

Zee Entertainment Enterprises Limited vs Invesco Developing Markets Fund And Ors on 7 October, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 121 of 2021

IN THE MATTER OF:

Zee Entertainment Enterprises Limited

...Appellant

Versus

Invesco Developing Markets Fund & Ors

...Respondents

Present:

For Appellant : Mr Navroz Seervai and Mr Krishnendu Dutta, Sr.
Advocates with Mr Prateek Seksaria, Mr Anuj Tiwari,
Mr Nitesh Jain, Mr Atul Jain, Mr Adrish Majumdar,
Ms Ritika Ajit Saria, Ms Vatsala Kumar and Mr Brihad
Ralhan, Advocates

For Respondent : Mr Mukul Rohatgi and Mr Janak Dwarkadas, Sr.
Advocates with Mr Kingshuk Banerjee, Mr Zacarias
Joseph, Mr Manesh Aggarwal, Mr Chaitanya Mehta,
Mr Bhavik Mehta, Mr Rishabh Parikh, Mr Arshit
Anand, Ms Sonali Aggarwal and Ms Prakruti Joshi,
Advocates for R-1 & 2.
Mr Arun Kathpalia, Sr. Advocate with Mr Mahfooz
Nazki and Mr Amitabh Sinha, Advocates for R- 4 to 9.

ORDER

(Through Virtual Mode)

1. The Appellant has filed this Appeal under Section 421 of the Companies date, 2013 (for brevity Companies Act read with Rule 11 of the National Company Law Tribunal Rules, 2016 (for brevity NCLT Rules) against the order passed by the National Company Law Tribunal, Mumbai Bench dated 5 October 2021 in Company Petition No. 322 (PMB) 2021.

2. The parties' original status is represented in this appeal for the sake of convenience.

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Brief facts

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3. The Appellant seeks to assail the impugned order dated 5 October 2021, contending that the learned NCLT in gross violation of Rule 37 of the NCLT Rules and Principles of Natural Justice and fairness has rejected the Appellant's request for the grant of sufficient time to file its reply/counter

to the Company Petition, which is being finally heard by it within six days from the filing of the Company Petition without issuing any notice. The Learned NCLT has erred in exercising its jurisdiction by failing to grant the Appellant's a reasonable and fair opportunity to file their reply/counter to the Company Petition. The learned NCLT has granted less than two days to the Appellant and Respondent No. 3 to 9 to file their replies even though no notice was issued in the Company Petition until 5 October 2021.

4. The Appellant is Zee Entertainment Enterprises Ltd and is one of India's leading media and entertainment companies. Respondent No. 1 is a Foreign Portfolio Investor and a shareholder of the Appellant holding 7,43,18,476 equity shares that carries voting rights representing 7.74% of the Appellant's paid-up share capital as of date.

5. Respondent No.2 is a Company incorporated under the laws of Delaware, United States of America is also a Shareholder of the Appellant holding 9,73,50,000 equity shares that carries voting rights representing 10.14% of the paid-up share capital of the Appellant, as on date. Respondent No.3 is the managing director and CEO of the Appellant.

Company Appeal (AT) No. 121 of 2021 2 of 15 Respondent Nos. 3-9 are independent directors of the Appellant. Respondent No.10 is the Appellant's Registrar and Share Transfer Agent.

6. Respondent No.1 and 2 filed a Company Petition CP322(MB)of 2021on 29 September 2021 seeking the following relief;

a) That this Hon'ble Tribunal be pleased to order an extraordinary general meeting of the Respondent No. I company Zee Entertainment Enterprises Limited to be called held and conducted on or before 28 October 2021 or soon thereafter as maybe practicable, in pursuance of requisition dated the 11 September 2021, in such manner as this Tribunal thinks fit and proper and that for purposes of the same, such ancillary and consequential directions be given as this Tribunal may think necessary or expedient including directions regarding the time and place of the meeting to be held, appointment of an independent Chairman for the meeting, deposit of proxies with such Chairman and all such other directions modifying or supplementing the operation of the provisions of the Companies Act, 2013 and of the Articles of Association of the Respondent No. 1 Company, relating to the calling, holding or conducting of the meeting, by exercise of its powers under Section 98 of the Companies Act, 2013;

b) For interim and ad-interim reliefs in terms of (a) above;

c) For costs of and incidental to this Application to be paid by the Respondents;

d) For such further and other or orders and/or directions of this Hon'ble Tribunal as may deem fit and proper.

