



The Zee – Invesco – Reliance Opera



Corporate Governance Research
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BACKGROUND

For the last 6 weeks or so, like a daily sitcom, the shareholders of Zee have been watching new episodes playing out in a corporate battle for control, with new players entering and hush hush tele-a-tale coming out in the open. And in latest episode, Zee has refused to call for an EGM, despite the Hon'ble Bombay High Court asking Zee to call for an EGM vide its order.

The issue can be broadly divided into two buckets - one purely of legal rights and the other governance issues as also intent of both Zee and Invesco, which may be beyond the legal boundaries yet may be the most important for shareholders. While shareholders may not be interested in the interpretation of law by legal eagles as their interest lies in running the Company in the best possible manner. This piece examines these two broad aspects.

INTENT

Ever since Invesco's out of the blue **Requisition Notice** to reconstitute the Board, the initial question on everyone's mind was – why and why now and for what objective? What is the game plan? And what after EGM?

REMOVAL OF PUNEET GOENKA:

Invesco has been backing Zee management for long and even after allegations of governance failures, diversion of funds and related parties' issues had surfaced, Invesco continued with its support to Mr. Goenka. With EGM Notice, it is clear that relationship has soured and it would be naïve to say that all is hunky dory between Goenka and Invesco, but all are in the dark as to what is the trigger for the soured relationship. Has governance deteriorated further? How does one know? What does Invesco know which is not known to public? Is there any additional information that Invesco has which is not in public domain and not known to the regulator? How Invesco has come to know something which no one else knows? Or Invesco without any additional information decided to act the way it is acting?

DO INSTITUTIONAL INVESTORS KNOW MORE THAN PUBLIC SHAREHOLDERS?

For long, questions have been raised on investors meet i.e. one to one meetings between the Company Management and Institutional investors. Every time a question is asked on such meetings, the answer is the same - nothing more than what is already in public domain is discussed. One fails to understand if that be the case why do meetings happen? If in the meetings Revenue of Rs 100 is explained as 100=99+1, probably no one would ever waste time in such meetings. Yet in absence of data, nothing can be said for sure. However, this is a wonderful opportunity to bag the Cat, as during legal proceedings Invesco would be made to reveal its mind, and investors would know whether, Invesco knew more than what was in public domain or it was their brilliant analysis of information in public domain that made them call for an EGM?

FAILED DEAL WITH RELIANCE:

News about the failed deal with Reliance put a lot of question marks on Invesco and its motive. First and foremost is, whether it is in the normal course that Invesco, as a large investor, initiated such a deal for merger? Can Invesco share any data as to how many such interventions they made in the past? What triggered this sudden action?

The other thing that is still not clear as to who initiated the deal? Zee? Reliance? Or Invesco? Invesco claims it was just facilitating the deal, whereas the other interpretation is that Invesco initiated the deal. Deals may fail or succeed, but what is intriguing here is the timing and impact of the failed merger between ZEE & Reliance.

SONY DEAL AND INVESCO ACTION - A CHICKEN & EGG STORY

Invesco is alleging that Zee signed a deal with Sony with the intention to negate Invesco's EGM notice. If one believes this, the deal between Zee and Sony must find its place in the fastest deals in the corporate world as it must have been done in just 12 days flat. Those experienced in deal making would respond - highly unlikely?

Couple of things at this juncture, if the deal was done so fast, it must be a sign of desperation at Zee. If that be the case ZEE, would have stitched a deal which must be in favour of Sony and detrimental to Zee shareholders (an allegation by Invesco as



well). However, one thing is still not clear - why would Sony agree to a desperate company and keep Mr. Goenka at helm and give their share of equity? Would anyone keep a person at the helm who is inefficient?

Secondly, another possibility that is being floated is that the Zee-Sony deal was in the making for long, Invesco got a wind and nursing its failed attempt of Reliance-Zee merger, put a spanner (EGM notice) in between?

Since the Zee-Reliance Deal was not a desperate deal, therefore it can always be used as a benchmark for a deal proposed in the normal course. Investors would expect that Invesco comes out with a comparative analysis of both deals in its Notice to shareholders - let shareholders compare and decide.

PUNEET GOENKA (PG) - HERO OR VILLAIN?

For quite some time, PG was a hero for Invesco, as even after issues on governance, related party transactions and questionable loans/ investments, Invesco continued with him at the helm at Zee, signalling their faith in his leadership. Did he ditch Invesco by deviating from agreed behaviour? Shareholders are once again in the dark as they do not know what was agreed or what changed?

