**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**APPEAL (L) NO.25420 OF 2021**
**IN**
**INTERIM APPLICATION (L) NO.22525 OF 2021**
**IN**
**SUIT (L) NO.22522 OF 2021**
**WITH**
**INTERIM APPLICATION (L) NO.25423 OF 2021**

1. Invesco Developing Markets Fund
(formerly Invesco Oppenheimer Developing Markets Fund) acting through the constituted attorney, of its Investment Advisor, Invesco Advisers Inc., having its place of business at 1555, Peachtree St. NE, Suite 1800, Atlanta GA 30309
Email : kriti.das@invesco.com

2. OFI Global China Fund LLC
acting through the constituted attorney of its Manager Oppenheimer Funds, Inc., having its office at 255, Liberty St. New York, BY 10281
Email : kriti.das@invesco.com ... **APPELLANTS**

**VERSUS**

1. Zee Entertainment Enterprises Limited
Marathon Futurex, 18th Floor,
N.M.Joshi Marg, Lower Parel, Mumbai,
Maharashtra 400 013
Email : shareservice@zee.com

2. Punit Goenka
Having his place of business at Marathon Futurex, 18th Floor, N.M.Joshi Marg,
Lower Parel, Mumbai, Maharashtra 400 013
Email : pg@zee.com ... **RESPONDENTS**

***Appearances :***

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ravi Kadam, Senior Advocate, Mr. Sharan Jagtiani, Senior Advocate, Mr. Somasekhar Sundaresan, Mr. Cyrus Ardeshir, Mr. Gaurav Mehta, Ms. Rishika Harish, Mr. Bhavik Mehta, Mr. Kingshuk Banerjee, Mr. Tomu Francis, Ms. Praktruti Joshi, Mr. Zacarias Joseph, Mr. Ritvik Kulkarni, Ms. Tikshata Modi i/by Dhruve Liladhar and Co., for Appellants.

Mr. Aspi Chinoy, Senior Advocate with Mr. Navroz Seervai, Senior Advocate, Mr. Pesi Modi, Senior Advocate, Dr. Birendra Saraf, Senior Advocate, Mr. Prateek Sakseria, Mr. Nitesh jain, Mr. Atul Jain, Mr. Adrish Guha, Ms. Ms. Vatsala Kumar, Ms. Ritika Ajitsaria, Mr. Brihad Ralhan i/by Trilegal, for Respondent No.1.

Mr. Zal Andhyarujina, Senior Advocate with Mr. Suhail Nathani, Ms. Mumtaz Bhalla, Mr. Manendra Singh, Mr. Chanakya Keswani, Mr. Neeraj Malik, Mr. Nausher Kohli, Ms. Maithili Parikh i/by Economic Laws Practice, for Respondent No.2.

**CORAM: S.J. KATHAWALLA &**
**MILIND N. JADHAV, JJ.**

**RESERVED ON : 11th MARCH, 2022**
**PRONOUNCED ON : 22nd MARCH, 2022**

**JUDGMENT : ( PER S.J. KATHAWALLA & MILIND N. JADHAV, JJ. )**

**INTRODUCTION :**

1. This Appeal impugns the judgment dated 26th October, 2021 passed by the Ld. Single Judge **("Impugned Judgment")**. This Appeal is adjudicated under two sections viz. Section A and Section B. Section A pertains to the arguments and our decision on jurisdiction and whether or not the learned Single Judge was correct in restraining the shareholders of Zee Entertainment Enterprises Limited from calling for and holding an Extra Ordinary General Meeting as requisitioned by them. Section B pertains to the arguments and our decision on the alleged illegalities in the resolutions

proposed under the aforesaid requisition. As set out hereinafter, we have ruled in favour of the Appellants in both sections.

**FACTS**

2. For adjudication of this Appeal, it would be necessary to set-out the following facts :

2.1 The Appellants collectively hold 17.88% of the total paid up share capital of Respondent No.1 / Zee Entertainment Enterprises Limited **("Zee")**. Zee is a publicly listed Company.

2.2 On 11th September, 2021, the Appellants issued a Requisition **("Requisition")** to Zee in terms of Section 100(2)(a) of the Companies Act, 2013 **("Act")** calling for an Extra Ordinary General Meeting **("EGM")**. By this Requisition, the Appellants requisitioned the convening of an Extraordinary General Meeting to *inter-alia* remove 3 (three) non-independent directors of the Company, *viz.* one Mr Ashok Kurien, Mr Manish Chokhani and Mr Punit Goenka / Respondent No.2. The Requisition further sought the appointment of 6 (six) Independent Directors on the Board of Zee *"subject to the approval of the Ministry of Information and Broadcasting"*.

2.3 On 13th September, 2021, Zee intimated the Stock Exchanges that it had received resignation letters from Mr. Chokhani and Mr. Kurien.

2.4 On 22nd September, 2021, by a disclosure to the Stock Exchanges, Zee

announced the approval and execution of a non-binding term sheet with Sony Pictures Networks Private Limited in relation to a potential transaction involving a composite scheme of arrangement for the merger of Zee and Sony India.

2.5 On 23rd September, 2021, the Appellants addressed a letter to Zee calling upon it to comply with the Requisition.

2.6 On 29th September, 2021, the Appellants filed a Company Petition under Section 98 (1) read with Section 100 of the Act before the National Company Law Tribunal, Mumbai Bench **("NCLT")** seeking the following reliefs **("NCLT Petition")** :

> "a. that this Hon'ble Tribunal be pleased to order an extraordinary general meeting of the Respondent No. 1 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 the 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. I 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;"

2.7 We have been informed that the NCLT Petition was mentioned on 29th September, 2021 and circulation was granted for 30th September, 2021. We have been further informed that on 30th September, 2021, the NCLT directed Zee to consider the Requisition and listed the NCLT Petition for hearing on 4th October, 2021.

2.8 On 30th September, 2021, Zee's Board concluded that the Requisition was invalid / illegal and accordingly, recorded its inability to convene the EGM.

2.9 On 1st October, 2021, Zee rejected the Requisition citing multiple legal infirmities contained in the Requisition.

2.10 Also on 1st October, 2021, Zee filed the captioned Suit before this Court praying for the following final reliefs :

> "a. That, as the Requisition Notice dated 11 September 2021 issued by Defendant Nos.1 and 2 is in contravention of the Companies Act, SEBI Listing Regulations, MIB Guidelines, AoA of the Plaintiff and other applicable laws, for a declaration of this Hon'ble Court that the said Requisition Notice dated 11 September 2021 is illegal, ultra vires, invalid, bad in law, and cannot be implemented in any manner;
>
> b. That, as the Requisition Notice dated 11 September 2021 issued by Defendant Nos.1 and 2 is in contravention of the Companies Act, SEBI Listing Regulations, MIB Guidelines, AoA of the Plaintiff and other applicable laws, for a declaration of this Hon'ble Court that the Plaintiff's refusal to act upon the invalid Requisition Notice vide letter dated 11

September 2021 being in accordance with law, is valid and justified;

c. That this Hon'ble Court be pleased to restrain Defendant Nos.1 and 2, their employees, servants, agents or any person acting by, under or through them, by an order of perpetual injunction from taking any action or step in furtherance of the Requisition Notice dated 11 September 2021 including calling and holding an extraordinary general meeting under Section 100(4) of the Companies Act, 2013;"

2.11 In the Suit, Zee preferred Interim Application (L) No.22525 of 2021 seeking an injunction against the Appellants from taking any action or step in furtherance of the Requisition including calling and holding an EGM under Section 100 (4) of the Act.

2.12 As stated hereinabove, the Impugned Judgment came to be pronounced on 26th October, 2021. By the Impugned Judgment, the Ld. Single Judge granted an injunction restraining the Appellants from taking any action or step in furtherance of the Requisition including calling and holding an EGM under Section 100(4) of the Act.

2.13 Challenging the Impugned Judgment, this Appeal came to be filed on 28th October, 2021.

2.14 On 11th March, 2022, after hearing all parties, we reserved the Appeal for

orders.

**SUBMISSIONS :**

3. Appearing for the Appellants, we have heard Ld. Senior Advocate Mr. Janak Dwarkadas. Mr. Dwarkadas' submissions can be summarized as under :

3.1 That a Civil Court cannot entertain a Suit of the nature filed by Zee;

3.2 That the Ld. Single Judge's findings that this Court has jurisdiction to entertain the Suit is in the teeth of Section 430 of the Act which ousts the jurisdiction of Civil Courts regarding matters that fall within the domain of the NCLT;

3.3 That since the Appellants had already filed an application under Section 98 i.e. the NCLT Petition, it is only the NCLT that is empowered to decide whether or not to call, hold or conduct a meeting;

3.4 That this Court cannot interfere with the statutory right of a shareholder to call for an EGM. In support of this submission, great emphasis was laid by Mr. Dwarkadas on the leading decision of the Supreme Court in *LIC vs. Escorts & Ors.*[1] **("*LIC vs. Escorts*")**. According to Mr. Dwarkadas, the Supreme Court's decision in *LIC vs. Escorts* applies squarely to the facts of the present case;

3.5 That the law as applicable in India does not recognize any right of the Board of Directors of a Company to refuse to call a meeting pursuant to a requisition made by shareholders where the requisition satisfies the numerical and procedural

1 (1986) 1 SCC 264

requirements set-out under Section 100 of the Act.

3.6 That strictly without prejudice to the aforesaid submissions, the Ld. Single Judge erred in finding that the requisitions proposed by the Appellants in the Requisition are illegal.

4. Appearing for Zee, we have heard Ld. Senior Advocate Mr. Aspi Chinoy. Mr. Chinoy's submissions can be summarized as under :

4.1 The jurisdiction of a Civil Court to entertain a challenge to the Requisition issued under Section 100 of the Act as being invalid / illegal / contrary to law is not affected by the bar contained in Section 430 of the Act. The bar in Section 430 would be applicable only if the Act or any other law specifically empowered the NCLT to deal with and determine a particular matter. A suit impugning the legality and validity of a requisition issued under Section 100 and a requisitionist's right to call and hold a meeting pursuant to such requisition does not fall within the purview of Section 98 of the Act or attract the bar under Section 430 of the Act. Reliance in support of this submission was placed on the decisions in *Embassy Property Development vs. State of Karnataka*[2] and *Pradhama Multi Speciality Hospital vs. Dr P Anupama*[3].

4.2 The jurisdiction of the Court to entertain a suit impugning the legality of a requisition purported to be issued under Section 100 of the Act, flows from the Civil

2 (2020) 13 SCC 308
3 (2019) Online NCLT 9862

Court's plenary jurisdiction / power under Section 9 of the Code of Civil Procedure, 1908 **("CPC")** to try all suits of a civil nature *[excepting suits, of which the cognizance is barred]*, including claims regarding the validity/ legality of matters relating to / arising out of the provisions of the Act. Accordingly, Civil Courts have entertained and granted reliefs in Suits challenging the legality of diverse matters relating to Companies and the provisions of the Act such as suits challenging a Company's meetings and resolutions passed at such meetings, suits challenging resolutions for appointment and removal of Directors and also suits challenging the legality of a requisition for calling an EGM. Reliance in support of this submission was placed on *Santosh Poddar vs Kamalkumar Poddar*[4] , *Madhu Ashok Kapur vs Mr Rana Kapoor*[5] , *Yes Bank vs Madhu Kapoor*[6] and *B Sivaraman & Ors vs Egmore Benefit Society*[7].

