WTM/SM/CFD-CMD2/33/2021–22

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

AD INTERIM *EX-PARTE* ORDER

UNDER SECTION 19 READ WITH SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 98 OF SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

In the matter of Majestic Auto Limited

In respect of

Sl. No.	Name of the Entity	PAN
1.	Majestic Auto Limited	AABCM2162M

BACKGROUND

1. Majestic Auto Limited (hereinafter referred to as "**MAL/the *Company***") is a company registered under the applicable provisions of the Companies Act, 1956 and its shares are listed on the BSE Limited (hereinafter referred to as "**Stock Exchange/BSE**"). As per the latest shareholding pattern for the quarter ended March 31, 2021 filed with the BSE, 75% of the shareholding is held by the promoter and promoter group, comprising of M/s Anadi Investment Private Limited (hereinafter referred to as "**Anadi**") and Mrs. Renuka Munjal, while 25% of the shareholding is held with the public shareholders of the *Company*. Mr. Mahesh Munjal, who is the Chairman and Managing Director of the *Company* and is also the promoter shareholder of Anadi. There are 7 directors on the Board of Directors (hereinafter referred to as "**Board/BoD**") of the *Company* consisting of 3 Executive Directors viz. Mr Mahesh Munjal, Mrs Aashima Munjal (Joint Managing Director), Mr. Ayush Munjal (Whole Time Director) and 4 Independent Directors (hereinafter referred to as "**IDs**"**).** The composition of the Board of the *Company* is as under:

Composition/Management of the Board/the *Company*		
Name of Director	**Category**	**Date of appointment**
Mr. Mahesh Munjal	Chairman and Managing Director	June 29, 1993
Mr. Aashima Munjal	Joint Managing Director	August 14, 2010
Ms. Aayush Munjal	Whole Time Director	August 14, 2015
Mr. Viaks Nanda	Independent Director	February 14, 2017
Mr. Naveen Jain	Independent Director	August 10, 2018
Mr. Sham Lal Mohan	Independent Director	April 18, 2019
Anil Kumar Sharma	Independent Director	August 12, 2019

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") has received a complaint vide e-mail dated April 02, 2021 (hereinafter referred to as "**Complaint**") from three Independent Directors i.e., Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain (hereinafter collectively referred to as "**existing IDs**") of the *Company* highlighting certain irregularities and breach of corporate governance standards in the management of the *Company* and *inter alia* stating as under:

   i. The Nomination and Remuneration Committee (hereinafter referred to as "**NRC**") in its meeting held on February 8, 2021 considered and did not approve the proposed resolution for appointment of one Mr. Anil Thapar as Additional ID on the Board of the *Company*. NRC further made recommendations to the Board to follow due process for appointment of IDs.

   ii. The Board Meeting held on February 08, 2021 also took note of the non-approval of the proposal to induct Mr. Anil Thapar by the NRC. However, the Chairman and Managing Director (hereinafter referred to as "**CMD**") of the *Company* i.e., Mr. Mahesh Munjal recorded his dissent in this regard.

   iii. Thereafter, Anadi through Mr. Mahesh Munjal, as the major shareholder of MAL caused a Notice to be sent to the *Company* on March 10 2021, to convene an Extra Ordinary General Meeting (hereinafter referred to as "**EGM**") for inducting 3 new

IDs namely Mr. Anil Thapar, Mr. Yogendra Kumar Gupta and Mr. Sanjeev Kumar Sharma (hereinafter referred to as "**Proposed IDs**") on the Board of the *Company*.

iv. In the Board meeting that was held on March 30, 2021 to consider the aforesaid Notice, the three existing IDs did not support the proposed resolution to convene the EGM. Consequently, the BoD did not approve the said proposal to convene the EGM.

3. Pursuant to the receipt of the Complaint and based on the nature of the allegations made therein, SEBI exchanged various communications with the *Company* from time to time in this regard. After preliminary examination of the matter, SEBI vide letter dated May 05, 2021(hereinafter referred to as "**the Letter**") addressed to the BoD of the *Company*, has informed that *prima facie*, MAL is not in compliance with the processes of appointment of IDs and consequent dissemination of information to its shareholders as laid down under law, for the reasons as recorded in detail in the said Letter. After making extensive references to various extant provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") and the relevant provisions of the Companies Act, 2013 (hereinafter referred to as "**Companies Act**") which have to be mandatorily followed in the matter of appointment of IDs, SEBI in the said Letter has drawn the attention of the BoD, the CMD as well as the Company Secretary to the following observations:

