

MAL/SECTT/BSE/

Date: 30.03.2021

To

Bombay Stock Exchange Limited

25th Floor, Phiroze Jee Jee Bhoy Towers

Dalal Street Mumbai - 400 001

SUBJECT: OUTCOME OF BOARD MEETING DATED 30TH MARCH, 2021

Dear Sir's

Pursuant to Regulation 30 and any other applicable provision of SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015, we wish to inform you that the Board of Directors of the Company at its meeting held today, 30.03.2021, has inter alia, taken following decisions on the notice received from the shareholders dated March 11, 2021 for conducting the EGM of the company by the Board:

The agenda item of convening Extra-Ordinary General Meeting was considered unapproved by the board due to the legal opinion received from an Expert Mr. S.Balasubramanian (Former Chairman, Company Law Board) that inter alia, "Independent Directors cannot be appointed under Section 160 of Companies Act, 2013 and therefore, the requisition sent by shareholders under Section 100 of the Companies Act, 2013 is not a valid requisition". Attached is the opinion received from the expert as '**Annexure - A**'.

Three Directors namely Mr. Mahesh Munjal, Mr. Aayush Munjal & Mr. Anil Sharma did not agree with the other Directors and placed their dissent relying on another opinion received by the company from a reputed law firm which provides that shareholders are within their rights to make a requisition under Section 160 of the Companies Act, 2013 and call EGM under Section 100 of the Companies Act, 2013 for appointment of Independent Directors of the company.

The meeting of the Board of Directors commenced at 04:30 p.m. and concluded at 07:20 p.m.

Thanking You

Yours faithfully

For Majestic Auto Limited

Juhi Garg

Company Secretary & Compliance Officer

MAJESTIC AUTO LIMITED

CIN L35911DL1973PLC353132

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S.BALASUBRAMANIAN
Former Chairman, Company Law Board

27th March 2021
Gurgaon 122002

OPINION (Ex-parte)

QUERIST: Mr S.L. Mohan

The querist is an independent director of M/s Majestic Auto Limited, a listed company. Furnishing a detailed brief on certain happenings in the company in relation to the appointment of independent directors, he has raised certain queries for my opinion. He has also furnished all connected documents in this regard.

Brief for opinion

M/s Majestic Auto Limited is a listed company. The Board of the company comprises of three promoter directors- (CMD, JMD and WTD) and four independent directors. The promoter group holds 75% of the issued shares. The promoters had proposed the name of one Mr Anil Thapar for appointment as an Additional Independent Director.

This proposal was considered by the Nomination and Remuneration Committee comprising of three independent directors in a meeting held on 8th February 2021. After detailed deliberation on the proposal, the NRC did not approve the same and recommended to the Board accordingly. In the Board meeting held on the same day, the item of appointing Mr Anil Thapar as an additional Independent Director was discussed and Board also concurred with the decision of the NRC.

Thereafter, in order to bypass the procedure of appointment of the Independent Directors i.e. the recommendation by NRC and the approval of such recommendation by the Board of Directors, CMD and other shareholders representing 75.47% equity capital in the Company have given a notice under Section 160 read with Section 100 of the Companies Act, 2013 dated 10.03.2021 for the appointment of 3 Independent directors including Mr Anil Thapar whose appointment was not approved by NRC.

Following documents are attached:

1. Minutes of the 14th meeting of the Nomination and Remuneration Committee dated 08.02.2021 of Majestic Auto.
2. Minutes of the 28th meeting of the Board of Directors dated 08.02.2021 of Majestic Auto.
3. Notice under Section 160 read with Section 100 of the Companies Act, 2013 dated 10.03.2021.
4. Email dated 11.03.2021 by Mr. Mahesh Munjal (the CMD of the Company) circulating the aforementioned notice dated 10.03.2021 to the board of directors of the Company.

In the above circumstances, opinion is sought on the following:

1. What is the process of appointment of Independent Directors in a listed Company? Can independent directors be appointed while ignoring or overruling the directions of a duly appointed NRC?

