IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st February, 2022

\+ W.P.(C) 1037/2022, CM No. 2937/2022

SAURABH KALIA AND OTHERS ..... Petitioners

Through: Mr. Arun Kathpalia and Mr. Krishnendu Datta, Sr. Advs. with Mr. Saurabh Sharma, Ms. Sonali Jain, and Mr. Preet Pal Singh, Advs.

versus

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA AND OTHERS ..... Respondents

Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. Srinivas Kotni & Mr. Sandeep Chatterjee, Adv. for R-1 & 3.
Mr. Sarat Chandra, Adv. for UOI/ R-2.
Mr. Raj Shekhar Rao, Sr. Adv. with Mr. Chitransh Mathur and Ms.Tarushi Maheshwari, Advs. for R-4.
Mr. Anurag Kalavatiya and Mr. Akshat Khandelwal, Advs. for R5

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This instant petition has been filed with the following prayers:-

> *"a) Issue a writ of certiorari or any other writ, order or direction to quash the meeting dated 26th December, 2021 thereby quashing the appointment of office bearers made in the alleged meeting dated 26th December, 2021 and;*
> *b) Issue a writ of certiorari or any other writ, order or direction to Quash decision made by the President of the ICSI on 6th January, 2022 and RD-*

NIRO on i h January, 2022 affirming the decision of the President and subsequent alleged appointments of the Office Bearers;
c) Issue a writ of Mandamus or any other writ, order or direction to Respondent No. 1 thereby directing the said Respondent to immediately allow the holding of the 259th Meeting (postponed meeting) scheduled for 18th January 2022 for appointment of the Office bearers for the term 19th January 2022 to 18th January 2023;
Any other and further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The petitioners being members of the Institute of Company Secretaries of India ('ICSI', for short, respondent No. 1 herein) established under the Company Secretaries Act, 1980 ('Act of 1980', hereinafter), have filed this petition, *inter alia,* seeking directions quashing the meeting dated December 26, 2021, of the Northern India Regional Council ('NIRC', for short) of the ICSI and thereby rendering null and void the appointment of office bearers of NIRC made in the said meeting.

3. It is stated in the writ petition that the petitioners were elected as members of NIRC from January 19, 2019, with tenure up to January 18, 2023, in terms of the notification dated December 31, 2018 issued in the Gazette of India (Extraordinary) in accordance with Rule 36 of the Company Secretaries (Election to the Council) Rules, 2006 ('Rules of 2006', for short). The process and modalities for election of the office bearers for the period January 19, 2022 till January 18, 2023 was taken on agenda as item No. 10 in the 258th Meeting of the NIRC held on December 20, 2021 as per section Clause 119(2) of the Company Secretaries Regulations, 1982 ('Regulations of 1982',

hereinafter). Given the prevailing situation with regard to the pandemic, it was decided to conduct an electronic voting process.

4. The notice for 259th meeting of the NIRC, scheduled to be held on December 26, 2021, was circulated through email amongst the members by the Chairman on December 18, 2021. Initially, the time of the meeting was fixed at 11 AM through Online Video Conferencing but the same was advanced to 9:30 AM and a hybrid mode was adopted, which was communicated by the Chairman vide email dated December 20, 2021. On December 23, 2021, an agenda for the 259th meeting was circulated by the Chairman.

5. It is stated that, for standardising diverse practices and institutionalising a reliable and robust framework to protect the interest of all stakeholders, the ICSI has formulated Secretarial Standard on Meetings of the Board of Directors ('SS-I', hereinafter) for its Council Meetings, which have been duly approved by Central Government under Section 118 (10) of the Companies Act, 2013. It is the case of the petitioners that the notice for the 259th meeting and the agenda thereof suffers from irregularities and legal infirmities as the same are in violation of Regulation 90 of the Regulations of 1982 and SS-I, and as such there was no valid notice/agenda for the 259th meeting. The irregularities alleged in the petition are reproduced as under:-

> *"i. Firstly, notice sent on 18th December 2021 itself does not contain the agenda and agenda notes for the meeting on 26th December 2021, which is in violation of SS-l as well does not comply Regulation 90 of the CS Regulations.*
>
> *ii. Secondly, as per Para 1.3.7 of the SS-l provides that the Agenda, setting out the business to be transacted at*

the Meeting, and Notes on Agenda shall be given to the Directors (in the present context- members of NIRC) at least seven days before the date of meeting, unless the Articles prescribe a longer period. However, in the present case, the Agenda of the Meeting was communicated two days prior to the meeting i.e. 23rd December, 2021 and that too incomplete. Further, the Agenda did not had guidelines nor notes to show how such agenda items will be taken up or voting shall take place. The said guidelines were the heart and soul of the agenda notes, as these guidelines provide clarity regarding the various nuances of the election process including the process for nomination, voting if members are attending the meeting physically, electronically or in hybrid mode. In absence of such guidelines the elections can not be conducted, especially in these COVID times when members participate in hybrid mode.

iii. Thirdly, there are discrepancies in Notice convening meeting. That the Notice issued on 18th December, 2021 for convening 259th meeting on 26th December, 2021 at 11:00 am only provided the facility to participate physically. The facility to participate through electronic mode was not mentioned. It was only email dated 23rd December, 2021 that mentioned such facility to participate through electronic mode. The same is also relevant from the point of view that several members who attend are out of NCR from various states of Northern India so they can plan in what manner they wish to attend the meeting.

iv. Fourthly, the mandate of SS-l is very clear that the notice convening meeting shall clearly specify inter-alia mode of participation. Further, para 1.3.4 of SS-l mandates that the Notice shall inform the Directors (in the present context- the members of NIRC) about option available to them to participate through Electronic Mode and provide them all the, necessary information. In absence of the above, the Notice convening the meeting shall be treated as defective and non-est.

v. No consent or consensus had been obtained from all the members for taking up such a pertinent Agenda on

shorter notice or even for such change of time as well.
vi. Further, the agenda papers were not sent within the stipulated time limit of seven days in advance. The Chairman, NIRC invited comments from Regional Council Members on the same and concerns were taken-up. The attention of the Chairman, NIRC was drawn to various non-compliances to the provisions of the CS Regulations, 1982 and SS-1 regarding the notice and Agenda papers. The Chairman, NIRC was further apprised that procedure for conduct of Election of office Bearers for 2022-23, nominations and voting in physical, electronic and hybrid mode has also not been circulated to the members and accordingly request was made to reschedule the 259th meeting after circulation of necessary documents in compliance to applicable Regulations and SS-1.
vii. It is a matter of record that the said details regarding the conduct of Election of office bearers for 2022-23 were neither annexed to the Agenda circulated two days prior to the meeting and nor were placed during the discussions. The member insisted that the said meeting is in contravention of law as no valid notice or agenda was circulated prior to the meeting, hence be postponed. The same was raised especially when the agenda was for election of office bearer and for a free, fair and transparent election process, the meeting be postponed.
viii. The issue pertaining to Notice and Agenda along with agenda notes not in due compliance to applicable provision of SS-1 and Regulations was deliberated and debated extensively. The views of members were divided, while few members were pressing for rescheduling the meeting after circulation of necessary agenda notes in compliance to applicable legal provisions and few supported for commencement of meeting for election of office bearers for 2022-23.
ix. The import of Regulation 90 read with SS-1 clearly mandates that the agenda with complete agenda notes, mode of attendance and manner of voting in this case ought to have been sent 7 (seven) days in advance which was not the case in the present meeting."

6. The aforesaid concerns/violations pertaining to improper notice and incomplete agenda for meeting were objected to and brought to the notice of the Chairman by some members vide email dated December 25, 2021, with a request to reschedule the 259th meeting, and convene it after proper circulation of notice and agenda notes with all relevant details regarding voting/e-voting process in concurrence with SS-I. It is stated that however, no reply/response was received for the same.

7. On December 26, 2021, all seventeen members of the NIRC met at 9.30 AM. Out of the seventeen members, fifteen members were present physically while remaining two members joined virtually. Since necessary compliance in terms of the Regulations of 1982 and SS-I was not made and a valid meeting could not take place, it was agreed to discuss the objections before officially commencing the meeting. As such, after about two hours of deliberations, around 11.35 AM, to avoid any complication and illegality, it was mutually agreed amongst all members to allow the Chairman to take a decision on the issue. The Chairman, after hearing the members, decided that the 259th meeting stands postponed to a future date. Thereafter, several members including the Chairman left. An email to the said effect was also circulated by the Chairman on December 26, 2021 itself to the Regional Director (North) intimating the decision of the Council to postpone the 259th meeting. It is stated that as per established practice of NIRC, the entire proceedings of Council meetings are audio recorded, and the facts stated above could be verified by a perusal of the same.

8. Further, it is submitted that to the surprise of the petitioners, in

the evening of December 26, 2021, some posts were published on social media, wherein it was claimed that respondent Nos. 4 to 7 herein have been elected as office bearers of NIRC for the period from January 19, 2022 till January 18, 2023. It is contended that after the postponement of the aforesaid meeting, some of the members got together and unauthorisedly appointed the office bearers for the year 2022-2023. It is also stated that the alleged meeting was attended by nine members, out of which, five members were ineligible to contest the election. As per the petitioners, the remaining four members (respondent Nos. 4 to 7 herein) have decided and distributed amongst themselves, the four posts of office bearers (i.e., Chairman, Vice-Chairman, Secretary and Treasurer). It is the case of the petitioners that the said illegal, unlawful and unauthorised meeting has been conducted in a clandestine manner in collusion and connivance with each other and smacks of *mala fide* and bypasses free, fair and transparent election process. It is stated that, of the seventeen council members, only nine members were eligible to contest elections, out of which five members (i.e., the petitioners herein) neither had any notice of the elections nor had participated in the same, and as such their statutory right to present their candidature/nominations for the election were taken away. It is the case of the petitioners that the meeting, election and the result thereof are null and void being *non-est* in law.

