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ZEE-SONY MERGER: A PARADIGM SHIFT

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INTRODUCTION

On 22nd September 2021, Zee Entertainment Enterprises ('ZEEL') entered into a non-binding term sheet with Sony Pictures Networks India ('SPNI') to consolidate their digital assets, networks, operations and program libraries. The merged entity will prove to be India's most extensive entertainment network, with SPNI's promoters investing $1.57 billion as growth capital, and will own two online streaming services (ZEE5 and Sonly LIV), two film studios (Zee studios and Sony Pictures Films India) and over 70 TV channels. Further, the merged company will be a publicly listed company with ZEEL shareholders having 47.07% stake and SPNI having 52.93% stake.[1]

ZEEL derives most of its viewership from regional general entertainment channels (GECs) and movies. It holds a bigger market share compared to SPNI and has more than 2.6 lakh hours of television content and have rights for over 4,800 movie titles across various languages. Further, ZEEL has the largest domestic non-sports OTT platform with 8 crores monthly avg users.[2] It complements SPNI perfectly, which has its strengths in sports segments and Hindi GEC having over 70 crores viewers in India and with presence in 167 countries.

INTERNATIONAL SCENARIO

This merger will not only create a giant presence in India but also put the merged entity on the map overseas by allowing it to exploit and monetize on SPNI's international presence. The combined market shares of ZEE5 and Sony LIV will assist the merged entity to compete with big OTT players like Netflix and Amazon Prime Video internationally along with Disney-star domestically.

The entry into the OTT market in India is a path ridden with difficulties, from catering to a diverse crowd to easy availability of dirt-cheap plans makes it a troublesome market to survive in. Even the market giants like Netflix are struggling to survive and are opting for introduction of ads to cope up with their rapidly declining subscribers and revenues. The combined shares of the merged entity could prove to be the perfect catalyst to further raise this entry barrier, for international entities, by making the competition even more cut throat.

Further, the well-established roots of both ZEE5 and Sony LIV in India will present a great challenge to the current market leader Disney-star which has a market share of 24%. SPNI will bring sports and GEC to the table whereas ZEEL will bring regional and fictional content, making it one formidable player with almost 28% market share. Moreover, the merged entity would also be able compete for acquiring broadcasting

[1] Ria Puneyani, ZEE-Sony Merger | Why did Zee Entertainment decide to merge with Sony?, November 29, 2021. Web source: https://startuptalky.com/zee-sony-merger-case-study/

[2] Cherian Varghese, The ZEEL-Sony Pictures Networks Merger Explained, October 9, 2022. Web source: https://marketfeed.com/read/en/the-zeel-sony-pictures-networks-merger-explained.

rights for IPL, BCCI, and ICC tournaments, the crown jewel of Disney-star, thereby strengthening their stronghold in the market even further.

POLITICAL SCENARIO

By far there are no issues that has been raised by the Government of India regarding the merger. There has not been any report if the merger between ZEEL and SPNI has violated any governmental policies but it is, however, facing a legal hurdle because of the Invesco Developing Market Funds, the Atlanta-based investment management firm and OFI China Fund LLC that together holds 17.88% stake in ZEEL, accused it of corporate mis-governance. The case is pending in NCLT and have been decided by Bombay HC. Invesco have called for EGM for appointment of 6 independent directors and removal of Punit Goenka, MD & CEO of ZEEL from Board. The Single Judge-Bench of the Bombay High Court granted an injunction in favor of ZEEL and restrained the Investors from taking any action in furtherance of the Requisition including, calling/holding the EGM. Further Division Bench of Bombay HC on appeal by Invesco overturned the previous judgement and held that the Board is mandatorily obligated to requisition a meeting if the numerical and procedural requirements appearing in Section 100 of Companies Act, 2013 are satisfied.

This law suit against Zee by Invesco has introduced a hot topic of 'Shareholder Activism' in corporate governance which seems to be a catalyst in blocking undesired transactions, forcing renegotiation of terms, allowing changes in the composition of the Board, and in deterring unprofitable mergers & acquisitions.[3] Can this tug of war for power between company and shareholder which has created a political clout be seen as another way for pushing the merger deal forwards?

ROLE OF REGULATORS

1. Competition Commission of India: It is mainly concerned with promoting competition and providing protection to the Indian market by prohibiting any practices causing appreciable adverse effect. The Competition Act, 2002 is mainly concerned with prohibiting three kinds of agreement that includes anti-competitive agreements, abuse of dominant position and the regulation of combinations (mergers and acquisitions).[4] In the present case of Zee-Sony merger the CCI has given its approval to the merger on modification of the transaction done by the parties in which they have proposed structural remedies, including the closure of channels to ensure there is no unfair dominance in one market. To address this anti-competitive concern Zee-Sony have agreed to sell three of their Hindi channels namely Big Magic, Zee Action and Zee Classic. CCI's main concern was that India's largest media merger of Zee-Sony may give

[3] Souvik Ganguly, Teena Jain, Yogesh Chhajer, Impetus to shareholder activism in India – Invesco v. Zee case, Acuity Law, April 21, 2022. Web source: https://www.acuitylaw.co.in/publication-and-news/article-impetus-to-shareholder-activism-in-india-invesco-v-zee case#:~:text=The%20Single%20Judge%20Bench%20of,meeting%20(EGM)%20of%20Zee.

