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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 2<sup>nd</sup> February, 2023*  
 + **W.P.(C) 1100/2023 and CM APPL. 4344/2023**  
**RAJIV K ADLAKHA** ..... Petitioner  
 Through: Petitioner in person.  
 versus  
**INSTITUTE OF COMPANY SECRETARIES**  
**OF INDIA & ORS.** ..... Respondents  
 Through: Mr. Amarjit Singh Chandhiok, Sr.  
 Advocate with Ms. Purva Kohli Advs.  
 for R-1&2 (M-8439691306)  
 Mr. Pragyan Pradeep Sharma,  
 Advocate for R-3.  
 Mr. Kartikay Dutta, Adv. for R-4.  
 Mr. Sushil Kumar Pandey, Sr. Panel  
 Counsel with Mr. Vedansh Anand,  
 G.P. & Mr. Kuldeep Singh, Advocate  
 for R-5 (M-9873099031)

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner- Mr. Rajiv Adlakha challenges the impugned order dated 27<sup>th</sup>/28<sup>th</sup> June, 2022 passed by Respondent No.2- Board of Discipline, Institute of Company Secretaries of India (ICSI) in **DC/890/2022** titled **Rajiv Kumar Adlakha v. Ashok Kumar Dixit**. Vide the impugned order, the complaint filed by the Petitioner against Respondent No.3- Mr. Ashok Kumar Dixit, Director (Discipline), ICSI, under section 21 of the Company Secretaries Act, 1980 (*hereinafter 'Act'*) has been closed by Respondent Nos.1 and 2.
3. At the outset, Respondent No.4 who has been impleaded in person, is

deleted from the array of parties.

4. The submission of the Petitioner- Mr. Adlakha, who appears in person, is that since Respondent No.3 is himself Director (Discipline), the impugned order could not have been passed by the Board of Discipline. It is his submission that the complaint can only be looked into by the Director (Discipline) in terms of Act and Rules. In the case at hand, Respondent No.3 recused from the Disciplinary case No. **890/2022** as he was the Respondent in the said case. It was only after the recusal that the Board of Discipline closed the case without any opinion being formulated by the Director (Discipline).

5. Mr. Chandhiok, Id. Senior Counsel appearing for Respondent Nos.1 and 2 submits that the complaint being against the Director (Discipline), the Institute had no other option but to have the Board of Discipline look into the complaint, what has been done by the ICSI.

6. On a query as to what could be the alternative solution in case of a complaint against the Director (Discipline), it is submitted by Mr. Chandhiok, Id. Senior Counsel, that under Rule 21 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, (*hereinafter 'Rules'*) any matter relating to procedure of investigation or misconduct in respect of which no express provision has been made, would have to be referred to the Central Government. Rule 21 reads as under:

**“21. Residuary provisions**

*Matters relating to the procedure of investigation, conduct of cases and allowances to nominated members with respect to which no express provision has been made in these rules shall be*

*referred in each to the Central Government for its decision and the decision of the Central Government thereon shall be binding.”*

7. It is further submitted by the Id. Sr. Counsel that in the case at hand, the impugned order can be withdrawn by the ICSI and reference under Rule 21 can be made to the Central Government.

8. Mr. Adlakha, is in agreement with the suggestion put forth by the Id. Senior Counsel.

9. After hearing submissions on behalf of the parties, this Court is of the opinion that since the Director (Discipline) plays a significant role in the day-to-day management and conduct of affairs at the ICSI, *‘justice should not only be done, but must also be seen to be done’*.

10. It is accordingly directed that the impugned order dated 27<sup>th</sup>/28<sup>th</sup> June 2022, shall stand withdrawn, as stated by the ICSI. It would be appropriate that the Central Government i.e., the Ministry of Corporate Affairs appoints an independent Company Secretary to look into the complaint made by the Petitioner against Respondent No.3.

11. Accordingly, the matter shall be referred by ICSI within 2 weeks to the concerned Joint Secretary in the Ministry of Corporate Affairs who shall appoint an independent Company Secretary. The said Company Secretary shall take a decision on the complaint within a period of six months.

12. If any pleadings are to be filed by either the Petitioner or Respondent No.3, the same shall be called for. An opportunity of hearing, shall also be afforded to both the parties before passing the final order.

13. A copy of the complaint has also been handed over in the Court to the Id. Counsel appearing for the Ministry of Corporate Affairs.

14. The present order is being passed in the facts of this case where the complaint is against the Director (Discipline).

15. It is clarified that this Court has not gone into the merits of the complaint.

16. The petition is disposed of in these terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**FEBRUARY 2, 2023**  
*Rahul/SK*