9. It is further submitted that the aforesaid unconstitutional election process was brought to the notice of the President of the Central Council of the ICSI and other members of the Central Council vide emails dated December 27, 2021.

10. It is stated that in compliance of the statutory and regulatory

provisions applicable, on December 31, 2021, the incumbent Chairman of NIRC, informed all the members that the postponed (259th) meeting shall be held on January 8, 2022 to elect the office bearers for the year 2022-2023. This communication was accompanied by agenda/notes on agenda along with summary of proceedings/discussions of the meeting held on December 26, 2021 and details pertaining to e-voting process, as mandated by the Regulations. No objections were received from any of the seventeen members either with regard to the re-convening of the postponed (259$^{th)}$ meeting on January 8, 2022, or with regard to the draft summary of the proceedings/discussions held on January 26, 2021.

11. It is stated that the Secretary, ICSI had, vide communication dated December 31, 2021 to the Regional Director (North), and subsequent communication to the Council members, informed that the matter regarding the election of office bearers to NIRC for the year 2022 is being scrutinised by the ICSI and as such, any agenda for election subsequent thereto, is void *ab initio.* It is submitted that the Secretary, ICSI has no power under any Act, Rule or Regulation to interfere with the election process of any of the Regional Councils or to issue any direction of such nature.

12. Thereafter, the President of ICSI vide email dated January 1, 2022 decided to hear all the members of NIRC on the issue, despite no reference in this regard having been made by the members. It is averred in the petition that the President of ICSI is not an adjudicating authority under the Act of 1980 or the Regulations framed there under, and does not have any power to take a decision on the issue/dispute that has arisen. The Act of 1980 read with the Rules and Regulations

of ICSI vests this power solely with the Central Council as a whole, and not with the President as an individual.

13. In view of the postponed (259^{th}) meeting being called on January 8, 2022, several members of the NIRC vide emails dated January 3, 2022 and January 4, 2022 apprised the President of ICSI of the said developments and requested that intervention in that regard is not required. However, the President of ICSI, ignoring the said request, in his zeal, took upon himself to adjudicate the dispute, without having any power or authority to do so. An *ex-officio* member of the Central Council of ICSI vide his email dated January 4, 2021 even drew the attention of the President of ICSI to the legal position with regard to the issue and alerted him that his actions lack necessary statutory backing.

14. It is further submitted that thereafter, the President of ICSI conducted the hearing on January 4, 2022 and vide his email dated January 6, 2022, unilaterally and illegally, accorded his approval to the illegal/ unauthorised/ unconstitutional meeting held on December 26, 2021 qua election of the office bearers. Acting on the said approval, the Regional Director, NIRC, sent out communication dated January 7, 2022 regarding appointment of newly elected office bearers with effect from January 19, 2022. It is also the averment of the petitioners that the President of ICSI has encroached upon the domain/jurisdiction of the members of NIRC by his arbitrary and illegal action.

15. That apart, it is stated that the incumbent Chairman of the NIRC vide email dated January 7, 2022 had called upon the Regional Director to generate and circulate the link for the postponed (259^{th}) meeting scheduled to be held on January 8, 2022, a request which was

not acceded to, resulting in further postponement of the once postponed (259th) meeting to January 18, 2022.

16. The petitioners vide email dated January 10, 2022 brought the above incident to the notice of the Secretary, Ministry of Corporate Affairs, Government of India (respondent No. 2 herein)

17. It is also stated that on January 11, 2022, the Chairman of NIRC vide email, circulated the agenda of the postponed (259th) meeting scheduled to be conducted on January 18, 2022.

SUBMISSIONS

18. Mr. Arun Kathpalia, learned Senior Counsel appearing on behalf of the petitioners has in his submissions, in addition to re-emphasising the facts and contentions set forth in the writ petition, stated that the meeting of the NIRC convened on December 26, 2021 is illegal and invalid as the same is not in accordance with the Act of 1980, the Regulations of 1982 and SS-I. He would submit that Regulation 90 of the Regulations of 1982, mandate the notice for a meeting shall contain a statement of the business to be transacted thereof. However, the same was not provided for.

19. He would further submit that as per the SS-I issued by the ICSI in terms of Section 118(10) of the Companies Act, 2013 and adopted by the NIRC, the notice for convening the meeting of NIRC was required to include the agenda and agenda notes, and in the present case, the entire mechanism of the voting process including online voting mode.

20. It is his submission that even the agenda circulated on December 23, 2021 was incomplete and did not conform to the mandated requirement of Paragraph 1.3.8 of the SS-I, as the members

were unable to understand the meaning, scope and implications of the proposal and the process of conduct of the election/nomination/voting in hybrid mode. Moreover, as per Paragraph 1.3.7 of the SS-I, the agenda setting out the business to be transacted at the meeting, along with the agenda notes shall be provided to the Directors (in the present case, the members) at least seven days prior to the meeting. However the agenda was circulated only on December 23, 2021, i.e., two days prior to the date of the meeting. Even the notice for the 259th meeting dated December 18, 2021 did not give the option to participate through virtual/electronic mode, which is in violation of Paragraph 1.3.4 of the SS-I, which stipulates, the notice shall inform the Directors (members in this case) about the availability of facility of participation through virtual/electronic mode.

21. Mr. Kathpalia would further submit that the timing prescribed in the notice dated January 18, 2021 of 11 AM was changed to 9.30 AM without seeking the consent of all the members, vide communication dated December 20, 2021. The said communication stated that consent was obtained for the change in time of the 259th meeting in the 258th meeting held on December 20, 2021. However not all members were present in the said meeting and the minutes of the meeting were not made available to the members. It is his contention that, as the notice itself is bad in law being made in violation of the Regulations of 1982 and SS-1, the same is liable to be set aside along with any decision taken thereof, of alleged appointment of office bearers.

22. That apart, he would also submit that the appointment of office bearers made on December 26, 2021 is illegal, as the meeting of December 26, 2021 was duly postponed by the Chairman in

accordance with Regulation 91 of the Regulations of 1982, after the members present authorised him to take a decision on the issue. As such, any decision taken subsequent thereto is bad in law. The postponement of the meeting is corroborated by the email of the Chairman dated December 26, 2021 and the subsequent agenda issued by him on December 31, 2021. Furthermore, no objections were raised by anyone including the respondent Nos. 4 to 7, on the draft proceedings of December 26, 2021.

23. It is also stated that the interference and action by the President and the Secretary of the ICSI are unlawful and without any authority. He stated that the President of ICSI has no power/authority for entertaining any referral or adjudicating any issue and as such, the communication dated January 6, 2022 and January 7, 2022 are bad in law. In this regard, Mr. Kathpalia has drawn my attention to various provisions of the Act of 1980 including Section 9 which deals with constitution of the Council of the Institute, Section 12 which states that there shall be a President and a Vice President from amongst the members of the Council, Section 15 which refers to the functions of the Council, Section 23 which provides for constitution and functions of Regional Councils. He has also referred to Regulations 156 and 157 of the Regulations of 1982, which deal with the powers and duties of the President and the Secretary of ICSI respectively, to buttress his argument that there are no adjudicatory or quasi-judicial powers conferred on them to take action as has been taken in the instant case. He seeks the prayers as made in the petition. Mr. Krishnendu Datta, learned Senior Counsel who also argued for the petitioners had adopted the submissions as made by Mr. Kathpalia.

24. Mr. A.S. Chandhiok, learned Senior Counsel appearing on behalf of the respondent Nos. 1 and 3, would submit at the outset that the petitioners have suppressed relevant facts and documents, such as the report of the independent Returning Officer/ Regional Director, details of meetings held prior to December 18, 2021, the meeting held on December 20, 2021 pertaining to the elections scheduled on December 26, 2021 etc. In response to the averments made in the petition, he would state that there is no procedural irregularity in the impugned meeting dated December 26, 2021 as well as in the election process in terms of notice, agenda and other processes as alleged by the petitioners.

25. He stated that the Chairman, vide email dated December 18, 2021, i.e., seven days prior to December 26, 2021, had apprised the date and venue of the 259th meeting, along with agenda thereof, i.e., *"…to Elect the Office Bearers for the year 2022…"*, in accordance with Regulation 90 of the Regulations of 1982. Thereafter, at the 258th meeting held on December 20, 2021, the modality and process of the election was unanimously agreed. During the meeting, the Chairman intimated the change of timing of the 259th meeting from 11 AM to 9.30 AM, which was also communicated to all the members of the NIRC *via* email on the same day (five days prior to the 259th meeting). He would submit that the said communication is aligned with Regulation 91 of the Regulations of 1982, which mandate five days' prior intimation on advancement/postponement of meetings. Thereafter, on December 23, 2021, even the web-link to attend the meeting was also shared, as it was decided in the meeting dated December 20, 2021 to conduct the election in a hybrid manner. No

objection was raised by anyone with regard to the scheduled meeting from December 20, 2021 till December 25, 2021. The objection was made only at 10.38 PM on December 25, 2021, i.e., eleven hours before the meeting, which shows the *mala fide* intent of the petitioners.

26. It is submitted that it is an admitted fact that all seventeen members joined together for the meeting at 9:30 AM on December 26, 2021. Mr. Chandhiok poses a question as to why the members would even meet if they presumed the meeting to be illegal. The petitioners could not muster the majority and therefore have taken all subsequent steps including the present petition in an attempt to scuttle the due election process conducted under the observation of the respondent No. 1 and an independent officer, as has been done in the other three Regional Councils of ICSI. He states that this is the reason as to why three out of the eight members who left the meeting on December 26, 2021 have not joined the petitioners in challenging the said meeting by way of this writ petition. It is his submission that the petitioner cannot be allowed to meddle with the fairly conducted election process raising certain non-maintainable technicalities.