> "*12. In the extant matter, the shareholders of MAL have proposed certain names for being appointed as independent directors by invoking section 160 of the Companies Act, 2013. The invocation of section 160 of the Companies Act does not however imply dispensation from compliance of the relevant requirements laid down under the Companies Act, 2013 and the LODR Regulations by the virtue of company being a listed company.*
>
> *13. Thus, the contention of MAL that the shareholders have the right to appoint any person as a director in terms of section 160 of the Companies Act and that it is not necessary for MAL under these circumstances to obtain the recommendations of the NRC and the opinion of the BoD before the EGM is not tenable as section 160 of the Companies Act neither specially exempts the applicability of the requirement of obtaining the recommendations of the NRC under section 178 of the Companies Act and regulation 19 of LODR Regulations nor does it exempt the requirement of obtaining the opinion of the BoD under section 149 and 152 of the Companies Act and regulation 16 of LODR Regulations.*

14. *MAL by directly placing the proposals for appointment of independent directors in the EGM without placing it before the NRC and obtaining approval of BoD has circumvented the established procedure for appointment of independent directors stipulated under the provision of the Companies Act and LODR. This defeats the purpose and role of NRC and BoD in the appointment of an independent director. MAL is therefore not in compliance with the aforesaid provisions of Companies Act and LODR regulations.*

15. *Further, by not disclosing the opinion of NRC and Board on the appointment of Mr Anil Thapar, MAL is also not in compliance with the principles governing disclosure and obligation laid down in the LODR Regulations, in particular, regulation 4 (2) (d) (ii) of LODR Regulations which inter-alia states that stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.*

16. *In view of the above, MAL failed to follow the laid down process of appointment of Independent Directors and imparting information to the shareholders.*

4. Accordingly, SEBI has advised the *Company "to follow the due process for appointment of independent directors of the Company which also involves placing the proposals before the NRC and the BoD for its recommendation and opinion respectively. The said recommendation of NRC and opinion of the BoD may also be disclosed to the shareholders and stock exchange well before the EGM for considering the proposal for appointment of three independent directors of MAL."* The *Company* was also informed that SEBI reserves its right to take action for any violation of provisions of the Securities and Exchange Board of India Act, 1992 and rules and regulations made there under as deemed fit in accordance with law. Further, the *Company* was advised to disseminate the above Letter of SEBI to the Stock Exchange.

5. The records before me show that the *Company* did not comply with the advice of SEBI communicated to it vide the above mentioned Letter dated May 05, 2021 with regard to following the due process for appointment of IDs by placing the proposals before the NRC and the BoD for their recommendation and opinion respectively prior to placing the said proposal before the shareholders for approval. It is observed that and the *Company* has merely made the said Letter of SEBI available to the Stock Exchange ahead of the EGM that was held on May 08, 2021 as requisitioned by some of the shareholders of the *Company* for the appointment of IDs, without following the aforesaid laid down processes involving the NRC and the BoD. In this regard, it is noted that Mr. Mahesh Munjal, CMD of the *Company* vide

his letter dated May 10, 2021 signed on behalf of Anadi (a promoter shareholder of MAL) has *inter alia* stated that he is **writing the said letter in the capacity of the managing director and as one of the shareholders of the Company who have requisitioned the EGM** and has also submitted that the law laid down by the Hon'ble Supreme Court which is binding on all, is that no court or authority can restrain shareholders from calling a meeting (EGM).

6. It is noted from the materials available on records that the events that have led to holding of the aforesaid EGM on May 08, 2021 based on the requisition made by some shareholders in brief are as follows:

   6.1 Since November 2020, the CMD i.e., Mr. Mahesh Munjal and Mr. Aayush Munjal of the *Company* have been trying to get Board approval for commencing business activity of trading in securities including equity, derivatives, debt & other products, which the exiting IDs of the *Company* have been objecting to *inter alia* on the grounds that the said proposal is without any attendant limitations, conditions and other checks and balances. Further, the said business proposal singly authorized Mr. Mahesh Munjal and/or his son Mr. Aayush Munjal to exclusively sell, purchase, transfer, endorse, negotiate or otherwise deal with the proposed depository accounts without any limitation or condition.

   6.2 Subsequently, in the meeting of the NRC and Board of the *Company* held on February 08, 2021, an agenda was circulated for inducting Mr. Anil Thapar, as a new Additional ID on the Board. However, the NRC did not recommend the appointment of Mr. Anil Thapar as an ID since, it was felt that the Board of the *Company* already had sufficient number of directors and expertise. Further, the NRC recommended that proper due diligence and detailed discussion on the qualification/expertise of the aforesaid proposed candidate was required prior to making any such recommendation in this regard.

   6.3 The Board of the *Company* was informed of the aforesaid observations and recommendation of the NRC. The Board of the *Company* considered the matter and did not pass the resolution for appointment of Mr. Anil Thapar as an Additional ID of the *Company*. Mr. Mahesh Munjal, recorded his dissent to the recommendations of the NRC.