2. Can the promoter directors/promoter shareholders along with some other shareholders of a listed Company invoke Section 160 read with Section 100 of the Companies Act, 2013 to directly appoint Independent Directors? Specifically, is the notice dated 10th March 2021 and the proposed appointment of independent directors vide this notice valid and enforceable against the company?

3. Generally and the way Forward.

The queries raised involve substantial issues of law having a serious impact on good corporate governance practices. Hence, it is essential to refer to the statutory provisions and their impact on good corporate governance.

Statutory provisions: Companies Act 2013

Section 2 (47) defines "independent director" as an independent director referred to in sub-section (6) of section 149.

Section 149(6) An independent director in relation to a company, means a director other than a managing director or a whole time director or a nominee director:- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience.

In addition, this sub-section also specifies certain other conditions relating to an independent director.

Section 149(8) The company and the independent directors shall abide by the provisions specified in Schedule IV.

In the, Part IV of schedule IV the manner of appointment of independent directors has been specified as under:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement

that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

Section 150(1) of the Act provides that a company could select independent directors from data bank maintained by those notified by the Central government with the stipulation that the responsibility of such selection would lie with the company.

Section 150(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement shall be annexed to the notice of the meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as an independent director.

Section 152(2): Save otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

Proviso to section 152(5): Provided that in the case of appointment of independent directors in the general meeting, an explanatory statement for such appointment annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such appointment.

Section 178 (1) stipulates that Board of directors of every listed company shall constitute the Nomination and remuneration Committee.

Sub section (2) stipulates that the Nomination and Remuneration Committee shall identify persons who are qualified to become directors and recommend to the Board their appointment and removal.

Sub section (3) further stipulates that NRC shall formulate the criteria for determining the qualifications, positive attributes and independence of a director

and recommend to the Board a policy relating to remuneration for the directors, managerial personnel and other employees — —. The policy is to be disclosed in the Board report.

Sub section 8 states that any contravention to this section would visit with a penalty of Rs five lakhs on the company and rupees one lakh on every officer in default. (Earlier, this subsection provided for imprisonment also)

SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015

Regulation 4(1)(g): The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchanges in this regard as may be applicable.

Regulation 4(2)(f)(ii)(5): Ensuring a transparent nomination process to the Board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

Regulation 16 (1)(b): ‘Independent director means a non executive director, other than a nominee director of the listed entity

(i) who, in the opinion of the Board of directors, is a person of integrity and possesses relevant expertise and experience

Regulation 19: (1) The Board of directors shall constitute the Nomination and Remuneration committee

Regulation 19(4) The role of the Nomination and Remuneration Committee shall be as specified as in Part D of the Schedule II

Part D of Schedule II: Role of NRC will, inter alia include:

(1) Formulation of the criteria for determining the qualification, positive attributes and independence of of a director and recommend to the Board of Directors a policy relating to remuneration for the directors etc.,.

Regulation 98: The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchanges in the manner specified in circulars or guidelines issued by the Board:

- (a) Imposition of fine
- (b) suspension of trading
- (c) freezing of promoter/promoter group holding of designated securities as may be applicable in coordination with the depositories
- (d) any other action as may be specified by the Board from time to time.

The Nomination and Remuneration Policy of Majestic Auto Ltd

1. OBJECTIVE

The Nomination and Remuneration Committee and this Policy shall be in compliance with Section 178 of the Companies Act, 2013 read along with the applicable rules thereto and Regulation 19 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015. The Key Objectives of the Committee would be:

- i. To guide the Board in relation to appointment and removal of Directors, Key Managerial Personnel and Senior Management.
- ii. To evaluate the performance of the members of the Board and provide necessary report to the Board for further evaluation of the Board.
- iii. To recommend to the Board on Remuneration payable to the Directors, Key Managerial Personnel and Senior Management.

3. ROLE OF COMMITTEE

Matters to be dealt with, pursued and recommended to the Board by the Nomination and Remuneration Committee

The Committee shall:

i. Formulate the criteria for determining qualifications, positive attributes and independence of a director.