27. It is further stated that the Regional Director has been designated as the Returning Officer for the election by the respondent No. 1. A bare perusal of the report/communication of the Regional Director / Returning Officer dated December 26, 2021 would clarify the meeting was conducted in compliance with the Regulations of 1982. As per the email report of the Regional Director / Returning Officer dated December 26, 2021, the necessary quorum was present at the meeting on December 26, 2021, as seventeen members were

present physically and two members joined online, a fact which is not disputed by the petitioners. The report records that even after the Chairman left the meeting *dehors* the Regulations requiring him to adjourn the meeting only with the consent of the members present, necessary quorum was present and the majority i.e., nine out of seventeen members, voted the respondent Nos. 4 to 7 as office bearers.

28. It is submitted that as per Regulation 120 of the Regulations of 1982, the provisions in respect of meetings of the Central Council of ICSI and its Committees shall be applicable to the meetings of the Regional Councils *mutatis mutandis*. The said Regulation is reproduced as below: -

> *"**120. Meeting of the Regional Council.-***
> *The provisions of regulations in respect of meeting of the Council and its Committees shall be applicable to the meeting of the Regional Council and its Committees mutatis mutandis"*

Mr. Chandhiok has also drawn my attention to Chapter X of the Regulations of 1982 (Regulations 88 to 97) which provides for meetings and proceedings of the Council.

29. He further stated that the notice issued by the incumbent Chairman on December 18, 2021 for the 259th meeting scheduled on December 26, 2021 at 11 AM for election of office bearers has a clear seven days' gap and as such, the notice is in accordance with Regulation 90 of the Regulations of 1982. The said Regulation is reproduced as under: -

> *"**90. Notice of Council Meeting**.-*
> *(1) Notice of the time and place of every meeting shall be sent to the registered address of every member of the Council ordinarily not less than seven days before such*

> *meeting and such notice shall, so far as practicable, contain a statement of the business to be transacted thereof, provided that in the case of a special meeting, the President may inform the members at the meeting of the subject matter for discussion.*
> *(2) Notwithstanding anything contained in sub-regulation (1) a special meeting called under Regulation 89 may be convened giving such shorter notice as circumstances may permit."*

The words used in the said provisions are '*ordinarily not less than seven days'*. It is the submission of Mr. Chandhiok that the word '*ordinarily'* means '*of a kind to be expected in the normal order of events',* and further, what is mandated to be served in business to be transacted *'as far as practicable'*, has been served vide email dated December 18, 2021.

30. It is submitted that there is a clear gap of five days from the date of notice of advancement of the 259th meeting, i.e., December 20, 2021 and the date of the meeting, i.e., December 26, 2021, and as such, it conforms to Regulation 91 of the Regulations of 1982 pertaining to notice period in case of advancement of time. The said provision is reproduced below:-

> ***"91. Advancement or postponement of meetings.-***
> *Any meeting of the Council, convened to be held at a particular date or dates, may be advanced or postponed by the President to a specific date or dates, not exceeding thirty days from the date originally determined for the meeting, if in his opinion such advancement or postponement is warranted, which may also include change of time and place of meeting. Notice of changes of such a meeting shall be sent to the registered addresses of every member of the Council not less than five days before the date fixed for advanced meeting of before holding of the postponed meeting. The business to be transacted at that meeting shall be the same as was*

intended for the original meeting unless, any other business is admitted by the Chairman at that meeting."

31. Reference has also been made to Regulation 95 of the Regulations of 1982, wherein it is stated that, subject to the provisions of the Regulations, the Chairman may, with the consent of the members present at the meeting, adjourn the meeting from time to time and from place to place. There were nine members after the Chairman left the meeting, who wished to continue with the meeting and were clearly against adjournment of the meeting. Regulation 94 of the Regulations of 1982 mandates that, in the event of a difference of opinion on any matters, the vote of majority shall prevail unless otherwise required by the Act or Regulations. Since, nine members out of seventeen originally present (still maintaining the quorum) sanctified the process of the election in a democratic manner to continue the meeting, the meeting could not be postponed. Regulation 93 of the Regulations of 1982, which deals with quorum for meetings Regulation 94 of the Regulations of 1982, which deals with voting, and Regulation 95 of the Regulations of 1982 which deals with adjournment of meetings are reproduced as under:-

"93. Quorum for meetings.-

(1) Not less than one-third of the total number of members of the Council for the time being shall constitute the quorum for a meeting, fraction being treated as a whole number for this purpose.

(2) If a quorum is not present within half an hour from the time appointed for the meeting the same shall be adjourned to such other date, time and place as the President may appoint and at the adjourned meeting the members present shall constitute the quorum to transact the business intended to be transacted at the original meeting.

94. Voting on resolution at a meeting and casting vote.-
At all meetings of the Council, in the event of a difference of opinion on any matters the vote of the majority shall prevail unless otherwise required by the Act or these regulations, and in the case of equality of votes, the Chairman shall have a casting vote in addition to his original vote.
95. Adjournment of meeting of the Council.-
(1) Subject to the provisions of these regulations, the Chairman of any meeting of the Council, may, with the consent of the members present at meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place unless not less than five days notice of any other business to be transacted at such adjourned meeting has been given to the members.
(2) If no new business is intended to be transacted at an adjourned meeting unless it is so directed in the resolution for adjournment of a meeting, no notice need to be given of an adjourned meeting."

32. Mr. Chandhiok would further submit that after the Chairman left, the Vice Chairman, on request of the members present, took the Chair. As per Regulation 92 read with Regulation 120 of the Regulations of 1982, the Vice Chairman in the absence of Chairman can chair the meeting. Hence, the chairing of the meeting by the Vice Chairman with consent of all the members present (nine) cannot be considered invalid as it does not breach the said Regulations.

33. That apart, it is submitted that in terms of Regulation 119 of the Regulations of 1982, the election of office bearers is to be conducted every year before the 31st day of December. Therefore, the entire election process for all four Regional Councils of ICSI was planned and scheduled to comply with the said requirement. Therefore, the

action of the then Chairman in trying to forcibly and unilaterally postpone the meeting of December 26, 2021 is illegal, as a Regional Council meeting once commenced cannot be adjourned except in terms of Regulation 95 of the Regulations of 1982, i.e., with the consent of all the members present. He would also submit that it is settled law that election process once started cannot be stopped on anyone's whims and fancies.

34. That apart, it is submitted that SS-I is inapplicable to NIRC meetings, as the Regulations of 1982 are comprehensive enough to deal with meetings and elections. SS-I was issued under Section 118(10) of the Companies Act, 2013 for companies. It is not applicable to NIRC meetings as is apparent from a bare reading of the definition of the word 'Act' therein. Furthermore, scope of SS-I clearly provides that : -

> *"The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee(s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations."*

35. Therefore, even in case of conflict between SS-I and the Regulations of 1982, the Regulations would prevail. It is also submitted that adoption of SS-I which Mr. Kathpalia has referred to, is only a recommendation for consideration to ICSI and is not approved yet. In other words, SS-I is recommended to be adopted for meetings of Chapters and Regional Councils of ICSI. The Resolution is mere a recommendation and not a Resolution of Adoption. The Provisions of the Regulations of 1982 are specifically applicable to ICSI and therefore, the same is being followed at the Regional Council meetings

mutatis mutandis. Hence, the Provisions of the Regulations of 1982 relating to meeting of the Regional Councils will override the provisions of SS-I, which have no legal sanctity in view of specific Regulations present in this regard.

36. That apart, Mr. Chandhiok would further submit that the fact that the petitioner No.1 did not attend the meeting dated December 20, 2021 cannot be held against the respondents. The argument of the petitioner No.1 that he did not attend the Regional Council meeting held on December 20, 2021 and hence was not aware of the voting procedure is faulty because he was served with the notice and agenda of the meeting on December 10, 2021 which contained a comprehensive process as to how the election was to be conducted. Moreover, the quorum was present in the meeting, and the decision taken therein is binding on all members, whether they attended the meeting or not.

37. It is also submitted that the petitioner No.1 himself sought intervention of the President of ICSI and requested a personal hearing vide e-mail dated December 27, 2021. Mr. Chandhiok would object to the submission of Mr. Kathpalia that the email was written to the entire Central Council and not exclusively to the President of ICSI, stating that a mere perusal of the email would show that it was addressed to the President of ICSI, and had sought his interference. However, when the President of ICSI vide email dated January 01, 2022 granted personal hearing as per the request, the petitioner No. 1 wrote an email dated January 3, 2022, refusing the opportunity for personal hearing. Mr. Chandhiok would allege that the petitioners have attempted forum shopping as they went initially to the President

of ICSI for intervention, but when his intervention did not culminate in a favourable result for them, the same is now being challenged.

38. That apart, it is submitted that the petitioners have suppressed provisions of statutes that actually demonstrate the correct legal position. The petitioners have deliberately omitted to reproduce Regulation 114 of the Regulations of 1982 in its entirety. Reference is made by Mr. Chandhiok to sub-section (4) to the said Regulation which is reproduced as under: -

> *"(4) Where any dispute arises regarding any election to a Regional Council, the matter may be referred by the candidate concerned within thirty days from the date of the declaration of the result of the election, to the President and the decision shall be final."*

39. The said provision makes it clear that when there is any dispute regarding any election to any of the Councils, the matter may be referred to the President of ICSI and his decision shall be final. He would vehemently oppose the submission of Mr. Kathpalia that Regulation 114 of the Regulations of 1982 is applicable only to elections to the Regional Councils, as the office bearers in the instant case belong to the Regional Council. If Regulation 114(4) of the Regulations of 1982 is not made applicable to the election of office bearers, it will lead to incongruence, as the provision clearly mandates the intervention of the President. There is no inconsistency in this regard and the principles of Regulation 114 would apply to the election of office bearers to NIRC also.

