

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

20.

**IA-69(MB)2024 IN
CP/212(MB)2022**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **08.05.2024**

NAME OF THE PARTIES:

Ajay Sukhwani
Vs.

Edwise Consultants Private Limited

SECTION: 213, 241(1), 242(4), 243(1)(b), 244(1) OF THE COMPANIES ACT, 2013. Rule 11 of NCLT, 2016.

ORDER

IA-69(MB)2024

1. Mr. Nausher Kohli, Ld. Counsel for the Applicant present, but appearance is not given in the appearance sheet. Mr. Ankit Lohia, Ld. Counsel for the Respondents present through VC.
2. This is an application filed by the Applicant/Original Petitioner No.1 under Rule 11 of the NCLT, 2016 pressing following prayers:

“b) That pending the hearing and final disposal of the present Petition, this Hon’ble Tribunal be pleased to re-instate its Order dated 27th August, 2022 passed in the captioned Company Petition No.212 of 2022.

c) That pending the hearing and final disposal of the present petition, this Hon’ble Tribunal be pleased to pass an order maintaining status quo in respect of the Directorship and Shareholding of Respondent No.1 Company”

3. Ld. Counsel for the Applicant submits that on 25.08.2022 after hearing both the sides and as per the undertaking given by the Ld. Counsel for the Respondents, this Bench observed that if the Respondents company

conduct the meeting and appoint a new Director, rights of the Petitioners will be prejudiced. For precautionary measures, till filing reply and filing written undertaking, this Bench directed the Respondents to maintain *status quo* till the next date of hearing. After passing the status quo order, the matter was listed on 17.05.2023, on which date the Bench observed as under - *“Ld. Counsel for the Respondent fairly concedes that the meeting which was proposed to be held has lost its relevance and they are not going to hold any such meeting and in case any meeting is planned, it shall be done only after proper requisition. Taking this undertaking of the counsel for the Respondent, this Bench does not feel any necessity to continue with the stay.”*

4. Ld. Counsel further submits that the Respondent No.4 has now illegally, unlawfully and disingenuously issued a purported requisition/notice on 19.04.2024 to the Board of Directors of Respondent No.1 Company. In terms of the said purported Requisition, Respondent No.4 has called upon the board of the Respondent No.1 Company to *inter alia* convene an Extra-Ordinary General Meeting (EOGM) for the appointment of Respondent No.3 i.e. Mr. Assan Hotchand Sukhwani as Non-Executive (Promoter) Director of the Company with the approval of members. Hence, the Application has filed for re-instate the order dated 27.08.2022.
5. Ld. Counsel for the Respondents appearing through VC and submits that the undertaking has been given on 17.05.2023 stating that they are not going to hold any such meeting and in case any meeting is planned, it shall be done only after proper requisition. Hence, they issued a notice for requisition of the members to take a decision for the appointment of Mr. Assan Hotchand Sukhwani as Non-Executive (Promoter) Director of the company. Before conducting the EOGM and without taking any

decision of the appointment, the Applicants seeking stay of EOGM is premature and the present IA is not maintainable.

6. Heard Ld. Counsel for both the parties and perused the record.
7. In the similar circumstances, this Bench had granted *status quo order* dated 27.08.2022 on the ground that the Respondents are with *malafide* intention inducting the new Director as 3rd Director of the Company for taking control of the company into their hands. If that is so happened, the Applicants will be put to irreparable loss and hardship.
8. Therefore, this Bench has taken a considered view that while the EOGM can be held, both the parties shall maintain the *status quo* in regards to appointment of Directors and any decision taken during EOGM on this issue will not be implemented till the next date of hearing. Meanwhile, Respondents are directed to file reply to the present IA.
9. List this matter for further consideration on **03.07.2024**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)