   6.4 On March 22, 2021, the *Company*, disclosed to the Stock Exchange that a meeting of the BoD would be held on March 30, 2021 to consider convening an EGM of the *Company* based on requisition dated March 10, 2021 received from certain shareholders and to

consider the Notice under Section 160 of the Companies Act, 2013 in which the candidatures of Mr. Yogendra Kumar Gupta, Mr. Anil Thapar and Mr. Sanjeev Krishna Sharma were proposed for appointment as IDs on the Board of the *Company*.

6.5 It is noted that such shareholders who made the requisition for convening an EGM were primarily the promoter shareholders holding 75% of the share capital (viz., Anadi and Ms. Renuka Munjal) along with a few public shareholders holding only 0.48%of the share capital of the *Company* (hereinafter referred to as "**Requisitionist Shareholders**")

6.6 On March 30, 2021, the *Company* disclosed that the aforesaid agenda item for convening of an EGM as proposed by the Requisitionist Shareholders was considered but not approved by the Board of the *Company*. It is noted from the disclosure made by the Company that three directors of the *Company* namely Mr. Mahesh Munjal, Mr. Aayush Munjal and Mr. Anil Sharma placed their dissent on record in this regard.

6.7 Subsequently, the *Company* vide disclosure dated April 10, 2021 has disclosed to the Stock Exchange that it has received an intimation that the EGM called by the Requisitionist Shareholders (hereinafter referred to as "**EGM Notice**") for the appointment of three persons namely Mr. Anil Thapar, Mr. Sanjeev Krishna Sharma and Mr. Yogendra Kumar Gupta as IDs on the Board of the *Company* has been postponed from April 27, 2021 to May 08, 2021.

7. Under the circumstances, based on the preliminary examination into the matter as referred to at paragraph 3 above, SEBI had issued the Letter dated May 05, 2021 to the BoD (with specific attention to the CMD and the Company Secretary of the *Company)*, bringing their knowledge about the non-compliance on the part of the *Company* with the laid down processes in the context of the extant provisions of law as discussed at length in the said Letter. Further, the contraventions and violations that are likely to be committed by the *Company* in the event the *Company* does not follow the laid down processes prescribed under the LODR Regulations and the Companies Act were pointed out in detail in the said letter. Keeping the aforesaid in view, SEBI advised the *Company* to follow the said processes as already highlighted at paragraph 3 above.

8. As noted above, although the *Company* has disclosed the said Letter of SEBI to the Stock Exchange on May 05, 2021, it is observed from the disclosures made by the *Company* on

'Summary proceedings of EGM' to the Stock Exchange on May 09, 2021 that the EGM was conducted on May 08, 2021 which was attended by Mr. Mahesh Munjal (CMD and representative of Anadi, i.e. one of the Requisitionist Shareholders, Mr. Chetan Gupta (authorized representative of Anadi) and Ms. Ayushi Jain (scrutinizer of the meeting). During the said EGM, the following information, *inter alia*, was disclosed to the shareholders of the *Company*:

i. The Board has considered the appointment of Mr. Anil Thapar in the ID category, however, did not recommend the same in the NRC and in the Board meeting held on February 08, 2021, on the following grounds:

   a) The Board has sufficient number of directors.

   b) The expertise of the proposed candidate shall be discussed in detail.

   c) Proper due diligence is required for appointment of an Additional ID.

ii. The Requisitionist Shareholders by themselves have nominated Mr. Anil Thapar along with other two persons for appointment as ID to be considered directly by the shareholders of the *Company* in this meeting.

iii. The *Company* had received correspondence from SEBI, the same has been uploaded at the website of BSE.

9. In response to the aforesaid Letter dated May 05, 2021 addressed by SEBI to the BoD, Mr. Mahesh Munjal, vide his letter dated May 10, 2021 addressed in the capacity of the Managing Director as well as one of the promoter shareholders (signing on behalf of Anadi) has *inter alia*, made the following submissions:

   i. The Letter is inexplicably titled as a "without prejudice" which raises questions on whether the letter can at all be regarded as an order and relied upon in evidence rendering the contents in the letter, incapable of being complied with.

   ii. The EGM is requisitioned by the Requisitionist Shareholders and not the Board as the shareholders have an independent statutory power and sovereign right to requisition a meeting and appoint directors including IDs.

   iii. A legal opinion contrary to the position taken in the Letter has been received. The law laid down by the Hon'ble Supreme Court which is binding on all, is that no court or

authority can restrain shareholders from calling a meeting and while disagreeing with the position outlined in the said Letter had requested SEBI to reconsider the position outlined in the Letter.

iv. All required information including on the candidates have been made available to the shareholders and the Requisitionist Shareholders have reiterated it appropriately at the EGM.