40. It is further submitted that the petitioners intentionally concealed the fact that the Regional Director / Returning Officer is an independent officer who has made a detailed report of the election and

presented the same to ICSI. Instead, the petitioners with *mala fide* intent filed and relied upon the report of the Chairman, who was one of the voters and an interested party in the election who also walked out of the meeting of December 26, 2021. The petitioners have also deliberately abstained from filing the communication of ICSI dated January 9, 2022 containing the details of the newly elected office bearers of all four Regional Councils, sent to all members of ICSI, amounting to nearly 70,000.

41. Furthermore, it is his contention that it is clear from reading of report of the Regional Director / Returning Officer and the improper walkout by the minority faction, the petitioners wanted to discredit and wriggle out of the due election process, and to scuttle the free and fair election sought to be continued by the majority faction under the observation of an independent Returning Officer. Notwithstanding the above, after having made allegations against the Chairman of NIRC and assailing the notice and agenda initially issued by him, the petitioners have not made him a party to the present writ petition. It is also submitted that the petitioners have not challenged the election result declared by the Regional Director / Returning Officer in the writ petition and hence, the same is not maintainable.

42. Mr. Rajshekhar Rao, learned Senior Counsel appearing for respondent Nos.4 and 6 would state at the outset that the petitioners have suppressed material facts and, on this ground alone the petition is liable to be dismissed *in limine*. The petitioners have deliberately chosen not to place on record (i) email dated December 26, 2021 by the Regional Director addressed to the Secretary of ICSI, and (ii) the communication dated January 9, 2022 by the ICSI announcing the

results of the election of office bearers to Regional Councils. It is submitted by Mr. Rao that it is settled law that a party is disentitled to any relief when it conceals facts from the Court. In this regard he has relied upon the judgments of the Supreme Court in the cases of ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166*** and ***Oswal Fats and Oils Ltd. v. Additional Commissioner (Administration), (2010) 4 SCC 728***. He further submitted that a bare perusal of the petition would indicate that the same involves multiple disputed questions of facts and as such, the petition should not be entertained. In this regard, reference has been made to the judgments of the Supreme Court in the cases of ***State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216*** and ***State of Kerala v. M.K. Jose, (2015) 9 SCC 433***.

43. That apart, SS-I has not been adopted by the NIRC and the same is evident from the minutes of the 248th meeting held on May 25, 2019, meaning that the meeting of the Council shall be governed by the Regulations of 1982. Even if SS-I were to be applicable, if it conflicts with the Regulations of 1982, the Regulations would prevail. It is also pointed out that the election of office bearers for the year 2021 was the first instance when election was carried out in hybrid mode, in light of the COVID pandemic. A notice for the 258th meeting was issued on December 10, 2021 in respect of which, the agenda was circulated on December 17, 2021 wherein agenda item No.10 was proposed to discuss and decide the process and modularity to conduct the election for the year 2022. The said meeting was attended by fourteen out of seventeen Council members. The minutes of the said meeting evidently clarifies that the members had unanimously

resolved that *"election procedure followed last year may be followed for the election in year 2022"* and also records that the procedure for online voting was also placed before the Council. The petitioners have no grievance qua this meeting as is evident from their assertion that the voting process was decided in the 258th meeting. That apart, petitioner No.1 was privy to the election procedure vide 252nd meeting of NIRC held on January 19, 2021 and cannot be allowed to approbate and reprobate his stand. The petitioners on their own showing also knew that SS-I was not compulsory as no objection has been raised regarding the 258th meeting wherein notice was served on December 10, 2021, agenda was served on December 17, 2021, and the meeting itself was held on December 20, 2021. This is indicative of *mala fide* on part of the petitioners especially against respondent Nos.4 and 6.

44. As far as the changing of the timing of the meeting dated December 26, 2021 is concerned, Mr. Rao stated that the same is irrelevant as the petitioners and indeed, all seventeen members of the NIRC were admittedly present in the said meeting. Even if the change of timing is seen as advancement of the meeting as per Regulation 91 of the Regulations of 1982, the notice for the same was served on December 20, 2021 i.e. five days prior to the scheduled date of the meeting. This issue is a deliberate afterthought as the petitioner No.1 begins his email dated December 25, 2021 with admission of knowledge of the change in timing and raised no grievance in relation to the same. Further, during the course of proceedings in the meeting of December 20, 2021 the Chairman categorically mentioned the advancement of the meeting from 11 AM to 9.30 AM, i.e., well before six days of the scheduled date of the meeting, which was not objected

to by any of the members present including four of the petitioners.

45. That apart, Mr. Rao has submitted that once the meeting is held to be in order and not bound by SS-I, then the grievance relating to the email dated January 6, 2022 of the respondent No.3 becomes immaterial. In any event, intervention of the President's office was sought by the petitioners themselves. Any dispute with regard to an election to the Regional Council is a dispute of high magnitude and has great implications, which Regulation 114(4) of the Regulations of 1982 empowers the President to decide. There is no specific provision regarding resolution of disputes in the election of office bearers. In such a scenario, guidance is to be drawn from Regulation 114(4) of the Regulations of 1982 to best appropriate such authority with the President. This is demonstrated by the contemporaneous conduct of the petitioners.

46. He would further state that as per Regulation 119(2) of the Regulations of 1982, the Regional Council elects from amongst its members, the office bearers for the subsequent years and the said result is taken note of by the respondent No.1. In the instant case, the result declared by the Regional Director / Returning Officer vide email dated December 26, 2021 has not even been challenged. It is further submitted that the email dated January 6, 2022 wherein the respondent No.3 had found no infirmities in the meeting dated December 26, 2021 was premised on the view of the Secretary of ICSI and the report of the Regional Director / Returning Officer, and after giving personal hearing to all the members. Mr. Rao submitted that the report of the Regional Director / Returning Officer in Paragraph 2 clarifies that the Chairman announced that necessary quorum was

present. Once the meeting has commenced, the same can be adjourned only in compliance of Regulation 95 of the Regulations of 1982. Upon the purported walkout of the Chairman, the Vice Chairman took the Chair in compliance of Regulation 92 of the Regulations of 1982, and thereafter the quorum was reconfirmed whereafter nine members took up the agenda of election. The result was duly and validly declared by the Returning Officer. That apart, as per Regulation 119 of the Regulations of 1982, the Regional Council determines the election finally and the same is only conveyed to respondent No.1. The petitioners have deliberately ignored the fact that the process has to be completed on or before December 31, 2021 as per Regulation 119(2) of the Regulations of 1982.

47. Mr. Rao would also state that the petition suffers from non-rejoinder of parties as the incumbent Chairman has not been arrayed as a party. Similarly, the members, other than the petitioners and respondents herein, were also not made parties to the petition.

48. The petitioner Nos.1, 2 and 4 are serving their second term as Regional Council members and subsequent to the completion of their term in the year 2022, would have to observe a cooling off period of four years as per Section 10 of the Act of 1980 read in conjunction with Rule 7 of the Rules of 2006. According to Mr. Rao, this petition is thus accentuated by the heartburn of the petitioners who would complete their terms without serving as office bearers.

49. He would also state that even though the petition essentially impugns the meeting dated December 26, 2021, the petitioners chose to belatedly file the petition only on January 13, 2022 with a view to delay and derail the taking over of the office bearers lawfully elected

in the meeting dated December 26, 2021.

50. Mr. Anurag Kalavatiya, learned counsel for the respondent No. 5 stated that he concurs with the submissions put forth by Mr. Rao, and adopts the same.

51. Mr. Anuroop Singhi, learned counsel appearing for the respondent No. 7 has also stated that he would concur with the submissions put forth by Mr. Rao.

52. Mr. Sarat Chandra, learned counsel for the respondent No. 2 stated that as, the petition is not directed against this respondent, no response is required to be given to the submissions made.

53. Mr. Kathpalia, in rejoinder to the submissions of Mr. Chandhiok and Mr. Rao, stated that the notice dated December 18, 2021, did not provide an option to participate through virtual / electronic mode, which is in violation of Paragraph 1.3.4 of SS-I. No reason was given for not circulating the agenda on December 18, 2021 and later circulating it on December 23, 2021. Glaring differences could be found on comparison of the notice dated December 31, 2021 of the re-scheduled (259th) meeting and the notice of December 18, 2021. As to the submission that SS-I is not applicable, he would state that the adoption of SS-I by NIRC in its 226th meeting held on January 23, 2016 and further reiterated in its 240th meeting held on May 25, 2019 clearly confirms such adoption.

54. Insofar as the contention of the respondents that all the members were present in the meeting of December 20, 2021 wherein voting mechanism for December 26, 2021 was decided, the same is opposed by Mr. Kathpalia, as in the said meeting the petitioner No.1 and two *ex-officio* members were not present. The absence of the

petitioner No.1 could be verified by the email dated December 25, 2021 where the fact has already been highlighted. The said issue of what transpired on December 20, 2021 and how the voting mechanism was to be placed was neither part of the notice of December 20, 2021 nor the agenda of December 23, 2021. If the same was decided, then it ought to have been placed in the agenda. However, it was not even placed before the Council in the meeting on December 26, 2021. Even the draft minutes of the meeting of December 20, 2021 admittedly were circulated only on January 3, 2022, i.e., after eight days of the meeting.

