

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

3. C.A. 151/2023  
Intervention Petition 1/2023  
Intervention Petition 3/2022  
Intervention Petition 7/2023  
I.A. 124/2022  
IN  
C.P.(CAA)/209/MB/2022  
IN  
C.A.(CAA)/204/MB/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **10.08.2023**

NAME OF THE PARTIES: Zee Entertainment Enterprises Limited.  
SECTION 230(I) OF COMPANIES ACT, 2013

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**ORDER**

Mr. Janak Dwarkadas, Senior Counsel a/w Adv. Nitesh Jain, Vatsala Kumar,  
Adv. Aniruddha Saverti, appearing for the Petitioner in  
C.P.(CAA)/209/MB/2022, Mr. Sachin Chandarnan, Ms. Samiksha Rajpur,  
appearing for the IDBI Trusteeship Services Ltd, Adv. Adv. Parag Maini, Adv.  
Ravi Bhasin appearing for the applicant in C.A. 151 of 2023 are present.

**C.P.(CAA)/209/MB/2022**

Order pronounced in the open court vide separate order. In the result, the  
above company petition is allowed by approving the scheme.

**C.A. 151/2023**

**Intervention Petition 1/2023**

**Intervention Petition 3/2022**

**Intervention Petition 7/2023**

**I.A. 124/2022**

Order pronounced in the open court vide separate order. In the result, all the above objection applications are **rejected**.

Sd/-  
MADHU SINHA  
Member (Technical)  
//RKS//

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-III**

**I.A. NO. 124 OF 2022**

**IN**

**C.A. (CAA)-204/2022**

Axis Finance Limited.

**...Applicant/Intervenor**

**Vs.**

Zee Entertainment Enterprises Limited

**...Respondent/Original Petitioner/Transferor Co.1**

Bangla Entertainment Private Limited

**...Respondent No.2/Transferor Company- 2**

Culver Max Entertainment Private Limited

**...Respondent No.2/Transferee Company**

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**Intervention Petition No.7 of 2023**

**IN**

**CP (CAA)-209/2022**

IDBI Trusteeship Services Ltd.

Registered office at: Universal Insurance Building,

Ground Floor, Fort, Bazargate, Mumbai 400001

**...Applicant**

**Vs**

**Dr. Subhash Chandra,**

Having registered office at:

18<sup>th</sup> Floor, A Wing, Marathon Futurex, N.M. Joshi Marg, Lower Parel

Mumbai 400013

**....Respondent**

**Intervention Petition No.3 of 2022**

**IN**

**CP (CAA)-209/2022**

**IMAX Corporation**

2525 Speakman Drive, Mississauga,  
Ontario, Canada, L5K 1B1

**Applicant/Intervenor**

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**Intervention Petition No.1 of 2023**

**IN**

**CP (CAA)-209/2022**

IDBI Bank Limited

Office at: IDBI Tower, W.T.C. Complex, Cuffe Parade,  
Mumbai- 400005...

**Applicant/Proposed Intervenor**

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**C.A. 151 of 2023**

**IN**

**CP (CAA)-209/2022**

J.C. Flowers Asset Reconstruction Company Limited

Registered office at: 12<sup>TH</sup> Floor, Crompton Greaves  
House, Dr. Annie Besant Road, Worli, Mumbai,  
Maharashtra- 400030

**...Applicant**

**Vs**

**Dr. Subhash Chandra,**

Having registered office at:

1<sup>st</sup> Floor, Vasant Sagar Properties Private  
Limited, A Road, Opposite Jai Hind College,  
Churchgate, Mumbai- 400020  
Mumbai 400013

**....Respondent**

**Order Pronounced on: 10.08.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble MS. Madhu Sinha, Member (Technical)

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**COMMON ORDER**

1. Heard Mr. Ravi Kadam, Sr. Counsel appearing for the Imax Corporation and JC Flower, Mr. Gaurav Joshi, Sr. counsel appearing for the Axis Finance Limited, Mr. Ankit Lohia, counsel appearing for the IDBI Trusteeship Services Ltd., Mr. Rishi Thakur, counsel appearing for the IDBI Bank Limited and Mr. Nausher Kohli, counsel appearing for the BSE and NSE and Mr. Janak Dwarkadas, Senior Counsel appearing for the Respondent/Zee Entertainment Enterprises Limited/Respondent.
2. All the above Interlocutory applications and Intervention Applications were filed by the respective applicants opposing the scheme of merger of Zee Entertainment Enterprises Limited and Bangla Entertainment Private Limited with Culver Max Entertainment private Limited (earlier known as Sony Pictures Networks India Pvt. Ltd.) filed under Section 230-232 of the Companies Act, 2013 and hereinafter referred as the Zee-Sony Merger. Since the grievance of all the petitioners is almost the same, all the above I.A's and Intervention Petitioners are disposed of through this common order.
3. The common grievance of all the above applicants in opposing the scheme is two-fold:

- i. The first one is with regard to non-compete fee of USD equivalent of INR 1101,30,91,800/- (Indian Rupees Eleven Hundred and One Crore thirty lakh Ninety-One Thousand and Eight Hundred) payable by SPE Mauritius Investment Limited (a Sony group entity) to Essel Mauritius, which amounts shall be used by Essel Mauritius to subscribe to its portion of the Essel Subscription Shares or paid to Essel Mauritius SPV for Essel Mauritius SPV to subscribe to its portion of the Essel Subscription shares. The terms of the non-compete arrangements include a possible loan by SPE Mauritius, at its option, to Essel Mauritius and / or Essel SPV, to enable them to subscribe to the Essel Subscription Shares, in certain circumstances and the non-compete agreement was entered into amongst Mr. Subhash Chandra, Mr. Punit Goenka, Mr. Amit Goenka and SPE Mauritius Investments Limited which is effective on and from the effective date, the Essel Group have agreed to not compete with the SPE Mauritius. It is the contention of all the above applicants herein that the Non-Compete Arrangement is bogus and a disguised mechanism to cheat lenders & public shareholders of Zee and if Non-Compete Fee was not going to the promoters Rs. 1101,30,91,800/- would have come to Zee Entertainment Enterprises Limited's shareholders from whom the Applicants can recover their dues.

ii. The next grievance is with regard to the appointment of Mr. Punit Goenka as Managing Director and CEO for five years upon the scheme coming into effect on the Effective Date, and as an integral part of the Scheme, the ZEEL Director shall be appointed as the managing director and Chief Executive Officer of the Transferee Company for a period of 5 years from the Effective Date subject to and on terms and conditions as agreed between the Transferee Company and the ZEEL Director.

In this regard, it is the contention of the petitioners that SEBI has recently passed an interim order on 12.06.2023 against Mr. Punit Goenka and Mr. Subhash Chandra restraining them from holding any key managerial positions in any listed company or its subsidiary after noticing certain financial irregularities said to be committed by them through group entities of Essel Group and therefore the scheme to the extent of appointing Mr. Punit Goenka as CEO of the merged Zee-Sony entity cannot be implemented. It is also the contention of the petitioners that Mr. Subhash Chandra and Mr. Punit Goenka preferred an appeal against the said interim order passed by SEBI before the Appellate Authority and sought for stay of the above order passed by the SEBI. This appeal was rejected by the Securities Appellate Tribunal and thus, they remain disentitled to hold any post in the merged entity till the ban is lifted by SEBI who are currently hearing the case and their final report is awaited.

**The following are submissions of Mr. Janak Dwarka Das on behalf of Zee Entertainment Ltd on the locus of each petitioner, the scope and jurisdiction of NCLT in scheme matters:**

**1. AFL (Axis Finance Limited)**

- 1.1. AFL's claim arises from credit facilities of Rs. 100 crores given to Cyquator Media Services Limited (Cyquator), an Essel Group entity.
- 1.2. The facility was secured, *inter alia*, by pledging part of promoter companies' shares in Zee in favour of AFL. AFL has invoked the pledge and there remain no further pledged shares in favour of AFL. In or around October 2019, AFL had participated in the stake sale of the pledged shares of ZEE held by the promoter group and recovered around INR 41.36 crores.
- 1.3. As on date, the alleged outstanding payable to AFL in relation to the facility granted to Cyquator, is INR 61,64,95,455.14/-.
- 1.4. AFL claims that its basis for filing the objection is that it is a creditor of Essel Group (which includes Zee) and therefore, it is also an unsecured creditor of Zee.
- 1.5. On the above ground, it claims to have a locus to object to the Scheme, and that notice of meeting of unsecured creditors should have been sent to AFL.
- 1.6. Zee has denied AFL's claim, therefore, AFL's claim is disputed. As per Zee's contention, AFL is neither a shareholder nor a creditor of Zee. It has no contractual or legal privity with Zee. Therefore, AFL clearly has no locus to object to the Scheme, which is only between the concerned companies and its members.
- 1.7. In 2021, AFL had filed a Summary Suit No. 14 of 2021 before the Hon'ble Bombay High Court *inter alia* against Cyquator, Dr. Chandra and Mr. Goenka, where Zee is not a party. In the Summary Suit, AFL sought for a stay on



the merger between Cyquator and Sprit Infrapower, and attachment of assets of Mr. Goenka and Dr. Chandra.