4.3 Mr. Chinoy placed reliance on the decisions in *Isle of Wight Railway Co vs Tahourdin*[8], *Queensland Press Ltd vs Academy investments No 3 Pty Ltd.*[9] and *Rose vs Mc Givern and others*[10] to submit that Courts have affirmed the power and jurisdiction of Courts to restrain a requisition calling for a general meeting if the object of the requisition is to do something which cannot be lawfully effectuated.

4.4 Dealing with Mr. Dwarkadas' emphasis on the Supreme Court's

4 1992 SCC OnLine Bom 151
5 2014 SCC Online Bom 401
6 2014 SCC Online Bom 574
7 (1992) 75 Co Cas 198
8 [1884] 25 Ch 320
9 1987 No 110
10 (1998) 2 BCLC 593

decision in *LIC vs. Escorts*, Mr. Chinoy submitted that this decision does not alter the settled legal position that a Civil Court can entertain a suit impugning diverse matters arising under the Act, including *inter alia* a requisition issued under Section 100 on the ground of the requisition and the proposed resolutions being contrary to law. According to Mr. Chinoy, in the *LIC vs. Escorts* judgement, the Supreme Court had no occasion to consider or decide whether a requisition for calling an EGM could be injuncted by a Court on the grounds of it being illegal, as no such case of the requisition notice being illegal was urged before the Supreme Court in that case. A perusal of the Supreme Court's judgement makes it clear, that the requisition for an EGM was not impugned in the Supreme Court on the ground of illegality, and that the Supreme Court has accordingly neither considered nor decided that a requisition / EGM cannot be injuncted by a Court, on the ground that it is contrary to law;

4.5 That the proposed resolutions contained in the Requisition are illegal and contrary to *(i)* various provisions of the Act pertaining to appointment and removal of Directors and Independent Directors; *(ii)* Clause 5.10 of the Policy Guidelines for Uplinking of Television Channels issued by the Ministry of Information & Broadcasting; and *(iii)* Regulation 17 of the Securities & Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

5. Appearing for Respondent No.2 / Mr. Punit Goenka, we have heard Ld. Senior Advocate Mr. Zal T. Andhyarujina. Mr. Andhyarujina's submissions can be

summarized as under :

5.1 The proposed resolutions are in breach of Clause 5.10 of the Policy Guidelines for Uplinking of Television Channels issued by the Ministry of Information & Broadcasting. That clause 5.10 makes it obligatory to take "prior permission". It is well settled that when a statute provides for prior permission, the same can never be considered to be *ex post-facto* permission. Reliance was placed on *Asha John Divianathan vs. Vikram Malhotra and Ors*[11]. Further, when the law provides for a thing to be done in a particular manner, then it must be done in that manner and in no other manner. In support of this submission, reliance was placed on *H.M.T House Building Cooperative vs. Syed Khader and Ors*[12].

5.2 The appointment of Directors cannot be made subject to any conditions. Under the Act, Directors stand appointed upon resolutions approving their appointment at a general meeting.

**S e c t i o n A**

***Sections 98 and 100 of the Companies Act, 2013***

6. As a starting point, we first consider Sections 98 and 100 of the Act. Section 98 reads as under :

> ***"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*

11 2021 SCC Online SC 1471
12 1995 (2) SC 677

*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 :*

*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."*

7. Section 98 empowers a member of a Company to approach the NCLT requesting it to pass an order calling for and holding an EGM. However, the power to be exercised by the NCLT is evidently discretionary. This, to us, is apparent from the words *"the Tribunal may"* used in Section 98.

8. Exercising their right as members of Zee, the Appellants filed a petition under Section 98(1) of the Act requesting the NCLT to call an EGM of Zee. In the NCLT Petition, it is the Appellants' case that it is *impracticable* for them to call for the

EGM. Therefore, whether or not the EGM should be called pursuant to the NCLT Petition is now within the domain of the NCLT.

9. Section 100 of the Act reads as under :

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

10. Section 100(2) uses the expression *"shall"* casting a mandatory obligation on the Board to adhere to the requisition.

11. Section 100(4) furnishes an additional right to members to proceed to call and hold a meeting themselves should the Board fail to call the requisitioned meeting.

12. On a plain and literal reading of Section 100(4), the words "*valid requisition*" appear to mean numerical and procedural compliance and nothing further. In support of this interpretation, we deem it appropriate to reproduce the following findings contained in *Cricket Club of India vs. Madhav L. Apte*[13]:

*"25. Under the Indian Companies Act, 1913, the provisions as regards calling of extraordinary general meetings on requisition were to be found contained in section 78 of the said Act. Under those provisions the directors of a company which has a share capital were enjoined on the requisition of the holders of not less than one-tenth of the issued share capital of the company, upon which all calls had been paid, to call an extraordinary general meeting of the company. The scheme was substantially similar to the scheme of section 169 of the Companies Act, 1956. Sub-section (2) of section 78 provided for the contents of the requisition and the mode of its deposit; and sub-sections (3) to (5) provided for calling of a meeting by*

13 [1975] 45 Comp Cas 574 (Bom)

*the requisitionists on failure by the directors to cause a meeting to be called for after deposit of a requisition. In sub-section (3) of section 78, however, the words used were "date of the requisition being so deposited". Under section 169(6) of the Companies Act, 1956, one finds a change in the terminology, the provision being that the requisitionists may themselves call a meeting (subject to other provisions, with which we are not concerned) if the board does not call a meeting "within twenty-one days from the date of deposit of a valid requisition" (underlining [ Here printed in italics.] supplied). Now, it was urged by learned counsel for the plaintiffs that the additional word "valid"; indicated clearly that the requisition which was made must be valid and lawful; in other words, that a requisition which was for consideration of something which would be illegal or invalid could not per se be considered to be a valid requisition, and if such requisition was deposited with the directors of a company the directors were not required to call a general meeting although the numerical requirement provided for in the earlier part of the said section was satisfied. Now, it may be pointed out that whereas under section 78 of the Indian Companies Act, 1913, the power to call an extraordinary general meeting was restricted to companies having a share capital, under section 169 of the Companies Act, 1956, such power can be exercised by the members of the company having a share capital as also by members of a company not having a share capital, and the requirements in the latter case are to be found in clause (b) of sub-section (4). Other requirements of a proper requisition have also been spelt out in greater detail in section 169; and, in my opinion, it would be proper to understand the word "valid" used in sub-section (6) of section 169 as having reference to the provisions of the earlier five sub-sections of that section rather than indicating compliance with any other requirements or provisions of the Companies Act.* ***In other words, to put it shortly, all that is required to be seen before the provisions of sub-section (6) of section 169 become applicable would be to consider whether the requisition deposited was in accordance with the provisions of section 169 as to its contents, the number of signatories and similar matters, and it would not be open to the board of directors of a company to refuse to act on a requisition on the ground that, although such***

***requisition was in accordance with the requirements of section 169, it was otherwise invalid.*** *This conclusion receives support when one peruses sub-section (5) of section 169, where also the use of the word "valid" is perceived. The learned counsel for the plaintiffs emphasised the mischief that in his opinion would be caused by an otherwise invalid requisition being made which would put the company to considerable financial loss for what he called would be an exercise in futility. On the other hand, the question to be considered would be whether the board of directors of a company can be allowed to ignore a requisition which complies with all the requirements laid down in section 169 of the Companies Act, 1956, on the ground that the object of the requisition was illegal or otherwise invalid and, therefore, the requisition was not a valid requisition which ground may ultimately be found to be unsustainable.* ***In my view, the word or the adjective "valid" in section 169 has no reference to the object of the requisition but rather to the requirements in that section itself.*** *If these requirements indicated in the earlier part of the section are satisfied, then the requisition deposited with the company must be regarded as a valid requisition on which the directors of a company must act. If the directors fail to act within the period specified by sub-section (6), then, in my opinion, the requisitionists would be entitled to proceed under the later provisions of that sub-section and the other sub-sections of section 169.*

*61.* ***Inasmuch as it has been conceded that the requisition satisfied the procedural and numerical requirements postulated by section 169 of the Companies Act, 1956, the requisition must be considered to be a valid requisition within the meaning of sub-section (6) of section 169.*** *Accordingly, the executive committee of the Cricket Club would appear to be bound and liable to call the meeting as provided by the said section. I do not wish to express any opinion as to the course to be adopted by the requisitionists or by the chairman of such meeting at the meeting. This course would depend upon the answer to question (a) which I have indicated earlier."* (emphasis supplied)

13. If there was any doubt in respect of the aforesaid interpretation, reliance

can also be placed on the following findings from *LIC vs. Escorts* :

> *"**100.** Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed **procedural** and **numerical** requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act."* (emphasis supplied)

14. In view of the aforesaid interpretation by the Supreme Court and this Court, we have no hesitation whatsoever in holding that the words "*valid requisition*" as appearing in Section 100(4) of the Act are restricted to numerical and procedural compliance and nothing further.

15. On a literal and plain reading of Sections 98 and 100, we do not see any discretion / power vested with the Board of a Company to sit in judgment over *"any matter"* for consideration of which the meeting is requisitioned. On a plain reading, the Board of a Company is mandatorily obliged to requisition a meeting if the requirements specified in sub-sections (2) and (3) of Section 100 are satisfied. Needless to state, whether or not the proposed requisition should be given effect to, is to be decided by the shareholders at the general meeting.

16. To our mind, the language used in the aforesaid Sections aid corporate democracy and protect the rights of shareholders. Section 100(4) in fact provides shareholders with an additional right to proceed to call for and hold an EGM despite an unwilling Board. This intent and object of the legislature cannot be ignored whilst construing the relevant provisions of the Act.

17. In the Impugned Judgment, the Ld. Single Judge has, as Mr. Dwarkadas puts it, *unsettled* a settled judicial interpretation of the words "*valid requisition*". In doing so, he has read into Section 100(4) and expanded it in a manner alien to the aforesaid decisions and the plain written letter of the Section. We will proceed to determine whether the Ld. Single Judge could have expanded the words "*valid requisition*" appearing in Section 100(4) of the Act and granted an injunction restraining the calling and holding of the EGM on the basis that the resolution proposed under the Requisition are illegal.