55. It is the submission of Mr. Kathpalia that the meeting of December 26, 2021 was adjourned in terms of Regulation 91 of the Regulations of 1982, and not in terms of Regulation 95 of the Regulations of 1982, as claimed by the respondents.

56. Contesting the submission of the respondents that as majority of the members were present, the quorum was formed and subsequently elections were rightly conducted, he would state that even though majority of members were present, no meeting could take place as per Regulation 91 of the Regulations of 1982, as the Chairman had already postponed the meeting. Further, no notice was provided by the members to either the Chairman or the members who left the meeting earlier. In other words, not all members who were eligible to be office bearers were present in the meeting, preventing them from participating in the elections. Majority cannot validate an action that is otherwise invalid in law.

57. He has opposed the submission of Mr. Chandhiok that Regulation 114(4) of the Regulations of 1982 gives authority to the

President of ICSI to interfere in the elections of office bearers by stating that the same is misplaced and liable to be ignored for the following reasons: -

(a) Regulation 114 is applicable only with respect of conduct of election to Regional Councils, which are held every four years, and not to the present election of office bearers which are held every year, as provided by the Rules of 2006.

(b) Reference is also made to Section 38A(2)(a) of the Act of 1980 which provides the power to make rules for *'election and nomination in respect of members to the Council under sub-section (2) of Section 9'*. This is for election to the Regional Council and not the election of office bearers.

58. He would also rebut the contention of the respondents that various members have written to the President of ICSI requesting to intervene in the matter and therefore, he has decided the same, by stating that the President has no such power under the Regulations of 1982. The representations dated December 26, 2021 and December 27, 2021 were to the entire Central Council of ICSI and was only marked to the President as he is the head of the Central Council. It is the submission of Mr. Kathpalia that when neither the Act of 1980 nor the Regulations of 1982 confer any power upon the President, the question of referral or any adjudication by the President is completely unwarranted even if some members have reposed faith and requested interference of the President. In response to the statement of the respondents that election has to be conducted before the 31st day of December every year, he would submit that even though this is the normal course in terms of Regulation 119(2) of the Regulation of

1982, when there are issues being raised, the same does not preclude the NIRC to conduct the election after the said date. He would further state that Section 10 of the Act of 1980 envisaging the eligibility pertaining to the members of Central Council, the same is not applicable to the appointment of office bearers of NIRC. Insofar as the email dated December 26, 2021 is concerned, Mr. Kathpalia would state that the same was not shared with any of the petitioners until the first date of hearing of this petition in this Court. Therefore, the allegation of suppression of facts is completely misplaced. Further, the said email relied upon by the respondents in Paragraphs 4 and 5 states that the meeting was postponed by the Chairman, which is in contradiction to their contention of the meeting being adjourned.

59. Having heard the learned counsels for the parties and perused the record including the written submissions filed by them, at the outset, I may state that it is a conceded case of the parties that the NIRC consists of seventeen members, out of which, twelve are elected members and five are co-opted members, whose tenure is for four years, i.e., till January 18, 2023. The subject matter of the petition is the election to the posts of Chairman, Vice-Chairman, Secretary and Treasurer of NIRC, who are elected for one year and in this case the period is from December 19, 2022 to January 18, 2023.

60. The issue which arises for consideration is whether the meeting held on December 26, 2021 wherein the respondent Nos. 4 to 7 were elected to the above posts to govern NIRC, is proper and justified.

61. The submissions of Mr. Kathpalia can be summed up as under:

i. The meeting of December 26, 2021 is not in accordance with the Act of 1980, Regulations of 1982 and SS-I.

ii. Regulation 90 of the Regulations of 1982 which mandates a notice for meeting shall contain a statement of the business to be transacted, was not complied with.

iii. The SS-I issued by ICSI adopted by NIRC requires notice of meeting to include the agenda and notes on agenda, including information as to whether the option for online participation would be available.

iv. The agenda circulated on December 23, 2021 did not conform to the mandate of Paragraph 1.3.8 of SS-I.

v. Paragraph 1.3.7 of the SS-I stipulates the agenda for the business to be transacted at a meeting, along with the notes on agenda be provided to the directors (members in this case) at least seven days prior to the meeting.

vi. Even the notice dated December 18, 2021 for the 259th meeting to be held on December 26, 2021 did not provide the option to appear through virtual / electronic mode as per Paragraph 1.3.4 of SS-I, which contemplates the facility of participation through virtual / electronic mode.

vii. The timing of 11 AM prescribed in the notice dated December 18, 2021 for the meeting of December 26, 2021 was changed to 9.30 AM without seeking consent of all the members.

viii. The decision taken in the 258th meeting held on December 20, 2021 to change the timing of the meeting of December 26, 2021 is untenable, as all members were not present on December 20, 2021.

ix. The meeting of December 26, 2021 was postponed by the Chairman in accordance with the Regulation 91 of the Regulation of 1982 after members present authorised him to take a decision on the issue, and any decision taken subsequent thereto is illegal.

x. The postponement of the meeting is corroborated by the e-mail of the Chairman dated December 26, 2021 and subsequent agenda issued by him on December 31, 2021.

xi. No objection was raised by the respondent Nos. 4 to 7 on either the convening of the rescheduled (259th) meeting on January 8, 2022 or the draft proceedings of December 26, 2021 circulated by the Chairman on December 31, 2021.

xii. The interference by the President and Secretary of the ICSI is uncalled for as no power / authority exist with them for entertaining any referral or for adjudicating the issue and as such, the communications of January 6 and January 7, 2022 are bad in law.

Applicability of SS-I to NIRC meetings

62. Having noted the broad submissions made by Mr. Kathpalia, at the outset, I intend to deal with his submission on the applicability of SS-I to the meeting of NIRC. Mr. Kathpalia had relied upon the minutes of the meeting of January 23, 2016 to contend that the SS-I was adopted by the NIRC in its 226th meeting held on that day. He has also relied upon the minutes of the 248th meeting held on May 25,

2019. Appropriate shall be, relevant parts of the minutes of the aforesaid meetings be reproduced as under:

226th meeting held on January 23, 2016.

"MINUTES OF 226th MEETING OF THE REGIONAL COUNCIL OF NIRC HELD ON SATURDAY, THE 23RD JANUARY, 2016 AT 12.30 PM AT NIRC OFFICE, 4 PRASAD NAGAR INSTITUTIONAL AREA, NEW DELHI

Present:

1.	*CS Manish Gupta*	*:*	*Chairman*
2.	*CS Dhananjay Shukla*	*:*	*Vice-Chairman*
3.	*CS Pradeep Debnath*	*:*	*Secretary*
4.	*CS Rajeev Bhambri*	*:*	*Treasurer*
5.	*CS Amit Gupta*	*:*	*Member*
6.	*CS Deepak Arora*	*:*	*Member*
7.	*CS Manish Aggarwal*	*:*	*Member*
8.	*CS NPS Chawla*	*:*	*Member*
9.	*CS Nitesh Kumar Sinha*	*:*	*Member*
10.	*CS Saurabh Kalia*	*:*	*Member*
11.	*CS Rajiv Bajaj*	*:*	*Ex-officio Member*
12.	*CS Ranjeet Kumar Pandey*	*:*	*Ex-officio Member*
13.	*CS Satwinder Singh*	*:*	*Ex-officio Member*

In attendance:

Mr. S.K. Nagar	*:*	*Joint Secretary (N)*

CS NPS Chawla took the chair and welcomed all the members present and requested CS Manish Gupta to chair the meeting.

CS Manish Gupta, after taking the chair, welcome all the members present and thanked them for unanimously electing him as Chairman of NIRC for the year 2016. He briefly shared his vision for the year 2016.
The Chairman then proposes to voluntarily adopt the Secretarial standard – I for all the Regional Council Meetings to be held in future and the same was appreciated and approved by the Regional Council."

(emphasis supplied)

248th meeting held on May 25, 2019:-

"ITEM NO. 8
TO CONSIDER AND DISCUSSION FOR ADOPTION OF SS-I BY THE CHAPTERS OF THE NORTHERN REGION:

The Regional Council considered and deliberated on compulsory adoption of the SS-I for the Meetings of the Management Committees & sub committees of the Management Committees by all the Chapters of NIRC-ICSI for the Meetings scheduled with effect from 1st day of July, 2019 to ensure better compliances and smooth functioning of the Chapters. It is further discussed that recommendation be also sent to the ICSI HQ to make compulsory adoption of SS-I for the Meetings of all the Chapters and the Regions to ensure better compliances, transparency, good governance and smooth functioning of the Chapters and Regions. After detailed deliberations the Regional Council unanimously resolved as under:

> *"**RESOLVED THAT** all the chapters of NIRC-ICSI be and are hereby advised to adopt SS-I for the Meetings of the Management Committees & Sub committees of the Management Committees which are scheduled with effect from 1st day of July, 2019.*
>
> ***RESOLVED FURTHER THAT** the Regional Council authorized the Chairman, NIRC-ICSI and the Regional Director, NIRC-ICSI to take necessary action in this regard.*
>
> ***RESOLVED FURTHER THAT** the Regional Council hereby recommend to the Council of ICSI to consider compulsory adoption of SS-I for the Meetings of all the Chapters and Regions to ensure better compliance, transparency, good governance and smooth functioning of Chapters and the Regions.*
>
> ***RESOLVED FURTHER THAT** the Regional Council further authorized Chairman, NIRC-ICSI and the Regional*

Director, NIRC-ICSI to take necessary action in this regard"."