10. The records further show that the Company Secretary, the existing IDs i.e., Mr. Vikas Nanda, Mr. Sham Lal Mohan and Mr. Naveen Jain and Ms. Aashima Munjal (JMD) of the *Company* did not attend the said EGM held on May 08, 2021, since they believed that the process adopted by the Requisitionist Shareholders for appointment of the Proposed IDs was against regulatory provisions and directive of SEBI.

11. From the perusal of the voting results as disclosed by the *Company,* under the signature of the CMD Mr. Mahesh Munjal*,* it is observed that:

    i. 100% of the promoter & promoter group, comprising 75% of the shareholding of the *Company*, voted in favour of the resolutions.

    ii. Over 87% of the public shareholding (present and voting), voted against the resolution.

12. It is thus noted from the records that the process of appointment of ID which mandatorily includes the process of placing such proposals before the NRC and obtaining the opinion of the BoD, before the same is placed for approval by the shareholders of the *Company* in the general meeting has not been followed.

13. In the above backdrop, while examining the aforesaid resolutions passed for appointment of the Proposed IDs, at this stage it is appropriate to comprehend the entire statutory framework and the legislative intent behind such framework as laid out under various provisions of the Companies Act. Accordingly, the relevant statutory provisions governing the appointment of IDs in the Companies Act, are highlighted hereunder:

    13.1 Section 2(10): "Board of directors" or "Board" in relation to a company means the collective body of directors of a company.

13.2 Section 2(20): A "company" means a company incorporated under this Act or under the provisions of any previous company law.

13.3 Section 2(34): "director" means a director appointed to the Board of a company.

13.4 Section 2 (47): "independent director" means an independent director referred to in sub-section (6) of Section 149.

13.5 Section 149(6)(a): 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. Section 149(8): The company and the independent directors shall abide by the provisions specified in Schedule IV.

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.

13.6 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.

13.7 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.

13.8 Section 160(1): A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.

Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.

13.9 Section 160(2): The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed**.**

13.10 178. (1) The Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and

removal and 5[shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

14. Thus, Section 178 (1) stipulates that Board of Directors of every listed company shall constitute the NRC. Sub section (2) stipulates that the NRC 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.

15. It is noted that the manner to inform its members of the candidature of a person for the office of director as referred to in Section 160(2) of the Companies Act, has been prescribed in Rule 13 of Companies (Appointment & Qualification of Directors) Rules 2014 which reads as under:

"Notice of candidature of a person for directorship

13. The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-

(1) by serving individual notices, on the members through electronic mode to such members who have provided their e-mail addresses to the company for communication purposes, and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district."

16. It is also noted that based on the afore-cited provisions of the Companies Act pertaining to appointment of ID and to further ensure mandatory compliances of such prescribed processes by a listed entity with respect to appointment of ID, the LODR Regulations also provide for similar regulatory framework and identical compliances to be made by the listed companies. The relevant provisions of the LODR Regulations governing the appointment of an ID are highlighted as under:

16.1 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

16.2 Regulation 4(2)(d)(iii): Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process

16.3 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

16.4 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

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

16.6 Regulation 19(4): The role of the NRC shall be as specified in Part D of the Schedule II. In this regard Part D of Schedule II: Role of the NRC will, *inter alia* include:

(1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

17. A comprehensive and harmonious perusal of the above cited provisions of the Companies Act as well as the LODR Regulations reveal that the listed companies in their conduct and governance shall be governed by the provisions of Companies Act, in addition to the provision of the SEBI Act and the LODR Regulations. In terms of the regulation 19(1) of the LODR Regulations, it is mandatory for every listed entity to constitute a NRC, which shall *inter alia*

identify persons who are qualified to become directors. The said regulation also lays down the policy for their appointment and removal. The LODR Regulations further demands that director of a company should be in the opinion of the board of the company, a person of integrity and possess relevant expertise and experience so as to enable it to discharge its functions and duties effectively. Similarly in terms of the provision of proviso to Section 152(5) of the Companies Act read with Schedule-IV, while proposing and recommending the appointment of an ID, the company is under an obligation to state in the explanatory statement attached to the notice of the general meeting that in the opinion of the Board, the person proposed to be appointed as ID fulfils the conditions as specified in the Companies Act and the rules made thereunder and that the proposed director is independent of the management. This is further emphasized in provision under Section 150 (2) of the Companies Act which goes on to impose a duty on the company to provide a justification in the explanatory statement (attached to the notice of the general meeting) for choosing a person to be appointed as an ID.

