

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10-05-2024 AT 10:30 AM**

CP No. 45/241/HDB/ 2023

AND

**IA (CA) 82 & 115/2024, IA(CA) 20/2024 in IA(CA) No. 264/2023, IA(CA) 264/2023, IA(CA)
65, 69, 76, 77 & 117/2024 , Contempt (CA) 05/2024 in CP No. 45/241/HDB/ 2023
u/s. 241 of Companies Act, 2013**

IN THE MATTER OF:

Escientia Life Sciences & ors

...Petitioner

AND

Escientia Advanced Sciences Pvt Ltd & Others

...Respondent

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

CP No. 45/241/HDB/ 2023

Learned Senior Counsel Mr Vivek Reddy, for the petitioner present through Video Conference.

Learned Senior Counsel Mr DV Seetharam Murthy for petitioner present physically.

Learned Senior Counsel Mr S Niranjan Reddy, for Respondent Nos 2 and 3 present through Video Conference.

Learned Senior Counsel Mr Arvind Pandian, for Respondent No.1 present through Video Conference. Pleadings completed .

IA (CA) 82/2024

Order pronounced . As the counsel for the respondents (Company Petitioners) reported no objection , we allow this application and hereby order expeditious hearing of the company petition. Since, the matter now stands posted to 31.05.2024

the parties shall get ready for hearing on that date. However, if the said date is not suitable to the parties then both sides shall give a date convenient to them which shall be in the month of June,2024. With these directions **this application is disposed of.** No costs.

IA (CA) 115/2024

Orders pronounced. In the result, **this application is dismissed. However, without costs.**

IA(CA) 20/2024 in IA(CA) No. 264/2023

This is an application filed seeking certain amendment IA(CA) No. 264/2023. Notice given. Counter filed. Perused the record. This application is allowed, however, without prejudice to the rights and contentions of the respondents.

Amendments shall be carried out within one week time and neat copy shall be filed and served on the respondent, in default amendments stands dismissed. Accordingly, **this application is allowed.**

IA(CA) 264/2023

For hearing, matter adjourned to 31.05.2024.

IA(CA) 65/2024

For hearing, matter adjourned to 31.05.2024.

IA(CA) 69/2024

It is represented that the convenience compilation has been filed on 18.04.2024 and a copy also served on the other side however the same is not been recorded in the previous proceedings. Since copy if available on record we record the fact of filing the same.

For hearing, matter adjourned to 31.05.2024.

IA(CA) 76/2024

Heard, learned senior counsel Mr DV Seetharam Murthy on the objection raised by the respondent's side that before issuance of notice to the proposed party the respondents shall be heard . Learned senior counsel is advised to e file and also physically the compilations of rulings and also serve the list of rulings on the other side.

For hearing the respondent at request and as a last chance, matter adjourned to 27.05.2024.

IA(CA) 77 /2024

For hearing, matter adjourned to 31.05.2024.

IA(CA) 117/2024

It is represented on behalf of the learned counsel that the respondent has e-filed the counter, however the physical copy has not been accepted contending that the same was not filed within the prescribed time, hence a memo is filed seeking direction to receive the same. Memo is hereby allowed. The counter is received. Since it is stated that copy has been served at request for filing rejoinder 10 days' time granted as a last chance.

For hearing, matter adjourned to 31.05.2024.

It is brought to the notice of this Tribunal that the EGM scheduled on 03.05.2024 which was ordered to be deferred till the disposal of this application, is now scheduled on 22.05.2024 and a communication in this regard has been e-filed.

Un Numbered IA/2024

Taken upon being mentioned by the learned senior counsel Mr. Vivek Reddy . Ld. Sr. Counsel, submits that the company petitioner has filed Un numbered IA/2024 for leave to cross examine all the persons whose names are mentioned in the application and requested for an expeditious listing of the same. Registry shall register the same , if the same is in order.

Learned senior counsel Mr Arvind Pandian takes notice of this application and prays time for filing counter. Hence for filing counter 10 days' time is granted. Matter adjourned to 31.05.2024.

Contempt (CA) 05/2024

Call on 31.05.2024.

SD/-

MEMBER (T)

SD/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD, BENCH-I, HYDERABAD**

**IA (CA) No.115 OF 2024
in
CP No. 45/241/HDB/2023**

**UNDER RULE 11 OF NCLT RULES,
2016 FOR CERTAIN INTERIM
RELIEF/ DIRECTIONS.**

IN THE MATTER BETWEEN:
Deccan Advanced Sciences Pvt Ltd
Regd Office : Plot No.1355/ G/A/1
Ground Floor, road No.45
Jubilee Hills
Hyderabad – 500033.

... **Applicant**
Respondent no.2 in CP

VERSUS

1. Escientia Life Sciences
Having its registered office at:
Rogers Capital Corporate Services Ltd
3rd Floor, Rogers House No.5
President John Kennedy Street
Port Louis, Republic of Mauritius.

Petitioner no.1 in CP

2. Kiran Reddy Pendri
54, Aspen Drive
South Glastonbury
Connecticut, 06073, USA.

Petitioner no.2 in CP

- 3. Ms. Swarnalatha Mannam**
12-11-1676, Amber Nagar
Hyderabad
Telangana 500044.

Petitioner no.3 in CP
- 4. Escientia Advanced Sciences**
Private Limited & others
Registered Office at:
Survey No.542/2
Plot No.DS/ 14
IKP Knowledge Park, Kolthur Village
Shameerpet, Rangareddi – 500078
Telangana

Respondent no.1 in CP
- 5. Ms. Rajya Lakshmi Penumetsa**
Sunder Nagar, Flat No.202
Jyothi Nest Apartments, SR Nagar
Ameerpet, Hyderabad – 500038.

Respondent no.3 in CP
- 6. Chakradhar Dandu**
Plot No.20, Venkatrao Nagar Colony
Kukatpally, Hyderabad – 500072.

Respondent no.4 in CP
- 7. Ajit Alexander George**
R/o 403, United Enclave
7-1-28/4, Ameerpet, Hyderabad.
Telangana 500016.

Respondent no.5 in CP
- 8. Vivek Vasant Save**
Rosemount Rodas Enclave
Ghodbunder Road
Hiranandani Estate
VTX, Thane P.O.
Chitalsar, Manpada
Maharashtra.

Respondent no.6 in CP
- 9. Deccan fine Chemicals (India) Pvt Ltd**

Regd Office: 8-2-293/ 82/A/74A
Road No.9, Jubilee Hills
Hyderabad – 500033.

Respondent no.7 in CP

10. G.S. Raju

Plot No.1355G/A1
Ground Floor, Road No.45
Jubilee Hills, Hyderabad – 500033.

Respondent no.8 in CP

11. Vamsi Gokaraju

Flat No.5, 14, Hans Crescent, London
SW1X0LJ, UK

ALSO AT

Plot No.1355/ A1, Ground Floor
Road No.45, Jubilee Hills
Hyderabad – 500033.

Respondent no.9 in CP

Date of Order: 10th May 2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

and

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Parties / Counsels Present

For applicant/ Respondent no.2 : Mr. P.H.Arvind Pandian, Senior Counsel with Mr. Tarun G. Reddy and Mr. Sairam Kanakamedala, advocates.

For R/1 to 3, viz. Company Petitioners : Mr. Vivek Reddy, Senior Counsel assisted by Mr. Sowmaya Das Gupta, Advocate.