**The Supreme Court's decision in LIC vs. Escorts & Ors. ( supra)**

18. Amongst the leading decisions on the rights of a shareholder of a Company is the judgment in *LIC vs. Escorts & Ors.* The decision was delivered on 19th December, 1985 by the Supreme Court in a Civil Appeal arising from the judgment and order dated 9th November, 1984 of this Court. The decision is a comprehensive authority on the subject of corporate democracy with particular reference to shareholders' entitlement to requisition a general meeting of a Company and seek removal of a Director. A brief reference to the facts *(as are relevant for our purposes)* of the case may be made before the observations of the Supreme Court are noticed. The matter arose out of controversial purchase of the shares of the Company concerned, namely, Escorts Ltd., by a certain overseas group, known as the Caparo Group. The purchase was made through thirteen overseas Companies, all of which were

predominantly owned by non-residents of Indian nationality or origin, that is to say, to an extent of at least 60 per cent. The purchase was purportedly in keeping with RBI Circulars which permitted non-resident individuals of Indian nationality / origin as well as overseas companies, partnerships firms, societies, trusts and other corporate bodies owned by, or in which the beneficial interest vested in non-resident individuals of Indian nationality / origin was to the extent of not less than 60 per cent, to invest, on a repatriation basis, in the shares of Indian Companies to the extent of one per cent of the paid-up equity capital of such Indian Companies subject to the ceiling of 5 per cent of the aggregate of such portfolio investment. Though the purchase was still subject to RBI permission under Section 29 of the Foreign Exchange Regulation Act **("FERA")**, it was contended on behalf of the investors that the permission could only be *ex post facto.* The Company, Escorts, argued otherwise; according to it the permission was required to be a previous permission. Be that as it may, before the matter reached the first Court *(the Bombay High Court)*, the RBI permission had actually come about, but which, according to the Company, was *ultra vires* the FERA. The Company raised various grounds of contraventions of laws, such as the FERA or the Non-residents Investment Scheme, in the matter of the subject purchase. On these grounds, the Company refused to register the share transfers. Instead of the purchasers taking up a challenge to that action of the Company, it was the Company, Escorts, that went to Court by way of a Writ Petition *(out of which the Appeals before the*

*Supreme Court in that case had arisen)*. The grievance of the Company in the Writ Petition *inter alia* was that the majority shareholders of the Company, who were financial institutions such as LIC, ICICI, IFC, IDBI and UTI, who between them held 52 per cent shares of the Company, and through them the Union of India was pressuring the Company to register the share transfer in favour of the Caparo Group. Appropriate injunctive reliefs were sought in that behalf in the Petition. Subsequent to the filing of the Writ Petition, LIC, who was also a part of the group of financial institutions holding 52 per cent shares of the Company issued a requisition to the Company to hold an extra ordinary general meeting for removing nine of its part-time Directors and for nominating nine others in their place. The Petitioner, Escorts, thereafter amended their Writ Petition by including prayers for declaring the requisition to be arbitrary, illegal, *ultra vires* etc. It was submitted by the Company that the action of LIC was *mala fide* and part of a concerted action by the Union of India, RBI and the Caparo Group to coerce the Company to register the transfer of shares and withdraw the Writ Petition. The Supreme Court, after noticing the sequence of events, held that the sequence showed the financial institutions which held 52 % per cent shares of the Company, and thus had a very big stake in its working and future, were aggrieved that the management did not even choose to consult them or inform them that a Writ Petition was proposed to be filed which would launch and involve the Company in difficult and expensive litigation against the Government and RBI. The

financial institutions, the Court observed, were instrumentalities of the State and so was RBI and must have thought it unwise to launch into such a litigation; the institutions were anxious to withdraw the Writ Petition and discuss the matter further; and as the management was not aggregable, LIC had sought removal of non executive Directors so as to enable the new Board to take a proper decision on the matter.

19. In the backdrop of these facts, on the separate and distinct issue of requisition issued by LIC, the Supreme Court proceeded to observe as follows:

> *"**94.** What does the sequence of events go to show? It shows that the financial institutions which held 52 per cent of the shares of the company and, therefore, had a very big stake in its working and future were aggrieved that the management did not even choose to consult them or inform them that a writ petition was proposed to be filed which would launch and involve the company in difficult and expensive litigation against the Government and the Reserve Bank of India. The financial institutions must have been struck by the duplicity of Mr Nanda who was holding discussions with them while he was simultaneously launching the company of which they were the majority shareholders into a possibly troublesome litigation without even informing them. The financial institutions were instrumentalities of the State and so was the Reserve Bank and it must have been thought unwise to launch into such a litigation. The institutions were, therefore, anxious to withdraw the writ petition and discuss the matter further. As the management was not agreeable to this course, the Life Insurance Corporation thought that it had no option but to seek a removal of the non-Executive Directors so as to enable the new Board to consider the question whether to reverse the decision to pursue the litigation. Evidently the financial institutions wanted to avoid a confrontation with the government and the Reserve Bank and adopt a more conciliatory approach. At the same time, the resolution of the Life Insurance Corporation did not seek removal of the Executive*

*Directors, obviously because they did not intend to disturb the management of the company. It is, therefore, difficult to accuse the Life Insurance Corporation of India of having acted mala fide in seeking to remove the nine non-Executive Directors and to replace them by representatives of the financial institutions. No aspersion was cast against the Directors proposed to be removed. It was the only way by which the policy which had been adopted by the Board in launching into a litigation could be reconsidered and reversed, if necessary. It was a wholly democratic process. A minority of shareholders in the saddle of power could not be allowed to pursue a policy of venturing into a litigation to which the majority of the shareholders were opposed. That is not how corporate democracy may function."*

20. Thereafter, the Supreme Court dwelled into the ambit of corporate democracy and the rights of shareholders by further proceeding to observe :

*"**95.** A company is, in some respects, an institution like a State functioning under its "basic Constitution" consisting of the Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes "the members in general meeting" and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of government. Like the government, the Directors will be answerable to the "Parliament" constituted by the general meeting. But in practice (again like the government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two-man companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as the general law expressly provides must be exercised in general meeting. [ Gower's*

*Principles of Modern Company Law] Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as Section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the Companies Act, there are many powers exerciseable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a company is an over-simplification and states "to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution." As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another.*

***96.*** *In Shaw & Sons (Salford) v. Shaw [(1935) 2 KB 113] Greer, L.J. expressed :*

*"The only way in which the general body of the shareholders can control the exercise of powers vested by the articles in the Directors is by altering the articles or, if opportunity arises under the articles, by refusing to re-elect the Directors on whose action they disapproved."*

***97.*** *In Isle of Wight Railway v. Tahourdin [(1883) 25 Ch D 320] Cotton L.J. said :*

*"Then there is a second object, 'To remove (if deemed necessary or*

*expedient) any of the present directors, and to elect directors to fill any vacancy in the board.' The learned Judge below thought that too indefinite, but in my opinion a notice to remove 'any of the present directors' would justify a resolution for removing all who are directors at the present time; 'any' would involve 'all'. I think that a notice in that form is quite sufficient for all practical purposes."*

*Fry, L.J. said:*

*"The second objection was, that a requisition to call a meeting 'to remove (if deemed necessary or expedient) any of the present directors' is too vague. I think that it is not. It appears to me that there is a reasonably sufficient particularity in that statement. It is said that each director does not know whether he is attacked or not. The answer is, all the directors know that they are laid open to attack. I think that any other form of requisition would have been embarrassing, because it is obvious that the meeting might think fit to remove a director or allow him to remain, according to his behaviour and demeanour at the meeting with regard to the proposals made at it."*

*In the same case considering the question whether an injuction should be granted to restrain the holding of general meeting, one of the purposes of the meeting being the appointment of a committee to reorganise the management of the company, Cotton L.J. said :*

*"It is a very strong thing indeed to prevent shareholders from holding a meeting of the company, when such a meeting is the only way in which they can interfere if the majority of them think that the course taken by the Director, in a matter intra vires of the Directors, is not for the benefit of the company."*

***98.*** *In Inderwick v. Snell [42 ER 83] the deed of settlement of a company provided for the removal of any Director "for negligence, misconduct in office or any other reasonable cause". Some directors were removed and others were appointed. The Directors who were removed sued for an injunction to prevent the new directors from acting on the ground that there was no reasonable cause for their removal. The court negatived the claim for judicial review of the reasons for removal and made the following interesting observations :*

*"The argument for the plaintiffs rested on the allegation that the*

*general cause of removal referred to in the clause being expressed to be 'reasonable' prevents the power referred to from being a power to remove at pleasure arbitrarily or capriciously, and made it requisite that the proceeding for exercising the power should be in its nature judicial, and that the reasonable cause should be such as a court of Justice, would consider good and sufficient. If this argument could be sustained, all the proceedings at such meetings would be subject to the review of the Courts of Justice, which would have to inquire whether the cause of removal which was charged was in their view reasonable, whether the charges were bona fide brought forward, whether they were substantiated by such evidence as the nature of the case required, and whether the conclusion was to come upon a due consideration of the charge and evidence. But the deed is silent as to these matters and the question is whether any such power of control in the Courts of Justice is to be interred from the words 'reasonable cause' contained in the 27th clause; whether the expression 'reasonable cause' contained in such a deed of a trading partnership can be held to be such a cause, as upon investigation in a court of Justice must be held to be bona fide founded on sufficient evidence and just; or whether it ought not to be held to mean such cause as in the opinion of the shareholders duly assembled shall be deemed reasonable. We think the latter is the true construction and effect of the deed.*

*In a moral point of view, no doubt every charge of a cause of removal ought to be made bona fide, substantiated by sufficient evidence, and determined on a due consideration of the charge and evidence; and those who act on other principles may be guilty of a moral offence: they may be very unjust, and those who (being misled by the statements made to them), have no doubt a just right to complain that they have been led to concur in an unjust act. But the question is, whether by this deed the shareholders duly assembled at a general meeting might not, or had not a right to, remove a director for a cause which they thought reasonable, without it being incumbent upon them to prove to this or any other Court of Justice that the charge was true and the decision just, or that the case was substantiated after a due consideration of the evidence and charge. We cannot take upon ourselves to say that in the case of a trading partnership like this, this Court*

*has upon such a clause in the deed of partnership jurisdiction or authority to determine whether, by the unfounded speech of any supporter of the change, the shareholders present may not have been misled or unduly influenced.*

*All such meetings are liable to be misled by false or erroneous statements, and the amount of error or injustice thereby occasioned can rarely, if ever, be appreciated. This Court might inquire whether the meeting was regularly held, and in cases of fraud clearly proved, might perhaps interfere with the acts done; but supposing the meeting to be regularly convened and held, the shareholders assembled at such meeting may exercise the powers given them by the deed. The effect of speeches and representations cannot be estimated, and for those who think themselves aggrieved by such representations, or think the conclusion unreasonable, it would seem that the only remedy is present defence by stating the truth and demanding time for investigation and proof, or the calling of another meeting, at which the whole matter may be reconsidered. The plaintiffs, objecting to this meeting and considering it illegal, protested against it, but abstained from attending, and, therefore, made no answer or defence to, and required no proof of, the charges made against them. The adoption of this course was unfortunate, but does not afford any grounds for the interference of this Court."*

***99.*** *Again in Bentley Stevens v. Jones [(1974) 2 All ER 653] it was held that a shareholder had a statutory right to move a resolution to remove a Director and that the court was not entitled to grant an injunction restraining him from calling a meeting to consider such a resolution. A proper remedy of the Director was to apply for a winding-up order on the ground that it was "just and equitable" for the court to make such an order. The case of Ebrahimi v. Westbourne Galleries Ltd. [(1972) 2 All ER 492] , was explained as a case where a winding-up of order was sought. In the case of Ebrahimi v. Westbourne Galleries Ltd. [ Re Wondoflex Textiles Pty. Ltd., 1951 VLR 458] , the absolute right of the general meeting to remove the Directors was recognised and it was pointed out that it would be open to the Director sought to be removed to ask the Company court for an order for winding-up on the ground that it would be "just and equitable" to do so. The House of Lords said :*

*"My Lords, this is an expulsion case, and I must briefly justify the*

*application in such case of the just and equitable clause.... The law of companies recognises the right, many ways, to remove a director from the Board. Section 184 of the Companies Act, 1948 confers this right on the company in the general meeting whatever the articles may say. Some articles may prescribe other methods, for example a governing director may have the power to remove. [ Re Wondoflex Textiles Pty. Ltd., 1951 VLR 458] And quite apart from removal powers, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote. In all these ways a particular director-member may find himself no longer a director, through removal or non-re-election; this situation he must normally accept, unless he undertakes the burden of proving fraud or mala fides. The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation of his fellow member(s) in good faith, or confidence, that so long as the business continues he shall be entitled to management participation, an obligation so basic that if broken, the conclusion must be that the association must be dissolved."*

21. Subsequent to the aforesaid elaborate discussion, the Supreme Court proceeded to succinctly lay down the law in paragraph no.100 as under :

*"**100.** Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. It is true that under Section 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all*

*material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Ltd., has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons for moving the resolutions."*

22. Lastly, whilst summarizing its conclusion, the Supreme Court held that

***"(9) The notice requisitioning a meeting of the company by the Life Insurance Corporation of India was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition."***

(emphasis supplied )

23. From the aforesaid, according to us, *LIC vs. Escorts* clearly lays down the proposition that no Court or Tribunal can restrain the holding of an EGM. Further, that a notice requisitioning a meeting of a Company is also not liable to be questioned.

