

In Re: Zee Telefilms Ltd.

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Court : Mumbai

Decided On : May-06-2004

Reported in : III(2005)BC298; 2004(6)BomCR270; [2005]124CompCas102(Bom); (2004)3CompLJ422(Bom); [2004]53SCL387(Bom)

Judge : Anoop V. Mohta, J.

Acts : [Companies Act, 1956](#) - Sections 78 and 100

Appeal No. : Company Petition No. 274 of 2004, Company Application No. 115 of 2004 and Company Application (Lodg.

Appellant : In Re: Zee Telefilms Ltd.

Advocate for Def. : S.J. Khera and ;Aradhana Khera, Advs.

Advocate for Pet/Ap. : Shyam Diwan, ;P.D. Shah and ;Kamlesh Kharade, Advs.

Judgement :

ORDER

Anoop V. Mohta, J.

1. The present Company Petition has been filed by Zee Telefilms Limited, having its registered office at Continental Building, 125, Dr. Annie Basant Road, Worli, Mumbai, for the purpose of reduction of Securities Premium Account of Zee Telefilms Limited by invoking the provisions of Sections 78 and 100 to 104 of the

[Companies Act, 1956](#) (for short 'Companies Act') and the Company (Court) Rules (for short 'Rules').

2. The details of the authorised, issued, subscribed and paid-up capital of the petitioner-company as on 31st March, 2004, i.e., the last audited balance sheet along with the unaudited balance sheet of the petitioner-company for the period 31st December, 2003 is reproduced in paragraphs 5 and 6 of the Petition.

3. As per the objects of the petitioner-company, as set out in their Memorandum of Association, they have an authority and power to reduce the share capital in case of urgency, need of exigency, within the framework of their Memorandum of Association, specially Articles 43 of the Articles of Association.

4. The petitioner-company have set out to reduce its premium Account pursuant to the provisions of Section 78 read with Sections 100 to 104 of the Companies Act, which can be reproduced as under :

'(i) In two separate acquisitions, in the year 1999-2000, the petitioner-company acquired 100 per cent equity shares in Zee Multimedia Worldwide Limited (a company having broadcasting and marketing operations in USA, UK, Europe, Africa, and many other countries) and 50 per cent equity shares in Winter heath Company Limited (a company broadcasting and marketing TV channels in India and Middle East) and 50 per cent equity shares in Siticable Networks Limited and Programme Asia Trading Company Limited (companies engaged in distribution of television content in India). This was done with a view to consolidate Petitioner Company's direct ownership on the content and distribution of the television channels in India and abroad. Zee Multimedia Worldwide Limited and Winter heath Company Limited are for the sale of brevity hereinafter referred to as 'Overseas Companies'.

(iv) The above Overseas Companies, which became wholly owned subsidiaries upon acquisition, were broadcasting several of the Group's channel including Zee TV, Zee Cinema and Zee News from their overseas locations. Due to certain regulatory restrictions in India on broadcasting, until recently, several of the Group's channels including Zee TV, Zee Cinema and Zee News were up linked by

these overseas companies from abroad. After removal of these restrictions, the petitioner company commenced up linking of many of these channels from India for strategic reasons. By moving up linking of these television channels to India, the investment of the petitioner company in these overseas subsidiaries (particularly Asia Today Limited) diminished substantially. As overseas subsidiaries as appearing in its books of account is required to be adjusted so as to reflect true and fair value of the petitioner company's investments in these subsidiaries.

(v) The petitioner-company appointed M/s. Deloitte Haskins & Sells, a firm of Chartered Accountants to value the remaining businesses of overseas subsidiaries under the changed circumstances. M/s. Deloitte Haskins and Sells, in their valuation report dated 16th February, 2004, valued the remaining businesses of overseas subsidiaries to Rs. 12,319 million thereby resulting in permanent diminution in value of investments by Rs. 17,716 million in the books of the Company. The petitioner-company craves leave to refer to and rely upon the copy of the valuation report as and when produced.

(ix) M/s. Jaiswal & Associates, Chartered Accountants, have ascertained these assets and diminution thereof. M/s. Jaiswal & Associates has submitted their valuation report dated 18th February, 2004. As per the valuation report, movable assets have diminished by Rs. 896 million. The petitioner company craves leave to refer to and rely upon the valuation report dated 18th February, 2004 as and when produced.