7. The said Company Petition was mentioned by the Respondent No.1 and 2 before the Learned NCLT on 29 September 2021, citing purported Company Appeal (AT) No. 121 of 2021 3 of 15 grave

urgency in the matter and purported urgent requirement of the grant of ad-interim relief (s). Therefore the Ld.NCLT listed the Company Petition on 30 September 2021 for considering a grant of ad-interim reliefs as sought in the Company Petition.

8. On 30 September, when the Company Petition was taken up, the learned NCLT heard the argument of Respondent No.1 and 2 at length. The Appellant and Respondent No. 3 to 9 was not heard on 30 September. Accordingly, the learned NCLT passed the following order on 30 September 2021.

"This is a petition filed by two shareholders holding around 18% of the shareholding in the Respondent no. 1, Company and Respondent no. 2 holds about 3.99% of the shareholding and rest of the shareholding is held with the public. It appears that about 2.5 lakhs public shareholders in the Company and the Company is a listed Company in the stock exchanges across the Country. Now the contention of the petitioners is that they have submitted a requisition to the Board of the Company calling for the extraordinary general meeting under the powers vested according to Section 100 of the Companies Act, 2013. The said Notice was sent on 11.09.2021 and till date no meeting of the Board has taken place to take a decision either to comply with the requisition made by the petitioners' or not i.e. the reason the petitioners are before this Bench and seeking a prayer to direct the respondents to direct a extraordinary meeting be conveyed by them. In this context the respondents counsel Shri Gopal Subramaniam and Shri Arun Kathpalia had submitted their points that till date only 19 days are over and the threshold will be crossed only on 3 October, 2021 and still Company Appeal (AT) No. 121 of 2021 4 of 15 they have 3-4 days' time within which time they can take a decision with regard to the requisition made by the petitioners.

Senior counsel appearing for the respondents also submits that the Company is proceeding to hold Board meeting today and an appropriate decision will be taken by them.

Apart from that Shri Mukul Rohatgi and Shri Janak Dwarkadas, both Senior counsels appearing for the petitioners emphatically submitted that there is no power vested with the Board to deny the requisition made by them. As the Senior counsel representing the respondents submit that they have a discretionary power to accept or reject the requisition made by the petitioners.

In view of the same, we hereby direct the respondents to consider the requisition made by the petitioners under Section 100 of the Companies Act, 2013 positively and direct them to comply with Section 100 of the Companies Act, 2013.

List the matter for further consideration on 04.10.2021.

High up in the list."

9. Thereafter, the Company Petition was taken up on 4 October 2021 the Respondent No.1 and 2 main submissions was for grant of ad-interim reliefs. However, the case was adjourned to 5 October 2021. On 5 October 2021, when the matter was heard for ad interim relief, the Appellant pointed out that no ad-interim reliefs can be granted to Respondent No.1 and 2; the Appellant for the 1st time became aware that the Company Petition was being heard finally merely five days after filing of the Company Petition.

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10. The Appellant also submitted that the objection in relation to the jurisdiction and maintainability must be decided before any hearing of the Company Petition. Appellant also contended that the final and ad-interim reliefs in the Company Petition are identical. Hence, no interim reliefs amounting to final reliefs can be granted at the interim stage. However, the Appellant categorically stated that if the matter was to be heard and decided finally, sufficient and a reasonable opportunity must be granted to the Appellant to file its reply/counter to the Company Petition.

11. The Appellant contends that under Section 100 of the Companies Act, the time limit provided to Respondent No.1 and 2 to call the meeting is three months despite such periods of 3 months, the request of the Appellant for reasonable and sufficient opportunity was not acceded to. Further, despite several requests from the Appellant and Respondent No. 3-9 to grant sufficient and reasonable time to file a reply/counter to the company petition, but the learned NCLT only granted time till 7 October 2021 to the Appellant and Respondent No. 3-9 to file their replies and even listed the Company Petition on 7 October 2021 for hearing.