24. Faced with *LIC vs. Escorts,* Mr. Chinoy canvassed elaborate submissions to the end that in *LIC vs. Escorts,* the Supreme Court only considered, dealt with and decided the case urged by Escorts; that the action of the LIC in issuing a requisition for an EGM to replace Escorts' non-executive directors was *mala fide*. In support of his submission, Mr. Chinoy relied upon paragraphs 58, 59, 93, 110(8), 110(9).

25. We have carefully considered the decision in *LIC vs. Escorts* and in

particular, Mr. Chinoy's submissions and the paragraphs therefrom relied upon by him. Paragraph no.59 records that the Writ Petition was *"suitably"* amended to add prayers (*ia*), (*ib*), (*ic*) and (*id*) to declare the requisition to hold the meeting arbitrary, illegal, ultra vires etc. In paragraph no.60, the findings of the High Court to the effect that *"There shall be a declaration that the action of Respondent 18 in issuing the impugned requisition notice is contrary to the provisions of Section 284 of the Companies Act and ultra vires the powers vested in the LIC under Section 6 of the LIC Act and contrary to the intendment of the provisions of the LIC Act."* are reproduced by the Supreme Court and if there is any doubt, it stands rested by the Supreme Court's conclusion in paragraph no. 100 (9) to the effect that *"(9) The notice requisitioning a meeting of the company by the Life Insurance Corporation of India was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition."*

26. We therefore disagree with the submission that *LIC vs. Escorts* does not bar or prohibit a Civil Court from entertaining a challenge to a requisition for an EGM, on the ground that the requisition and the proposed resolutions are illegal / contrary to law. We have applied the ratio of *LIC vs. Escorts* after having considered and understood the background of the facts of that case. *LIC vs. Escorts* is certainly an authority for what it actually decides which, in our opinion, is that no Court or Tribunal can restrain the holding of an EGM so long as the requisition of shareholders in that behalf is compliant with the procedural and numerical requirements of Section

100.

27. Faced with the decision in *LIC vs. Escorts,* the Ld. Single Judge in the Impugned Judgment observed as follows : *"55. But the question with which I am concerned never arose in LIC v Escorts. It was under the 1956 Act, which did not separate listed companies as the 2013 Act does. In any case, as Mr Chinoy points out, the LIC v Escorts debate was about mala fides, not about the legality or legal effectiveness of resolutions proposed at an EGM."* In our considered opinion, the aforesaid finding of the Ld. Single Judge is based on an incorrect assessment and analysis of the decision in *LIC vs. Escorts.* We are unable to appreciate where the Act, its provisions pertaining to listed Companies, and more particularly Sections 98 and 100 thereof would enable us deviate from the ratio laid down in *LIC vs. Escorts*. The Ld. Single Judge has not analysed the facts, submissions and findings rendered by the Supreme Court in *LIC vs. Escorts* while cursorily accepting Mr. Chinoy's submission that in *LIC vs. Escorts,* the debate was about *mala fides* and not about the legality or legal effectiveness of resolutions proposed at an EGM.

**This Court's decision in Cricket Club of India vs. Madhav L. Apte (supra)**

28. The decision of this Court in *Cricket Club of India vs. Madhav L. Apte (supra)* arose in a Special Case for the opinion of this Court under the provisions of

Order 36 of the CPC. Certain introductory paragraphs from the decision are reproduced as under :

> *"S.K. Desai, J.:— This is a special case filed for the opinion of this court under the provisions of order 36 of the Civil Procedure Code. Three questions have been asked at the end of the special case; but before referring to them or discussing them, the facts which are not in dispute may be briefly stated.*
>
> *2. The 1st plaintiff to the special case is a sports and social club (hereinafter referred to as the "Cricket Club" for the sake of brevity), registered as a company limited by guarantee, having no share capital. It is incorporated under the provisions of the Indian Companies Act, 1913, and today functions under the provisions of the Companies Act, 1956. Plaintiffs Nos. 2 to 17 have been described as members of the executive committee of the 1st plaintiff, and the powers and functions of this executive committee are admittedly analogous to those of the board of directors of a company under the Companies Act, 1956. Articles 69 to 92 of the articles of association of the Cricket Club provide for the executive committee and article 74 of these articles provides for the retirement from office of one-third members of the executive committee at the annual general meeting of the Cricket Club, excluding the nominated and ex-officio members who are not subject to retirement under the articles. There is provision in the said article to the effect that a member retiring at any such meeting shall be eligible for re-election and shall retain office as a member of the executive committee until the close of the meeting at which he retires.*
>
> *3. On 3rd August, 1973, the Cricket Club received from 591 of its members, including the defendants to the special case, a requisition, dated 3rd August, 1973 (hereinafter referred to as "the requisition" for the sake of brevity). By the requisition the requisitionists desired the convening of an extraordinary general meeting of the Cricket Club to consider and, if thought fit, to amend its articles of association by passing a resolution, which may be fully set out :*
>
> *"Resolved that article 74 of the articles of association be amended as follows by adding the following at the end of the words 'he retires':*

*Provided however that a member shall not be eligible to stand for re-election to the office of the executive committee if he has been a member of the executive committee for a continuous period of six years.*

*Provided further that a member who has been a member of the executive committee for a continuous period of six years may seek election after the expiry of a period of three years from the date of the six years' period as mentioned in this article.*

*For the purpose of this article, a member of the executive committee who retires or otherwise ceases to be a member of the committee at any time after being such a member for a continuous period of five years shall be deemed to have been a member of the executive committee for a continuous period of six years."*

*4. After receipt of the requisition the same was considered by the executive committee of the Cricket Club at its meeting held on 9th August, 1973, and after some discussion the said committee resolved to obtain opinion thereon of counsel on the validity and legality of the resolution proposed to be considered and passed at the requisitioned meeting under the requisition. It appears that pursuant to the said resolution of the executive committee, the attorneys for the Cricket Club obtained opinion of two counsel who independently opined that the resolution, for consideration of which the requisition had been received, would not be valid in law and, further, that the requisition was not a valid requisition. On the other land, the defendants, presumably acting on behalf of the requisitionists, obtained opinion of three other counsel who arrived at a contrary conclusion. In view of the conflicting opinions expressed by counsel on points on which their advice had been sought, the executive committee of the Cricket Club and the requisitionists mutually agreed to submit a special case and the present special case arises from the mutual agreement as aforesaid."*

29. This Court thereafter recorded the questions that had been posed before it as under :

*"7. The following three questions have been posed on which the opinion of the*

*court is sought :*

*"(a) Whether amendment of article 74 proposed by the resolution contained in the requisition would be invalid as being repugnant to section 274 of the Companies Act or any other provision of the said Act, or whether the same would be valid?*

*(b) Whether the requisition is a valid requisition?*

*(c) Whether the executive committee of the plaintiffs, viz., plaintiffs Nos. 2 to 17, are bound and liable to call an extraordinary general meeting of the members of the plaintiffs to consider and, if thought fit, to pass the said resolution as a special resolution by the requisite majority?""*

30. After a detailed analysis of the arguments placed before this Court, this Court proceeded to hold as under :

*"**25.** Under the Indian Companies Act, 1913, the provisions as regards calling of extraordinary general meetings on requisition were to be found contained in section 78 of the said Act. Under those provisions the directors of a company which has a share capital were enjoined on the requisition of the holders of not less than one-tenth of the issued share capital of the company, upon which all calls had been paid, to call an extraordinary general meeting of the company. The scheme was substantially similar to the scheme of section 169 of the Companies Act, 1956. Sub-section (2) of section 78 provided for the contents of the requisition and the mode of its deposit; and sub-sections (3) to (5) provided for calling of a meeting by the requisitionists on failure by the directors to cause a meeting to be called for after deposit of a requisition. In sub-section (3) of section 78, however, the words used were "date of the requisition being so deposited". Under section 169(6) of the Companies Act, 1956, one finds a change in the terminology, the provision being that the requisitionists may themselves call a meeting (subject to other provisions, with which we are not concerned) if the board does not call a meeting "within twenty-one days from the date of deposit of a valid requisition" (underlining [ Here printed in italics.] supplied). Now, it was urged by learned counsel for the plaintiffs that the additional word "valid"; indicated clearly that the requisition*

*which was made must be valid and lawful; in other words, that a requisition which was for consideration of something which would be illegal or invalid could not per se be considered to be a valid requisition, and if such requisition was deposited with the directors of a company the directors were not required to call a general meeting although the numerical requirement provided for in the earlier part of the said section was satisfied. Now, it may be pointed out that whereas under section 78 of the Indian Companies Act, 1913, the power to call an extraordinary general meeting was restricted to companies having a share capital, under section 169 of the Companies Act, 1956, such power can be exercised by the members of the company having a share capital as also by members of a company not having a share capital, and the requirements in the latter case are to be found in clause (b) of sub-section (4). Other requirements of a proper requisition have also been spelt out in greater detail in section 169; and, in my opinion, it would be proper to understand the word "valid" used in sub-section (6) of section 169 as having reference to the provisions of the earlier five sub-sections of that section rather than indicating compliance with any other requirements or provisions of the Companies Act. In other words, to put it shortly, all that is required to be seen before the provisions of sub-section (6) of section 169 become applicable would be to consider whether the requisition deposited was in accordance with the provisions of section 169 as to its contents, the number of signatories and similar matters, and it would not be open to the board of directors of a company to refuse to act on a requisition on the ground that, although such requisition was in accordance with the requirements of section 169, it was otherwise invalid. This conclusion receives support when one peruses sub-section (5) of section 169, where also the use of the word "valid" is perceived. The learned counsel for the plaintiffs emphasised the mischief that in his opinion would be caused by an otherwise invalid requisition being made which would put the company to considerable financial loss for what he called would be an exercise in futility. On the other hand, the question to be considered would be whether the board of directors of a company can be allowed to ignore a requisition which complies with all the requirements laid down in section 169 of the Companies Act, 1956, on the ground that the object of the requisition was illegal or otherwise*

*invalid and, therefore, the requisition was not a valid requisition which ground may ultimately be found to be unsustainable. In my view, the word or the adjective "valid" in section 169 has no reference to the object of the requisition but rather to the requirements in that section itself. If these requirements indicated in the earlier part of the section are satisfied, then the requisition deposited with the company must be regarded as a valid requisition on which the directors of a company must act. If the directors fail to act within the period specified by sub-section (6), then, in my opinion, the requisitionists would be entitled to proceed under the later provisions of that sub-section and the other sub-sections of section 169."*

31. The aforesaid paragraph makes it very clear that what this Court has opined is that the word "valid" is restricted only to the satisfaction of the numerical and procedural requirements. Further, and more importantly, that the word or the adjective "valid" in Section 169 has no reference to the object of the requisition but rather to the requirements in that Section itself. Lastly and most importantly, that even if the requisition was illegal or invalid, the Board was still obliged to call for the meeting.

