

Shareholder Activism in India: The Zee-Invesco Decision

India has witnessed a significant increase in institutional shareholder activism over the past few years. As a consequence of the rapid rise in shareholder activism, there has been much greater focus on the rights of minority shareholders in relation to a company. In this context, the judgment of the division bench (“**Division Bench**”) of the Bombay High Court (“**High Court**”) on March 22, 2022 in *Invesco Developing Markets Fund v. Zee Entertainment Enterprises Limited* addresses two key issues: (i) the statutory right of shareholders to call a shareholders’ meeting and (ii) the appropriate judicial forum for such shareholder disputes.

BACKGROUND

Section 100(2) of the Companies Act, 2013, as amended (“**Companies Act**”) provides that the board of directors of a company shall call a shareholders’ meeting within 21 days from the date on which a requisition is made by shareholders holding not less than 10% of the paid-up share capital of the company carrying the right to vote.

Invesco Developing Markets Fund (“**Invesco**”) and OFI Global China Fund LLC (“**OFI**”) collectively hold 17.88% in Zee Entertainment Enterprises Limited (“**Zee**”). Invesco and OFI issued a requisition (the “**Requisition**”) to Zee seeking a shareholders’ meeting in terms of Section 100(2)(a) of the Companies Act. Pursuant to the Requisition, Invesco sought appointment of six independent directors on the board of Zee subject to the approval of the Ministry of Information and Broadcasting (the “**MIB**”) and the removal of three non-independent directors.

When Zee failed to comply with the Requisition, Invesco and OFI filed a petition before the National Company Law Tribunal (“**NCLT**”) seeking a shareholders’ meeting to be called in pursuance of the Requisition. The NCLT directed Zee to consider the Requisition. The Board of Directors rejected the Requisition citing various legal issues

with respect to the proposals contained in it, including non-compliance with the Policy Guidelines for Uplinking of Television Channels (“**MIB Guidelines**”) issued by the MIB and the Securities & Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Simultaneously, Zee filed a civil suit before the High Court seeking (i) a declaration that the Requisition is illegal, ultra vires, invalid and bad in law and (ii) an injunction against Invesco from taking any action in furtherance of the Requisition. The Single Judge of the High Court granted an injunction restraining Invesco and OFI from taking any action in furtherance of the Requisition to call an EGM.¹ The investors appealed against the decision of the Single Judge of the High Court.

On appeal, the Division Bench of the Bombay High Court held that a requisition by a shareholder calling for a shareholders’ meeting cannot be refused by the board of directors of a company or be restrained by any court or tribunal, if such requisition satisfies the numerical and procedural requirements under Section 100 of the Companies Act.²

Pertinently, Invesco and OFI chose to withdraw the Requisition after a six-month long battle before the Bombay High Court and the NCLT that resulted in a judgment in their favor.

BOARD’S OBLIGATION TO CALL A MEETING

The Division Bench held that the usage of the expression ‘shall’ in Section 100(2) of the Companies Act makes it mandatory for the board of directors of the company to call a shareholders’ meeting upon the receipt of a ‘valid requisition’. The Division Bench further held that a ‘valid requisition’ can be adjudged only by looking at the “*numerical and procedural compliance and nothing further*”.

Keeping in mind the protection of the rights of shareholders and corporate democracy, the Division Bench clarified that the word ‘valid’ has no reference to the object of the requisition and even if the requisition was illegal or invalid, the board of directors is still obligated to call a shareholders’ meeting. According to the Division Bench, the board of directors cannot sit in judgment to consider any matter for which the meeting is sought to be requisitioned.

¹ (2021) 229 CompCas 540 (Bom)

² 2022 SCCOnline Bom 630

JURISDICTION OVER CORPORATE LAW MATTERS

Another interesting issue which was raised in the dispute related to the jurisdiction of a civil court in relation to corporate law matters. Section 430 of the Companies Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the NCLT or National Company Law Appellate Tribunal (“**NCLAT**”) is empowered to determine. Further, no injunction can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the NCLT or NCLAT.

Given the absolute bar set out under Section 430 of the Companies Act, the Division Bench held that the Single Judge of the High Court did not have the jurisdiction to grant an injunction restraining Invesco and OFI from calling a shareholders’ meeting.

REGULATORY APPROVAL SUBSEQUENT TO APPOINTMENT OF DIRECTOR

Under the MIB Guidelines, a company is required to take prior permission from the MIB before effecting any change in the CEO/Board of Directors. With respect to the appointment of the six independent directors as proposed by Invesco and OFI, the Division Bench held that there is no requirement to obtain the permission of the MIB *prior* to such directors being appointed at a shareholders’ meeting. The permission of the MIB can be sought following the appointment of the directors subsequent to the EGM. Following the receipt of such permission, the appointed persons can start acting as directors of the company.

Zee also argued that it is obligatory to obtain the permission of the MIB for removal of directors as the MIB Guidelines stated such permission is required for effecting ‘any change in the CEO/Board of Directors’. On this issue, the Division Bench held that the permission of the MIB is only required in case of appointments, and such permission would not be needed for removal or resignation of a CEO or director.

CONCLUSION

The Division Bench of the Bombay High Court has clarified two keys points in its judgement with respect to the right of the shareholders to requisition a shareholders’ meeting:

- It mandatory for the board of directors of the company to call a shareholders’ meeting upon the receipt of a shareholders’ requisition, which satisfies the procedural and numerical requirements set out in the Companies Act. The board

of directors would need to call such meeting even if it believes that the proposals in such requisition are illegal or invalid.

- Given the bar set out under Section 430 of the Companies Act, a civil court does not have the jurisdiction to grant an injunction restraining shareholders from calling a shareholders' meeting.

The judgment of the Division Bench also suggests that regulatory approvals required in relation to appointment of directors (such as the permission of the MIB under the MIB Guidelines) can be obtained following their appointment at a shareholders' meeting. The appointed persons can start acting as directors only after the receipt of the relevant regulatory approvals.

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