
Board Vs. Shareholders



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There appears to be constant corporate conflict between the Board and the Shareholders of the Company.

The Corporate Governance structure is a framework to operate the Company in a democratic manner.

Under the Companies Act, certain powers are bestowed to the Board of Directors only, while the shareholders can exercise certain powers with 10% voting rights, and certain important business decisions are lying in the hands of shareholders with 75% voting rights.

Corporate Event 1 – Eicher MD re-appointment

Recently we have seen how the majority shareholders threw out the proposal for the re-appointment of MD in Eicher.

As per documents available in the public domain, institutional investors did not approve the said proposal based on their own point of view.

Corporate Event 2 – IDFC Chairman re-appointment

We have also seen that the proposal for re-appointment of Chairman of IDFC was rejected by the shareholders of the Company based on their own concerns.

Shareholders Activism

Recent corporate events show that public shareholders of the Company are critically analysing the Board proposals which are put forth for their approval.

Section [100](#) of the Companies Act, 2013

This Section allows members holding 10% of the paid-up voting rights to ask the Board to call for an Extra-ordinary General Meeting.

To rephrase, members with 10% voting rights can ask the Board to call for an Extra-ordinary General Meeting.

This is a significant provision in the Company Law and empowers the shareholders to intervene in the Corporate Governance process.

Case Study – ZEE v Investco

Invesco group held 17.88% shareholding in Zee.

In September 2021, Invesco group sent a letter to the Board of Directors under Section 100(2)(a) requisitioned for calling an Extra-ordinary General Meeting to pass the nine (9) ordinary resolutions: -

- (i) Removal of three Directors from the Board;
- (ii) Appointment of six Independent Directors.

In essence, the 10% shareholders of the Company expressed the desire to overhaul the Board of the Company.

Zee Board Decision

The Board of Directors of ZEE decided not to call the requisitioned EGM as it was not in the best interest of the Company and its shareholders.

The Board further decided to approach the Court questioning the validity of the Requisitioned Notice.

Basis of Zee Board decision

Basis the following, the Board decided not to call the requisitioned EGM :-

- (a) That it would contravene Regulation 17 of the SEBI Listing Regulations on the appointment of directors;
- (b) That it would contravene Section [203](#) of the Companies Act, 2013 on Managing Director;
- (c) That it would be contrary to the Articles of Association of the Company;
- (d) That it would amount to bypassing or jettisoning of the mandatory statutory provisions regarding Nomination and Remuneration Committee approval which is a pre-requisites to the appointment or removal of any director; and
- (e) That it would violate the SEBI Takeover Regulations and the Competition Act.

Bombay High Court

A writ petition was filed by ZEE before the Bombay High Court with the prayer to declare the requisitioned EGM notice as invalid.

Impugned Order

The Ld. Single Judge passed the judgement dated 26th October 2021 restraining the shareholders of ZEE from calling for and holding an EGM as requisitioned by the shareholders holding more than 10% shareholdings.

Appeal before Bombay High Court

The matter went before the Appellate Court.

The issues before the Appellate Court were as under :-

- (i) Whether a Civil Court can entertain a Suit under Company Law matter;
- (ii) Whether High Court can interfere with the rights of the shareholders to call an EGM;
- (iii) Whether agenda items of the requisitioned EGM were valid;

Can Civil Court grant injunction

The Division Bench held that the purpose of the Supreme Court's decision in *LIC v Escorts* would be lost and the very foundations of corporate democracy in India would be undermined, if civil courts are allowed to grant injunction in restraining the shareholders of a company from exercising their statutory right.

Therefore, findings of the Ld. Single Judge would result in laying down a precedent that would have drastic consequences and derail the democratic functioning of companies across India, owing to the non-cooperative and obstructive conduct of the board of director(s).

Basic Governance Principles

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.

The only effective way the members in general meetings can exercise their control over the directorate in a democratic manner is to dismiss the directorate and appoint others in their place.

Observations of the Appeal Court

Whilst setting aside findings of the Ld. Single Judge, it was observed that -

- (a) it is a very strong thing indeed to prevent shareholders from holding a meeting of the Company;
- (b) an injunction cannot be granted to restrain the holding of a general meeting from removing a Director and appointing another;
- (c) the shareholder had a statutory right to move a resolution to remove a Director;
- (d) the Court was not entitled to grant an injunction restraining shareholders from calling a meeting to consider such a resolution;
- (e) every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extra-ordinary general meeting in accordance with the provisions of the Companies Act.

ZEE's point of view

The counsel for ZEE emphasised their arguments on the basis 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.

Hence, the object of the requisition was illegal or otherwise invalid and the Board is not liable to call requisitioned EGM.

This proposition was not sustained at the Appeal Court.

Judgement of the Appeal Court

Whilst setting aside the findings of the Ld. Single Judge, the Division Bench held that on a plain and literal reading of Section 100(4), the expression "*valid requisition*" is restricted to numerical and procedural compliances which is commensurate with the requirements of Section 100 of the Act.

It was held 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. As it is the shareholders of the Company who will ultimately decide whether the agenda items proposed to be passed or not.

Settled Legal Position

The Division Bench's Judgment restores the settled legal position on corporate democracy in India, by clarifying the NCLT's jurisdiction to adjudicate questions arising out of Section 100 of the Act as Section [430](#) of the Companies Act bars the High Court from adjudicating matters arising under the Act.

Landmark Case Laws

The Hon'ble Supreme Court analysed the ratio of the following cases laws :-

- (a) *LIC v. Escorts*
- (b) *Bentley Stevens v. Jones*
- (c) *Cricket Club of India v. Madhav L. Apte*

Power of Section 100

Section 100 is a very powerful section to put a halt in the Company's decision-making process. The Board of Directors and the professionals should handle powers of the shareholders very carefully.

Ultimately, the powers lies in the hand of shareholders, not the Board.