32. Following the aforesaid, this Court delivered its finding as under :

***59.*** *In this view of the matter, the questions are answered as follows :*

*Question (a) :*

***60.*** *In my opinion, the amendment of article 74 proposed by the resolution contained in the requisition would be invalid as being repugnant to section 274 of the Companies Act, 1956. No other provision of the said Act has been brought to my attention which would render such resolution invalid.*

*Questions (b) & (c):*

***61.*** *Inasmuch as it has been conceded that the requisition satisfied the procedural*

*and numerical requirements postulated by section 169 of the Companies Act, 1956, the requisition must be considered to be a valid requisition within the meaning of sub-section (6) of section 169. Accordingly, the executive committee of the Cricket Club would appear to be bound and liable to call the meeting as provided by the said section. I do not wish to express any opinion as to the course to be adopted by the requisitionists or by the chairman of such meeting at the meeting. This course would depend upon the answer to question (a) which I have indicated earlier."*

33. After a detailed study of the aforesaid decision, in our considered opinion, the decision in *Cricket Club of India vs. Madhav L. Apte (supra)* applies squarely to the facts of this present case.

34. Faced with the decision in *Cricket Club of India vs. Madhav L. Apte (supra),* Mr. Chinoy has sought to argue that this decision is no binding precedent. He submitted that considering the decision was passed under Order 36 which is in effect a consensual jurisdiction exercised pursuant to *"an agreement in writing stating such question in the form of a case for the opinion of the Court"*, the decision is in effect a *"compromise decree"*. What Mr. Chinoy's argument overlooks is that irrespective of whether or not the decision was delivered in a special case or otherwise, it would still be binding, as it has been delivered by a Ld. Single Judge of this Court. Be that as it may, we are ourselves in complete agreement with the reasoning provided by the Ld. Single Judge. We completely disagree with Mr. Chinoy's dismissal of the Ld. Single Judge's decision on this ground. In any event, it is a matter of record that the decision in *Cricket Club of India vs. Madhav L. Apte (supra)* has been followed and relied upon by

various Courts from time to time[14]. In *Minoo Velgaumwala & Ors. vs. Maneck Kothawala*[15], the High Court of Mysore clearly held that the Ld. Judge whose opinion is sought in such a case is required to follow the procedure prescribed under the CPC and more particularly, Order 18 thereof. Reliance can be placed on the following observations from the decision in *Minoo Velgaumwala :*

> *"26. Order 36 Rule 1 clearly provides for statement of a special case both in regard to question of law. There would be no meaning in enabling a statement of a case on questions of fact if the contending party had to give an agreed statement of facts, and questions of fact were not open to investigation and decision, as the learned Judge appears to have understood Rule 4 of O. 36 to mean. It is no doubt, true that sub-rule (2) of R. 5 lends some colour to the view that judgment is to be pronounced by the Court immediately after the conditions (a), (b) and (c) mentioned in clause 2 are fulfilled, namely (a) that the agreement was duly executed by the parties, (b) that they have a bona fide interest in the question stated therein and (c) that the same is fit to be decided. It would look as if nothing else need intervene between the satisfaction of the Court on these three matters (though in regard to them the Court is authorised to examine the parties) and the pronouncement of the judgment. But this would totally ignore Clause 1 of R. 5 which provides for the case being set down for hearing as a suit instituted in the ordinary manner and that the provisions of the Code shall apply to such suit so far as the same are applicable. This means, as explained above, that, subject to the conditions mentioned above, being satisfied, the suit will be tried in the same manner as other suits, the parties being at liberty to establish their respective cases by adducing evidence."*

35. Mr. Chinoy further submitted that after an amendment to the CPC

14 Snowcem India Ltd. Vs. Union of India [2005] 124 CompCas 161 (Del) , Power Grid Corporation of India Ltd. vs. Canara Bank [Co.A.(B) 8/2003] , Kothari Industrial Corporation Ltd. vs. Lazor Detergents Private Ltd. [1994] 81 CompCas 699 (Mad), The Indian Cable Co. Ltd. vs. Lodna Colliery Co. (1920) Ltd. AIR 1977 Cal 402 , Anantha R. Hegde vs. T S Gopalakrishna 1998 91 ComCas 312 (Kar)

15 AIR 1964 Kant 185

which was effective on and from 1st February, 1977, Order 36 Rule 6 expressly provides that *"No appeal shall lie from a decree passed under Rule 5."* We do not see how this argument furthers Mr. Chinoy's case considering that at the time when the decision in *Cricket Club of India vs. Madhav L. Apte (supra)* was delivered, an appeal was permissible. Nonetheless, despite the amendment, as has been held by the Gauhati High Court in *Ramdhan Sinha vs. Notified Area Authority, Kailashahar*[16], a revision would still lie against a judgment / decree under Order 36 Rule 5.

36. Lastly, Mr. Chinoy placed reliance on *Balaji Property and Developers Goa vs. Church of St Matias*[17] to further his submissions. We have considered this decision and do not see where or how this decision states what Mr. Chinoy intends us to hold. This decision merely expounds on the meaning and scope of a special case and nowhere rules that a decision on such Special Case has no binding value.

37. For the reasons aforesaid, we reject Mr. Chinoy's submissions on *Cricket Club of India vs. Madhav L. Apte (supra)* and endorse and approve of the view taken by the Ld. Single Judge therein.

**This Court's decision in Centron Industrial Alliance vs. P K Vakil & Anr**[18]

38. Mr. Chinoy has laid great emphasis on the decision of a Ld. Single Judge

16 (2001) 3 Gauhati Law Reports 469
17 (2010) 4 Mh LJ 328
18 (1982) SCC Online Bom 318

of this Court in *Centron Industrial Alliance vs. P K Vakil & Anr. (supra)* and more particularly, the following extract therefrom :

> *"**21.** One of the main reasons why injunctions are not normally granted to restrain the holding of a requisitioned meeting is that the shareholders ought to be allowed to regulate and set right the affairs of the company by calling general meetings. The court, has, therefore, been reluctant to interfere in the internal management of the company. Secondly, such injunctions were sought in the cases cited before me by the board of directors of the company. The courts have not normally permitted the board of directors of the company to sit in judgment over the requisition received by them to call a meeting of the shareholders. Normally, such a meeting would be required to be requisitioned by the shareholders in order to pass resolutions which are not supported by the board of directors or the management of the company. The board of directors would, therefore, be expected to thwart the calling of such requisitioned meeting. It is thus undesirable that the board of directors should be allowed to refuse to call a requisitioned meeting, because the board considers the resolutions which were proposed to be passed at such a meeting, undesirable or not in the interest of the company. Courts have, therefore, consistently held that if the requisition is called for the purpose of passing a resolution which can be implemented in a legal manner, although the form in which the resolution has been proposed is irregular on the face of it, nevertheless, such a meeting must be called because ultimately a decision taken at the meeting can be implemented in a legal manner. Lord Justice Lindley has, in the case of Isle of Wight Railway Co. v. Tahourdin, [1884] 25 Ch D 320 (CA), in his guarded language, expressed a view that if the resolution proposed to be passed at the requisitioned meeting were wholly illegal, then the board of directors would be under no obligation to call a meeting requisitioned for the purpose of passing such an illegal resolution. **Left to myself, I would rather lend my humble support to the weighty pronouncement of Lord Justice Lindley rather than to the stand taken by learned brother, Desai J. when he stated that the requisitioned meeting must be called, even if the resolution proposed at the requisitioned meeting was illegal.***

> ***<u>To my mind, there can be no point in calling a meeting for passing a resolution which would be wholly illegal.</u>*** *In any event, in the present case, it is not necessary to decide one way or the other on this aspect, because there are various reasons why the meeting sought to be requisitioned in the present case is not covered by any of the considerations which have led the courts in the past to refuse to injunct such meetings."* (emphasis supplied)

39. We are not persuaded by view taken by the Ld. Single Judge aforesaid and doubt its correctness. Firstly, the Ld. Single Judge's view predates the binding decision of the Supreme Court in *LIC vs. Escorts.* Considering the law as laid down post *LIC vs. Escorts*, we do not see how the Ld. Single Judge's view can persuade us to grant an injunction restraining the holding of an EGM in the teeth of *LIC vs. Escorts.*

40. Whilst interpreting this decision, the Ld. Single Judge has, in the Impugned Judgment, opined as under :

> *"53. That, I believe, is the correct distinction to be drawn in regard to resolutions proposed at a requisitioned EGM: between resolutions that are irregular, undesirable or unpalatable to the Board and those that are illegal. The question is not of interpretation of the word 'valid' in Section 100 at all, but whether what is sought to be done is plainly an illegality."*

41. We are unable to appreciate how the Ld. Single Judge could arrive at the aforesaid finding in view of the interpretation of the word *"valid"* in the decisions in *Cricket Club of India vs. Madhav L. Apte (supra)* and thereafter in *LIC vs. Escorts.*

**Foreign citations relied upon by Zee**

42. As stated hereinabove, Mr. Chinoy has placed reliance on the decisions in *Isle of Wight Railway Co vs Tahourdin* (supra), *Queensland Press Ltd vs Academy investments No 3 Pty Ltd.* (supra) and *Rose vs Mc Givern and Ors. (supra)* to submit that Courts have affirmed the power and jurisdiction of Courts to restrain a requisition calling for a General Meeting if the object of the requisition is to do something which cannot be lawfully effectuated.

43. In *Isle of Wight,* Mr. Chinoy has placed reliance on the following :

> *"LINDLEY, L.J.:—*
>
> *I am of the same opinion. It appears to me that this case is very much more important than at first sight appears. It raises a question of the utmost possible consequence as to the management of railway and other companies. We must bear in mind the decisions in Foss v. Harbottle 4 and the line of cases following it, in which this Court has constantly and consistently refused to interfere on behalf of shareholders, until they have done the best they can to set right the matters of which they complain, by calling general meetings. Bearing in mind that line of decisions, what would be the position of the shareholders if there were to be another line of decisions prohibiting meetings of the shareholders to consider their own affairs? It appears to me that it must be a very strong case indeed which would justify this Court in restraining a meeting of shareholders. I do not mean to say of course that there could not be a case in which it would be necessary and proper to exercise such a power. I can conceive a case in which a meeting might be called under such a notice that nothing legal could be done under it. Possibly in that case an injunction to restrain the meeting might be granted.*

*xxx*

*FRY, L.J.:—*

*I am entirely of the same opinion. If the object of a requisition to call a meeting were such, that in no manner and by no machinery could it be legally carried into effect, the directors would be justified in refusing to act upon it."*

44. The aforesaid decision came to be placed before the Supreme Court in *LIC vs. Escorts*. Despite being placed for consideration, in paragraph no. 100, the Supreme Court expressly held that a shareholder cannot be restrained from calling a meeting, such shareholder need not disclose reasons for the resolutions proposed and that the reasons for the resolution are not subject to judicial review. In view thereof, notwithstanding the view adopted in *Isle of Wight,* we see no occasion to deviate from the law stated in *LIC vs. Escorts* and adopt the view in *Isle of Wight* which even the Supreme Court refused to do.

