

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. 65/241-242/NCLT/AHM/2017**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.05.2017**

Name of the Company: Kusum B Kumar & Ors.  
V/s.  
Sterling Greenwoods Ltd & Ors.

Section of the Companies Act: Section 241-242 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	RASHESH SANJANWALA,	Sr. Adv.	Petitioners	Divedi
2.	ACHINTYA DVIVEDI,	Adv.		
3.	ANKIT SHAH,	Adv.		

**ORDER**

Learned Senior Advocate Mr. Rashesh Sanjanwala with Learned Advocate Mr. Achintya Dvivedi with Learned Advocate Mr. Ankit Shah present for Petitioners. Learned Advocate Mr. Navin Pahwa present for Respondents no. 1 and 8. None present for other Respondents.

Learned Advocate Mr. Navin Pahwa filed Vakalatnama for Respondents no. 1 and 8.

Heard Learned Counsel for Petitioners and Learned Counsel for Respondents no. 1 and 8.

Short Affidavit in reply filed by Respondents no. 8.

It is stated in the additional affidavit that the right to sue accrued on 01.03.2017 when the application for probate was filed by respondent no. 2 and thereafter when the petitioner filed the suit questioning the genuineness of the <sup>dead</sup> will dated 06.02.2014 and

the trust deed dated 25.01.2014. In view of the said averments in the additional affidavit it cannot be said that this petition is barred by limitation.

Coming to the aspect of eligibility prima facie form no. MGT 6 vide Annexure 5 of the affidavit in reply disclose only the shares of the deceased Mr. Basant Kumar were transferred in the name of B Kumar Family trust but not the shares of Petitioner no. 1 who is admittedly having 15.05% of the paid-up share capital of the company, but for the disputed Trust deed and the disputed will deed referred to above which are subject matter of the suit filed by petitioners and the probate filed by the Respondent no. 2. Therefore, prima facie it can only be said that petitioners satisfied the test of eligibility required by section 241 of the Companies Act, 2013.

Coming to the averments regarding oppression and mis management it appears that it is the case of petitioners that Respondent no. 2 basing on the disputed trust that the shares of the petitioner no. 1 also stood transferred to the Trust. It appears that in that view of the matter the requisition given by the petitioner no. 1 to conduct EOGM was rejected in the Board meeting.

On the basis of the requisition given by the Respondent no. 2 and 3 the EOGM is called on 10.05.2017 where in the resolution that was put for vote relate to the removal of the petitioner no. 2 from the directorship of the Respondent no. 1 company. The above said averments are sufficient to entertain the petition

Learned Counsel appearing for the Respondents relying on the judgment of the Hon'ble Supreme Court AIR 1986 SC 1370(1) in the case of "Life Insurance Corporation of India v. Escorts Ltd & Others" contended that Courts cannot pass injunction order restraining the general body meeting called on the basis of requisition given by shareholders.

Learned Counsel for the petitioner contended that the very shareholding of the requisitionists i.e. Respondent no. 2 and 3 is in dispute since the Trust deed dated 25.01.2014, the will deed dated 06.02.2014, the nomination deed dated 21.12.2015 are disputed documents.

Having considered the pleadings so far placed on record and the rival submissions this petition is admitted.

In view of the fact that there is the dispute regarding the transfer of the shares of the deceased of the Mr. Basant Kumar in the name of Trust this Tribunal thought it fit to give certain directions to the Respondent no. 1 company in respect of EOGM schedule <sup>be</sup>to held on 10.05.2017.


It appears that the process of E-voting in respect of the EOGM schedule to held on 10.05.2017 had already been commenced and came to end by today evening. Therefore, at this stage it is neither just nor equitable to give a direction to the respondents not to proceed with the EOGM on 10.05.2017.

However, in order to maintain balance of convenience, to prevent avoidable further litigation and in the interest of justice it is just and expedient <sup>ent</sup>to direct the Respondent no. 1 company not to implement the resolution that is going to be passed in EOGM schedule to be held on 10.05.2017 in respect of the directorship of the Petitioner no. 2 in the respondent no. 1 company, till the next date of hearing.

Respondents shall file detailed reply within three weeks. Petitioner shall file their rejoinder, if any, within two weeks thereafter serving a copy in advance.

Petitioner is directed to serve a copy of this order on Respondent no. 1 and Registrar of Companies, Gujarat and the other Respondents who have not appeared before this Tribunal today, forthwith and file proof of service before Registry of this Tribunal by 11.05.2017.

List the matter 11.07.2017 for final hearing.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Dated this the 9<sup>th</sup> day of May, 2017.