18. The above noted statutory and regulatory provisions clearly mandate that listed companies are expected to have a robust policy on appointment of managerial personnel including IDs. From a perusal of the aforesaid provisions, it is abundantly clear that there are at least four essential steps involved in the process of approval of appointment of IDs.

    i. First, it is the responsibility of the NRC of a listed company to identify the persons who comply with the eligibility and other requirements of the Companies Act as well as those prescribed under the LODR Regulations for appointment as ID and thereafter furnish its recommendations to the Board.

    ii. Second, the Board has to take a considered decision and express its opinion on the recommendation of the NRC.

    iii. Third, in case the Board approves the recommendation made by the NRC for appointment of an ID, then, it has to refer the same to the shareholders for their approval.

    iv. Fourth, the shareholders will take a decision on the appointment of the ID as referred to them by the BoD on the basis of the recommendation made by the NRC.

19. In this regard it has to be borne in mind that even though the final authority for approving the appointment of IDs rests with the shareholders, yet, the process as envisaged under the Companies Act and the LODR Regulations referred to above, have to be complied with before the proposal to appoint a particular person as ID is referred to the shareholders. This is easily implied from the statutory requirement that the proposal to the shareholders for appointment of IDs has to be accompanied by an explanatory statement (annexed to the Notice for the general meeting) in which the board of a company shall require to include a statement that in the opinion of the board, the person whose name has been proposed for approval by the shareholders, fulfils the conditions specified in the LODR Regulations for such appointment.

20. In this context of the aforesaid statutory and regulatory framework, it becomes abundantly clear that while acting on the request of the Requisitionist Shareholders to call for an EGM to seek approval of the shareholders on the names proposed by them for appointment as ID, the *Company* was duty bound to take the following steps:

    i. To place the candidature of those three proposed names before the NRC for deliberation and recommendations, if any,

    ii. Based on the recommendations of the NRC to place the candidature of those three persons proposed by the Requisitionist Shareholders before the BoD for consideration and formulation of an opinion,

    iii. On the basis of the views of the NRC and BoD, the candidature of those three persons needed to be notified to its members/shareholders for approval of appointment of ID.

    iv. Further such notice is required to be supported by an explanatory statement providing therein, justification and opinion of the BoD of the *Company*.

21. However, in the instant matter, it is observed that while putting up the proposal of the Requisitionist Shareholders for the approval of the shareholders in the EGM convened by the certain shareholders, no such statement appears to have been issued by the *Company* nor the said proposal was deliberated in the NRC or in the BoD. Consequently, the *Company* has also not disclosed to the shareholders the opinion of the Board on the proposal of the Requisitionist Shareholders as to whether the three persons proposed to be appointed as ID fulfilled the conditions specified in the LODR Regulations for such an appointment.

22. In this respect, as already highlighted earlier, Mr. Mahesh Munjal, CMD vide his letter dated May 10, 2021 signed on behalf of Anadi has informed that the appointment of the Proposed IDs as referred to above, has been made by invoking rights of a shareholder under Section 160 of the Companies Act and adherence to above requirement of processing through NRC and expressing opinion of Board and providing justification with respect to the competency, integrity and other requirements are not essential.

23. The aforesaid reply of Mr. Mahesh Munjal, apart from resorting to a very narrow interpretation of law, is glaringly contrary to the specific provisions of the Companies Act as already highlighted earlier in this order. For illustration, it is noted that Section 160 of the Companies Act refers to appointment of a director in a company and Section 100 refers to requisitioning of an EGM of a company. Hence these provisions, read with Sections 2(10) and 2(20) of the Companies Act appears to be 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 a special provision in respect of ID. Similarly, Section 149(10) which provides for a term of fixed 5 years' term to ID 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 IDs are special provisions. Further 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 Hon'ble 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.*

24. To put the above discussions in perspective, it is necessary to discuss in brief the necessity and importance of ID and also the scheme of SEBI Act and LODR Regulations in respect of appointment as well as the significance of an ID in a listed company. In this regard, it is noted that the concept of ID has evolved from the need to have a certain number of directors on

the Board of a company who would think and act independently to bring about a healthy balance between the interests of the promoters and other stakeholders including minority and small shareholders. The IDs are an important component in the overall framework of corporate governance. The IDs are often seen as the vanguards of shareholders, especially minority shareholders in the corporate boardroom. They hold a fiduciary position which is critical to corporate governance. The role and duties of IDs has also been well emphasized in schedule-IV of the Companies Act and the same has also been adopted under regulation 17(5)(b) of the LODR Regulations.

