

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

ITEM No. 1
CP/322(MB)2021

IN THE MATTER OF

Invesco Developing Markets Fund ... Petitioner
Vs
Zee Entertainment Enterprises Ltd. ... Respondent

Order under Section U/s 98(1) & 100 of the Companies Act 2013
Order Delivered on 05.10.2021

CORAM:

SH. BHASKARA PANTULA MOHAN
HON'BLE ACTG. PRESIDENT

SH. NARENDER KUMAR BHOLA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner: Mr. Mukul Rohatgi, Sr. Counsel Mr. Janak Dwarkadas, Sr. Counsel Mr. Ravi Kadam, Sr. Counsel, Mr. Vikram Nankani, Sr. Counsel
Mr. Somasekhar Sundaresham, Sr. Counsel
Mr. Sharan Jagtiani, Sr. Counsel, Gaurav Mehta, Counsel Alongwith Mr. Kingshuk Banerjee and Mr. Zacarias Joseph, Mr. Chaitanya Mehta, Mr. Bhavik Mehta, Ms. Sonali Aggarwal and Ms. Prakruti Joshi, i/b. Dhruve Liladhar Co.

For the Respondent: Mr. Sudipto Sarkar, Senior Advocate,
(Adv. Arun Kathpalia, Mahfooz Nazki, Adv. Amitabh Sinha, adv. R3 & R8),
Mr. Navroz Seervai, Senior Advocate along with Mr. Prateek Seksaria, Counsel and Mr. Nitesh Jain, Mr. Atul Jain, Mr. Adrish Majumder, Ms. Vatsala Kumar, Ms. Ritika Ajitsaria and Mr. Brihad Ralhan i/b Trilegal, Advocates (R1),
Mr. Sudipto Sarkar, Senior Advocate, Mr. Zal Andhyarujina, Senior Advocate, Mr. Suhail Nathani, Ms. Mumtaz Bhalla, Mr. Manendra Singh, Mr. Chanakya Changez Keswani, Mr. Neeraj Malik i/b Economic Laws Practice for Respondent No.2 (i.e. Mr. Punit Goenka)

ORDER



This matter had come up for hearing on 30.09.2021 for the first time. The nature of the dispute is quite simple and the case of the petitioners is that they have given a notice to the company i.e. the respondent company requisitioning to hold a Board meeting to call for an EGM for passing certain resolutions. The attention of the Tribunal was drawn under Section 100 read with Section 98 of the Companies Act, 2013, the counsel appearing for the petitioners argued the case in full and on behalf of the respondents, learned senior counsel Mr. Gopal Subramaniam appeared and when certain questions were posed by this Tribunal Mr. Subramaniam answered to this Bench that in case the respondent company considers the requisition made by the applicants is valid and taking into consideration various legal aspects, Board will consider whether to call for an EGM or not. At that point of time, this Bench had posed a question whether there is any discretionary power vested with the Board to deny the requisition made by the requisitionists i.e. the applicants herein, then Mr. Gopal Subramaniam stated that it is only on the ground of validity of the notice, the said issue can be decided and also stated that the board meeting is being called to consider the request made by the applicants on 30th September itself and appropriate decision of the Board will communicated in the shortest possible time.

2. Then this Bench had passed a detailed order in which this Tribunal had directed the respondents to call for the board meeting and also to consider the requisition made by the applicants positively under Section 100 of the Companies Act as also stipulated under the law and subsequently the matter had come up on 04.10.2021. When the matter was called and it was reported



by the counsel for the applicants that the meeting of the Board had already taken place and the Board had taken a decision not to call for the extraordinary meeting of the shareholders citing technical various reasons. It is also argued by the counsels for the applicants that a suit has already been filed on 01.10.2021 before the Hon'ble High Court of Bombay, seeking a declaration that the requisition made by the applicants herein is invalid under law. It is also argued by the counsel for the applicant that the said plaint which has been filed in the Hon'ble High Court of Bombay runs into 425 pages with lot of documents in their support. It appears that the Hon'ble High Court of Bombay had not passed any order so far.

3. Be that as it may, this matter again came up for hearing on 04.10.2021 during which time, the counsel for the applicants had argued and due to paucity of the time, the matter has been posted today for the continuation of the arguments of the applicants. The applicants were heard in complete and after that the counsel appearing for the respondents Mr. Navroz Seervai, learned senior counsel had come up with an argument that this applicant is bad in law for the reason that the final relief which has been asked in the application is being sought in *ad interim* level itself without there being an opportunity for filing the counter on the part of the respondents. Then there was an argument whether in this kind of matter where timelines have been fixed and the meeting is required to be held within 45 days of the service of the requisition on the Board. Can there be questions in the present case as it is in Civil Suits issuance of notice, then rejoinder, then the reply etc. etc. be allowed in this kind of matter. Then the counsel for the respondents convinced



us that there is lot to say on the facts and they required reasonable time to file the counter.

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

5. On hearing the arguments of all the parties concerned, we are of the considered view that a minimum but a fair opportunity/time should be given to the respondents to file a reply to the petitioner and get ready to argue the matter. Apart from that timelines prescribed in the Act and constraints on the part of the Tribunal with regard to the legal aspects must also be considered by this Bench and in view of the same and in order to meet the ends of justice, we the Tribunal direct the respondent to file a reply to the application by 07.10.2021 by duly serving a copy on the petitioners. No further time shall be granted to either of the parties. This is not a usual case where weeks and weeks of time can be granted to file replies and hear the matter for days



together and finally write an order consisting hundreds of pages. The point involved in this case is very short, simple and we are conscious that the Senior Counsels appearing for both the sides are aware of this and we are very clear there is no need to grant days and days time to file reply as we could understand from their argument that they are fully abreast with the legal points and hence only in obedience to their seniority and their knowledge and their stature, this Bench is inclined to grant reasonable time which is in our opinion, time granted up to 07.10.2021 is quite sufficient.

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



**(BHASKARA PANTULA MOHAN)
ACTG. PRESIDENT**



**(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)**

05.10.2021
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