For respondent 4 : Mr. S. Niranjan Reddy, Senior Counsel with Mr. Rusheek Reddy K.V., Advocate

PER BENCH

ORDER

This is an application filed under Rule 11 of NCLT Rules, by M/s Deccan Advanced Sciences Pvt Ltd., the 2nd respondent in the Company Petition praying :

“To restrain petitioner no.1 from proceeding with and holding the EGM of R/1 company on 03.05.2024 or any date thereafter inter alia for consideration and approval of the terms and conditions of appointment of Dr. MSM Mujeebur Rahuman as the Chief Operating Officer of the company under section 196(4) of the Companies Act, 2013 or otherwise.

II. The brief description of the parties to the present application:

APPLICANT/ RESPONDENT IN THIS I.A.	NAME	DESCRIPTION
Applicant (R/2 in Company Petition)	Deccan Advanced Sciences Pvt Ltd	It is a company registered under Companies Act, 2013. It holds 74% of the shareholding. It is the single largest and majority shareholder in R/1.

R/1 in IA (Petitioner no.1 in Company Petition)	Escientia Life Sciences	It is a company registered under Mauritius laws and located at Mauritius. Its MD is Dr. Yadagiri Reddy Pendri. It holds 24.76% shareholding in R/1.
R/2 in IA (petitioner no.2 in the CP)	Kiran Reddy Pendri	He is residing in USA. He is 0.05% shareholder in R/1.
R/3 in IA (petitioner no.3 in the CP)	Ms. Swarnalatha Mannam	She has 1 share in R/1 company.
R/4 in IA (R/1 in the CP)	Escientia Advanced Sciences Pvt Ltd.	It is a company registered under the Companies Act, 1956.
R/5 in IA (R/3 in the CP)	Rajya Lakshmi Penumetsa	She holds 1.19% share in R/1 company.
R/6 in IA (R/4 in the CP)	Chakradhar Dandu	He is a Director on Board of R/1.
R/7 in IA (R/5 in the CP).	Ajit Alexander George.	He is a Director on Board of R/1
R/8 in IA (R/6 in the CP)	Vivek Vasant Save	He is a Director on Board of R/1 residing in Maharashtra.
R/9 in IA (R/7 in the CP)	Deccan Fine Chemicals (India) Pvt Ltd.	It is a company registered under the Companies Act, 1956.
R/10 in IA (R/8 in the CP)	G.S. Raju	He is Managing Director of R/7 company.
R/11 in IA (R/9 in the CP)	Vamsi Gokaraju	He is partly responsible in promoting family of Deccan Group.

III. Escientia Life Sciences, R/1 herein and others have filed Company Petition No.45/241/HDB/2023

seeking various reliefs for effective and professional functioning of Escientia Advanced Sciences, R/1 company. The applicant in this IA claims that the said reliefs made in the Company Petition were targeted by minority shareholder/ petitioners intended to take over the management of R/1 company to the exclusion of the majority shareholders. The petitioners have also sought to restrain the respondents from conducting Board meeting which was scheduled for 04.09.2023. Agenda of the said Board meeting included appointment of a Chief Operating Officer of R/1. However, this Tribunal, vide order dated 04.09.2023, declined to grant interim relief.

IV. Below are the facts as narrated by the applicant in this application:

(i) The applicant submits that the facts and circumstances in relation to the Company Petition are pleaded in Reply dated 02.04.2024 filed by R/2 to the amended Company Petition of the petitioners. The applicant herein craves the said Reply to be part of this IA.

(ii) Appointment of Dr. MSM Mujeebur Rahuman as Chief Operating Officer (COO) of respondent no.1/ company:

(iii) The Company Petition was filed to create roadblock in convening the Board Meeting proposed on 04.09.2023. However, on 04.09.2023 interim order (ANNEXURE '1' of this IA) was passed by this Tribunal in CP No.45/241/ HDB/2023 as under:

“14. On a prima facie examination of the records placed before us, we are of the view that in the absence of any specific

allegation that the due procedure in calling for today's Board Meeting is not followed, granting stay of today's Board Meeting is unwarranted. Therefore, we are not inclined to stay the Board Meeting scheduled on 04.09.2023 (today at 5 PM).

15. *However, having regard to the fact that the affairs of the 1st respondent are prima facie being conducted normally, we do not find any immediate urgency to empower the COO to be appointed in today's Board Meeting with the power to conduct the affairs of the 1st respondent company, as detailed in the Power of Attorney.*

16. *Therefore, if the Board of Directors of R/1 takes a decision to appoint Shri MSM Mujeebur Rahuman as COO of 1st respondent company, the said decision shall be kept in abeyance till 12.09.2023."*

Pursuant to the above directions Board meeting was held at 05.45 PM on 04.09.2023. Resolution was passed by majority of directors voting in favour of Dr. MSM Mujeebur Rahuman for his appointment as COO of R/1 company, but kept in abeyance by virtue of the above order.

(iv) At the Board meeting revised Delegation of Authority (DoA) of the COO was placed before the

Board by R/4 as a Director of R/1, which inter alia, provided powers to carry out his responsibilities as entrusted by the Board. A copy of the said DoA dated 04.09.2023 is at ANNEXURE-2 of this IA.

(v) Above order dated 04.09.2023 was extended from time to time. Copies of such orders dated 12.09.2023, 11.10.2023, 20.10.2023, 30.10.2023 and 08.11.2023 are at ANNEXURE-3 (COLLY) of this IA.

(vi) IA (CA) No.263 of 2023 was filed seeking extension of interim directions issued vide order dated 04.09.2023. This Tribunal vide order dated 28.11.2023 passed in IA (CA) No.263 of 2023 has observed as under:

*“We have already held that **prima facie**, the Petitioners have failed in establishing violation of any Article or provision in Companies Act, 2013 in appointing Dr. Mujbur Rehuman as COO of the 1st Respondent. Hence, it is not proper to interfere with the said appointment process, merely on the basis of the*

‘perception’ of the petitioners as regards Article 69 of the AAO of the 1st respondent.’

The applicant has relied on the following paras of the above order dated 28.11.2023:

“(A) Whether the role of the Respondents is only passive and no involvement in the day-to-day management?”

(1) to (5)

(6) The Petitioners only contend that the word “both Directors” in Article 69 post induction of the Respondents 2, 3 & 7 as Directors shall be read as “all Directors”, which is the self-interpretation of the Petitioners.

(7) and (8)

(9) Therefore, prima facie, we are of the view that merely by the ‘self-suited’ interpretation of Article 69 of AOA, it is not permissible under law to either enlarge or reduce the powers/role of directors in the management of a Company, especially when such an interpretation runs contrary to section 179 (1) of the Companies Act.

(B) Whether the word ‘both directors’ in Article 69 of the AOA, now means ‘all directors’ if so, the impugned board resolution passed only by the majority directors is sustainable?

(1) to (3) ...

*(4) At the outset, it is pertinent to note that the petitioners by their firm stand that the word ‘both directors’ used in Article 69 on its plain reading now shall be read as ‘all directors’, have categorically **accepted** that Article 69 in its present form is **inoperative or otiose** post induction of Respondents 2, 3 & 7 as Directors of the 1st Respondent. Therefore, as on the date of passing the impugned board resolution, Article 69 being*

inoperative or redundant, the argument that the impugned board resolution dated 04.09.2023 where under Dr. MSM Mujibur Rahuman, has been appointed as the COO of the 1st respondent by the majority members of the Board, is violative of Article 69 (in its present form) is nothing but futile.

(5) to (7)

(8) *Therefore, if the contention of the petitioner that the word ‘both directors’ used in Article 69 of AOA now be read as ‘all directors’ is accepted the same would apparently run in conflict with Article 73 of the AAO, read with section 175(1) of the Companies Act, as section 175(1) of the Act, requires approval by a majority of the directors or members, who are entitled to vote on the resolution and not by ‘both directors’ as sought to be contended by the Petitioners.*

(9) to (10)

(11) *Therefore, we are of the view that, it is in appropriate especially at this stage of the proceedings either to re-write Article 69 and import into it something which it does not mean.*

(C) Whether the appointment of Dr. M S M Mujibur Rehuman, as COO, is mala fide, unwarranted, unsustainable and oppressive?