Identify persons who are qualified to become Director and persons who may be appointed in Key

Managerial and Senior Management positions in accordance with the criteria laid down in this policy.

Recommend to the Board, appointment and removal of Director, KMP and Senior Management Personnel.

ii. Policy for appointment and removal of Director, KMP and Senior Management. Appointment criteria and qualifications are listed below:

The Committee shall identify and ascertain the integrity, qualification, expertise and experience of the person for appointment as Director, KMP or at Senior Management level and recommend to the Board his / her appointment.

A person should possess adequate qualification, expertise and experience for the position he/she is considered for appointment. The Committee has discretion to decide whether qualification, expertise and experience possessed by a person is sufficient / satisfactory for the concerned position.

OPINION

On the basis of the above legal provisions and Regulations, Company's Policies, my opinion on the queries is:

Query No 1: *What is the process of appointment of Independent Directors in a listed Company? Can independent directors be appointed while ignoring or overruling the directions of a duly appointed NRC?*

Listed companies are governed, in addition to the provisions of Companies Act 2013, by SEBI Act and the Regulations made thereunder. These companies are expected to have a robust policy on appointment of managerial personnel including independent directors, which the company has. As could be seen from the provisions of Companies Act 2013 and LODR Regulations extracted in the earlier part of this opinion, it is abundantly clear, that there are four steps involved in the approval of appointment of Independent directors. First, it is the

the responsibility of the NRC to identify the persons who comply with all the requirements of the Act and the Regulations for appointment of independent directors and furnish its recommendations to the Board of Directors. The second is that the Board has to take a decision on the recommendation of NRC. The third is that in case the Board approves the recommendation of the NRC for appointment of an independent director, then, it has to recommend to the shareholders for their approval. Fourth is that the shareholders have to approve the appointment. Even though the final authority for approving the appointment of independent directors is the shareholders, yet, the process as envisaged in the Act and the Regulations have to be complied with. Most importantly because, the proposal to the shareholders for appointment of independent directors has to be accompanied by an explanatory statement in which the Board shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such appointment. This is a mandatory provision.

The above being the legal position, in my opinion, the question of cutting shorting the above sequence of events and directly appointing independent directors by shareholders will not be legal both in terms of the Act and the Regulations as explained in the answer to the second query. .

Query No 2: *Can the promoter directors/promoter shareholders along with some other shareholders of a listed Company invoke Section 160 read with Section 100 of the Companies Act, 2013 to directly appoint Independent Directors? Specifically, is the notice dated 10th March 2021 and the proposed appointment of independent directors vide this notice valid and enforceable against the company?*

While section 160 empowers the shareholders to propose the appointment of a director in a general meeting, section 100 empowers them to requisition an extra

ordinary general meeting for the same purpose. The question is whether this right could be exercised for appointment of an independent director is an issue for consideration, especially when some provisions of law as extracted earlier specifically govern the appointment of independent directors.

Section 2(10) defines 'Board of directors' or 'Board' in relation to a company means the collective body of directors of a company. Section 2(20) of the Companies Act defines a company as a company incorporated under this Act or under the provisions of any previous company law. Section 2(34) defines a director as one appointed to the Board of a company.

Section 160 refers to appointment of a director in a company and section 100 refers to requisitioning of an extra ordinary meeting of a company. Hence these provisions, read with sections 2(10) and 2(20) are meant to be applicable to all companies. Once a particular provision is applicable to all companies, the said provision is considered to be a general provision. Similarly section 149(1) , which stipulates the number of directors in a company is a general provision. But Section 149(4) which relates only to a listed company or companies as may be prescribed by the Central Government is a special provision. So is the position of Section 149(6) which is special in respect of independent director. Similarly, section 149(10) which provides for a term of fixed 5 year term to independent director is a special provision as against section 150 which provides for retirement by rotation for other directors. Thus, all the provisions relating to appointment of independent directors are special provisions.