25. It is noted that SEBI in exercise of the statutory powers conferred under Section 11, 11A (2) read with Section 30 of the SEBI Act and Section 31 of the Securities Contracts (Regulation) Act, 1956 has issued the LODR Regulations. Further, as per Section 32 of the SEBI Act, the provisions of the SEBI Act are in addition to the provisions of Companies Act. Regulation 4 of the LODR Regulations *inter alia* stipulates that the listed company 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 SEBI and follow its obligations in letter and spirit by taking into consideration the interest of all stakeholders. Also the BoD of a listed entity shall ensure a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

26. Further, in terms of regulation 5 of LODR Regulations, the listed company shall ensure that key managerial personnel, directors, promoters or any other person complies with responsibilities or obligations, assigned to them under the regulations. Regulation 16 of LODR Regulations set out certain objective conditions for determination of independence of a director and some of such conditions operate as prohibitions so far as the appointment of IDs are concerned. These conditions include areas of relationship of self and of relatives (including material pecuniary relationship) with the listed entity, its promoter or directors, its holding, subsidiary or associate companies and shareholding in the listed entity.

27. In the above said background, in the present matter, it is noted that even though the *Company* had placed the name of Mr. Anil Thapar before the NRC for appointment as an ID, the NRC has specifically not recommended his name for appointment to the BoD. The NRC has further noted that proper due diligence and detailed discussion on the qualification/expertise

of the proposed candidate was required, for making any recommendation and any recommendation for the appointment need to be proceeded through the laid out process as mandated under the provisions of the Companies Act and the LODR Regulations. The records also show that the said proposal was also considered by the BoD on the same day, but the BoD did not pass any resolution for the appointment nor expressed any opinion about his integrity and relevant expertise or experience.

28. In this context, it is noted that all the three persons proposed to be appointed as IDs by the Requisitionist Shareholders have submitted declarations that they meet the criteria for independence as per regulation 16 (1) (b) of the LODR Regulations. However, this above declarations cannot and shall not substitute the requirement of giving opinion by the BoD of the *Company* regarding the integrity, expertise and experience of the persons coupled with justification for the appointment of those persons as ID before the said proposal was placed before the shareholders in the EGM. As the records reveal, only the name of Mr. Anil Thapar was proposed, discussed but was not recommended by the NRC, whereas the names of other two persons (Mr. Sanjeev Krishna Sharma and Mr. Yogendra Kumar Gupta) for the post of ID were never proposed and discussed either in the NRC or in the Board. As noted above, the records also do not show that said facts were disclosed to the members/shareholders of the *Company* either in the notice or in the explanatory statement to the notice sent to the shareholders prior to convening the said EGM at the behest of the Requisitionist Shareholders.

29. As regard to the invocation of Section 160 of the Companies Act, is concerned, the perusal of the same shows that it *inter alia* gives right to a member/shareholder of a company to propose name of himself or of any third person for appointment as director. However, the said provision does not render the other provisions related to appointment of ID provided under the Companies Act and the LODR Regulations inapplicable to the proposal of appointment of ID by shareholders within the framework provided under Section 160 of the Companies Act. In the extant matter, simply because, the shareholders have proposed certain names to be appointed as ID by invoking Section 160 of the Companies Act, that does not mean the other requirements contemplated under the Companies Act and the LODR Regulations can be ignored by the *Company* especially being a listed company governed by specific provisions of the Companies Act and the LODR Regulations.

30. Further, in the present matter, it is noted that the notice issued by Requisitionist Shareholders for the EGM does not carry the opinion of the Board in the form of an explanatory statement to the effect that the three persons proposed to be appointed as ID fulfilled the conditions specified in the Companies Act such as the conditions specified under Section 149(6) and proviso to Section 152(5) of the Companies Act and also the provisions of regulation 16(1)(b)(i) of the LODR Regulations, the compliance of which was a legal necessity, prior to placing the said proposal before the general meeting for consideration. It is observed that Mr. Mahesh Munjal in his letter referred to above has not made any endeavor to put forth any additional facts/details so as to over-rule the views of the NRC and to justify the name of Mr. Anil Thapar for being proposed under Section 160 of the Companies Act, after his name was not recommended by the NRC. I find that Mr. Mahesh Munjal in his letter referred to above has merely submitted that ***'all required information including on the candidates have been made available to the shareholders'*** for taking an informed decision but for the reasons best known to him, Mr. Mahesh Munjal being the CMD of the company, has chosen not to apprise the shareholders about the recommendation of the NRC and the opinion of the Board thereby depriving the shareholders from taking an informed decision in this regard.

31. It is also pertinent to mention here that the *Company* vide its email dated April 27, 2021, filed in response to the queries sent by SEBI to it, has *inter alia* submitted that in terms of Rule 17(5) of the Companies (Management and Administration) Rules, 2014, where the EGM is held by the *requistionists*, they are not required to annex an explanatory statement or required to provide reasons for the resolutions to be passed. In this regard, it is noted that the Rule 17(5) of the Companies (Management and Administration) Rules, 2014 reads as under:

"*(5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting."*

In this respect, from the bare perusal of the said provision, it is noted that as per this Rule the exemption from annexing explanatory statement is available for the items listed under Section 102 of the Companies Act which is a general provision whereas the issue at hand is that the *Company* did not provide explanatory statement as mandated under proviso to Section 152(5)

of the Companies Act, which is a special provision as already held in the earlier part of this order. In view of this, the aforesaid submissions of the *Company prima facie* does not carry any force and is not maintainable.

