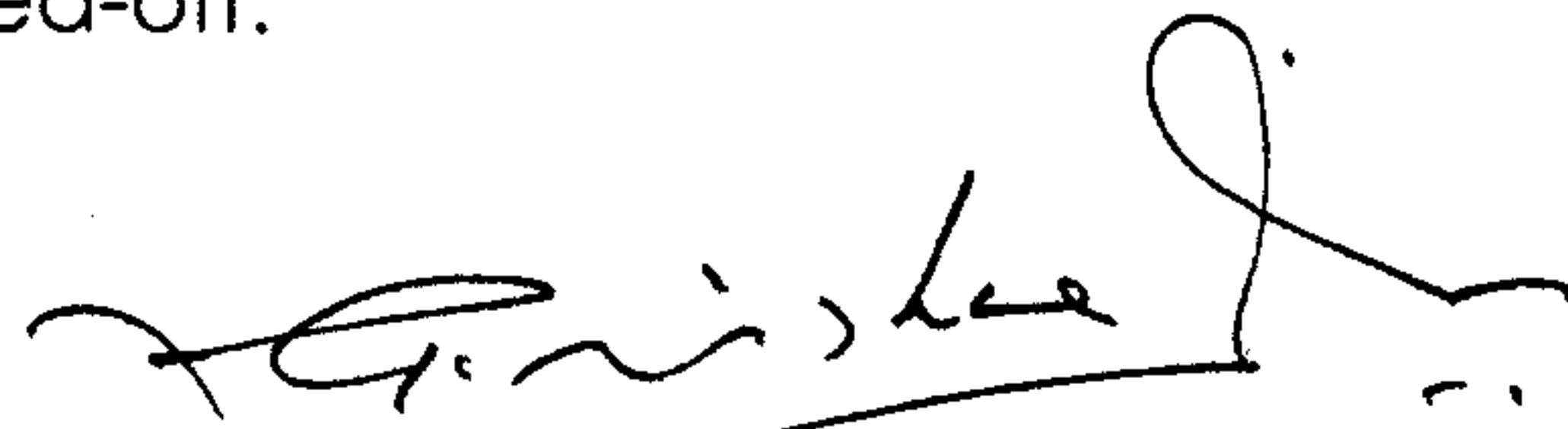
7. The Director (Discipline) pursuant to Rule 9 of the Rules examined the complaint, written statement, rejoinder and other material on record and was of the *prima-facie* opinion that the Respondent is not guilty of professional or other misconduct under the Company Secretaries Act, 1980 as the Respondent had certified the said forms on the basis of the Resolutions passed in the meeting of the Board of directors in EOGM. He further opined that it is apposite to allusion that the Company Secretary in Practice has every reason to rely on the genuineness of the documents produced before him for certification unless there is suspicious apparent on the record. In the instant case, the Respondent had relied on the resolutions. The letter dated 26th July, 2011 issued by Mr. Sanjeev Patni, Director of the company also clearly portrays that the Respondent had only acted on the basis of the explanations and the documents provided to him.
8. 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.



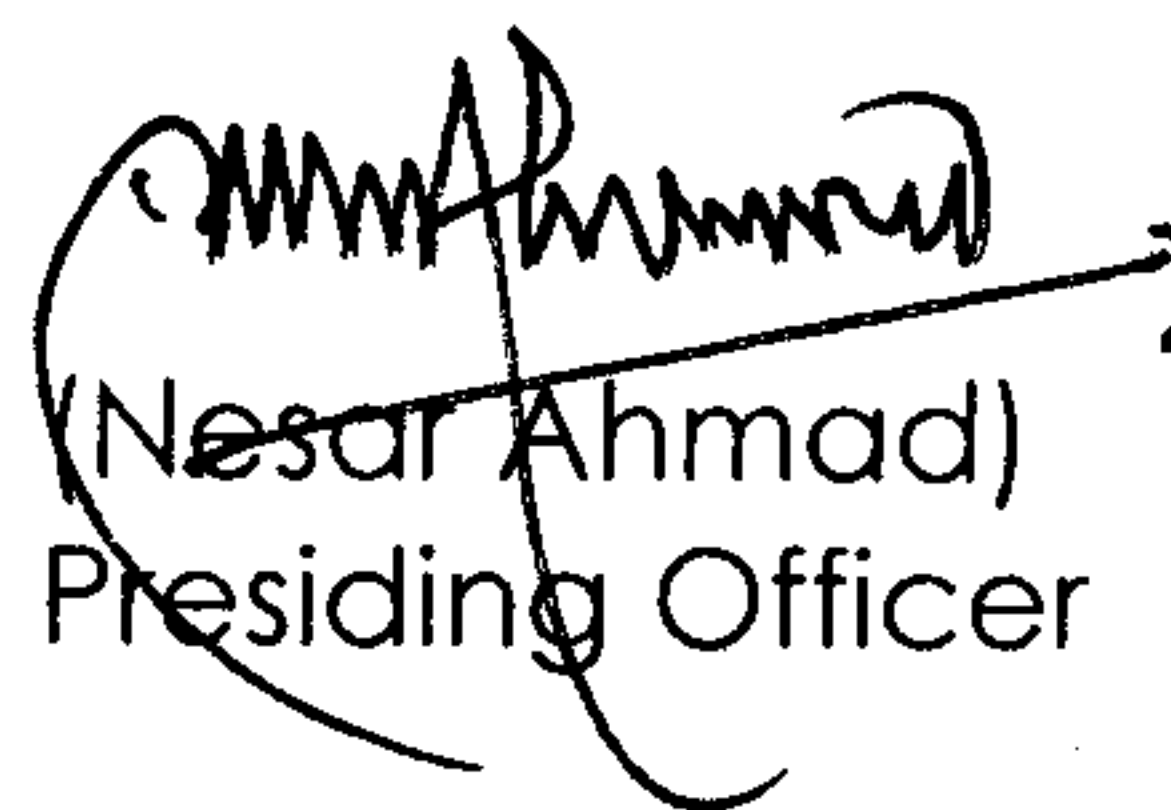
(B Narasimhan)
Member



(S K Tuteja)
Member



(Gopalakrishna Hegde)
Member



(Nesar Ahmad)
Presiding Officer

New Delhi
Date: 9th July, 2012