When there is a special provision along with a general provision, special provision will prevail over the general provision as per the maxim *Generalis specialibus non derogant* (*general things do not derogate from special things*). The application of this maxim has been approved in *J K cotton Spinning &*

Weaving Vs The State of Utter Pradesh 1961 AIR 1170, wherein the Supreme Court has held that when there is a conflict between general provision and special provision in the same enactment, the special provision prevails over the general provision and the general provision would apply only to cases not covered by the special provision. In *Pankajakshi (Dead) through LR Vs Chandrika*, the judgment of which was delivered by a Constitution Bench as recently as on 25th February 2016, the Court has opined that special provision would always prevail over general provision.

As could be seen from the provisions of the Companies Act 2013/LODR as extracted earlier in this opinion, the selection and appointment of an independent director are governed by specific or special provisions in the Act/LODR and hence an independent director can be appointed only in accordance with these special/specific provisions. One of the basic principles of law is that if it mandates that something to be done in a particular manner, it has to be done only in that manner and not otherwise. Hence, under the right given by the general provisions, that is, section 100 or section 160, shareholders of a listed company cannot seek to appoint an independent director. The only exception is that by virtue of section 151, small shareholders of a listed company numbering 1000 or constituting 1/10th of the total number of shareholders which ever less can issue a notice to the company for appointment of a director, who, if satisfies the requirements under section 149(6) will be treated as an independent director. Even under section 151, it is to be noted that only one person can be appointed and that too not as an independent director but only as a director, who, if he fulfils the requirements of section 149(6) will be deemed to be an independent director and he can hold office only for one term of 3 years.

Thus, in my opinion, since in the present case, the notice under sections 100 and 160 has been given by the promoter group and not by small shareholders, even the exception to the special provisions is not applicable and hence the notice is not legally tenable.

Query No 3. Generally and the way forward?

As per section 100 of the Act, within 21 days of receipt of a notice under this section, the Board has to call for a meeting of the shareholders to be held within 45 days of the notice. In case the company fails to do so, the requisitionists themselves can call the meeting within 3 months from the date of the notice. The issue as to whether the Board is bound to call a meeting when the notice itself is not legally permissible is an issue to be examined, keeping in view that if the Board fails to call the meeting, the requisitionists themselves have been empowered to call the meeting.

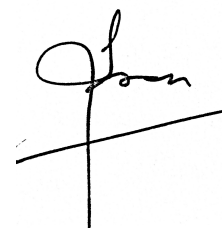
Even though the promoters holding nearly 75% shares may be aggrieved that their recommendation has not been accepted, yet, the drastic action of trying to appoint his nominee through EOGM is not warranted. The action of the promoter group having three directors on the Board in issuing the impugned notice appears to have been not only hasty but also without realising its adverse repercussions. The fall out of the attempt to induct three independent directors by the promoter group though section 100 and section 160, being completely against the provisions of the Act and LODR, would definitely invite action by the Regulators. While the violation of the provisions of the Act would visit only with monetary penalty, the violation of the provisions of LODR, as specified in Regulation 98, may result, besides fine, suspension of trading as well as freezing of

shares of promoters group. **Most importantly, the corporate governance practiced by the company will become questionable and the prestige and reputation of the company will go for a toss especially when even the NRC Policy codified/published in the Annual Reports and in the Web site of the company is breached by the promoter directors themselves.**

Hence, in my opinion, the way forward for the querist is to convene an emergency board meeting, preferably within 21 days of the notice and bring to the notice of the promoter directors the repercussions of their action and advise them to withdraw the notice and settle the issue in-house. It is the best course and will be in line with good corporate governance. In case they refuse, the Board has two options-

One is that it may inform the requisitionists that since they are not entitled to issue a notice under section 100 and 160, the Board cannot call the meeting. In case, inspite of this, they call the meeting by themselves and approve the appointment of independent directors, the Board can refuse to recognise their appointment.

The second option is that the Board may call the EOGM by narrating in the notice calling for the meeting all the facts and legal position as described earlier. Once such a notice is issued, the whole matter will come into the public domain tarnishing the image of the company and the reputation of the promoters.



S.Balasubramanian