- 1.8. In 2022, AFL filed a Commercial Suit No. 252 of 2023 for the same cause of action against *inter alia* Dr. Chandra and Mr. Goenka, where in Zee is again not a party. AFL objected to the present Scheme of Zee-Sony merger and sought for deposit of the non-compete fee, and attachment of assets of Mr. Goenka and Dr. Chandra.
- 1.9. AFL also filed an interim application in the Commercial Suit seeking that Dr. Chandra and Mr. Goenka should deposit the said non-compete fees under the present scheme (Zee-Sony merger), to the extent of AFL's claim. The interim application was rejected by the Hon'ble Court on 09 November 2022.
- 1.10. AFL also approached the Hon'ble Bombay High Court in appeal against order dated 9 November 2022, in Criminal Appeal (L) No. 35699 of 2022 (Appeal)- which AFL has conveniently failed to disclose to this bench. Zee was not a party to the Appeal.
- 1.11. AFL also filed an interim application in the Appeal, to which Zee was made party. However, the appeal was disposed of, and parties were asked to go before the Learned Single Judge in the Commercial Suit.
- 1.12. Clearly, AFL has approached multiple courts on the basis of the same cause of action (i.e., to object to and seek deposit of the non-compete fee) and is indulging in forum shopping. In any case, in each of these multiple proceedings, courts have rejected AFL's claim.

1.13. On one hand, AFL is alleging that the Scheme and payment of non-compete fee are fraudulent and on the other hand, AFL is seeking to benefit from the payment of non-compete fee, by seeking as under:

In its Additional Affidavit, AFL sought the prayer that *“even if the Scheme has to be approved, the amount to be received under the non-compete arrangement, the amount or shares equivalent to the Applicant’s dues be deposited with the Applicant.”*

1.14. In the Appeal filed by AFL before the Hon’ble Bombay High Court, while seeking a deposit of the non-compete fees, AFL had contended that its prayer *“...in no manner whatsoever affects the terms and condition of the Scheme of Merger”* and that *“...it is the receipt of the [non-compete fees] which the Appellant is concerned with in the hands of the Essel Group Companies / the Goenka Family and the not the act of payment.*

1.15. AFL is seeking to approbate and reprobate. The principle of approbation and reprobation has been discussed in the judgment of the Supreme Court in the matter of ***Union of India & Ors. V. Murugesan & Ors [(2022) 2 SCC 25] [para 26] observing that no party can be allowed to accept and reject the same thing. A party cannot object to an instrument while enjoying the fruits under it and take advantage of one part while rejecting the rest. A party must either affirm or disaffirm the transaction*** (in this case, the Scheme). The same composite Scheme cannot be treated on different footings, such that the non-compete fee equivalent to AFL’s claim is legitimate while the

remaining consideration and the arrangement is illegal/fraudulent.

## **2. IDBI Trusteeship Services Ltd.**

- 2.1. IDBI Trusteeship is the debenture trustee of 425 debentures issued by Essel Infraprojects Limited (EIL) in favour of certain schemes managed by Franklin Templeton Asset Management (India) Pvt. Ltd.
- 2.2. Dr. Subhash Chandra had executed a personal guarantee dated 25 June 2019 in favour of IDBI Trusteeship (for the benefit of Franklin Templeton) Guaranteeing the repayment obligations towards the debentures. Dr. Chandra has purportedly failed to comply with his obligations under the personal guarantee.
- 2.3. IDBI Trusteeship claims to be a creditor of Dr. Chandra. It has a claim of Rs. 535,33,97,085 for which it has filed a Commercial Summary Suit No. 7 of 2021 before the Hon'ble Bombay High Court against Dr. Chandra.
- 2.4. The suit is presently stayed as a result of the interim moratorium operating under Section 95 of the Insolvency and Bankruptcy Code, 2016, in relation to the personal insolvency proceedings initiated by Indiabulls Housing Finance Limited. Therefore, IDBI Trusteeship has approached the Hon'ble NCLT to secure its claim amount.
- 2.5. IDBI Trusteeship is admittedly not a creditor of Zee. It has no contractual or legal privity with Zee. Therefore, it has no locus to object to the present Scheme.

