

Requisitioning a Shareholders' Meeting: The Unfolding Events Relating to Zee Entertainment and Dish TV

The recent controversies relating to Zee Entertainment and Dish TV both involve investors holding significant stakes attempting to convene general meetings of shareholders through which they seek to replace certain directors on the existing boards. The shareholders in these cases are Invesco Developing Markets Fund (“**Invesco**”) and OFI Global China Fund LLC (“**OFI**”) in the case of Zee Entertainment, and Yes Bank in the case of Dish TV. In both cases, the existing boards of directors have declined to convene such meetings.

We first consider a purely legal question related to the circumstances under which can a company's board decline a request from the company's shareholders to convene a shareholders meeting. We then consider whether the grounds on which the boards of Zee Entertainment and Dish TV have rejected the investors' requests are valid.

THE LEGAL STANDARD FOR REFUSING TO CONVENE A GENERAL MEETING

The relevant provision under the Companies Act, 2013 (“Companies Act”) is Section 100.

Section 100(2) of the Companies Act provides that: “*the Board shall at the requisition made by such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company...call an extraordinary general meeting of the company within the period specified in sub-section (4)*”.

Section 100(4) further provides that “*if the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a*

meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition”.

A reading of Section 100 suggests that the board of directors does not have the power to examine the matters that are proposed to be voted upon. They must proceed with convening a general meeting so long as the shareholders who have sent such requisition hold 10% of the company’s share capital. In the event that the board fails to do so, the members have the option of convening such meeting on their own.

Courts have, however, previously taken differing views on how the expression “a valid requisition” in Section 100 needs to be interpreted.

In the case of *Cricket Club of India v. Madhav Apte*,¹ one of the parties to the dispute had attempted to convene a general meeting to amend the articles of association of the Cricket Club of India. The Bombay High Court held that the proposed amendments themselves were illegal but that the board of directors were nevertheless obliged to convene an EGM if the shareholders who had sought to convene the general meeting fulfilled the 10% threshold set out under the Companies Act. In other words, the word “valid” under Section 169 of the Companies Act, 1956 (which corresponds to Section 100 of the Companies Act) should have no reference to the object of the requisition but rather to the requirements of the section itself. If the requirements of the section are satisfied (i.e., that the person(s) requisitioning the shareholders’ meeting hold(s) at least ten percent of the paid-up share capital of the company), then the requisition must be regarded as a valid requisition on which the directors must act. It would then be up to the chairperson of the meeting and the shareholders to determine the course to be adopted at such meeting.

A contrary view was taken by the Madras High Court in the case of *Sivaraman v. Egmore Benefit Society Limited*.² In this case, certain persons were elected as directors at a company’s annual general meeting. Shortly after the meeting, the persons who had lost the election sought to requisition another general meeting for the removal of the elected directors. The Court held that the removal of duly elected directors shortly after a general meeting was not a valid reason for convening a general meeting and the board was not obliged to convene such a meeting merely on account certain shareholders being able to fulfil the 10% threshold.

¹ (1974) 2 Comp LJ 173 (Bom)

² (1992) 75 CompCas 198 (Mad)

Taking into account these differing views, we think that the correct legal standard should be that if the object of the proposed general meeting is illegal on the face of it or cannot legally be given effect to by the board (for instance on account of repugnancy with the Companies Act or the articles of association of the Company), or is an attempt to usurp the powers vested in the board, it should not be necessary for a board to convene such a meeting. As another instance, if the object of the meeting is to authorize the company to engage in a criminal enterprise, the board can obviously not be compelled to convene such a meeting.