45. In addition to the aforesaid, another distinguishing factor is that in *Isle of Wight*, the Court was dealing with and interpreting Section 70 of the Companies Consolidation of Clauses Act, 1845 which provided for a requisition to *"fully express the object of the meeting to be called."* As opposed to this, there is no such requirement under Indian law as has been held in paragraph no. 100 of *LIC vs. Escorts.*

46. For all of the reasons aforesaid, we are not persuaded to accept the view laid down in *Isle of Wight* and would go by to the Supreme Court's decision in *LIC vs.*

*Escorts* to reject the injunctive relief sought here.

47. Mr. Chinoy next placed reliance on the decision in *Queensland Press Ltd vs. Academy investments No 3 Pty Ltd. (supra)* and more particularly the following paragraphs therefrom :

> *"I agree, with respect, with the opinion expressed by Needham J in Turner v Berner [1978] 1 NSWLR 66 ; 3 ACLR 272 that the decision in Isle of Wight Railway Co v Tahourdin, supra , establishes the proposition that if an object of the requisition cannot be lawfully effectuated at the meeting, then the directors are at least entitled to omit that object from the notice of meeting. It seems to me to follow that if the sole object of a requisition is to do something which cannot be lawfully effectuated at a meeting, the directors are entitled to refuse to convene the meeting.*
>
> *xxx*
>
> *But in my opinion if the only objects stated are such that the general meeting is invited to do something which at law it has no power to do, the directors are entitled to refuse to convene the meeting."*

48. Considering that we have refused to rely on and accept the view in *Isle of Wight,* we also cannot accept the view expressed in *Queensland Press.*

49. Mr. Chinoy also placed reliance on *Rose vs Mc Givern and others (supra)* and more particularly, the following observations therefrom :

> *"that if the EGM called pursuant to the requisitions could only be for the purposes of passing ineffective resolutions , then , as a matter of commercial common sense , the directors need not call such an EGM . Such a proposition is supported by an observation of Fry J in Isle of wight Rly Co vs Tahourdin where he said :*
>
> *" If the object of a requisition to call a meeting were such that , in no*

*manner and by no machinery could it be legally carried into effect , the directors would be justified in refusing to act upon it "*

*That proposition has been cited with approval and followed in three Australian Cases ... "*

50. For similar reasons as aforesaid, we will not deviate from the law prevalent in India and follow the aforesaid view.

51. The last foreign citation relied upon by Mr. Chinoy is *Kaye & Anr vs Oxford Press (Wimbledon) Management*[19] to demonstrate that it notes that the UK Companies Act of 2006 has introduced Section 303(5), which provides that a resolution may properly be moved at a Requisitioned Meeting unless : *(a) it would , if passed be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise); (b) it is defamatory of any person (c) it is frivolous or vexatious.* He therefore submitted that the said Section 303(5) only statutorily recognizes a jurisdiction/ power that Civil Courts have always exercised to restrain a requisition and a meeting called on the basis thereof, if the requisition / resolutions are illegal as being contrary to law or the Company's Articles. Having considered this decision, it is manifest that it came to be passed in the context of the statutory scheme prevalent before it, i.e. Section 303 of the UK Companies Act of 2006. This statutory scheme is at stark variance to the statutory scheme prevalent in India. Despite this, in the Impugned Judgment, the Ld. Single Judge has erroneously adopted and read into

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Indian law provisions codified under the UK Companies Act of 2006. Whilst doing so, the Ld. Single Judge has deviated from the Act and binding precedents of the Supreme Court and this Court despite arriving at the finding that *"We do not have such a provision."*

52. In the aforesaid backdrop, we reject the Ld. Single Judge's findings in paragraph no. 70 of the Impugned Judgment wherein he seeks to apply the principles contained in Section 303(5) of the UK Companies Act of 2006 to Indian company law.

53. For all of the reasons aforesaid, we are unable to accept the view cited before us from foreign jurisdictions.

**Whether or not an Injunction could be passed against a shareholder restraining the holding of an EGM**

54. By the Impugned Judgment, the Ld. Single Judge has restrained a shareholder of a Company from calling or holding an EGM. In our opinion, such an injunction is in the teeth of the decision of the Supreme Court in *LIC vs. Escorts.*

55. In view of the law as analysed hereinabove, we are of the considered opinion that the Ld. Single Judge could not have deviated from the law laid down by the Supreme Court in *LIC vs. Escorts* and proceeded to restrain a shareholder by way of an injunction from calling or holding an EGM.

56. In so far as Mr. Chinoy's reliance on *Embassy Property Development vs. State of Karnataka (supra)* is concerned, we firstly note that the said decision does not

deal with the grant of an injunction for calling and holding of an EGM. Next, we have no quarrel with the proposition that the NCLT is not a Civil Court nor with the proposition that the NCLT can exercise only such powers within the contours of jurisdiction prescribed for it. But these findings cannot by themselves be extended to mean that a Civil Court can grant an injunction to the calling or holding of an EGM in the teeth of settled law.

57. Mr. Chinoy's reliance on the decisions in *Santosh Poddar vs Kamalkumar Poddar (supra)*, *Madhu Ashok Kapur vs Mr Rana Kapoor (supra)*, *Yes Bank vs Madhu Kapoor (supra)* are collectively distinguishable for the simple reason that in all of these decisions, the impugned resolution in question *had already been passed*. In the present case, Zee seeks an injunction from calling and holding of an EGM in respect of resolutions that may or may not be passed. Such injunction as has been repeatedly held, cannot be granted.

58. We also do not see how the decision in *Pradhama Multi Speciality Hospitals vs. Dr. P. Anupama & Anr. (supra)* furthers Zee's case. Paragraph no. 12 of the decision clearly lays down that the only question that had arisen for consideration was whether the petition as filed before the NCLT was maintainable under Section 100 of the Act. The NCLT was correct in holding that Section 100 does not provide for such Petition to be filed. The correct procedure is to file an Application under Section 98 of the Act which, in the present case, the Appellants have already done.

59. Mr. Chinoy also placed reliance on the decision in *B Sivaraman & Ors vs Egmore Benefit Society (supra).* In this decision, the Ld. Single Judge of the High Court of Madras proceeded to grant an injunction on the holding of an EGM without as much as even analysing or considering the decision in *LIC vs. Escorts.* After the said decision was placed before the Ld. Single Judge along with the decision in *Cricket Club of India vs. Madhav L. Apte (supra)* amongst others, he proceeded to deal with them as under :

> *"57. I have carefully perused the above text books on company law and the case-laws cited above, in the context of the proved and established factual aspects of the instant case. Though I have absolutely no discontent with the legal ratios held out in the above case-laws as well as the text books pertaining to the rights of the shareholders of a company and the various modes to be adopted in appointing and removing the directors and conducting the elections and so on, since they were on different facts not at all germane to the present case, the ratio held therein may not render any help or assistance t the respective parties in this case. Therefore, under the circumstances, I feel that it is totally not necessary to traverse or import or refer to any of the citations individually one by one in this case."*

60. We are unable to appreciate how the facts before the Ld. Single Judge in the case were *"different facts"* and *"not at all germane"* to the decisions in *LIC vs. Escorts* and *Cricket Club of India vs. Madhav L. Apte (supra).* The findings and reasoning of the Ld. Single Judge do not persuade us to deviate from the law as captured hereinabove.

**Consequences of interfering with Corporate Democracy**

61. We cannot omit reference to the resultant consequences which may arise should we rule that a Civil Court can, in certain cases, grant an injunction restraining shareholders of a company from exercising their statutory right to call for and hold an EGM.

62. Should Mr. Chinoy's submissions be accepted, the result would be that any unwilling Board of a Company, which intends to obstruct its shareholders from exercising their statutory right, will resolve that the Company file a suit in a Civil Court of appropriate jurisdiction *(which apart from where the High Courts exercise original jurisdiction, will be a trial court)*. In such Suit, an application for Interim Reliefs will be moved and at the ad-interim stage, which is generally a summary hearing, the Company will contend before the Civil Court that the resolutions proposed in the requisition have resultant illegalities. Till such time that this adjudication of illegalities is completed, the Civil Court, in order to balance the convenience, will injunct the holding of such meeting. This decision of the trial court will then of course be subject to rounds of appeal. If we were to open this flood gate, Corporate democracy, as we understand it, would be rendered nugatory. Shareholders will be repeatedly restrained and injuncted from exercising their statutory rights. Civil Courts will grant injunctions at the ad-interim stage and thereafter embark on an analysis as to whether or not the resolutions proposed are illegal or legal and only thereafter, vacate the injunction, if at

all. What then was the purpose of the Supreme Court's pronouncement in *LIC vs. Escorts* to the effect that *"The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another"* and to the further effect that *"every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review."* ? If we were to accept the proposition of Mr. Chinoy, not only would that be a clear departure from the law stated by the Supreme Court, but we would undermine the very foundations of corporate democracy in India.

63. In the present case itself, the Appellants, being shareholders of Zee, have been unable to call for and hold an EGM despite the Requisition being addressed as early as on 11th September, 2021, i.e., over 6 months ago. For the past 6 months, the contesting parties have been arguing the alleged illegalities contained in the Requisition, whilst shareholders of Zee suffer an injunction. We cannot lay down a precedent resulting in such drastic consequences derailing the democratic functioning of Companies across India owing to the non-cooperative and obstructive conduct of

the Board of Directors.

**Jurisdiction**

64. The Appellants have strenuously argued that the present Suit attracts the bar under Section 430 of the Act. Mr. Chinoy argues otherwise. In these circumstances, Mr. Dwarkadas argues that Section 430 of the Act would kick-in and prohibit this Court from exercising jurisdiction. As opposed to Mr. Dwarkadas' submissions, Mr. Chinoy submits that Section 430 is not attracted to a proceeding regarding the legality / illegality of a requisition issued under Section 100, i.e., such as the Suit. Further, that under Section 98 the only question which the NCLT is empowered to decide, is whether it is *"impracticable"* to call or hold a meeting, which the Applicant otherwise has a right to call and hold under the Act or the Articles. Accordingly, a suit impugning the legality and validity of a requisition issued under Section 100 and the Requisitionist's right to call and hold a meeting pursuant to such Requisition, does not fall within the purview of Section 98 , or attract the bar in Section 430.

65. Section 430 of the Act reads as under :

*430. Civil Court Not to Have Jurisdiction.*

> *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction*

> *shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.*

66. The aforesaid Section provides for two contingencies. One, where a Civil Court's jurisdiction is barred in respect of any matter, which the NCLT or NCLAT is empowered to determine. Secondly, no Civil Court shall grant an injunction in respect of any action taken or to be taken by the NCLT or NCLAT in pursuance of any power conferred on them.