- 2.6. Further, IDBI Trusteeship has admittedly, already, filed a suit against Dr. Chandra before the Hon'ble Bombay High Court arising out of the same alleged claim. In the suit, IDBI Trusteeship has also admittedly sought similar interim reliefs from the Hon'ble Bombay High Court. Therefore, there is no reason why IDBI Trusteeship should approach two courts seeking the same reliefs. Merely because that proceeding is stayed on account of the moratorium on Dr. Chandra's debts, does not give IDBI Trusteeship the locus to object to the present Scheme, in order to secure the amount claimed before the Hon'ble Bombay High Court. This is nothing but a misuse of the process of law and forum shopping.
- 2.7. IDBI Trusteeship has claimed on the basis of newspaper articles that Dr. Chandra has acted in a mala fide manner by giving up his right to receive non-compete fees under the Scheme in favour of a group entity only with an intent to defraud IDBI Trusteeship and other creditors.
- 2.8. At the outset, it is submitted that IDBI Trusteeship's entire claim is based on conjectures arising out of newspaper articles. There is not a single document to show that IDBI has any claim against Zee or that the Scheme is fraudulent. So much so that IDBI Trusteeship has not even annexed a copy of the personal guarantee given by Dr. Chandra, on which it is basing its entire objection.
- 2.9. On one hand IDBI Trusteeship is claiming that the Scheme is fraudulent as Dr. Chandra is giving up his right to receive non-compete fee, while on the other hand

IDBI Trusteeship is seeking that Dr. Chandra is restrained from parting with the amount received / to be received under the Scheme as non-compete fee. Further, it is seeking that all parties to the company scheme petition be restrained from making any payments to Dr. Chandra. IDBI Trusteeship's submissions and prayers are completely contradictory and confused.

### **3. IMAX Corporation**

- 3.1. Imax's claim is based on 3 arbitral awards dated 9 February 2006, 24 August 2007 and 27 March 2008 (Arbitral Awards). The awards are against E-City Entertainment Pvt. Ltd. (E-City Entertainment), aggregating to USD 25 million.
- 3.2. By way of the application, Imax has prayed, inter alia, that permanent injunction be issued restraining the directors, employees etc. of Zee from disposing of assets, in furtherance to the merger, till Imax's dues are realized. Imax has also sought for the Hon'ble NCLT to enjoin the disposition of assets/deposit of USD 11,3096,496.06 by ZEE.
- 3.3. Imax claims that E-City Entertainment owes Imax the awarded sum of USD 25 million. Zee belongs to the same group of companies, Essel Group, as E-City Entertainment, being under the common control and management of the promoters-so the companies should be treated as one.
- 3.4. Imax is neither a shareholder nor a creditor of Zee. Admittedly, the Arbitral Awards are not against Zee. Zee was not party to the arbitration agreement, awards,

challenge, or enforcement proceedings. Imax, therefore, has no contractual or legal privity with Zee.

- 3.5. Zee denies Imax's claim, which has been made against Zee for the first time before this Hon'ble NCLT, despite the alleged cause of action of Imax having been arisen more than 15 years ago.
- 3.6. Imax has alleged that the Essel Group have the "*same ultimate owners and Promoters*". E-City Entertainment and Zee are group companies belonging to the Essel Group and therefore, form a 'single economic entity'.
- 3.7. Zee and E-City Entertainment falls within the doctrine of 'Group Companies' and should be treated as one concern.
- 3.8. The awards are against a distinct entity. Zee is a Board managed, publicly listed company of which the promoter hold only 3.99 % E-City Entertainment is not even a part of Essel Group as on date.
- 3.9. Zee and E-City Entertainment do not constitute a 'single economic entity' as both companies have different business, revenue streams and directors.
- 3.10. Imax's reliance on the 'group of companies doctrine' is misplaced as Zee is a distinct company from the 'Essel Group Companies'. In any case, the doctrine is one applied to join parties to an arbitration if the arbitration agreement indicates that they are group companies. Therefore, reliance on the doctrine is completely misplaced.
- 3.11. Imax claims that the Scheme is an attempt to divest the assets of the Essel Group so as to avoid paying Imax the awarded sums. However, Imax has been unable to

discharge its burden of proof that the Scheme is an attempt of Zee to avoid paying Imax.