63. The pleas of Mr. Chandhiok, Mr. Rao, Mr. Kalavatiya and Mr. Singhi on this submission of Mr. Kathpalia was that SS-I is inapplicable, as it is clear from the minutes of the meeting dated May 25, 2019 that the same was merely a recommendation for adoption by chapters and regions of ICSI for their meetings, and not a resolution of adoption. Secondly, the scope of SS-I clearly states that the same shall be applicable to the meetings of committees unless otherwise stated therein or stipulated in any other applicable guidelines, rules or regulations. So, in the case of a conflict, the Regulations of 1982 shall prevail. Having noted the submissions, from the minutes of the meeting dated January 23, 2016, it is clear that the decision of the NIRC was to adopt SS-I for all its meetings to be held in future. The plea of Mr. Chandhiok and Mr. Rao that the minutes of 248th meeting dated May 25, 2019 filed along with the writ petition are only recommendations and not an adoption is unmerited inasmuch as, the said minutes is concerned with discussion and adoption of SS-I in the chapters of Northern Region, as the report itself would reveal. Even the decision taken, which I have reproduced above clearly suggest so. The minutes reveal that all chapters of NIRC have been advised to adopt SS-I for its meetings of Managing Committees and Sub-Committees and in that regard, the Chairman and the Regional Director of NIRC were to take necessary decision. Further the minutes of 248th meeting also recommended the Council of ICSI to consider compulsory adoption of SS-I for the meetings of all the chapters and regions to ensure transparency, good governance and

smooth functioning. In other words, the minutes had called upon the main body ICSI that all other regions also adopt SS-I, which NIRC has already adopted. I must state here, it is not clear whether the apex body ICSI, (the rule making body) has itself adopted it for the Regional Council meetings. It is only on such adoption that a particular procedure shall be applicable to the Regional Councils. Insofar as the question as to whether an individual Council could adopt a procedure, which has not been adopted by ICSI for other Regional Councils, to supersede the Regulation, as is the contention of Mr. Kathpalia the answer has to be "no". This I say so for more than one reason; firstly, the rule making authority is ICSI. Secondly, if every Regional Council, starts adopting / framing Guidelines / Procedure for itself, it shall lead to an anomalous situation, where every Regional Council, would be following its own procedure for conducting / governing its business. This is clearly impermissible.

64. Be that as it may, it is clear that the NIRC had, in the meeting of January 23, 2016 adopted the SS-I. Proceeding on the premise that the provisions of SS-I also govern the meeting of the NIRC, the connected submission of Mr. Chandhiok and Mr. Rao is that if there is a conflict between the provisions of the Regulations of 1982 and SS-I, it is the Regulations that would prevail. To consider this submission, it is necessary to reproduce the relevant provisions of SS-I and the Regulations of 1982 on which reliance has been placed by the counsels for the parties in their submissions as under:

Regulations of 1982	SS-I
90. Notice of Council meeting.- *(1) Notice of the time and place of every meeting shall be sent to the*	*1.3.4 The Notice shall inform the Directors about the option available to them to participate through*

registered address of every member of the Council ***ordinarily not less than seven days before such meeting and such notice shall, so far as practicable, contain a statement of the business to be transacted thereof****, provided that in the case of a special meeting, the President may inform the members at the meeting of the subject matter for discussion.*	*Electronic Mode and provide them all the necessary information.* *If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.* *The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.* *The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.* *1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors* ***at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.*** *Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such*

	details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors. *1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.*

(emphasis supplied)

65. A reading of the provisions of SS-I as relied upon by Mr. Kathpalia would reveal the following position:

i. A notice from the Chairman shall inform the members about the option available to them to participate through electronic mode and provide them all the necessary information.

ii. If a member intends to participate through electronic mode, he shall give sufficient information to the Chairman to enable him to make suitable arrangements in that behalf.

iii. *The agenda setting out the business to be transacted at the meeting and notes on agenda shall be given to the members at least seven days before the date of the meeting. The agenda and agenda notes shall be sent to all members by hand or by speed-post or by registered post or by e-mail or by any other electronic modes.*

iv. Each item of business requiring approval at the meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the members to understand the meaning / scope and implications of the proposal and the nature of concern or interest, if any, of any member in the proposal.

66. A perusal of the provisions of the Regulations of 1982 on which reliance has been placed by the counsels for the parties, i.e., Regulations 90, 91, 94, 95, 114 and 119 etc. reveal the following:

i. *Notice of the time and place of every meeting shall be sent to the registered address of every member of the Council ordinarily not less than seven days before such meeting and such notice, so far as practicable, shall contain a statement of the business to be transacted thereof.*

ii. Any meeting of the Council to be convened at a particular date or dates may be advanced or postponed by the Chairman to a specific date or dates not exceeding thirty days from the date originally determined for the meeting.

iii. The advancement or postponement can also include change of time and place of meeting.

iv. The agendas of such meeting shall be sent to the registered address of every member of the Council not less than five days before the date fixed for the advanced meeting or before holding of the postponed meeting.

v. All meetings of the Council shall be chaired by the Chairman of the Regional Council, and in his absence, by the Vice-Chairman. In the absence of both, the members present shall elect from amongst themselves, a member to be the

Chairman of the meeting.

vi. Not less than 1/3rd of the total number of members of the Council for the time being shall constitute the quorum for a meeting.

vii. If a quorum is not present within half an hour from the time scheduled for the meeting, the same shall be adjourned to such other date, time and place as the Chairman may appoint.

viii. At all meetings, in the event of a difference of opinion on any matter, the vote of the majority shall prevail unless otherwise required by the Act or the Regulations and in case of equal votes, the Chairman shall have a casting vote in addition to his original vote.

ix. The Chairman of any meeting may, with the consent of the members present at meeting, adjourn the meeting from time to time and from place to place.

67. There cannot be any dispute on the proposition of law that the Regulations having been framed under the Act of 1980 have a statutory force and shall prevail over the SS-I, which, though framed by the ICSI under the Companies Act, 2013 has been adopted by the Regional Council only for its convenience. In this regard, I may refer to the judgment of this Court in the case of ***Trinity Institute of Higher Education v. GNCTD, W.P.(C) 4244/2008*** decided on July 21, 2008.

68. It is clear that the presence of words *"ordinarily not less than seven days"* indicate that the Regulation 90 of the Regulations of 1982 does not mandatorily stipulate a period of seven days in sending notice to the members unlike Paragraph 1.3.7 of the SS-I. The words, by stipulating notice for every meeting shall be sent *'ordinarily'* not

less than seven days before the date of the meeting, confer a discretion on the Chairman to give a notice of even less than seven days. This I say so, because, SSI cannot take away / dilute, the discretion vested with the Chairman by the Regulation of 1982 to give, a notice of less than seven days. The word *"ordinarily"* denotes, that the underlying provision does not promote a cast-iron rule. On the issue of agenda, the Regulations only contemplate, *as far as practicable, a statement of the business to be transacted be provided*, unlike the SS-I, which stipulates, agenda and agenda notes be mandatorily sent seven days prior to the meeting. In this instance as well, a discretion has been conferred on the Chairman by the provisions of the Regulations of 1982 to, *as far as practicable*, send a statement of the business to be transacted to the members. Even if it is not sent, the same is not fatal. The above is not to be construed to mean that the SS-I should not be followed at all. If in a given case it is followed, the same shall be proper / justified. In other words, if a notice of less than seven days is given along with a statement of the business to be transacted, the same shall not be held to be illegal merely because the notice of not less than seven days along with the agenda and agenda notes have not been sent.

<u>Validity / Legality of the meeting of December 26, 2021</u>

69. Now, it is necessary to determine whether the meeting dated December 26, 2021 is illegal, on the facts of the case. To answer this issue, it is necessary to consider the notices/communications issued / exchanged by the Chairman, members including the petitioners, the President of ICSI and the Secretary of ICSI. The relevant communications in brief are as under:

December 18, 2021

E-mail of the Chairman to all the members of the NIRC regarding scheduling of the 259th meeting on Sunday, December 26, 2021 at 11 AM to elect the office bearers for the year 2022, to hold office w.e.f. January 19, 2022.

December 20, 2021

E-mail of the Chairman to all the members apprising them about the advancement of the scheduled meeting of December 26, 2021 from 11 AM to 9.30 AM.

December 23, 2021

E-mail of the Chairman to all the members of the NIRC circulating the agenda for the 259th meeting to be held on December 26, 2021 and the web link for attending the said meeting online.

December 25, 2021

E-mail of petitioner No.1 to the Chairman raising issues (i) agenda for the 259th meeting was circulated only on December 23, 2021; (ii) notice was sent without agenda notes in violation of SS-I; (iii) agenda does not show notes as to how such agenda items will be taken up or if voting shall take place; (iv) consent was not taken from all the members for taking up the said agendas at a shorter notice; (v) SS-I has not been followed in letter and spirit.

December 25, 2021

E-mail of the petitioner No. 4 to the Chairman, wherein, while concurring with the concerns raised by the petitioner No. 1 in the email of the same day, he has stated (i) the meeting was scheduled on December 26, 2021 in disregard to the provisions of SS-I, i.e., without checking the availability of members; (ii) the Council meeting was held without sharing complete agenda papers in timely manner; (iii) communication dated December 18, 2021 was without agenda notes; (iv) the meeting of December 26, 2021 was scheduled to be held only through physical mode; (v) the meeting was advanced from 11 AM to 9.30 AM; (vi) in the meeting of December 20, 2021 it was informed that online facility shall be available on December 26, 2021, however, further methodology and process for the same including agenda notes, were not provided; (vii) on December 23, 2021 incomplete agenda notes were circulated without providing detailed process / guidelines.

December 26, 2021

E-mail of the petitioner No.4 stating that he joined the meeting of December 26, 2021 through video conferencing. There were several issues raised regarding the validity of the meeting and upon request of all members, the Chairman declared postponement of the meeting. Thereafter members started leaving the meeting and accordingly he too left the meeting.