[4] Sneha Suman, Mergers and the role of Competition Commission of India, Legal Service India. Web source: https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India.html.

them unprecedent pricing power which can affect the business of other TV channels.

2. Securities and Exchange Board of India: The approval by SEBI is granted as per Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011 to govern investments and it is mainly taken when voting rights in the target company while acquisition, exceed 25 per cent. When any individual or an entity acquires more than 25 per cent share, a public announcement has to be made for the purposes of an 'open offer' under the SEBI Takeover Code. This open offer allows the investors to either exit the shareholding at a reasonable price, or retain their shares at the fixed price.[5] As of now, there is no report about approval given by SEBI to this merger.

3. National Exchange Board and Bombay Exchange Board: A 'no objection certificate' from the exchange is required before any scheme of merger can be approved by the National Company Law Tribunal and other regulatory bodies. This approval permits the company to carry forward the merger to next step. So that the emerging entity will be allowed to trade on registration of extinguishing entity for 45 days. In the present case, the merged entity will retain ZEEL's stock market listing. The Zee-Sony merger has been given approval to proceed further with their transaction.

4. Ministry of Information and broadcasting: One of the objectives of MIB is to create environment and set up policy framework for healthy development to various mass media in the country. For the purpose of merger of companies of same group, the MIB has imposed various conditions on the merging parties like new entity should have minimum prescribed net worth and have to adhere by terms and conditions of the Tender Document and Grant of Permission Agreement. As of now, there is no report that Zee-Sony have gotten approval of MIB but this is the hurdle they have to face sooner or later as it has been previously done in the merger of Dish TV and Videocon d2h in 2017.

5. National Company Law Tribunal: The Companies Act, 2013 gives authority to NCLT to approve scheme of merger or acquisition with an aim to ensure fairness and effective overseeing of the deals. Sec. 230, 231 and 232 are the essentials provisions which provides for the role of NCLT in M&A. The procedure followed for approval of NCLT also ensures transparency for the benefit of shareholders and give them opportunity to raise any issue at any stage against the M&A deal. It also provides a stable platform where foreign companies can explore business relationships in India.[6] In the present case, the Mumbai Bench of NCLT had directed management of ZEEL to convene a shareholders' meeting on for voting on the proposed scheme of merger. In this meeting, for the approval of the scheme, 3/4th majority of the members is needed, which has been obtained by ZEEL from 99.99% of the shareholders. Another role NCLT is played here was in the application

[5] Abhishek Asha Kumar, Priya Gupta, CCI Vs. SEBI: An Analysis of the Indian Merger Regime, Centre for Competition Law and Economics. Web source: https://www.icle.in/resource/cci-v-sebi-an-analysis-of-the-indian-merger-regime/.

[6] Seerat Kaur, Checklist for NCLT approval of mergers, Ipleaders, August 15, 2020. Web source: https://blog.ipleaders.in/checklist-nclt-approval-mergers/#:~:text=of%20the%20entities.-,Role%20of%20NCLT%20in%20a%20merger,effective%20overseeing%20of%20the%20deals.

sought by Invesco to conduct EGM for removal of three directors which was refused by ZEEL and the NCLT had directed ZEEL to consider the requisition in accordance of law against which ZEEL later filed a case in Bombay HC.

CONCLUSION

With the entry of Adani Group in the media industry and Disney-star and Reliance being well established players, the merger between ZEEL & SPNI will allow them to compete in the industry with an upper hand in terms of viewership in the Indian market.

With ZEEL having 15-17% viewing share to SPNI's 8-10%, it would be a strong and strategic match in broadcast, digital and content. In terms of synergies Sony is performing well in sports and mainstream GEC, but Zee has a high recall on regional genres, which Sony has less of or none of. Further, Sony's foreign repertoire would be available for ZEE to exploit and monetize. And as both companies have a robust film library that can be exploited for OTT and TV offerings and therefore, the merged entity will be powerful and better positioned to challenge the current industry leader, Disney-star as well as establish its presence internationally.

Further, corporate democracy is protected on the basis of supremacy of shareholders' rights provided under Companies Act which has been discussed in the Invesco v. Zee case by Bombay HC. Thus, is it possible that the introduction of 'shareholder activism', which entails a set of proactive efforts taken by the shareholders to bring about the desired change in the operations or decisions of a company, be a resort Invesco is taking to establish its position of power in the merger?

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