(1) to (6)

(7) *In re, Rajahmundry Electric Supply Corpn. Ltd supra, it was held that, “courts will not, in general, intervene at the instance of shareholders in matters of internal administration, and will not interfere with the management of a company by its directors, so long as they are acting within the power conferred on them under the Articles of Association”. As already pointed out, the Petitioners failed in establishing violation of any particular Article of the Articles of Association of the 1st Respondent or any provision in the Companies Act, warranting our interference in the decision of the majority directors of the 1st respondent.*

(8) *Therefore, we are not inclined at this stage of the proceedings to hold that the appointment of Dr. M.S.M.*

Mujeebur Rahuman as COO, is mala fide, unwarranted besides unsustainable and oppressive.”

In fine the above order of this Tribunal further observed that:

“46. However, we hereby make it clear that the above appointment of Dr. MSM Mujibur Rahuman as COO of the 1st respondent is subject to the final outcome of this Company Petition.”

V. The applicant further submits that letter of appointment dated 02.12.2023 (ANNEXURE-4 of this application) was issued to the COO of R/1, in conformity with order dated 28.11.2023, confirming appointment of Dr. MSM Mujibur Rahuman as COO of R/4, with retrospective effect, viz. from 04.09.2023, the date on which the Board appointed him.

(vii) The applicant further submits that the finalized Minutes of Board meeting dated 21.10.2023, as produced vide Additional Affidavit dated 01.12.2023 of R/4 (Chakradhar Dandu) reflects that the Board

accorded its consent to the said appointment. Copy of said Additional Affidavit is at ANNEXURE-5 of this IA.

(viii) Petitioner no.2/ Kiran Reddy Pendri has challenged order dated 28.11.2023 passed by this Tribunal in IA (CA) No.263 of 2023 before the Hon'ble NCLAT, Chennai by way of Appeal (AT) (CH) No.106 of 2023 u/s 421 of Companies Act, 2013. The Hon'ble Appellate Tribunal vide its order dated 21.12.2023 has declined to interfere in the matter and disposed of the appeal. Copy of the above Appeal is at ANNEXURE-6. Copy of order dated 21.12.2023 passed by the Hon'ble NCLAT, Chennai in the above appeal is at ANNEXURE-7.

(ix) The applicant submits that petitioner no.2, who carried the matter before the Hon'ble NCLAT

holds 0.05% shareholding in R/1. Whereas, other two petitioners including petitioner no.1 holding 24.76% shareholding did not join him in the above appeal.

VI. COMPLAINT BY PETITIONER No.3 BEFORE REGISTRAR OF COMPANIES (RoC):

(i) The applicant states that petitioner no.3, Ms. Swarnalatha Mannam, holding one share, in R/1 company has filed a Shareholder Complaint dated 16.01.2024 (copy at ANNEUXRE-8, page 272 of the IA) before the RoC, alleging certain incorrect facts including the fabricated fact that the COO was appointed as Manager. The RoC has issued Show Cause Notice dated 02.02.2024 (ANNEXURE-8, page 270) to R/1 company. Petitioner no.2 has received the said notice.

(ii) The applicant alleged that petitioner no.3 failed to state the basis on which she concluded that COO was a Manager.

In this regard the applicant relied on the definitions provided in section 2(53) of the Companies Act, 2013, which reads that:

“2 Definitions. –

(1) to (52)

(53) — ‘manager’ means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a 18 company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;”

(iii) Having received notice dated 02.02.2024 of the RoC, petitioner no.2 has suppressed the said fact and did not file reply within the stipulated time. Eventually petitioner no.2 shared the Show Cause Notice with the Board of Directors of R/1 and the Board directed the former Company Secretary to prepare draft response expeditiously. The former Company Secretary shared the draft reply prepared by Cyril Amarchand Mangaldas, law firm representing the petitioners. Thus, the petitioners collude with the former Secretary, suppressed material facts.

VII. DELIBERATIONS FOR FINALISING DRAFT REPLY TO THE RoC/ EXCHANGE OF E-MAIL COMMUNICATIONS BETWEEN THE PETITIONERS AND RESPONDENTS:

- R/4 sent e-mail dated 14.02.2024 (ANNEXURE-9) to the former Company Secretary and questioned the conflict of interest and collusion between the parties. However, there is no response thereto.
- R/4 sent e-mail dated 15.02.2024 (ANNEXURE-10) to the former Company Secretary asking him to review the draft reply for its submission to RoC.
- Petitioner no.2 has responded to it vide e-mail dated 15.02.2024 (ANNEXURE-11) stating that he has certain changes to make.
- Petitioner no.2 sent e-mail dated 16.02.2024 (ANNEXURE-12) stating his disagreements with the draft reply.
- R/2 has sent reply mail dated 17.02.2024 (ANNEXURE-12) refuting the allegations contained therein. It was also stated that they are

ahead with filing the reply for the shareholder complaint.

VIII. REPLY BY RESPONDENT No.1 TO REGISTRAR OF COMPANIES (RoC):

(i) Ultimately R/4 by his e-mail dated 17.02.2024 (ANNEXURE-13) sent reply to RoC for and on behalf of R/1 company duly signed by the majority of the directors of R/1 company. It was acknowledged by the RoC (ANNEXURE-13, Page 317). The above reply dated 17.02.2024 primarily dealt with the allegations as enumerated in para 26 (pages 23 to 29 of the IA).

(ii) The applicant submits that having received the said reply dated 17.02.2024, the RoC has not made any further inquiries in the matter.

IX. EVENTS UNFOLDING ABOUT CONVENING OF EXTRAORDINARY GENERAL MEETING (EGM).

10.03.2024 Yadagiri Reddy has sent e-mail (ANNEXURE-14) enclosing therewith an undated communication (page 319 of the IA) signed by himself calling for Extraordinary General Meeting of shareholders of R/1 company under section 100(2) of the Companies Act, 2013, by 02.04.2024, to consider:

“Confirmation of the appointment of Dr. MSM Mujeebur Rahuman, a Manager of the company as per the requirement set out in section 196(4) of the Companies Act, 2013.”

20.03.2024 Ajit Alexander George, R/5 has sent e-mail (ANNEXURE-15) enclosing therewith Agenda for the Board of Directors meeting of R/1 scheduled to be held on 27.03.2024. Item No.4 of the Agenda reads:

“To discuss the requisition by shareholder (Escientia Life Sciences, Mauritius, the 24.76% shareholder of the company) for convening EGM.”

22.03.2024 R/5 sent Notes to the Agenda (ANNEXURE-15).

27.03.2024 Board of Directors meeting of R/1 was held. It was concluded that the agenda to be transacted at the EGM as requested by petitioner no.1 cannot be legally carried into effect.

30.03.2024 R/5 has sent detailed letter (ANNEXURE-16) to petitioner no.1 in relation to EGM of shareholders of R/1 u/s 100(2). It was disclosed that the Board of Directors of R/1 has decided that EGM cannot be convened. Reasons furnished in the said letter dated 30.03.2024 have been enumerated as points (1) to (7) at para 31, pages 31-34 of the application.

10.04.2024 Yadagiri Pendri, on behalf of petitioner no.1 has sent e-mail (ANNEXURE-17) enclosing therewith Requisition Notice calling an EGM of R/1 company u/s 100(4) of the Companies Act, 2013. By the said e-mail it was intimated that EGM of R/1 shall be held on 03.05.2024 at 11.00 AM via videoconference.