GROUNDS FOR REJECTION

Turning to the facts of Zee Entertainment and Dish TV cases:

- a.** Pursuant to a requisition letter dated September 11, 2021, Invesco and OFI requested the board of Zee Entertainment to convene a meeting of the company's shareholders to remove three existing directors (including the managing director and CEO, Mr. Punit Goenka) and appoint six independent directors. Two of the existing directors resigned from the board citing personal reasons shortly after; rendering the requests for their removal unnecessary. On October 1, 2021, the board of directors unanimously declined to convene the shareholders' meeting to consider the appointments and the resignation of Mr. Punit Goenka.
- b.** Similarly, in the case of Dish TV, through a letter dated September 21, 2021, Yes Bank requested the board of Dish TV to convene an EGM for effecting the (i) removal of five directors (including the managing director and CEO, Mr. Jawahar Lal Goel) and (ii) appointment of two non-independent directors and five independent directors. On October 13, 2021, the board of directors unanimously declined to convene the shareholders' meeting to consider the appointments and the resignations.

In both cases, the respective existing boards have cited the following reasons (among others) for rejecting the investors' requests:

- Prior Permission of the Ministry of Information and Broadcasting (“MIB”)

Both the Dish TV and Zee Entertainment boards have argued that changes to the companies' boards required the prior approval of the MIB and that since the investors had not obtained such permission before writing to the companies' boards, the boards cannot convene general meetings. It is, however, difficult to understand how the investors could have obtained such permissions since it is only the license holders (i.e., the companies) and not the investors who are capable of making such applications. Yes Bank has also acknowledged this in their

requisition; they state that the proposed appointments of the new directors shall take effect only after the MIB's approval is obtained and that Dish TV should seek the requisite MIB approval.

- Non-Compliance with the SEBI's Takeover Regulations

The existing board of directors of both companies argue, in essence, that by replacing over half of their board of directors, the investors are seeking to acquire "control" of the companies and that accordingly, the investors will need to comply with the provisions of the SEBI Takeover Code – that is, the investors will be required to make an "open offer" to the companies' public shareholders. This contention is problematic on two counts. First, even if investors were not making an open offer although required to, it is a matter for the regulator, i.e., the SEBI, to investigate and pass judgment on. The SEBI has the authority under the Takeover Regulations, in an appropriate case, to require an "acquirer" to make an open offer. It is not appropriate for the board of directors of the two companies to adjudicate such matter in the SEBI's place. Second, almost all of the directors who the investors seek to appoint are proposed to be appointed as independent directors and not as investor nominee directors. It is therefore, in any event, arguable whether and to what extent the investors will have control over the respective boards if such appointments were to be made.

There are other arguments as well that have been made by the two companies. For instance, the Dish TV board has also cited concerns involving the Banking Regulation Act, 1949 and both the Dish TV and Zee Entertainment boards have stated that replacing the companies' directors will require prior approval of the Competition Commission of India. These concerns have not been set out in detail in the companies' public statements.

The underlying ethos of all of the above arguments is not a substantive approach based on the relevant provisions of the Companies Act but a reliance on the Indian regulatory framework (and perhaps even a tendency to assume the role of regulators) to cut across explicit shareholder/investor rights – it is not the first time these type of arguments have been raised (similar arguments have notoriously been raised on numerous occasions on the basis of the Indian exchange control regulatory framework) and it will not be the last.

CONCLUSION

In relation to Zee Entertainment, legal proceedings are currently pending before the National Company Law Tribunal, the National Company Law Appellate Tribunal and

the Bombay High Court. As regards Dish TV, legal proceedings could well be initiated soon. In both cases, we consider the reasons put forward by the respective boards to reject the requisition of general meetings to be difficult to sustain.

Another twist in the tale is the amendments to the SEBI's Listing Obligations and Disclosure Requirements Regulations, 2015 which require that from January 1, 2022, any appointment or removal of an independent director will require a special resolution (a 75% majority vote) as opposed to an ordinary resolution (a 50% majority vote) that is required at present.

The case of Zee Entertainment has also raised certain corporate governance issues, which merit separate analysis.

*This insight has been authored by **Rajat Sethi** (Partner) and **Sarangan Rajeshkumar** (Associate). They can be reached at rsethi@snrlaw.in and sarangan@snrlaw.in for any questions. This insight is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*

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ASSOCIATES
ADVOCATES



NEW DELHI

64 Okhla Industrial Estate
Phase III
New Delhi 110 020
Tel: +91 11 4069 8000

MUMBAI

One World Center, 1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
Tel: +91 22 4302 8000