(xi) Petitioner-company has made a total equity investment of Rs. 3179.97 million in equity share capital of Siticable Networks Limited. The reduction in share capital of Siticable Networks Limited (wholly owned by petitioner company) will cause proportionate reduction of Rs. 1,491 million in the value of investments made by the petitioner-company in Siticable Networks Limited. This would result in reduction of petitioner-company's investments in Siticable Networks Limited from Rs. 3,179.97 million to Rs. 1,689 million.'

5. In order to reflect the true and fair status of the petitioner-company's financial performance, the company proposed to adjust the diminution of value of its

investments as per the provisions of Section 78 read with Sections 100 to 104 of the Companies Act. The Board of Directors of the company, therefore, decided to adjust the losses of the petitioner-company by making adjustments in its Security Premiums Account of Rs. 19,207 million. The balance in the Security Premium Account shall stand reduced by Rs. 19,207 million and the investment of account shall stand reduced to Rs. 15,149 million from Rs. 34,356 million. According to the petitioner, therefore, this proposed adjustment in Reserve and Surplus Account is deemed to be the reduction in the share capital by reason of Section 78 and, therefore, sanction of the Court under Section 100 of the Companies Act is necessary. To achieve this particular object, the petitioner-company have called its meeting on 25th March, 2004 for a Special Resolution as required under law. The meeting was accordingly attended and the Special Resolution in question was unanimously passed. The said Resolution is a part of the record.

6. It may be mentioned here that the notice of the said meetings with the explanatory statement is also part of the record.

7. As contended, as the adjustment in the Security Premium Account of the petitioner-company does not involve diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, the list of the creditors of the petitioner-company is not annexed to the present petition. As contended, the creditors of the petitioner-company are not in any way affected by the proposed objects as there is no reduction in the amount payable to any of the creditors and no compromise or arrangement is contemplated with the creditors. The proposed adjustment would not in any way adversely affect the ordinary operations of the petitioner-company or the ability of the petitioner-company to honour its commitments or to pay its debts in the ordinary course of business and the creditors are, therefore, not entitled to object and holding their meeting would be a mere formality and, therefore, the dispensation. The Scheme, as contemplated, would not, in any manner adversely affect the rights of the creditors. There are no proceedings pending under Sections 235 to 251 of the Companies Act against the petitioner. However, the Registrar of Companies, Mumbai, has launched prosecution under Sections 217(5), 212(9), 209(5), 307(7) and 211(7) and those cases are pending. The offences are compoundable under

Section 621A of the Companies Act. The relevant applications have been filed before the Regional Director under Regulation 40(1) of the Company Law Board Regulations. However, till this date, the petitioner-company or their Directors have not been served with any notice or summons or complaint in respect of the said offences. Parties are bound to follow provisions of all laws.

8. As per the provisions of the Listing Agreement, the petitioner-company has filed a draft of this petition with the Stock Exchanges where the shares of the petitioner-company are presently listed. In view of the letter dated 26th February, 2004, there is no objection of any kind received, even from the said authority.

9. By order dated 2nd April, 2004, the petition was admitted and it was made returnable on 29th April, 2004, after usual notices of publication. Affidavit of publication of the notice dated 13th April, 2004, has been filed on record.

10. The matter was heard initially, as listed on the returnable date i.e. on 29th April, 2004. On that day, two objectors/interveners viz. Aradhana Shivkumar Khera and one Mr. Shivkumar Khera appeared in person. Mr. Shivkumar Khera is an Advocate, who appeared for person himself and he also appeared on behalf of Aradhana Shivkumar Khera, who is his wife. As per the objectors, they are holding shares of the petitioner-company vide client ID No. 1111012 and D.P. No. IN 300100. The objectors are holders of 665 shares. As per his request, as he wanted to file reply and also wanted to take inspection of the documents, the matter was adjourned for one week. Only to accommodate Mr. Khera, the matter was adjourned for one week. No one else objected or nothing objectionable was found or traced out from the record. On 6th May, 2004, the matter was called out again. Mr. S.J. Khera appeared and filed Company Application (Lodg.) No. 459 of 2004 and requested to grant the said application whereby the objector wanted direction for the inspection of the documents and for furnishing xerox copies of the documents as described in the Schedule E annexed to the Judges' Summons. This includes various documents : Company Petition No. 274 of 2004, list of documents in Company Petition No. 274, exhibits referred therein, Annual Reports from 1999 to 2003, Indian subsidiaries, as well as, Foreign subsidiaries, Valuation Report of M/s. Deloitte, Haskins and Sells, Valuation Report of Jaiswal &

Associates, Chartered Accountants, Board Resolution, and cases pending and permission from the Reserve Bank of India for acquiring foreign subsidiaries of the companies. On this foundation, he again submitted that these documents are essential to raise objections and/or to oppose the Scheme in question.