However, Invesco is not the only one who feels PG is a hero. As per reports Reliance was also to continue with him as a leader, so is Sony. Not only that, concessions/ largesse is bestowed upon PG by both. Is there a compulsion or he is a really worthy to head a merged entity?

An unanswered question remains, why would an independent majority shareholder (Sony or Reliance as the case may be) continue with PG?

LEGAL ISSUES

A number of legal points have been raised in the last six weeks. However, since the battle has gone to all possible legal forums, except Hon'ble SC, the main issue under consideration is Section 100 & 98 of Companies Act 2013 (hereinafter 'the Act'). The question is whether there exists any power with these legal forums to give any relief to Invesco?

Companies Act, 2013:

98. Power of Tribunal to call meetings of members, etc. –

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

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

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

100. Calling of Extraordinary General Meeting –

...

(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;

...

call an extraordinary general meeting of the company within the period specified in sub-section (4).

...

(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.



SECTION 100 OF ACT:

Probably this is the only Section in the Act, which contains a remedy for default, at subsection 100(4). If Zee has refused to call for the meeting, law provides that Invesco can call meeting by itself and that Zee is duty bound to support Invesco in its effort. As on date, Zee has not refused co-operation. Anyway, that cannot be manifested till one crosses the bridge by calling EGM.

SECTION 98 OF ACT:

Both Section 98 and 100 are independent provisions and can be invoked based on the cause of action. However, the law appears to be clear that Section 98 is not the remedy for failure to call an EGM under Section 100 as it provides a remedy within the section.

Section 98 is a remedy in case where '*it is impracticable to call a meeting of a company, 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 present application/ Notice by Invesco does not qualify or meet any of the conditions.

HAS INVESCO BECOME AN INSIDER UNDER SEBI REGULATIONS?

Though shareholders were not aware of any deal that was being negotiated between Zee & Reliance, however Invesco was involved as per their own admission. Any talks on merger acquisition etc are UPSI under Insider Trading Regulations, hence Invesco became an insider for both Zee and Reliance. Did Invesco sign any Non-Disclosure Agreement? What was interest of Invesco? How did it come to know in first place about the deal? Was it aware of any Board discussions? How?

CAN ID BE APPOINTED IN AN EGM CALLED BY A SHAREHOLDER?**S. 149 (6) of the Companies Act, 2013**

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*

The short and crisp conclusion is that without the 'opinion of the Board' no appointee is considered Independent, hence an EGM notice by an investor can't propose appointment of an ID.

There are other impediments in appointment like prior approval of relevant Ministry, violation of Articles, etc. However, these are curable issues.

NCLT/ NCLAT & HC JURISDICTION

While these legal forums have the power to suo-motu admit any case, take cognizance of issues and give a verdict, however powers are to be exercised rationally and fairly and going beyond provisions of law and having a new interpretation is resorted to mostly in cases where public interest is involved. On the face of it, public interest is involved as a high percentage of the company shareholding is held by public shareholders. The difficulty at this juncture is that one does not know which option is better. As the case is not being fought on merits but on technicalities, shareholders are mere onlookers. Yet It can be said that:

- It is highly unlikely that Zee can be forced to call EGM under Section 100 of Act 2013, by any of these forums and in the event it is ordered to be called, the case will head to the door of Hon'ble SC.
- Section 98 of the Act 2013 cannot be invoked, the EGM Notice of Invesco does not qualify to be covered under Section 98, as no meeting is due and there is no failure.
- The proposed appointees cannot be appointed as Independent Directors and it is beyond the scope of these forums to decide independence ab initio.



OPTIONS FOR INVESCO

It will be unfair to dismiss concerns of Invesco relating to issues raised by them. However, the blame, if any, rests with them. They have been economical with truth, the entire issue lacks transparency and one does not know the final plan or road map post removal of PG? Additionally, their role as facilitator of a deal between Reliance and Zee, to say the least, is intriguing. Despite all these shortcomings, the fact remains that they own close to 18% stake in Zee and by any benchmark, have their skin in the game and should not be dismissed without full opportunity. Shareholders will wait for a comprehensive disclosure from Invesco on each and every issue raised here or elsewhere.

END NOTE

Shareholders are looking for an early closure of this issue and would want a deal - be it Sony or Reliance, to be executed.



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