Agenda for the said EGM at Item No.1 is:

“To consider and approve the terms and conditions of appointment of Dr. MSM Mujeebur Rahuman as the COO of the company u/s 196(4) of the Companies Act, 2013.”

Explanatory Statement to the Notice contained twisted facts and misleading statements, which inter alia, are as under:

“Hon’ble NCLT in its order dated February 01, 2024 in Company Petition No.44 of 2023 also held that prima facie Dr. MSM Majeibur Rahuman qualified as a ‘Manager’ u/s 2(53) of the Companies Act, after considering the letter of appointment issued to Dr. MSM Majeibur Rahuman.”

Whereas, the Tribunal has merely ordered to maintain status quo vide order dated 02.01.2024 as below:

“Heard. We have gone through the entire record. It is in the fitness of things that status quo order be maintained on the appointment of Dr. MSM Majeibur Rahuman as COO of the company till further orders.”

16.04.2024 R/2 sent e-mail (ANNEXURE-18) enclosing therewith letter of even date in relation to EGM Notice. It was intimated to petitioner no.1 that requisition of EGM is an attempt to involve R/2 into EGM which was convened to consider unlawful resolution. Hence the 1st petitioner was asked to withdraw the said EGM Notice.

X. SUBMISSIONS OF THE APPLICANT ON THE PROPOSED EGM:

(i) Proposed resolution in the EGM is premised on requirement of compliance with section 196(4) of the Act. Allegation that title of COO given to Dr. MSM Mujeebur Rahuman is of no consequence as he was appointed as Manager u/s 2(53) of the Act.

(ii) Dr. MSM Mujeebur Rahuman is not a Manager. As such R/1 is not required to hold EGM for confirmation of his appointment being exempt from compliance with section 196 of the Act.

(iii) Requisition of EGM by petitioner no.1 is an abuse of process of law. It is an attempt by the petitioner/ minority shareholders to indulge in multiple proceedings and oust the duly appointed COO.

(iv) It is for the Tribunal to decide whether classification of 'Manager' under Companies Act, 2013 would apply to Dr. MSM Mujeebur Rahuman.

(v) Requisition of EGM is a ploy to out Dr. MSM Mujeebur Rahuman as COO of R/1 by usurping the powers of Board of Directors of R/1 company, which has appointed Dr. MSM Mujeebur Rahuman. Even this Tribunal in its order dated 28.11.2023 found no infirmity/ irregularity in any Articles of the company.

(vi) The tenor of the Resolution proposes approval of terms and conditions of appointment of COO u/s 196(4) of the Act at EGM by shareholders. As regards applicability of section 196(4) of the Act, there is no determination by any court of law to the effect that COO is 'Manager' within the definition of Section

2(53) of the Act. Board Resolution dated 04.09.2023 does not state that Dr. MSM Mujeebur Rahuman is appointed as Manager. Had he been appointed as Manager, requisite filing/ Form MR-1 would have been made before RoC in relation to that effect.

(vii) If EGM is allowed to be convened it will undermine fairness in legal proceedings and it will interfere with matters which are directly pending adjudication before this Tribunal.

XI. The applicant/ respondent no.2 in the Company Petition has filed BRIEF SUBMISSIONS DATED 08.05.2024. The gist of the submissions are:

(i) Ministry of Corporate Affairs (MCA) vide Notification No.GSR 464(E) dated 05.06.2015 have exempted private companies from compliance with section 196(4) of the Companies Act, 2013. Whereas

EGM was called on the premise that Dr. MSM Mujeebur Rahuman was appointed by the Board as Manager as defined u/s 2(53) of the Act. However, such an exemption is not available to R/1 company in view of para 2A of the said Notification inserted by MCA Notification GSR 583(E) dated 13.06.2017, which inter alia, provides that if a company is in default in filing its annual return u/s 97 of the Act or financial statement u/s 137 of the Act with RoC, then exemption will not be available. Copy of said MCA Notification GSR 464€ dated 05.06.2015 is at ANNEXURE 'A' of this Written Submission.

(ii) The applicant relied on *Man Industries (I) Limited v. Jagdish Chandra Jhamaklal Mansukhani*, 2013 SCC

OnLine Bom. 890. Para 16 of the judgment reads as under:

“16. Whilst that argument as a general proposition may be accepted to uphold the democratic functioning of a company with which the Court must not interfere, allowing a meeting which is shown to be illegal in view of all the provisions of Company Law would not fall under the general principle. It would tantamount to a court ignoring the provisions of law or not considering provisions of law to allow the meeting to be held which would be later held to be invalid and illegal. The Appellant company has applied for declaration in this suit itself that the requisition dated 15th January, 2013 is invalid, illegal and inoperative and that the EGM sought to be held is null and void so that they asked for the injunction restraining its holding.”

Copy of said judgment is at ANNEXURE ‘B’ of this Written Submission.

XII. In light of the discussion as aforementioned, the **point** that emerges for our consideration is:

POINT:

Whether the Extraordinary General Meeting (EGM) of 1st respondent/ Company scheduled on 03.05.2024 or any date thereafter, for consideration and approval of the terms and

conditions of appointment of Dr. MSM Mujeebur Rahuman as the Chief Operating Officer (COO) of the 1st respondent/ Company, can be *injunctioned* by this Tribunal on the grounds pleaded in the application? If so, for what relief?

XIII. We have heard Mr. P.H. Arvind Pandian, Senior Counsel for the applicant; Mr. Vivek Reddy, Senior Counsel for respondents 1, 2 & 3 and Mr. S. Niranjan Reddy, Senior Counsel for respondent no.4. Perused the record, the written submissions and the case law filed.

POINT:

Whether the Extraordinary General Meeting (EGM) of 1st respondent/ Company scheduled on 03.05.2024 or any date thereafter, for consideration and approval of the terms and conditions of appointment of Dr. MSM Mujeebur Rahuman as the Chief Operating Officer (COO) of the 1st respondent/ Company, can be *injunctioned* by this Tribunal on the grounds pleaded in the application? If so, for what relief?

The factual backdrop in brief.

XIV. The actions and the events that triggered filing of the present application by M/s Deccan Advanced Science Private Limited, (the 2nd respondent in the company petition) praying, to *injunction* the proposed EGM, on the grounds urged in this application in *brief* are as below:

On 10.03.2024 Dr Yadagiri Reddy Pendri, the 1st petitioner in the above Company petition, has sent an e-mail enclosing therewith an undated communication signed by himself calling for the Extraordinary General Meeting, for short ‘EGM’, of shareholders of M/s. Escientia Advanced Sciences Private Limited, the 1st Respondent in the Company Petition and the 4th

respondent herein, under section 100(2) of the Companies Act, 2013, by 02.04.2024, to *consider*:

“Confirmation of the appointment of Dr. MSM Mujeebur Rahuman, a Manager of the company as per the requirement set out in section 196(4) of the Companies Act, 2013.”

On 20.03.2024 Ajit Alexander George, the 5th respondent in the Company Petition has sent an e-mail enclosing therewith Agenda for the Board of Directors meeting of 1st respondent scheduled to be held on 27.03.2024. Item No.4 of the Agenda reads:

“To discuss the requisition by shareholder (Escientia Life Sciences, Mauritius, the 24.76% shareholder of the company) for convening EGM.”

On 27.03.2024, in the Board of Directors meeting, it was concluded that the agenda to be transacted at the EGM as requested by Dr Yadagiri Reddy Pendri the 1st petitioner herein, cannot be legally carried into effect.

On 30.03.2024, the 5th respondent has sent detailed letter 1st respondent in relation to EGM of shareholders of R/1 u/s 100(2), stating that the Board of Directors of R/1 has decided that EGM cannot be convened.