11. Heard the learned counsel for the parties. Mr. Diwan, learned counsel for the petitioner-company pointed out from the Affidavit filed alongwith the Company Application No. 459 of 2004 and submitted that this petition or objection is not bona fide and it is raised with ulterior purposes. Mr. Diwan also pointed out that the objectors/interveners, inspite of due notice of advertisement, admittedly never attended the meeting. Mr. Khera made a statement that they have not received notice of the said meeting. So far as documents are concerned, Mr. Diwan pointed out the Annexures which start from letter dated 21st April, 2004, whereby full opportunity was given to the petitioner to have inspection of the documents, which includes all details, requisite and essential materials which are necessary for the purpose of holding such meetings under the provisions of the Companies Act. What is required is that all the material and requisite statutory documents which are essential to place in particular Resolution should be part of such notice or notifications. All the shareholders, even otherwise, as per the scheme of the Companies Act, in such cases, always have full opportunities and rights to inspect the documents, but at the relevant time. There is no dispute that the admission and hearing of the petition was advertised. What was required is proper and due advertisement with proper notices and details as per law. Once those formalities have been complied with by the company, at the instance of one shareholder, there is no question of providing all such detailed documents as required by the objector for the first time in this company application in the Court.

12. One cannot overlook the procedure prescribed by the Company Rules and Regulations whereby, parties are under an obligation to file their affidavit of objection within the specified period or time, failing which, the Court may or may not take into consideration their objections. In the present case, Mr. Khera who appears in person, is fully aware of the proceedings, but still, at the relevant time, has admittedly not attended the proceedings as well as, the meetings, whereby all these objections could have been raised and the majority shareholders of the

concerned companies or members, at the relevant time, could have decided or could have given deliberation to the objections of Mr. Khera. Therefore, in my opinion, the objection raised by Mr. Khera, for the first time by this company application in the company petition and that too, at the stage of final hearing, is not bona fide and cannot be said to be in the interest of the companies of which they were holding some shares. The company runs as per the scheme and thereby, once unanimous decision is taken by the company based on the experts, opinion, in my view, persons like the present objectors, at this stage, need not be allowed to interfere with the unanimous decision taken. It need not be mentioned here that in view of the reasons and background, as referred above, if the company has taken particular decision within the framework of law which is not illegal or contrary to public policy, there is no reason to interfere with such decision taken by the experts which includes business, financial experts, auditors and majority shareholders of the company.

12A. The reason, therefore, as reflected in the affidavit filed by Mr. Khera for inspection of the documents, at this stage, cannot be entertained and such application, is also liable to be rejected as this is nothing, but fishing inquiry for information to support vague and unsupported objections, if any. Mr. Khera, as a single objector, even assuming for a moment that has some case, his objections cannot be gone into for want of detail objections or affidavit. He was fully aware of the contents of the petition, as copy of the petition was served on 22nd April, 2004. However, Mr. Khera contended that only copy of the petition was served and not the annexures. One cannot overlook the obligations of the shareholders and their rights as contemplated under the Companies Act, which should have been exercised at the relevant time. Shareholders, had full rights to inspection as admittedly notices were issued and published with details and requisite materials, alongwith explanatory notes as contemplated under the law. In this view of the matter, I see no reason to accept the objections of Mr. Khera.

13. Therefore, company application Lodging No. 479 of 2004 is rejected.

14. Having considered the Scheme and purpose of reduction of the Share Premium, I see there is no illegality or any breach of any other provision of law.

The total reduction, as claimed, is fair, just and proper and within the framework of law and in view of this, the petition is allowed, as prayed, in terms of prayer Clauses (a) to (d). No order as to costs.

15. At this stage, Mr. Khera orally applies for stay of this order. Considering the objections raised and the observations made above, I see no reason to stay the sanction of such reduction and the oral stay application is also rejected.

Parties to act on an ordinary copy of this order, duly authenticated by the Company Registrar of this Court.

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