67. In the context of Section 430, we draw useful reference to the following observations by the High Court of Madras in *Selvarathnam vs. Standard Fire Woods*[20]:

> *"11. Section 430 of the Act ousts Civil Court jurisdiction on matters, which the Tribunal is empowered to determine. In sofar as the matter relating to EGM or AGM is concerned, the statue prescribes procedures under Sections 96 to 100 of the Act. There is a mandate prescribed under the statute that AGM should be conducted within the prescribed time limit and default in convening AGM beyond the prescribed period will invite consequences and in default in convening the AGM, the Tribunal has power to call for AGM under Section 97 of the Act. Similarly, under Section 98 of the Act, the Tribunal is empowered to call for any other meeting other than AGM which includes EGM either suo motu or an application of any Director or members of the Company, who would be entitled to vote at the meeting. Section 100 of the Act prescribed the procedure how EGM should be conducted by the Board and under Section 100 (4) of the Act, if the Board fails to convene EGM within 21 days from the date of receipt of valid requisition in regard to any matter, the requisitonists themselves can convene EGM within 3 months from the date of requisition. If there is any resolution*

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*passed in such EGM removing the Managing Director, Manager or any of the Directors of the Company which shall be prejudicial or oppression to any member or members or to public interest or in a manner prejudicial to the interest of the company, application can be made to the Tribunal under Section 241 of the Companies Act, 2013 and the Tribunal is empowered to consider the said application under Section 242(1)(a) and 242(2)(h) of the Companies Act, 2013.*

*12. Therefore, in this case, on considering the plaint averments, cause of action and the statute governing the dispute in entirety undoubtedly indicates that the subject matter for determination squarely falls within the domine of the NCLT and therefore, Civil Court jurisdiction is ousted expressly by Section 430 of the Act. The Trial Court has erroneously dismissed I.A.No.1080 of 2016 without taking note of Section 98, 100 and 242 of the Companies Act, 2013. Failure to mention specific provision of Law by the petitioner cannot be an excuse for the Court to overlook the provisions relevant for the case."*

68. In the Impugned Judgment, the Ld. Single Judge has dealt with the argument on jurisdiction as under :

*"75. Mr Dwarkadas says this Court has no jurisdiction. Section 430 of the Companies Act bars any civil court from entertaining any suit or proceeding in respect of any matter which the NCLT or the NCLAT is empowered to determine. But the NCLT Rules that set out the list of provisions over which the NCLT/NCLAT have jurisdiction does not include Sections 100, 149, 150 or 168.*

*76. Mr Dwarkadas argues that no injunction can issue against the NCLT, which is already seized of Invesco's petition under Section 98. I am not asked to issue any such injunction against a court. The injunction is against Invesco. Indeed, in any anti-suit injunction proceeding, the frame is precisely against the party prosecuting a rival action in another forum, not the forum itself (unless the other forum is hierarchically subordinate)."*

69. In the face of the absolute bar contained in Section 430, we cannot appreciate how the Ld. Single Judge could have granted the present injunction. The scheme of Sections 96 to 100 makes it clear that the subject of calling of a meeting of a Company has exhaustively been treated under them. So far as meetings of Companies other than Annual General Meetings are concerned, the law is governed by Section 98, which kicks in if it is for any reason *"impracticable"* to call such meeting. Section 100 gives a right to the requisitionists of an EGM to themselves call a meeting for consideration of the matter of their requisition, if the Board does not, within twenty-one days, proceed to call a meeting. In the case on hand, as the facts have transpired, it is now clearly a case of the Appellants in the face of the Board's stand *vis-à-vis* their Requisition, though they would be within their rights to call and hold the requisitioned EGM, it is impracticable for them to hold such meeting and accordingly, they pray for an order of the NCLT to do so under Section 98. We do not see how such a matter would not fall within the purview of the NCLT and if it does, how a Civil Court could interfere by passing an order of injunction, which would have the effect of preventing the NCLT from considering the Appellants' prayer. We find no credence on the reasoning based on the NCLT Rules or Schedule of Fees. We do not see how these Rules or Schedule of Fees can defeat the plain and simple language contained in Section 430 of the Act. Be that as it may, the Schedule of Fees in fact specifically provides for an application under Section 98, which, as we have already noted, has

been filed by the Appellants.

70. For the reasons aforesaid, in our considered opinion, the injunction granted by the Impugned Judgment is squarely hit by Section 430 of the Act.

**Conclusion on Section A**

71. Considering that the Impugned Judgment has in effect restrained a shareholder of a Company from calling for and holding an EGM, which injunction is in the teeth of the decision of the Supreme Court in *LIC vs. Escorts*, we allow the Appeal and set-aside the Impugned Judgment.

## S e c t i o n B

**Alleged illegalities in the proposed Resolutions**

72. Despite our aforesaid ruling in Section A to the effect that the law, as prevalent in India, does not permit the Board of a Company to refuse to act on a valid requisition issued by a shareholder of a Company, we propose to deal with the alleged illegalities on the basis of which Zee's Board has refused to call for and hold the EGM as requisitioned by the Appellants considering that the Ld. Single Judge in the Impugned Judgment has arrived at a finding that the proposed Resolutions are illegal and considering that elaborate submissions have been made in this regard before us. We make it clear that according to us, the law as prevalent in India does not entitle the Board of a Company to refuse a requisition calling for an EGM if such requisition

satisfies the numerical and procedural requirements set-out under Section 100 of the Act.

73. Whilst in its response refusing to act on the Requisition and before the Ld. Single Judge, Zee submitted that the Requisitions would violate various laws. However, before us, in this Appeal, Zee and Respondent No.2 have restricted their objections that the resolutions proposed under the Requisition, if passed, would only violate :

(i) Clause 5.10 of the Policy Guidelines for Uplinking of Television Channels issued by the Ministry of Information & Broadcasting **("MIB Guidelines")**;

(ii) The procedure for appointment and removal of Directors and Independent Directors under the Act;

(iii) Section 178(2) of the Act read with provisions of the Securities & Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR**"); and

(iv) Regulation 17 of the SEBI LODR.

**The MIB Guidelines**

74. Mr. Chinoy submitted that the MIB Guidelines make it obligatory on Zee to take prior permission from the MIB before *effecting* any change in the CEO/ Board of Directors. That the Requisition / Resolution No. 1 for the removal of Mr. Punit

Goenka proposes that he *"be and is hereby removed from the office of director of the Company"* and is in contradistinction to Resolution Nos 4 to 9 which propose the appointment of the six persons mentioned therein as Independent Directors *"subject to the approval of Ministry of Information and Broadcasting , Government of India."* That the clear intent of Resolution No. 1 is to remove Mr. Punit Goenka as Director forthwith on passing of the Resolution, i.e. purports to effect a change in the Board of Directors, without taking the prior permission from the MIB. That this is not a mere inadvertence is apparent from the aforesaid difference in the language of Resolution No. 1 and Resolutions 4 to 9. That, therefore, Resolution No. 1 will clearly violate the MIB Guidelines. Such a violation, under Clause 8.2 of the MIG Guidelines, attracts serious penalties. Under Clause 8.2.1, Zee's uplinking license can even be suspended for a period of 30 days for the first violation.

75. Upholding Zee's submissions in this respect, the Ld. Single Judge held as under :

> *"33. But it does not end there, Mr Subramaniam says. Clause 5.10 of the MIB Guidelines requires a company under those guidelines to seek prior permission from MIB before effecting any change to the CEO or Board of Directors. The change cannot be effected in advance of permission. A default invites penalties, including the suspension of the license and a 30-day ban on broadcasting6 (90 days for a second violation).7 In the Requisition Notice, only the resolutions for the appointment of the six new independent directors are said to be 'subject to MIB approval'. The removal of Goenka is not. But even that requires prior MIB permission, as does any change in the constitution of the Board. Mr Subramaniam*

> *submits that there is no situation in which 'prior permission' equates to 'subject to approval'. The latter is, by definition, ex post facto; the former is clearly not. Therefore, he contends, the entire resolution structure is not merely flawed; it drives through a demonstrable illegality and infirmity, one that will jeopardize the functioning of the company and threatens the interests of all shareholders.*
> *36. I am inclined to agree with Mr Subramaniam on all counts. I do not see how Goenka can be removed at all, leaving a managerial void only to be possibly later filled. His removal causes an immediate vacancy and non-compliance. How this is to be done without prior permission of the MIB is also unclear. I see no method of circumventing the NRC or directly proposing named persons as 'independent directors'."*

76. In order to deal with Mr. Chinoy's submission, we first reproduce Clause 5.1. of the MIB Guidelines :

> *"5.10 It will be obligatory on the part of the company to take prior permission from the Ministry of Information & Broadcasting before effecting any change in the CEO/Board of Directors."*

77. The aforesaid Guideline calls upon us to interpret the expression *"before effecting any change…"*. If we are to accept Mr. Chinoy's submission, even prior to the general body of Zee voting in favour of or against the proposed resolution, it is incumbent to obtain permission of the MIB as opposed to obtaining its permission post the passing of a resolution, which to us appears to be a more workable and practical manner of reading the Guideline. We have been informed that in the past, MIB has been granting approval to such change being effected subsequent to the passing of resolutions by the general body[21].

21 In the matter of New Delhi Television Limited and TV Today Network Limited.

78. Even otherwise, we agree with Mr. Dwarkadas' submission that MIB's permission is required only in case of appointments and not removal/resignation of a Director. Considering the nature of Zee's industry and business, the MIB deems it fit to follow a process of vetting a person prior to such person being entrusted with the charge of the Board of a broadcasting company. We do not see why and how the MIB can prevent a Director *(who has been previously vetted)* from resigning / being removed from the Board. The record in the present case itself demonstrates that MIB approval was not sought before effecting a change in the Board of Zee on account of the resignations tendered by its two directors, viz., Mr. Chokhani and Mr. Kurien on 13th September, 2021 post the Requisition issued by the Appellants.

79. For the reasons aforesaid, we reject Mr. Chinoy's submission and the findings of the Ld. Single Judge in the Impugned Judgment.

80. Mr. Andhyarujina, appearing for Respondent No.2 / Mr. Goenka, submitted that appointments of Directors cannot be made subject to any conditions. Under the Act, Directors stand appointed upon resolutions approving their appointment at the general meeting. Based on the provisions of the Act, he submits that the appointment is immediate in the general meeting. Mr. Andhyarujina referred to various provisions of the Act including Section 152(5) of the Act which reads :

> *"(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be*

*prescribed:"*

81. The aforesaid provision relied upon by Mr. Andhyarujina itself indicates to us that a person appointed as a Director at a general meeting shall not *act* as such in the absence of compliance of Section 152(5) of the Act. Therefore, the Act itself provides for such a contingency. Our interpretation is further buttressed by relying on Rule 8 of the Companies (Appointment and Qualification of Directors) Rules,2014 which reads as under :

> *"8. Consent to act as director.-*
> *Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2 :*
> *Provided that the company shall, within thirty days of the appointment of a director. file such consent with the Registrar in Form DIR-12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014"*

82. Faced with the aforesaid, Mr. Andhyarujina submits that Section 152(5) of the Act is the sole circumstance in which a person appointed shall not act as a Director. The aforesaid provisions within themselves provide that despite appointment at the general meeting, a Director so appointed will not act as such till such time that consent in writing has been furnished. This being so, we see no reason as to why the MIB's consent can't be taken subsequent to the EGM, post which, the Directors, if appointed at the EGM, may act as Directors of Zee.

83. For the reasons aforesaid, we reject Mr. Andhyarujina's submissions.

84. At this stage, it is also pertinent to note that the Requisition was addressed way back on 11th September, 2021. Thereafter, the Appellants addressed an e-mail dated 15th September, 2021 to Zee calling upon it to confirm whether or not an application to the MIB has been submitted in relation to the proposed appointment of the 6 Independent Directors. Zee has admittedly not made such application. Now, in these proceedings, Zee takes advantage of its own wrong and argues before us that in the absence of such permission, the proposed resolutions are illegal and therefore, we must grant an injunction. This is another illustration as to why Courts must uphold corporate democracy and not indulge incumbent Boards in restricting the democratic functioning of Companies.