On 10.04.2024, Dr. Yadagiri Reddy Pendri, on behalf of 1st petitioner has sent e-mail enclosing therewith 'Requisition Notice' calling for an EGM of 1st respondent company u/s 100(4) of the Companies Act, 2013, which shall be held on 03.05.2024 at 11.00 AM via videoconference. Agenda for the said EGM at Item No.1 is:

Item No.1:

"To consider and approve the terms and conditions of appointment of Dr. MSM Mujeebur Rahuman as the COO of the company u/s 196(4) of the Companies Act, 2013."

Draft Resolution :

"Resolved that the approval of the shareholders be and is hereby accorded to the terms and conditions of Dr. MSM Mujeebur Rahuman's appointment as the Chief Operating Office of the Company as provided

in the letter of appointment dated December 02, 2023, issued to Dr. MSM Mujeebur Rahman under section 196(4) of the Companies Act, 2013.

Resolved further that”

XV. This Tribunal on 04.09.2023 passed the following interim Order in IA No.263 of 2023.

“On a prima facie, examination of the records placed before us, we are of the view that in the absence of any specific allegation, that the due procedure in calling for today’s Board Meeting is not followed, granting stay of today’s Board Meeting is unwarranted. Therefore, we are not inclined to stay the Board Meeting scheduled on 04.09.2023 (today at 5pm).

However, having regard to the fact that, the affairs of the 1st Respondent are prima facie, being conducted normally, we do not find any immediate urgency to empower the COO to be appointed in today’s Board meeting with the power to conduct the affairs of the 1st Respondent Company, as detailed in the Power of Attorney. Therefore, if the Board of Directors of R-1 takes a decision to appoint Shri M.S.M. Mujeebur Rahuman as COO of 1st Respondent Company, the said decision shall be kept in abeyance till 12.09.2023.”

XVI. The above order has been extended from time to time till 28.11.2023 and on 28.11.2023 the following order was passed in IA (CA) No.263 of 2023.

“43. Therefore, in the light of our discussion as above, we are of the view that the petitioners have failed in establishing a prima facie, case in their favour for extension of our interim order dated 04.09.2023 beyond 28.11.2023. Hence this application is liable to be dismissed.

However, we hereby make it clear that the above appointment of Dr. MSM Mujubur Rehuman, as COO of the 1st respondent, is subject to the final outcome of this company petition. So also, the remuneration offered to Dr. MSM Mujubur Rehuman. We further direct Dr. MSM Mujubur Rehuman to file an undertaking affidavit before this Tribunal, within three days from the date of this order duly declaring and unconditionally undertaking that, in the event of this Tribunal declaring that the remuneration now offered to him by the Directors of the

“Deccan Group’, is not as per acceptable/market standards, commensurate with the role and responsibilities of the COO and his qualifications, then he would return either the whole or such partition of the remuneration as may be directed by the Tribunal. At the same time, we also direct the board of directors of the 1st respondent to have a relook at the objections raised by the members of the ‘Essentia group’ on the quantum of remuneration offered to Dr. Mujbur Rehuman, in the best interests of the 1st respondent.

44. *We have also taken note of the submission of the Ld. Sr Counsel for the 2nd Respondent that at the impugned board meeting dated 04.09.2023, a revised Delegation of Authority of the COO was placed before the board by the 4th Respondent, which, inter alia, provides powers to carry out his responsibilities as entrusted by the board and that all the responsibilities discharged by the COO would at all times be subject to any further directions of the board of 1st Respondent Company, besides the statement that the consideration of this ‘limited Delegation’ of Authority, was deferred at the request of the ‘Escientia Group’, at the said board meeting as they wanted time to consider the same. A copy of this Delegation of Authority presented to the board on 04.09.2023 also has been annexed to the counter. We therefore, hope that the members of both the ‘Groups’, would once again deliberate on this aspect and take appropriate decision in this regard in the best interests of the 1st respondent.*

45. *This application therefore, is hereby dismissed, however under the circumstances without costs.”*

The above order was challenged by the Applicant herein before Hon’ble NCLAT, Chennai Bench by way of an Appeal (AT) (CH) No.106 of 2023 and the Hon’ble NCLAT, refused to interfere with the order dated 28.11.2023.

While things thus stood, the Petitioners in the Company petition have filed IA 77 of 2024, praying to recall the order dated in IA (CA) No. 263 of 2023 28.11.2023,

contending, *inter alia*, that the order in IA (CA) No. 263 of 2023 has been obtained by suppression of material information in the knowledge of the respondents which is opposed by the respondents and is pending.

The 4th respondent in the Company Petition have filed IA (CA) No.69 of 2024 for order of injunction restraining Dr. Kiran Reddy Pendri, from interfering with or acting contrary to Board Resolutions passed by the Board of Directors of 1st respondent company, particularly in implementation of the Board Resolution dated 11.03.2024 by which T.P. Chakrapani was removed as Company Secretary of 1st respondent company and the same is pending.

The 5th Respondent in the Company Petition, *namely*, Ajit Alexander George has filed IA (CA) No. 82 of 2024 for a direction to expedite the hearing of CP No.45/241/ HDB/2023 and the same has been heard.

The crux of the submissions.

XVII. Mr. P.H. Aravind Pandian, learned Senior Counsel for the applicant and Mr. Niranjan Reddy, the Ld. Sr. Counsel for the 4th respondent in *chorus*, have assailed the proposed EGM, contending, *inter alia*,

- (1) That the proposed EGM has been called on the *premise* that the COO, Dr. MSM Mujeebur Rahuman, was appointed by the Board as “Manager” as defined in Section 2 (53) of the Act, *despite* the exemption under section was not available to the 1st Respondent Company, in view of para 2A of the MCA Notification

G.S.R. 583 (E) dated 13.06.2017 inserted by MCA Notification G.S.R. 583(E) dated 13.06.2017 which *inter alia* , provides that if a company is in default in filing its annual return under Section 97 of the Act or financial statements under Section 137 of the Act with the Registrar of Companies, then the exemption will not be available.

- (2) Even for the sake of argument and without conceding that Dr. MSM Mujeebur Rahuman was appointed a ‘Manager’, the *plea* that the 1st Respondent was not entitled to the exemption available to a private company *vide* the aforesaid MCA Notifications from shareholders’ approval under section 196(4) of the Act, at the time of appointment of Dr. MSM Mujeebur Rahuman on 04.09.2023 is self-serving, false, and based on an incorrect understanding and interpretation of the applicable provisions of the Act for the *following reasons*:

- (a). The appointment was made by the Board on 04.09.2023, however, such decision was kept in abeyance pursuant to interim order dated 04.09.2023 of the Hon'ble NCLT in the Company Petition which interim order was extended from time to time
- (a) This Tribunal vide its order dated 28.11.2023 lifted the aforesaid abeyance order and Dr. MSM Mujeebur Rahuman assumed charge as the COO on 02.12.2023, and appointment letter was issued to him on 02.12.2023 stating that his appointment as the COO is effective from 04.09.2023 being the date on which the Board approved his appointment.
- (b) Even if the 1st Respondent is in default for non-filing of financial statements and annual return for the financial year 2022-23, the default of non-filing under sections

92 and 137 of the Act commenced only from their respective due date of filing, that is, 11.10.2023 for annual return and 11.09.2023 for financial statements as the AGM was held on 12.08.2023. However, the appointment of Dr. MSM Mujeebur Rahuman was made prior to such dates on 04.09.2023 as COO, that is, before the purported default commenced under such Sections 92 and 137 of the Act and hence, even if Dr. MSM Mujeebur Rahuman would have been appointed as a ‘manager’, the exemption available to a private company in respect of requirement of seeking shareholders’ approval under Section 196(4) of the Act would have been/was available at the time of such appointment.