32. The above facts and the manner and sequence of events through which the appointment of the three persons proposed by the Requisitionist Shareholders have been placed for the approval of the shareholders is in glaring and gross deviations of as well as by way of circumvention of the mandatory provisions of law as cited aforesaid governing the appointment of IDs. Therefore, it raises serious doubts not only on the legal validity of such appointment but also on the fairness and independence essentially required to be followed by a listed company, when it comes to the appointment of directors, particularly in the appointment of ID. This conduct of the CMD of the *Company* in piloting such a legally untenable process of appointing ID under the shelter of the Section 160(1) of the Companies Act by shrewdly overlooking and ignoring all other statutory and regulatory provisions as the CMD of the *Company* not only reflects very poorly on the governance standard of the *Company* but also cast a serious aspersion on the fairness of the process adopted by the *Company* in proposing the name of Mr. Anil Thapar again directly before the shareholders (along with two other names) despite knowing that the NRC has already considered his name and has not made recommendation for appointment as an ID. The process adopted to get the three persons' appointment as ID also tantamount to getting thing done indirectly what could not be done directly through the NRC by circumventing the process and law. It also cannot be overlooked that in the entire process that was adopted by the Requisitionist Shareholders to convene and get the names of their proposed candidates approved in the general meeting by side-stepping the laid down processes as prescribed under law, the *Company* under the management of the CMD has committed serious violations of law. In the entire process, Mr. Mahesh Munjal, CMD remained a highly conflicted person, and there appears to a clash between his role as the CMD of the listed company who is responsible for maintaining high standards of corporate governance and his personal vested interest as a promoter shareholder (through Anadi). It appears that he allowed his vested interest as a promoter shareholder representing the majority stake to prevail and dominate over his statutory responsibilities and liabilities as the CMD of the *Company*, hence he has preferred to adopt the aforesaid path of sidelining the institution of the NRC and BoD in his pursuit of appointing his own chosen

persons as ID. It appears that Mr. Mahesh Munjal, who is wearing two hats, one as a CMD of the *Company* and other as a promoter shareholder (through Anadi) has conveniently used its position and resources available to him as CMD of the *Company* and has got the three persons approved for appointment as IDs and in the process has abdicated his responsibility as CMD of the *Company*. He has for the reason best known to him not placed the names to the NRC for consideration and recommendation and to the BoD for its opinion as per the well laid out processes and apparently willingly circumvented the entire process thereby depriving the shareholders from the opinion of the NRC and BoD for the benefit of the shareholders.

33. As discussed above, MAL being a listed company is under obligation to strictly comply with the provisions of all applicable laws including the Companies Act, the SEBI Act and LODR Regulations. By not following due procedure contemplated under the law in the appointment of IDs despite the guidance provided by the existing IDs in the BoD and SEBI's guidance communicated vide the Letter dated May 05, 2021, the *Company* has not provided the shareholders with relevant, sufficient and reliable information (as mandated under regulation 4(2)(d)(iii) of the LODR Regulations) and declaration in the form of the opinion of the BoD to ensure the appointment to be approved in strict compliance of corporate governance requirements as per the extant LODR Regulations and the Companies Act. The object of placing relevant, sufficient and reliable information before the shareholders is to secure that all the facts which have a bearing on the issues/proposals on which the shareholders have to form their judgment, are brought to the notice of the shareholders on time. The above provision has been enacted in the interest of the shareholders so that the material facts concerning the item of business proposed to be transacted in the general meeting of the shareholders are brought to their knowledge well before those proposals/items of business are deliberated and decided upon in such general meeting. The idea being that the shareholders should know what is the nature of concern or interest of the management in such item of business so that they may not be misled by the management to act in the manner to the detriment to their interest in the company.

34. Further, as *prima facie* held by me in the preceding paragraphs of this Order, by taking recourse to Section 160 of the Companies Act for appointment of persons as ID in exclusion of other relevant provisions of law, thereby deliberately undermining the role and mandate of the duly

constituted NRC and depriving the shareholders of its opinion regarding the integrity, expertise and experience of the said three persons proposed to be appointed as ID, the *Company* acting through the CMD has failed to furnish necessary information to the shareholders and has also failed to ensure a transparent nomination process to the BoD as per law.