12. The learned NCLT in its order dated 5 October 2021 has observed that;

"3. Be that as it may, this matter again came up for hearing on 04.10.2021 during which time, the counsel for the applicants had argued and due to paucity of the time, the matter has been posted today for the continuation of the arguments of the applicants. The applicants were heard in complete and after that the counsel appearing for the respondents Mr. Navroz Company Appeal (AT) No. 121 of 2021 6 of 15 Seervai, learned senior counsel had come up with an argument that this applicant is bad in law for the reason that the final relief which has been asked in the application is being sought in ad interim level itself without there being an opportunity for filing the counter on the part of the respondents. Then there was an argument whether in this kind of matter where timelines have been fixed and the meeting is required to be held within 45 days of the service of the requisition on the Board. Can there be questions in the present case as it is in Civil Suits issuance of Notice, then rejoinder, then the reply etc. etc. be allowed in this kind of matter. Then the counsel for the respondents convinced us that there is lot to say on the facts and they required reasonable time to file the counter.

4. Here this Bench is of the opinion that the respondents are completely aware of the case, facts and circumstances and the supporting documents are very much available

for the reasons that they have already agitated the issue before the Hon'ble High Court of Bombay by way of a suit and what is required to be filed, if at all necessary is that a simple counter in furtherance of their argument. It is also a fact that learned senior counsel, Mr. Gopal Subramaniam had argued for one of the respondents on 30 September itself. Today when the matter had come up Mr. Navroz Seervai, learned senior counsel, Mr. Sudipto Sarkar, learned senior counsel and Mr. Arun Kathpalia, learned senior counsel who are appearing for the respondents strenuously and tactically, submit that at this point of time, no orders can be passed without there being an opportunity of filing the counter.

5. On hearing the arguments of all the parties concerned, we are of the considered view that a minimum but a fair opportunity/time should be given to the respondents to file a reply to the Petitioner and get ready to argue the matter. Apart Company Appeal (AT) No. 121 of 2021 7 of 15 from that timelines prescribed in the Act and constraints on the part of the Tribunal with regard to the legal aspects must also be considered by this Bench and in view of the same and in order to meet the ends of justice, we the Tribunal direct the respondent to file a reply to the application by 07.10.2021 by duly serving a copy on the petitioners. No further time shall be granted to either of the parties. This is not a usual case where weeks and weeks of time can be granted to file replies and hear the matter for days together and finally write an order consisting hundreds of pages. The point involved in this case is very short, simple and we are conscious that the Senior Counsels appearing for both the sides are aware of this and we are very clear there is no need to grant days and days time to file reply as we could understand from their argument that they are fully abreast with the legal points and hence only in abeyance to their seniority and their knowledge and their stature, this Bench is inclined to grant reasonable time which is in our opinion, time granted up to 07.10.2021 is quite sufficient.

6. List the matter for hearing on 07.10.2021, at the top of the list as Item No. 1."

(verbatim copy)

13. Appellant further contends that the learned NCLT further recorded that no extension will be granted and directed that a physical copy of the reply to the Company Petition must be submitted to the learned NCLT on 7 October 2021. The Appellant and Respondent No. 3-9 were effectively provided only 36 hours for filing reply.

14. The Appellant also contended that Rule 37 of the NCLT Rules mandates to issued Notice to allow the opposite party. But the learned Company Appeal (AT) No. 121 of 2021 8 of 15 NCLT, without even considering the said provision, denied the request of the Appellant for grant of reasonable and sufficient time to file its reply/counter and instead gave a limited period of less than 2 days to file its reply/counter in complete violation of rule 37 of the NCLT Rules and Principles of Natural Justice.

It is further contended that granting such a short span of less than two days of filing reply, the learned NCLT has, in fact, denied the Appellant an opportunity to effectively present its case, thereby grossly violating principles of natural justice.

Discussion and Findings

15. We have heard the arguments of the Learned Counsel for the parties and perused the record.

16. Admittedly, this Company Petition was filed by Respondent No.1 & 2 before the Learned NCLT on 29 September 2021, citing purported grave urgency in the matter and purported urgent requirement of the grant of ad-interim reliefs. Accordingly, pursuant to this Company Petition was listed on 30 September 2021 for considering grant of ad-interim reliefs as sought in the Company Petition.

17. On 30 September 2021 argument of the Learned Counsel of Respondent No.1 & 2 was heard at length. But the Learned NCLT, based on the submission of the Learned Sr. Counsel Mr Mukul Rohtagi and Mr Janak Dwarkadas on behalf of the Petitioner, directed the respondents to Company Appeal (AT) No. 121 of 2021 9 of 15 consider the requisition made by the Petitioners under Section 100 of the Companies Act, 2013 positively.