(d). The applicability of Section 196(4) of the Act, at this stage, is *questionable* as there

is no determination by any court of law or by this Hon'ble Tribunal that the COO is a "manager" within the definition of Section 2(53) of the Act.

(e). The Board at its meeting held on 04.09.2023 did not appoint Dr. MSM Mujeebur Rahuman as a "manager". Had the appointment been as a manager, requisite filing (Form MR.1) would have been made by the Respondent No.1 before the ROC as required under Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 in relation to Dr. MSM Mujeebur Rahuman being appointed as manager.

(f). None of the Directors on the Board of Respondent No.1 nor the Company Secretary of the Respondent No.1 ever raised this issue that Dr. MSM Mujeebur Rahuman has been appointed as a 'manager' at the Board meeting held on 04.09.2023 or at any subsequent Board meeting of Respondent No.1.

(g). There was no tearing hurry for 1st Petitioner for convening this EGM for the reason that section 196(4) of the Act envisages that the approval shall be 'at the next general meeting'. Hence, it is the Board's prerogative to seek approval of the shareholders at the next general meeting, whenever called by the company in the normal course.

(h). The requisition for the EGM with only one agenda item and that too relating to the appointment of Dr. MSM Mujeebur Rahuman, which issue is directly the subject matter of the Company Petition is a devious and mischievous attempt to try and overreach the orders and authority of this Hon'ble Tribunal.

(i). Convening of the EGM is a gross abuse of the process of law in as much as Petitioner No.1 is indulging in multiplicity of proceedings in the hope of getting some relief to dislodge the COO whose appointment was approved by the Hon'ble NCLT. Whilst on one hand the

Petitioners are perpetuating delays in expeditious disposal of the proceedings before this Hon'ble Tribunal and on the other, they are indulging in seeking reliefs in other forums.

(j). The requisition of EGM, therefore is a ploy to oust Dr. MSM Mujeebur Rahuman as COO of the 1st respondent by usurping the powers of Board of Directors of the 1st respondent Company, which has appointed Dr. MSM Mujeebur Rahuman.

(3) The contention that the application is belated and a eleventh hour application, and that the same is devoid of any merit or substance.

XVIII. Ld. Sr. Counsel also relied on the ruling in, Man Industries (I) Limited v. Jagdish Chandra Jhamaklal Mansukhani, 2013 SCC OnLine Bom. 890. Para 16 of the judgment reads as under it was held that:

“16. Whilst that argument as a general proposition may be accepted to uphold the democratic functioning of a company with which the Court must not interfere, allowing a meeting which is shown to be illegal in view of all the provisions of Company Law would not fall under the general principle. It would tantamount to a court ignoring the provisions of law or not considering provisions of law to allow the meeting to be held which would be later held to be invalid and illegal. The Appellant company has applied for declaration in this suit itself that the requisition dated 15th January, 2013 is invalid, illegal and inoperative and that the EGM sought to be held is null and void so that they asked for the injunction restraining its holding.”

XIX. Mr. Vivek Reddy, learned Sr. Counsel for the respondents 1 to 3 while refuting the aforestated submissions of the Ld. Sr. Counsels for the applicant, at the outset, submitted that the present application along with the enclosures therein, since comprised two volumes running into 320 pages, within the short span of just 48 hours, besides as the hearing on *interim relief* has been taken up by this Tribunal, these respondents were unable to get filed their counter in this application, hence non-filing of the counter by the respondent shall not be construed as admission of the

material allegations and assertions as made in the application, and shall be deemed to have been denied, except those which are expressly admitted.

XX. Ld. Sr. Counsel further submitted that the submitted that the conduct of the applicant in approaching this Tribunal, just two days prior to the proposed date of the EGM, seeking an *injunction* restraining the proposed EGM, despite indisputably being served with the notice of the proposed EGM by 10.04.2024 itself, shall itself disentitle the applicant any *interim* relief in this application.

In support of this plea Ld. Sr. Counsel relied on the following rulings;

- Power Control Appliances vs Sumeet Machines Pvt. Ltd 1994 SCR (1) 708, wherein, Hon'ble Supreme Court of India, held that;

“3. Now, we come to the principles in relation to the grant of interim injunction. The case in K.E. Mohammed Aboobacker v. Nanikram Maherchand⁸ makes a reference to the case-law and holds at pages 574-75 as under:

"The principles which should govern the Court in granting or withholding a temporary injunction in trade mark infringement actions are well-settled : See recent decision Henry Hemmings, Ltd. v. George Hemmings, Ltd.²⁷ As a temporary injunction is merely of a provisional nature and does not conclude the rights of the parties in any way, the 26 (1880) 15 Ch D 96: 43 LT 95 27 (1951) 68 RPC 47 Court will exercise its discretion in favour of the applicant only in strong cases. The plaintiff must make out a prima facie case in support of his application for the ad interim injunction and must satisfy the Court that his legal right has been infringed and in all probability will succeed ultimately in the action. This does not mean, however, that the Court should examine in detail the facts of the case and anticipate or prejudice the verdict which might be pronounced after the hearing of the suit or that the plaintiff should make out a case which would entitle him at all events to relief at the hearing. Colman v. Farrow & Co.²⁸, Hoover, Ltd. v. Air- way Ltd.²⁹, Upper Assam Tea Co. v. Herbert and Co.³⁰, Star Cycle Co., Ltd. v. Frankenburg³¹. In fact the Court will not ordinarily grant an interlocutory injunction if a large amount of evidence is necessary to support the plaintiff's case. The proper course in such a case is to ask for the trial of the action. The injury must be actual or imminent. Pinel & Cie v. Maison Pinet, Ltd.³² Where the defendant disputes the plaintiff's title to the mark or contends that the plaintiff is not entitled to relief by reason of the acquiescence or delay or other estoppel or of the defendant's concurrent rights, the Court will be guided by the balance of inconvenience which may arise from granting

or withholding the injunction as well as the justice of the cause after considering all the circumstances in the suit. In other words, where the plaintiff's title is disputed or the fact of infringement or misrepresentation amounting to a bar to the action or some other defence is plausibly alleged upon the interlocutory motion, the Court in granting or refusing the interim injunction is guided principally by the balance of convenience that is by the relative amount of damage which seems likely to result if the injunction is granted and the plaintiff ultimately fails or if it is refused and he ultimately succeeds; Read Brothers v. Richardson and Co.³³, Hommel v. Bauer & Co.³⁴ ... It is necessary that an application for interlocutory injunction should be made immediately after the plaintiff becomes aware of the infringement of the mark. Improper and unexplained delay is fatal to an application for interlocutory injunction. The interim injunction will not be granted if the plaintiff has delayed interfering until the defendant has built up a large trade in which he has notoriously used the mark. North British Rubber Co., Ltd. v. Gormully and Jeffery Manufacturing Co.³⁵, Army and Navy Cooperative Society, Ltd. v. Army Navy and Civil 28 (1898) 15 RPC 198 29 (1936) 53 RPC 399 30 (1890) 7 RPC 183 31 (1906) 23 RPC 337 32 (1895) 14 RPC 933 33 (1 881) 45 LT 54 34 (1903) 20 RPC 801 35 (1 894) 12 RPC 17 Service Cooperative Society of South Africa Ltd.³⁶, Hayward Bros. Ltd. v. Peakall³⁷, Yost Typewriter Co. Ltd. v. Typewriter Exchange Co.³⁸, Royal Warrant Holders' Assn. v. Slade & Co., Ltd.³⁹"

- **B.L. And Co. And Others vs Pfizer Products Incl, 93(2001) DLT346, where in Hon'ble Delhi High Court, held that,**

"We find merit in the submission of the learned counsel for the appellant that the respondents rather waited for the appellant to incur promotional and other expenses on trials etc. launching of the product and thereafter they chose to file the present suit perhaps with a view to stem the growing sales and market of the

appellant's product. The factor of delay alone should have been sufficient to deny the respondents an ex parte restraint.”