**The procedure for appointment of Independent Directors**

85. As stated hereinabove, the Requisition proposes the appointment of 6 persons as Independent Directors. To this, Mr. Chinoy objects by submitting that the provisions of the Act make detailed provisions which are mandatorily required to be followed for appointment of an Independent Director and these provisions make it clear that a member cannot propose himself or someone else for appointment as an Independent Director, merely by giving notice in writing of his candidature , or of his intent to propose another member as candidate for election as an Independent Director at the general meeting. In support of this submission, Mr. Chinoy places

reliance on Section 149(6), 149(8), 150(2), the proviso to Section 152(5) and Schedule IV to the Act. According to him, these provisions make it clear that a person can be proposed for appointment as an Independent Director by a Company in a general meeting only if the Board has first opined that he is a person of integrity and possess relevant expertise and experience.

86. Upholding Zee's objection, in the Impugned Judgment, the Ld. Single Judge observes :

> *"36. I am inclined to agree with Mr Subramaniam on all counts. I do not see how Goenka can be removed at all, leaving a managerial void only to be possibly later filled. His removal causes an immediate vacancy and non-compliance. How this is to be done without prior permission of the MIB is also unclear. I see no method of circumventing the NRC or directly proposing named persons as 'independent directors'."*

87. Once again, there is no analysis whatsoever of the provisions of the Act dealing with the appointment of Independent Directors prior to upholding Zee's objection.

88. An Independent Director has been defined under the Act as :

> *"An independent director in relation to a company, means a director other than managing director or a whole-time director or a nominee director"*

89. Section 149 (4) provides that every listed public Company shall have at least one-third of the total number of directors as Independent Directors and the

Central Government may prescribe the minimum number of Independent Directors in case of any class or classes of public companies.

90. Section 149 (6) reads as under:

> *" (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—*
> *(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;*
> *(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;*
> *(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;*
> *(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;*
> *(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;*
> *(e) who, neither himself nor any of his relatives—*
> *(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;*
> *(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—*
> *(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or*

*(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;*

*(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or*

*(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or*

*(f) who possesses such other qualifications as may be prescribed. "*

91. Mr. Chinoy obviously stresses on *"who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience".* Moving on, Section 150 of the Act which provides for the manner of selection of Independent Directors reads :

*"(1) Subject to the provisions contained in sub-section (6) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may by notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors :*

*Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.*

*(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.*

*(3) The data bank referred to in sub-section (1), shall create and maintain*

*data of persons willing to act as independent director in accordance with such rules as may be prescribed.*
*(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149."*

92. As can be seen from Section 150(2), it is clear that the appointment of an Independent Director must be approved in a general meeting as provided under Section 152(2). Section 152(2) reads as under :

*"52. Appointment of Directors*

*(1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first Directors of the company until the Directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or Directors are duly appointed by the member in accordance with the provisions of this section.*
*(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting."*

93. In the present case, the proposed resolutions under the Requisition are to appoint ordinary Directors and not additional or alternate Directors. Therefore, from a reading of Sections 150(2) and 152(2), even in case of an Independent Director of a listed Company, the appointment will be made at the general meeting and not by the Board of Directors.

94. We the aforesaid backdrop, we next consider Section 178 of the Act and Regulation 19 of the SEBI LODR. Section 178 of the Act reads :

> *"178. Nomination and Remuneration Committee and Stakeholders Relationship Committee.— (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors :*
>
> *Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.*
>
> *(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.*
>
> *(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.*
>
> *(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub- section (3) ensure that—*
>
> *(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;*
>
> *(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and*
>
> *(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals :*
>
> *Provided that such policy shall be disclosed in the Board's report.*
>
> *(5) The Board of Directors of a company which consists of more than one thousand*

*shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non- executive director and such other members as may be decided by the Board.*

*(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.*

*(7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.*

*(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both :*

*Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.*

*Explanation.—The expression "senior management'' means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads."*

95. Regulation 19 of the SEBI LODR reads :

*"19. (1)The board of directors shall constitute the nomination and remuneration committee as follows :*

*(a) the committee shall comprise of atleast three directors ;*

*(b) all directors of the committee shall be non-executive directors;*

*and*

*(c) at least two-thirds fifty percent of the directors shall be independent*

*directors .*

*(2) The Chairperson of the nomination and remuneration committee shall be an independent director :*

*Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.*

*(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance*

*(3) The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.*

*(3A) The nomination and remuneration committee shall meet at least once in a year .*

*(4) The role of the nomination and remuneration committee shall be as specified as in Part D of Schedule II. "*

96. On a close reading of all of the aforesaid provisions, we are unable to see any bar on a shareholder to appoint an Independent Director on the Board of a Company. As opposed to the aforesaid provisions, we take note Section 160 of the Act *(which has been completely ignored in the Impugned Judgment).* Section 160 reads :

*"160. Right of persons other than retiring directors to stand for directorship.-*

*(1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of 3[one lakh*

*rupees] or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.*

*Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.*

*(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed."*

97. The power given to shareholders of a Company by Section 160 and more importantly, the proviso thereto, cannot go unnoticed. In the teeth of the aforesaid provision, we cannot appreciate how the Ld. Single Judge agreed *"on all counts"* with Zee's submission that *"In the scheme of the Companies Act, shareholders do not get to choose individual independent directors."*. Therefore, according to the Ld. Single Judge, the fate of all directorial appointments must rest in the hands of the NRC and the existing Board. In effect, as Mr. Dwarkadas correctly points out, the Ld. Single Judge has obliterated Section 160 of the Act. According to us, Section 160 does not make any distinction whatsoever between an Independent Director or otherwise. On a plain reading of Section 160, a shareholder of a Company clearly has the right to propose the appointment of an Independent Director.

98. Mr. Chinoy submits that Section 160 uses the expression "*subject to the*

*provisions of this Act*" and therefore, Section 160 cannot be read as enabling / entitling a person to be eligible for appointment as an Independent Director without complying with the requirements of the other Sections he relies upon. In order to consider this submission, we use settled principles of statutory interpretation to harmonize the various aforesaid Sections of the Act. Undoubtedly, a duty has been cast on the Board under Section 146(6) to opine on the integrity, expertise and experience of an Independent Director. Now, once the Board of Zee has received a requisition proposing the appointment of Independent Directors, we are unable to see the embargo on the Board to furnish their opinion in terms on Section 146(6). On the contrary, they refuse to do so and argue before us that because they have refused to do so, the Requisition must fail. To say the least, Zee's Board's conduct is obstructive.

99. For the reasons aforesaid, we cannot accept Zee's submission by defeating corporate democracy and ignoring the safeguards provided to shareholders under Section 160 and 169 of the Act.

100. We may also take note of the absurdity resulting from Zee's submissions. If we interpret Section 178 (2) of the Act as Zee asks us to, a shareholder of a listed company would not only be disabled from proposing Independent Directors, but such disability would extend to all other Directors. Effectively, even a majority shareholder of a listed Company cannot suggest/appoint a Director without identification by the NRC. We do not think this is the intent or purpose of the Act and more particularly,

Section 178 thereof.

**Regulation 17 of the SEBI LODR**

101. Mr. Chinoy submitted that Regulation 17 of the SEBI LODR stipulates that the Board of Directors of a listed entity shall have an optimum combination of executive and non-executive Directors with at least one woman director and not less than fifty per cent of the Board of Directors shall comprise of non-executive Directors. According to him, *'Optimum combination'* in Regulation 17 posits that the Board of Directors should, at the minimum, comprise of both executive and non-executive Directors. Therefore, Regulation 17 mandates the presence of executive Director(s). Presently, Mr. Punit Goenka is the only executive Director on the Board Zee. The Requisition seeks removal of Mr. Goenka and does not propose appointment of any executive Director by way of replacement. Accordingly, the Requisition will result in Zee not having any executive Director on its Board and this will result in Zee being in violation/ contravention of Regulation 17. Lastly, that Regulation 98 of the SEBI LODR provides for liability and penalty for companies in contravention of the SEBI LODR, including imposition of fines, suspension of trading, and freezing of promoter/ promoter group holding of designated securities.

102. Despite upholding the aforesaid alleged illegality, the Ld. Single Judge has not provided any reasoning whatsoever in the Impugned Judgment in support of

Regulation 17 being applicable.

103. The Impugned Judgment records Zee's submission on Mr. Goenka's non-removal as under :

> *"30. Section 203, in contrast, applies to every company of a prescribed class. Such a company must have a Managing Director or a Chief Executive Officer or manager or, in their absence, a whole- time director. Goenka is the Managing Director and the Chief Executive Officer. The requisition demands his ouster — but without proposing a replacement. This puts Zee into a statutory black hole, for it would then be totally in violation of Section 203(1); and it, and its directors, would have to face the liabilities, including fines, set out in Section 203(5). No shareholder can be permitted, he submits, to drive his company into a state of non-compliance and penalty."*

104. Thereafter, the Ld. Single Judge proceeds in paragraph no.36 to agree with Zee's submissions *"on all counts"*. Further, the Ld. Single Judge has also remarked that *"I do not see how Goenka can be removed at all, leaving a managerial void only to be possibly later filled. His removal causes an immediate vacancy and non-compliance."* Therefore, in effect, the Ld. Single Judge has obliterated a shareholder's fundamental right to remove Mr. Goenka *(a Director)* under Section 169 of the Act merely because he happens to be Zee's only executive Director and CEO.

105. We make reference here to Section 203 of the Act which reads as under:

> *"203. Appointment of Key Managerial Personnel.*
> *(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel, —*
> *(i) managing director, or Chief Executive Officer or manager and in their absence,*

*a whole-time director;*

*(ii) company secretary; and*

*(iii) Chief Financial Officer :*

*Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless, —*

*(a) the articles of such a company provide otherwise; or*

*(b) the company does not carry multiple businesses:*

*Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.*

*(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.*

*(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time :*

*Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:*

*Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel :*

*Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the Directors present at the meeting and of which meeting, and of the resolution to*

> *be moved thereat, specific notice has been given to all the Directors then in India.*
> *(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy."*

106. Section 203 (4) clearly provides that if the office of the CEO is vacated, such resulting vacancy can be filled-up within a period of 6 months from the date of such vacancy. Therefore, even if Mr. Goenka is in fact removed, Zee can always fill up the resultant vacancy as provided for under Section 203 (4) of the Act.

107. Regulation 17 of the SEBI LODR which reads as under :

> *"17. (1) The composition of board of directors of the listed entity shall be as follows :*
> *(a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;"*

108. On a plain and literal reading of the aforesaid Regulation, to our mind, the expression "*optimum combination*" means the presence of one woman director and *at least* fifty percent of the Board of Directors shall comprise of non-executive Directors. Regulation 17 does not prescribe the maximum number of non-executive Directors but only the maximum number of executive Directors. Likewise, Section 149 of the Act provides that a listed company must have *at least* one-third of its Board comprising of Independent Directors. No other Regulation of the SEBI LODR or

Section of the Act has been brought to our notice that prescribes a maximum number of Independent Directors. Despite there being no embargo in law, in the Impugned Judgment, the Ld. Single Judge agrees with Zee's submission to the effect that *"…the result will be one wholly alien to law — a Board with only independent directors."*

**Conclusion on Section B**

109. For all of the reasons aforesaid, we conclude that the proposed resolutions contained in the Requisition are neither illegal nor incapable of being lawfully implemented and consequently, set-aside all of the Ld. Single Judge's findings in this regard *on all counts*. The Appeal is accordingly disposed of. Interim Application (L) No.25423 of 2021 also stands disposed of.

**( MILIND N. JADHAV, J. )** **( S.J.KATHAWALLA, J. )**

110. At the request of the learned Senior Advocate appearing for Respondent No.1, ad-interim order shall continue for a period of three weeks from today.

**( MILIND N. JADHAV, J. )** **( S.J.KATHAWALLA, J. )**