18. Learned NCLT had stated in its order that the Petitioner contends that they have submitted a requisition to the Board of the Company for calling of the Extraordinary General Meeting under the powers vested according to Section 100 of the Companies Act, 2013. It also appears that on 4 October 2021 matter again came up for hearing. The argument of the Learned Counsel for the Applicants was completely heard and after that Learned Senior Counsel appearing on behalf of the Respondents submitted that the final relief which has been asked in the petition, is being sought as ad-interim relief without there being an opportunity for filing the counter on the part of the respondents. The Respondents sought time for filing counter. However, the Learned NCLT made an observation that the timeline prescribed in the Act and constraints on the part of the Tribunal with regard to the legal aspects must also be considered. In the circumstances, Learned NCLT directed the Respondents to file a reply to the application by 7 October 2021 by duly serving a copy to the Petitioners. It is further noted in the order this is not a usual case where weeks and weeks of time can be granted to file replies and hear the matter for days together and finally write an order consisting of 100 of pages there is no need to grant days and days' time to file reply as we could understand from their argument. This Bench is inclined to grant a reasonable time, which is quite sufficient for up to 7 October 2021.

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19. It appears undoubtedly, a petition was filed on 29 September 2021, and after that, it was listed on 30 September 2021. After that, arguments of the Learned Sr. Counsel for the Applicant/Respondent No.1 & 2 of this Appeal was heard at length. Because petitioners seeking final reliefs, at an admission/interim stage which was impermissible, therefore, the Learned Sr. Counsel appearing on behalf of Appellants and Respondents No.3 to 9 sought time for filing a reply and

granting such a sort span of less than two days' time has in effect denied the Appellant an opportunity to effectively present its case, thereby grossly violating Principles of Natural justice.

20. Statutory provision of Section 98 and 100 is quoted below for ready reference:

98. Power of Tribunal to call meetings of members, etc. - (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,--

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Company Appeal (AT) No. 121 of 2021 11 of 15 Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Corresponding Law: S. 186 of Act 1 of 1956.

Section 98 enforced w.e.f. 1-6-2016

100. Calling of extraordinary general meeting.--(1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

[Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.] (2) The Board shall, at the requisition made by,--

(a) in the case of a company having a share capital, 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 as on that date carries the right of voting;

(b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in sub-section (4).

(3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

Company Appeal (AT) No. 121 of 2021 12 of 15 (4) 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.

(5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under Section 197 payable to such of the directors who were in default in calling the meeting. Corresponding Law: S. 169 of Act 1 of 1956.

Section 100 [except sub-section (6)] enforced w.e.f. 12-9- Sub-section (6) of Section 100 enforced w.e.f. 1-4-2014

21. It is pertinent to mention that Section 98 of the Companies Act, does not prescribe any time limit or limitation on the Learned NCLT to pass order within that time limit. Engrafting the provisions of Section 100(4) in Section 98 would be wholly misconceived and untenable. Undisputedly, the reliefs sought in the Company Petition are specifically under Section 98 of the Companies Act. Given that Section 98 does not prescribe any time limit, the Learned NCLT ought to have granted reasonable time to the Appellant to file a reply.

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22. It is also important to mention that Rule 37 of NCLT Rules provides a grant for reasonable and sufficient time to file a reply/counter. Rule 37 of NCLT Rules, 2016 is quoted below for ready reference:

"37. Notice to Opposite Party.--(1) The Tribunal shall issue Notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such Notice in Form No. NCLT. 5 shall be accompanied by a copy of the application with supporting documents.

(2) If the respondent does not appear on the date specified in the Notice in Form No. NCLT. 5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.

(3) If the respondent contests to the Notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the Petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

23. Therefore, it is clear that the Learned NCLT has committed an error in not granting reasonable and sufficient time for filing a reply, which is a complete violation of Rule 37 of NCLT Rules and Principles of Natural Justice.

Therefore, in the circumstances, as stated above, we are of the opinion that reasonable and sufficient opportunity should be given to the Appellants for filing a reply. After hearing both the parties, the Learned Company Appeal (AT) No. 121 of 2021 14 of 15 NCLT should proceed further. The appeal is disposed of accordingly--no order as to costs.

Justice Jarat Kumar Jain Member (Judicial) [V.P. Singh] Member (Technical) pks/gc Company Appeal (AT) No. 121 of 2021 15 of 15