December 26, 2021

E-mail of the petitioner No. 1 to the Chairman and the Regional Director, stating that a discussion had taken place on the validity of the meeting and whether proper notice and agenda was provided or not. A request was also made to schedule the postponed meeting after addressing the concerns raised.

December 26, 2021

E-mail of the petitioner No. 4 to the petitioner No. 1, the Chairman and other members, providing his view on the discrepancies in the meeting of December 26, 2021. He states that- (i) the said meeting is defective as the communication regarding the said meeting was only made on December 20, 2021 and SS-I has not been complied with, as the notice had not specified the mode of participation; (ii) no business could be validly carried out in the said meeting as no agenda notes including detailed process for conduct of election process, nomination, voting in physical /electronic / hybrid mode, were circulated to the members at least seven days in advance; (iii) there is no conflict between the provisions of SS-I and the Regulations of 1982 regarding the circulation of agenda notes, as SS-I was framed by ICSI to standardise the practices and institutionalise a standard, reliable and robust framework to enable the necessary protection of interest of all stakeholders; (iv) even if the Regional Council decided that process of the previous year shall be adopted for the conduct of election and voting, etc., the agenda should have included the detailed process to bring clarity amongst the members regarding the same; (v) neither outcome nor minutes of the meeting of December 20, 2021 were circulated and as a few members had not attended the said meeting, they would not have any information about the decision taken therein, and therefore, the request made by members for providing a detailed process before the meeting was valid and in absence of the same, no decision-making can be done; (vi) the phrase "*the facility for* *online voting will also be available for the members*” added in the e-mail dated December 20, 2021 cannot be considered as agenda notes as it does not explain/provide the complete information; (vii) reconvene the postponed meeting after circulating the agenda notes, ensuring due compliance.

December 26, 2021

E-mail of the Chairman to the Regional Director stating that no consensus could be arrived at on the meeting of December 26, 2021 and the same was declared postponed by him and closed at around 11.35 AM.

December 27, 2021

E-mail of the petitioner No. 1 to the President of ICSI stating (i) there were apparent discrepancies in the meeting of December 26, 2021; (ii) after discussions on the issue, the members requested the Chairman to take a decision and the Chairman subsequently postponed the meeting, whereafter some members and the Chairman left; (iii) some posts were published on social media stating office bearers of the Council for 2022-2023 were elected. He also requested the President for a meeting to explain the matter in detail and necessary directions for convening the postponed meeting after due compliance.

December 29, 2021

E-mail of the respondent No. 4 to the President of ICSI requesting a meeting with him to apprise on the issue.

December 30, 2021

E-mail of the Regional Director to the Secretary of ICSI seeking directions with regard to the advisory of the Chairman to circulate the agenda and draft proceedings for the postponed meeting.

December 30, 2021

E-mail from the Secretary of ICSI to the Regional Director stating that the matter regarding election of office bearers in NIRC for the year 2022 has been referred to ICSI HQ and is being scrutinised. The Regional Director was advised not to consider any matter relating to the same until further directions from ICSI HQ.

December 31, 2021

E-mail of the Chairman to the members stating that the postponed 259th meeting is scheduled to be held on January 8, 2022 at 11 AM to elect the office bearers for the year 2022 to hold office w.e.f. January 19, 2022. The agenda/notes on agenda were enclosed therewith.

January 1, 2022

E-mail of the President of ICSI to the petitioner No. 1 stating that as per requests of intervention from the petitioner No. 1 and other members, a meeting with all the members were scheduled for the next day. It is also stated that as already informed by the Secretary, the matter of election of office bearers to the Council were being scrutinised by the ICSI HQ and as such, any agenda of election of office bearers subsequent thereto would be void *ab-initio.* Another e-mail was also sent by the President to the members informing them of the opportunity of personal hearing granted to them.

January 3, 2022

E-mail from the petitioner No. 1 to the President of ICSI stating that the postponed meeting was re-scheduled on January 8, 2022 and in view of that, the intervention of the President was not required.

January 6, 2022

E-mail of the President of ICSI stating that subsequent to the personal hearing granted to the members and considering the report of the Regional Director / Returning Officer, he is of the view that the proceedings of the meeting of December 26, 2021 were in order and the election of the office bearers conducted therein do not suffer from any infirmity.

January 7, 2022

E-mail of the Secretary of the ICSI declaring the newly elected office bearers of the Regional Council for the year 2022 w.e.f. January 19, 2022.

70. Having noted the relevant events, it is also necessary to reproduce the report of the Returning Officer, i.e., the Regional Director appointed by the respondent No.1 as under:

> *"Secretary*
> *259th Meeting of Northern India Regional Council of ICSI started today, the 26th December 2021 at 09:30 AM at ICSI-NIRC building, Prasad Nagar, New Delhi and through online Video Conferencing mode to elect the Office Bearers of NIRC of ICSI for the year 2022 (w.e.f. 19-01-2022 to 18-01-2023).*
> *The sequence of discussions during the meeting were as under:-*
>
> > *1. Some of Members of the Regional Council raised concerns over validity of the meeting with regard to issue of notice and notes on agenda and non-compliance of SS-1 and Chairman invited*

comments from Regional Council Members on the same and concerns were taken-up.
2. The Chairman announced the Quorum to be present. 15 members were present physically and 2 members joined online. However, Some members of the Regional Council did not sign in the Attendance Register.
3. On raising concern by one of Regional Council Member, Motto Song was played as it was inadvertently left to be played earlier.
4. Some of the Members present requested the Chairman to take-up the agenda item for election of the Office Bearers as sufficient discussion had taken place for almost two hours. Some of the members requested Chairman to postpone the meeting.
5. Chairman CS Vimal Gupta instructed to reschedule the meeting and declared the meeting postponed.
6. Many Members present stated that postponement/adjournment of meeting cannot be sustained under Regulation 95 of CS Regulations 1982 as the Chairman did not adjourn the meeting with the consent of the members present at the meeting.
It was quoted that as per the Regulation 95 "Subject to the provisions of these regulations, the Chairman of any meeting of the Council, may, with the consent of the members present at meeting, adjourn the meeting from time to time and from place to place but ……………".
7. Thereafter, CS Vimal Gupta, Chairman, NIRC and some Other members left the Council Meeting Room.
8. Since the Chairman left the meeting, the members present requested CS Susshil Daga, Vice-Chairman, NIRC to take the Chair as per Regulation 92 of CS Regulations 1982 and the same was confirmed by Head Office also.
9. All members present consented CS Susshil Daga

to Chair the meeting except CS Vinay Shulka who stated that although he is present but he is under protest and is not in agreement with continuing of this meeting. Thereafter CS Vinay Shukla left the meeting.
10. At this point of time, 9 (nine) members were physically present for the meeting and none of the Regional Council member was present in the meeting through online mode. Thereafter quorum was reconfirmed. The online Video Conferencing link was kept open throughout the meeting.
11. Members present requested the Chair to proceed with the agenda item for election of Office Bearers of NIRC of ICSI.
12. Thereafter Chairman of the Meeting proceeded with Agenda of 259th Meeting of RCM and started the process of election of the Office Bearers of NIRC of ICSI for the year 2022.
13. The following were unanimously elected the as the Office Bearers of NIRC of ICSI for the year 2022 (w.e.f. 19-01-2022 to 18-01-2023):-
1. CS Susshil Daga - Chairman
2. CS Devender Suhag - Vice-Chairman
3. CS Himanshu Harbola - Secretary
4. CS Surya Gupta - Treasurer
14. Thereafter, few additional agenda Items were taken-up with permission of the Chair and the Meeting Concluded with vote of Thanks to Chair.
Submitted please.
CS Sonia Baijal
Regional Director (North)"

71. From the above, it is seen that the process of holding the scheduled meeting on December 26, 2021 at 11 AM started on December 18, 2021 with the issuance of notice to all the members of NIRC stating that the same is for electing office bearers for the year 2022. The notice of December 18, 2021 satisfies the requirement of 'ordinarily not less than 7 days' as contemplated by Regulation 90 of

the Regulations of 1982. The e-mails also inform the business to be transacted, i.e., election of office bearers of NIRC for the year 2022. Such a report of an independent authority has to be given credence and cannot be ignored. The report suggests that the meeting of December 26, 2021 and the election of the office bearers held therein are justified.

Agenda / Notes on Agenda

72. Even the plea of Mr. Kathpalia that the notice was not accompanied by the agenda and agenda notes is not sustainable on facts. I may at this stage state that on December 23, 2021, the following agenda note was sent to the members:

> **"AGENDA ITEM NO.2**
> ***TO ELECT THE OFFICE BEARERS OF THE REGIONAL COUNCIL FOR THE YEAR 2022 (TO BE EFFECTIVE FORM 19TH JANUARY, 2022 TO 18TH JANUARY 2023)***
>
> ***I) Election of the Chairman***
> *After Election of the Chairman, following resolution may be passed:*
> *"Resolved that CS_______________ be and is hereby elected as the Chairman of the Northern Regional Council of the Institute of Company Secretaries of India for the year 2022 (for the period from 19.01.2022 to 18.01.2023).*
> ***II) Election of the Vice-Chairman***
> *After Election of the Vice-Chairman, following resolution may be passed:*
> *"Resolved that CS______________ be and is hereby elected as the Vice-Chairman of the Northern Regional Council of the Institute of Company Secretaries of India for the year 2022 (for the period from 19.01.2022 to 18.01.2023).*
> ***III) Election of the Secretary***
> *After Election of the Secretary, following resolution may be passed:*
> *"Resolved that CS____________ be and is hereby elected as*

the Secretary of the Northern Regional Council of the Institute of Company Secretaries of India for the year 2022 (for the period from 19.01.2022 to 18.01.2023).