- Toyota Jidosha Kabushiki Kaisha vs M/S Prius Auto Industries Limited, 2018 (2) SCC, wherein Hon’ble Supreme Court, held that,

“The delay and latches on the part of the plaintiff in tolerating the defendants using the trade mark ‘Prius’ since April, 2001 in spite of due knowledge has also been urged to contend that the claim of the plaintiff has been rightly rejected by the Division Bench of the High Court”

XXI. According to the learned Sr. Counsel, the law on ‘injunction’ an EGM called at the behest of the shareholder(s) who satisfy the *procedural and the numerical strength* as contemplated under the provisions of the Companies Act, is no more *res integra*, as Hon’ble Supreme Court of India, in Life Insurance Corporation of India v. Escorts Ltd & others, AIR 1986 SC 1370, held that:

“Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general

meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling-a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. It is true that under s. 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Limited, has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons its reasons for moving the resolutions.”

Learned Sr. Counsel also relied on para 26 of judgment dated 22.03.2022 in Appeal (L) No.25420 of 2021 in Interim Application (L) No.22525 of 2021 in Suit (L) No.22522 of 2021, which is reproduced below:

“26. We therefore disagree with the submission that LIC vs. Escorts does not bar or prohibit a Civil Court from entertaining a challenge to a

requisition for an EGM, on the ground that the requisition and the proposed resolutions are illegal / contrary to law. We have applied the ratio of LIC vs. Escorts after having considered and understood the background of the facts of that case. LIC vs. Escorts is certainly an authority for what it actually decides which, in our opinion, is that no Court or Tribunal can restrain the holding of an EGM so long as the requisition of shareholders in that behalf is compliant with the procedural and numerical requirements of Section.” (Emphasis is ours)

XXIII. So much so, according to the learned Sr. Counsel the requisition of the shareholder for the proposed EGM in this case satisfies both the *procedural and the numerical strength* as contemplated under the section 100 of the Companies Act 2013, hence the present application seeking a *restraint order* from holding the proposed EGM is liable to be dismissed.

XXIV. Learned Sr. Counsel further contended that the statement that Dr. MSM Mujeebur Rahuman was not appointed as ‘Manager’ as defined in section 2(53) of the Companies Act, 2013, is factually incorrect and legally unsustainable. According to the learned Senior Counsel the functions of Dr. MSM Mujeebur

Rahuman, as Chief Operating Officer (COO) of 1st respondent company as mentioned in the appointment order are nothing but ‘managerial’ as envisaged in section 2 (53) of the Companies Act 2013. As such notice calling for EGM under section 196(4) of the Companies Act, 2013 is valid and enforceable. Ld. Sr. Counsel also strongly denied the contention that the exemption available to a private company in respect of requirement of seeking shareholders’ approval under Section 196(4) of the Act would have been/was available at the time of appointment of Dr. Rehman as COO, as such there was no requirement of compliance of Section 196(4) of the Act .

Our analysis and finding.

XXV. Having heard the articulation of the learned Senior Counsels for both sides, we, at the very outset, without even an iota of hesitation would like to state that, that the practice of parties approaching the

Courts/Tribunals at the *eleventh hour* needs to be deprecated especially when the suitor had sufficient advance notice, since it would be unfair to other litigants waiting for their turn.

XXVI. In this context we usefully quote herein, the pertinent observations of Hon'ble High Court of Bombay, made while refusing an *interim injunction* in favour of the suitor, in Plex, Inc v. Zee Entertainment Enterprises Ltd., 2020 SCC OnLine Bom 989, as below,

"I do believe and maintain - and I have said this before - that parties in IPR matters cannot expect Courts to push aside all other cases. This happens repeatedly, whether it is movie releases or otherwise. It must stop. It is unfair to courts and it is unfair to other litigants waiting their turn. Where a plaintiff has had enough notice and yet chooses to move at the eleventh hour - and makes no allowance at all for any adjustment that may be required - the plaintiff must be prepared to face the consequences." (Emphasis is ours)

XXVII. In the case on hand as rightly pointed out by the Ld. Sr. Counsel for the contesting respondents, the applicant herein had notice of the proposed EGM on 10th April 2024 itself, but the applicant has chosen to file this application only on 01.05.2024, i.e. just two days prior to the date of the EGM. Hence this kind of approach deserves to be deprecated. In the rulings, supra, relied on by the contesting respondents, it was held that, “The factor of delay alone should have been sufficient to deny the respondents an ex-parte, restraint.”

XXVIII. Now we shall first deal with the the legal position as regards ‘injuncting’ an ‘EGM’ called at the behest of the shareholder of a Company, which has been authoritatively, stated by Hon’ble Supreme

Court of India, in Life Insurance Corporation of India

v. Escorts Ltd & others, AIR 1986 SC 1370,

“Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. It is true that under s. 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Limited, has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons its reasons for moving the resolutions.”

Relying on the above ruling, Hon’ble Hight Court of Bombay, in its judgment dated 22.03.2022 in Appeal (L) No.25420 of 2021 in Interim Application (L) No.22525 of 2021 in Suit (L) No.22522 of 2021, held that;

“26. We therefore disagree with the submission that *LIC vs. Escorts* does not bar or prohibit a Civil Court from entertaining a challenge to a requisition for an EGM, on the ground that the requisition and the proposed resolutions are illegal / contrary to law. We have applied the ratio of *LIC vs. Escorts* after having considered and understood the background of the facts of that case. *LIC vs. Escorts* is certainly an authority for what it actually decides which, in our opinion, is that no Court or Tribunal can restrain the holding of an EGM so long as the requisition of shareholders in that behalf is compliant with the procedural and numerical requirements of Section.”(Emphasis is ours).

XXIX. Therefore, in the light of the above *legal frame*, and the *factual matrix* of this case, when the case on hand is tested, we do not find any quarrel as regards the satisfaction of the *numerical requirement* as envisaged under section 100 of the Companies Act, 2013 for calling the proposed EGM. However, as the applicant since questioned the notice of the requisitionist, contending that section 196(4) mentioned in notice is not applicable, *primarily*, on the *premise* that, Dr. Rehuman, who has been appointed by the Board as the Chief Operating Officer, is not a ‘Manager ‘ as defined in Section 2 (53) of the

Companies Act 2013, which plea, in turn, is based on some alleged ‘omissions’ such as, i) non-mention of the provision *namely*, section 196(4) of the Companies Act in the Board resolution appointing Dr. Rehuman as the COO, ii) non-filing of Form MR.1 by the 1st Respondent before the RoC as required under Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 in relation to appointment of Dr. MSM Mujeebur Rahuman as Manager , and iii) non raising of the issue by the Directors on the Board of 1st Respondent or its Company Secretary that Dr. MSM Mujeebur Rahuman has been appointed as a ‘manager’ at the Board meeting held on 04.09.2023 or at any subsequent Board meeting of Respondent, we have *prima facie*, tested the same on the touchstone of the well settled legal frame which

we referred supra, and we are of the view that, the same neither amount to nor can be considered or construed as violation(s) of the *procedure* enshrined in section 100 of the Companies Act 2013 by the requisitioner and the above are nothing but ‘inferences’ drawn by the applicant devoid of any valid legal or factual basis. Moreover, it is necessary herein to note that for the purpose of the present application, we are concerned only with the compliances that the requisitioner of the proposed meeting of ‘Members’ of a Company of a Company was required to meet, and not of the Company and we state that there is no beach of the same in so far as the requisitioner herein is concerned.