35. It is seen that in the EGM held for the approval of the appointment of the aforementioned three persons proposed by the Requisitionist Shareholders, 87% of the public shareholders present in the said meeting have voted against the said proposal. The manner in which the names of these three persons have been proposed by the promoters of the *Company* through the CMD and the way the approval of the shareholders was obtained in a meeting directly convened by the Requisitionist Shareholders are self-evident of the fact that none of the provisions of the LODR Regulations or the Companies Act which should have been put into application in a harmonious manner has been followed at all. The apparent irregularities followed and the illegalities displayed in the aforesaid manner of appointment of the ID are further reflected in the fact that the majority of the existing IDs and other Key Managerial Persons including the JMD of the *Company* have preferred to remain absent and did not participate in the said EGM held on May 08, 2021. It manifests their concern that the affairs of the *Company* are not being managed properly and that the *Company* has not followed due process of law when it comes to appointment of the ID.

36. SEBI has a statutory duty to protect the interests of investors in securities market and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered SEBI to take such measures as it thinks fit for fulfilling its legislative mandate. Further, the LODR Regulations have been formulated with the main objective of regulating the activities of listed entities through proper disclosure mechanism so as to safeguard the interests of investors and hence, the requirements/ conditions laid down therein have to be mandatorily followed. In this regard, it has been brought to my notice that while the issue as to whether the appointment of the afore-stated three persons as IDs in the EGM held on May 08, 2021 was fair and in due compliance of the processes prescribed under law is under examination of SEBI, the *Company* has scheduled its next Board meeting at 3:00 PM on June 12, 2021 in which the said three newly appointed IDs, the legality of whose appointment itself is questionable and *prima facie* untenable, are expected to participate. Under the circumstances,

it becomes imperative to make an urgent intervention in the light of the aforesaid attending facts and circumstances wherein, the very foundation of appointment of such persons as IDs on the Board of the *Company* has become highly questionable as in my *prima facie* view, the said appointment has been made in circumvention and in complete disregard to the established statutory and regulatory mandates. Further the existing IDs (excluding the three newly appointed persons), other Key Managerial Persons including the JMD have already raised concerns about the manner of appointment of the said three persons as IDs so much so that they did not attend the said EGM held on May 08, 2021. Under these compelling circumstances it becomes imperative that before any decision is taken in the Board meeting proposed to be held on June 12, 2021 and any resolution is passed by the BoD on the strength of the support of these three newly appointed IDs thereby prejudicing the interest of the *Company* and/or the interest of the majority of the public shareholders of the *Company*, an urgent intervention is warranted to protect the interest of public shareholders of the *Company* and investors of the securities market.

37. Hence, having been *prima facie* convinced that the appointment of Mr. Anil Thapar, Mr. Sanjeev Krishna Sharma and Mr. Yogendra Kumar Gupta as IDs on the basis of approval obtained by the Requisitionist Shareholders in the EGM held on May 08, 2021 was done without following the due processes as mandated under the Companies Act and the LODR Regulations and also by ignoring the advice issued by SEBI vide letter May 05, 2021, I consider this as a fit case where, pending further examination, effective and expeditious preventive action is required to be taken by way of an *ad interim ex-parte* order to prevent the *Company* from further acting on the said appointment of the IDs done in deviation from the laid down process and to protect the interests of shareholders as well as to preserve the safety and integrity of the securities market.

ORDER

38. In view of the aforesaid discussions, pending conclusion of further examination by SEBI, I, in order to protect the interests of investors and integrity of the securities market, in exercise of powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and read with regulation 98 of the LODR Regulations hereby issue by way of this *ad interim ex-parte order*, the following directions:

i. Majestic Auto Limited is directed to ensure that the appointment of Mr. Anil Thapar, Mr. Sanjeev Krishna Sharma and Mr. Yogendra Kumar Gupta as Independent Directors on the Board of the Company pursuant to the EGM dated May 08, 2021 shall not be further acted upon and shall be kept in abeyance.

ii. Majestic Auto Limited is directed to continue with the composition of the Board of the Company as it was in existence prior to the EGM dated May 08, 2021.

39. Majestic Auto Limited may file its objections/reply, if any, within fourteen (14) days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.

40. This order shall come into force with immediate effect and shall be in force until further orders.

41. A copy of this order shall be forwarded to Majestic Auto Limited and its promoters directors viz., Mr. Mahesh Munjal, Mr. Aayush Munjal and Ms. Aashima Munjal, all existing Independent Directors namely Mr. Viaks Nanda, Mr. Naveen Jain, Mr. Sham Lal Mohan, Mr. Anil Kumar Sharma, Compliance Officer and the three newly appointed Independent Directors viz., Mr. Anil Thapar, Mr. Sanjeev Krishna Sharma and Mr. Yogendra Kumar Gupta of Majestic Auto Limited to ensure that the directions given above are strictly complied with.

Sd/-

Date: June 11, 2021 **S. K. MOHANTY**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA