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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8361/2022 & CM APPL. 29101/2022, 29104/2022**

KAILASH CHANDRA NUWAL

..... Petitioner

Through: Mr. Percival Billimoria, Sr. Advocate
with Ms. Rachita Sood, Mr. Divyam
Khera, Mr. Rahul Goel, Mr Shobhit
Sharma & Mr. Paritosh Dhawan,
Advocates. (M: 9910335069)

versus

INSTITUTE OF COMPANY SECRETARIES OF INDIA

& ORS.

..... Respondents

Through: Mr. S. K. Maurya, Advocate (proxy
counsel). (M: 9540024465)
Mr. Ravi Prakash (CGSC) Mr.
Farman Ali, Ms. Usha Jamnal & Ms.
Archana Surve, Advocate for R-2.
(M: 9015697073)
Mr. Vijayendra Pratap Singh, Mr.
Aditya Jalan, Ms. Urvashi Misra,
Ms. Simran Bhat, Mr. Arnab Ray,
Advocates for R-3. (M:
9804861182)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 18.04.2023

1. This hearing has been done through hybrid mode.

W.P.(C) 8361/2022 & CM APPL. 29101/2022, CM APPL. 29104/2022

2. The present petition has been filed by the Petitioner – Kailash Chandra Nuwal seeking setting aside of the order dated 14th January, 2022 *passed by the* Respondent No.1 - Institute of company secretaries of India



(ICSI). The Petitioner further seeks directions to ICSI to pass appropriate order against Respondent No.3 - Ms. Khushboo Pasari for wilful breach and non-compliance of various laws, regulations, rules amounting to gross professional misconduct.

3. The Petitioner had filed a complaint before the ICSI in respect of the conduct of Respondent no.3, who is a company secretary on the rolls of the ICSI,. Vide impugned order dated 14th January, 2022 the ICSI came to the conclusion that the Respondent No.3 is *prima facie* not guilty of professional or other misconduct. The challenge has been raised against the the *prima facie* opinion of the ICSI *inter alia*, on the ground that the Petitioner was not heard in the matter.

4. In the present petition, the order dated 26th May, 2022 passed by this Court records *prima facie* as under:

“Bearing in mind the nature of controversy which stands raised, notice shall issue to respondent Nos.1 and 3. Although those respondents have been placed on advance notice, none has appeared on their behalf when the matter was called. Consequently, learned counsel for the petitioner shall take steps for service through all permissible modes including via approved courier service.

Prima facie, the Court finds the merit in the contention of Mr. Billimoria, learned Senior Counsel appearing in support of the writ petition, who draws the attention of the Court to the License Agreement which was executed by the wife of one of the directors and which would thus consequently fall in the specie of a related party agreement. It is in the aforesaid backdrop that it is contended that the action of the concerned Company Secretary would clearly amount to professional misconduct.

Matter requires consideration.”



5. The grievance of the Respondent No.3 is that the Court was incorrectly informed that the advance copy was served on her. In fact the advance copy of the petition was not served upon her and the petition was served deliberately through courier to Nagpur and no email service were effected. Thus, the representation to the Court that the Respondent No.3 were served through approved courier service is incorrect.

6. Mr. Percival Billimoria, Id. Sr. counsel for the Petitioner submits that since the Respondent No.3 is based in Nagpur, the courier service was made as per prescribed procedure, three days prior to the first listing of the matter.

7. The recall application is based on the alleged misrepresentation relating to service of advance copy. The fact remains that the petition was not served through email upon Respondent No.3. Further, the *prima facie* observation made by this Court on 26th May, 2022 was made in the absence of the Respondent No.3. The matter would still have to be adjudicated after hearing Respondent No.3. A *prima facie* observation of this nature does not prejudice the party as the said observation is recorded in the context of issuing notice and the Court arriving at the conclusion that the matter requires consideration. With this clarification the application for recall i.e., **CM APPL. 29104/2022** is disposed of.

8. It is seen that the allegations of the Petitioner before the ICSI relates to the Respondent No.3's tenure as a company secretary of M/s Solar Industries India Ltd. and M/s Economic Explosives Ltd. However, it is the case of the Respondent No.3 that she was not the company secretary of Economic Explosives Ltd.



9. Considering this background, it is deemed appropriate to implead these two companies in the present proceedings as Respondent Nos. 4 & 5.
10. Let the amended memo of parties be filed within a week and notice be issued to the said companies as well.
11. ICSI has not filed the counter affidavit in this matter. Last and final opportunity is granted to the ICSI to file its counter affidavit. In the counter affidavit, ICSI shall also state as to whether, in practice, hearing is granted to the parties or not, while deciding complaints of this nature.
12. Let all the remaining Respondents also file their respective counter affidavits. Rejoinder, thereto, be filed within four weeks.
13. List before Registrar for on 12th July, 2023.
14. List before Court on 11th October, 2023.

PRATHIBA M. SINGH, J.

APRIL 18, 2023

dj/kt