IV) Election of the Treasurer

After Election of the Treasurer, following resolution may be passed:

"Resolved that CS__________ be and is hereby elected as Treasurer of the Northern Regional Council of the Institute of Company Secretaries of India for the year 2022 (for the period from 19.01.2022 to 18.01.2023)."

73. With the agenda being sent on December 23, 2021, i.e., four days prior to the scheduled meeting and the Regulation 90 of the Regulation of 1982 stipulating *'ordinarily not less than seven days'*, which gives discretion to the Chairman to send it even within seven days, I am of the view that the notice of December 18, 2021 informing the business of election for the year 2022 to the members and even sending the agenda in the manner depicted above, are not in violation of Regulation 90 of the Regulations of 1982. I have also noted that even for the 258th meeting scheduled on December 20, 2021, notice was served on December 10, 2021 and agenda was served on December 17, 2021. No objection was raised by any of the members including the petitioners herein, either to the meeting or to the manner in which notice / agenda was served. In the 258th meeting when fourteen members were present, the following decision was taken:

"ITEM NO. 10
TO DISCUSS AND DECIDE ON THE PROCESS AND MODALITIES TO CONDUCT THE ELECTION OF OFFICE BEARERS OF THE REGIONAL COUNCIL FOR THE YEAR 2022

The Regional Council noted that as per Clause 119 (2) of the Company Secretaries Regulations, 1982:

"<u>Every Regional Council shall at its first meeting held after its constitution and in subsequent years at a meeting to be</u>

held in December of every year elect from amongst its members a Chairman, a Vice-Chairman, a Secretary and a Treasurer thereof to hold office for a period commencing from the date of its first meeting after constitution or from 1st January of the subsequent year as the case may be, till the 31st December of that year and so often as any of those offices become vacant, the Regional Council shall elect another person from amongst its members to hold the office for the remaining period of a year."

The Regional Council further noted that ICSI Head Office has verbally clarified that the Regional Council has to decide on the procedure to be followed for election of office bearers.

The Regional Council further noted that the Executive Committee in its meting held on 10th December, 2021 discussed on the Election of Office Bearers of Regional Council and suggested that the election procedure as followed last year may be followed for Election of Office Bearers of Regional Council for the year 2022 and recommended the same to the Regional Council. The Committee also advised to check with concerned Directorate of Head Office for SOP and modalities of online voting. The proposed procedure for Election of Office Bearers of Reginal Council and the SOP as received from Dte. of IT, Head Office for online voting was placed before the Regional Council.

Some of the members expressed that there was no need to bring this Agenda in the Meeting as there were modalities already in place, there is set procedure which had been tested and followed last year. It was also expressed that whether we should keep this item as already expressed by some other members that there is set procedure in place and we can discuss only if there is any change in the procedure for election of Office Bearers. Chairman expressed that there is no change proposed and the procedure followed last year be followed.

The Regional Council discussed and adopted the procedure for Election of Office Bearers as was followed last year.

The Regional Council further desired that:-

1. *ICSI Head Office be requested to depute IT personnel for smooth conduct of online voting process.*
2. *Bandwidth, Connectivity, Adequate IT systems and network be placed for smooth conduct of online voting*

process.
3. Technical specifications regarding bandwidth required to be present with the Members for online voting, be circulated to Members of Regional Council."
(emphasis supplied)

74. The plea of Mr. Kathpalia was that petitioner No. 1 and two co-opted members were not present for the meeting on December 20, 2021 and the minutes of the said meeting were only circulated on January 3, 2022. Hence, three members were not privy to the said decision. Surely majority of the members having decided what has been stated in the minutes of the 258th meeting, absence of three members and also that they were not privy to the decision taken with regard to the manner in which the elections were to be held, cannot be construed to mean the modalities and the process for holding the 259th meeting on December 26, 2021 was not known to the majority of the members. In fact, I find the agenda / agenda notes circulated on January 11, 2022 for the meeting proposed to be conducted on January 18, 2022, with which the petitioners are satisfied, is nothing but a coalescence of the minutes of the 258th meeting held on December 20, 2021 and the agenda / notes for the meeting of December 26, 2021 sent on December 23, 2021. In fact, Mr. Kathpalia has heavily relied upon the agenda for January 18, 2022 to contend that it is in that manner, the agenda note should have been circulated. Hence, even on this ground, the plea of the petitioners that agenda / agenda notes were not circulated, resulting in the petitioners not being aware of the manner in which the modalities and process of election was to take place, is unsustainable.

75. That apart, it is only five petitioners / members who have

approached this Court challenging the meeting held on December 26, 2021. In other words, the other twelve members have no grievance with regard to the meeting held on December 26, 2021 wherein the office bearers were elected. It is not known why the Chairman was not made a party in the proceedings when, much of the submissions made by Mr. Kathpalia were on the manner in which the notices for the meeting on December 26, 2021 were issued and also, that the Chairman had adjourned the proceedings of the meeting held on December 26, 2021, at the asking of all the members present, a stand which has been denied by the respondent Nos. 4 to 7 herein.

Advancement of timing of the 259th meeting from 11AM to 9.30AM

76. A reading of Regulation 91 of the Regulations of 1982 would reveal, any advancement or postponement of the time or date of a meeting must be intimated not less than five days prior to the meeting. Admittedly, the timing of the meeting of December 26, 2021 was advanced from 11 AM to 9.30 AM on December 20, 2021, which is six days before the scheduled meeting of December 26, 2021. Even the plea of Mr. Kathpalia that petitioner No.1 and two co-opted members were not part of the meeting, would not nullify the decision, as fourteen members were present, who were privy to the advancement of the time from 11AM to 9.30 AM. In this regard I may also refer to Regulation 94 of the Regulations of 1982 which contemplate a decision of the NIRC has to be by vote of majority in case of any dispute / conflict, i.e., it is the majority decision that would prevail. In any case, the plea of Mr. Kathpalia that the petitioner No.1 along with two other members had no notice of the change in timing of the 259th meeting is inconsequential, as all

seventeen members were present for the said meeting on December 26, 2021 at 9.30 AM.

77. A perusal of the dates referred to above would reveal that the Chairman in his e-mail to the Regional Director / Returning Officer has stated, as no consensus could be arrived at in the meeting of December 26, 2021, the same has been declared postponed by him and the meeting was closed around 11.35AM. A reading of the Regulations would contemplate that any scheduled meeting under the Regulations can be advanced or postposed under Regulation 91 of the Regulation of 1982 only before the meeting is actually held. Once the meeting is convened and held on a given date and time, the business stipulated in the said meeting needs to be transacted unless and until the members present (in conformity with the quorum) agrees to adjourn the same as per Regulation 95 of the Regulation of 1982. It is not such a case as is clear from the report of the Regional Director / Returning Officer appointed by respondent No.1 who stated in his report that, after the Chairman and some of the members left the meeting, the members present requested Mr. Susshil Daga, Vice-Chairman (respondent No.4) to take the Chair as per Regulation 92 of the Regulations of 1982 and nine members being physically present, the quorum was met, resulting in unanimous election of the four office bearers. Hence, it must be held that the Chairman had no power to adjourn the proceedings as per Regulation 95 of the Regulation of 1982 by himself. The plea of Mr. Kathpalia that the Chairman was asked by the members to take a decision in the meeting because no consensus could be arrived at and he had subsequently postponed the meeting in terms of Regulation 91 of the Regulation of 1982 is

unmerited as the same is not borne out from the record and also the facts, and as it is clear from the report of the Regional Director / Returning Officer that, nine members stayed back to continue the meeting. This report of the Regional Director / Returning Officer of December 26, 2021 is not under challenge. I may also state here that it is the case of the petitioners that they have not received the report of the Regional Director / Returning Officer till the first date of hearing of this petition. This plea is unmerited for the reason that on January 7, 2022 the ICSI had notified to its 70000 members, the result of the election of the functionaries with respect to all Regional Councils. It is not the case of the petitioners that they were not privy to such notification, and additionally they have not challenged the said notification.

Powers of the President / Secretary of ICSI

78. The plea of Mr. Kathpalia, that the President and the Secretary of ICSI have no authority to adjudicate the dispute with regard to the elections of the functionaries of NIRC, though justified in the absence of any regulation in that regard, but in view of the fact that it was the petitioner No.1 who had through his e-mail dated December 27, 2021 brought to the notice of the President, the manner in which the meeting of December 26, 2021 wherein the election of office bearers were held, and had sought his intervention, is clearly an afterthought, as contended by Mr. Rao, to wriggle out of the decision taken by the President / Secretary of ICSI. The plea of Mr. Kathpalia that the respondent Nos.4 to 7 have not challenged the email dated December 26, 2021 of the Chairman informing the postponement of the 259th meeting of NIRC is also unmerited. They have rightly refrained from

challenging the same in view of the subsequent email of the Regional Director / Returning Officer; conclusion of the President of ICSI and circulation of the names of the elected office bearers of all Regional Councils by the ICSI itself.

79. In view of my discussion above, it must be held that the meeting held on December 26, 2021 is proper, in accordance with the Regulations of 1982, and the business transacted thereof, i.e., election of office bearers of NIRC for the year 2022, cannot be faulted with. Having said that, the e-mail of the incumbent Chairman dated December 31, 2021 scheduling the 259th meeting on January 8, 2022 (as re-scheduled to January 18, 2022) and circulating the agenda thereof with regard to election of the office bearers of NIRC for the year 2022 would be unsustainable and cannot be acted upon.

80. The petition is dismissed. No costs.

CM No. 2937/2022 (for stay)

Having finally decided the writ petition, this application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J.

FEBRUARY 01, 2022/*jg*