XXX. In order to address the plea of the applicant that Dr. Rehuman, who has been appointed by the Board as the Chief Operating Officer, is not a ‘Manager ‘ as defined in Section 2 (53) of the Companies Act 2013, we usefully refer to Section 2 (53) of the Act, 2013, which defines ‘Manager’ as under:

“2 Definitions. –

(1) to (52)

(53) — ‘manager’ means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a 18 company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;”

We also usefully refer to Section 2(51) of the Companies Act 2013, the “Key Managerial Personnel”, in relation to a Company is defined as:

“(51) —key managerial personnell, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

- (iii) the whole-time director;*
- (iv) the Chief Financial Officer; and*
- (v) such other officer as may be prescribed;”*

Indisputably, the job designation of Dr. Rehuman is Chief Operation Officer (COO), which designation does not find place in the Companies Act 2013 or in the Articles of Association of the 1st respondent company. However, as per Section 2 (53) of the Companies Act 2013, ‘Manager’ also is a “Key Managerial Personnel”. A bare perusal of the job role & responsibilities of Dr. Rehuman as COO, discloses that the same are akin to that of a CEO as defined in section 2(51) of the Companies Act .

XXXI. Hon’ble High Court of Bombay, in Ramchandiram Mirchandani vs India United Mills Ltd. and Ors. AIR 1962 BOM 92, while dealing with the

definition of ‘Manager’ under section 2(24) of the Companies Act, 1956, held that’

“I may at this stage refer with advantage to the definition of the word "manager" which is given in Section 2(24) of the Act, which says "manager" means an individual subject to the superintendence, control and direction of the Board of directors, has the management of the whole or substantially the whole of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not. The definition of the word "manager" is very wide, and whatever be the nomenclature employed by the parties, if large powers of management of substantially the whole business of the company are vested in a person then that person becomes the manger.”
(Emphasis is ours)

In the light of the above ruling, when the powers and the functions that Dr. Rehuman as COO of the 1st respondent are tested, *prima facie*, we are of the view that Dr, Rehuman is ‘Manager’ in terms Section 2 (53) of the Act, 2013,

Moreover, this Tribunal, vide order in IA No.2 of 2024 in CP 44/2023 dated 02.01.2024, held that,

“We have gone through the entire record. It is in the fitness of things that status quo order be maintained on the appointment of Dr. M.S.M Mujeebur Rahuman, as Chief Operational Officer of the company till further orders’,

thereby clearly indicated *prima facie*, acceptance of the contesting respondent’s contention that Dr. Rehuman is a ‘Manager’ within the meaning of Section 2 (53) of the Companies Act 2013.

So much so, the argument of the Ld. Sr. Counsel for the applicant that, the applicant cannot be treated /called as ‘Manager’ in terms of section 2 (53) of the Companies Act 2013, does not hold any water. Therefore, the requisition by the shareholder for an EGM, to ratify the appointment of Dr. Rehuman in terms of section 196 (4) of the Act, in our view is sustainable and tenable under law.

Moreover, Hon'ble High Court of Bombay, in Invesco Developing Markets Fund and another vs Zee Entertainment Enterprises Ltd. and others, held that;

*“26. We therefore disagree with the submission that LIC vs. Escorts does not bar or prohibit a Civil Court from entertaining a challenge to a requisition for an EGM, on the ground that the requisition and the proposed resolutions **are illegal / contrary to law**. We have applied the ratio of LIC vs. Escorts after having considered and understood the background of the facts of that case. LIC vs. Escorts is certainly an authority for what it actually decides which, in our opinion, is that no Court or Tribunal can restrain the holding of an EGM so long as the requisition of shareholders in that behalf is compliant with the procedural and numerical requirements of Section 100.” (Emphasis is ours)*

So much so, even if the plea of the Ld. Sr. Counsel for the applicant that the proposed EGM called is contrary to law is accepted for the sake of argument, yet by virtue of the ruling, *supra*, this Tribunal cannot restrain holding of an EGM, in view of our finding *supra*, that the requisition of shareholders in that behalf is in conformity with the procedural and numerical requirements of Section 100.

XXXII. Here we wish to state that the view taken in by Hon'ble High Court of Bombay, in Man Industries (I) Limited v. Jagdish Chandra Jhamaklal Mansukhani, *supra*, which ruling is relied on by the applicant herein wherein it was held that,

“16. Whilst that argument as a general proposition may be accepted to uphold the democratic functioning of a company with which the Court must not interfere, allowing a meeting which is shown to be illegal in view of all the provisions of Company Law would not fall under the general principle. It would tantamount to a court ignoring the provisions of law or not considering provisions of law to allow the meeting to be held which would be later held to be invalid and illegal. The Appellant company has applied for declaration in this suit itself that the requisition dated 15th January, 2013 is invalid, illegal and inoperative and that the EGM sought to be held is null and void so that they asked for the injunction restraining its holding.”

in our view, cannot be followed in preference to the law as laid down by Hon'ble Supreme Court of India, in re, LIC vs Escorts, *supra*. Moreover, the facts in re, Man Industries, *unlike* the case in Invesco Developing Markets Fund and the case on hand, relate to a civil suit filed for declaration.

Therefore, in the light of our discussion as above, we unhesitatingly, hold that the requisition of shareholder in this case is compliant with the procedural and numerical requirements of Section 100 of the Companies Act 2013, as such our interference with the proposed EGM, is unwarranted and uncalled for.

As regards the plea that the exemption under section was not available to the 1st Respondent Company, in view of para 2A of the MCA Notification G.S.R. 583 (E) dated 13.06.2017 inserted by MCA Notification G.S.R. 583(E) dated 13.06.2017 is concerned, we have perused the letter dated 16.01.2024 to the ROC, Telangana, by the shareholder, the show-cause notice dated 01.02.2024 and the response thereto copies which are annexed to the application. Thus, it is clear

that the office of ROC, Telangana, is seized of the issue, hence it would be improper on our part at this stage to embark on an enquiry on the very same issue.

The point is answered accordingly.

XXXIII. Before we part with, it is pertinent to state that, while disposing of IA (CA) No.263 of 2023, we made it clear that the appointment of Dr. MSM Mujeebur Rahuman as Chief Operating Officer of 1st respondent company was subject to certain conditions and observations as made in our dated 28.11.2023 in IA (CA) No.263 of 2023, which order has been upheld by the Hon'ble NCLAT, Chennai. Hence we reiterate that whatever may be the outcome of the proposed EGM, which we are informed by way of Memo that, it

is rescheduled on * **22.05.2024**, *will be subject to the final out come of this Company Petition.*

With these observations the application is dismissed, however without costs.

In the result this IA (CA) No.115 OF 2024 in CP No. 45/241/HDB/2023 is **dismissed. No costs.**

SD/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

SD/-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)**

Karim

** Amended as per order dated 10.05.2024*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10-05-2024**

**CP No. 45/241/HDB/ 2023
AND
IA (CA) 115/2024 in CP No. 45/241/HDB/ 2023**

u/s. 241 of Companies Act, 2013

IN THE MATTER OF:

Escientia Life Sciences & ors

...Petitioner

AND

Escientia Advanced Sciences Pvt Ltd & Others

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER
(JUDICIAL)**

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (CA) 115/2024

Perused the Note pointing out error crept in order dated 10.05.2024 in IA (CA) No.115 of 2024 in CP No.45/241/HDB/2023, viz. date of the proposed EGM incorrectly typed as 21.04.2024 instead of **22.05.2024**, in the last para of the order.

Since it is a typographical error, correction is permitted.

SD/-

SD/-

MEMBER (T)

MEMBER (J)