- 3.12. Imax is trying to arm twist Zee into paying dues that are not owed to Imax at all. In any case, the Scheme (in Part B, Clause 2.1 (d)) contemplates that all debts and liabilities of Zee will be transferred without compromise to the merged entity. So, even if Imax has a claim against Zee, it cannot lead to an objection to the Scheme.
- 3.13. Imax has filed an additional affidavit dated 3 July 2023 (Additional Affidavit) bringing on record:
- (i) An email dated 2 June 2003 sent by the Assistant of Dr. Subhash Chandra regarding disputes between Imax and E-City Entertainment to claim that E-City Entertainment is part of the Essel Group; and
  - (ii) Copy of web page of ZEE Learn (to claim that Zee and E-City Real Estate Private Limited (E-City Real Estate) are part of the Essel Group.
- 3.14. The email dated 2 June 2003 does not make any mention of Zee. Copy of website pages of Zee learn are irrelevant as Zee, E-City Entertainment and E-City Real Estate are distinct entities and Zee cannot be held liable for Imax's claims against another entity. In fact, E-City Entertainment and E-City Real Estate are not even a part of Essel Group as on date.

#### **4. IDBI Bank Limited**

- 4.1. In 2009, IDBI advanced a working capital facility of Rs. 50 crores (Facility) to Siti Networks Limited (Siti). In 2012, IDBI enhanced the Facility to INR 150 crores.

- 4.2. Zee had executed a Debt Service Reserve Account Guarantee Agreement dated 3 August 2012 (DSRA Agreement) undertaking to ensure that credit balance of 2 quarter's interest was maintained in the DSRA and replenished in case of a shortfall.
- 4.3. IDBI's alleged an outstanding debt in the Intervention Petition is Rs. 149,60,69,763,39.
- 4.4. IDBI claims that its basis of filing the objection is that it is a creditor of Zee.
- 4.5. IDBI claims that Zee provided a guarantee under the DSRA Agreement in favour of IDBI, to secure the facility given to Siti and Siti defaulted on the payment, therefore, Zee was called upon to make the payment.
- 4.6. Zee has denied and disputed IDBI's claim. Therefore, IDBI is not an admitted creditor of Zee. IDBI is also not a shareholder of ZEE. Therefore, IDBI clearly has no locus to object to the Scheme, which is only between the concerned companies and its members.
- 4.7. IDBI claimed that as Zee failed to pay its purported debt under the DSRA Agreement, IDBI had initiated insolvency proceedings before the Hon'ble NCLT, against Zee and if Scheme is sanctioned, it will prejudice the insolvency petition as Zee will cease to exist. IDBI argued that the proceedings in the Scheme must await the Insolvency proceedings.
- 4.8. The Hon'ble NCLT, on 19.05.2023, dismissed IDBI's insolvency petition against ZEE on the ground that the petition is not maintainable pursuant to Section 10A of the IBC. Therefore, IDBI's argument that the Scheme



cannot be sanctioned as it will prejudice the insolvency petition, falls.

- 4.9. IDBI has claimed that under the DSRA Agreement, Zee owes IDBI Rs. 149,60,69,763,39 because Zee guaranteed IDBI that it will maintain credit balance in the DSRA equivalent to 2 Quarter's interest payable for the working capital facility.
- 4.10. Siti purportedly failed to maintain the DSRA. IDBI recalled the facility and is seeking the entire amount from Zee.
- 4.11. As IDBI is a creditor of Zee, the Scheme cannot be approved without a separate meeting of the creditors and Zee addressing the concerns of all creditors including IDBI.
- 4.12. IDBI has stated in its Intervention Petition that Zee has "guaranteed the Borrower's obligation to maintain credit balance in the DSRA at all times equivalent to 2 Quarters' interest payable for the Working Capital Facility. Clearly, Zee did not guarantee the entire outstanding amounts under the Facility.
- 4.13. However, now IDBI is claiming payment for the entire Facility from Zee by way of the objection application – which is not a legitimate claim. Under the DSRA Agreement, Zee's obligation (if any) was limited to only maintaining the amounts specified in the DSRA and not towards the entire outstanding amount under the facility.
- 4.14. However, even this obligation, if at all, stood extinguished in light of IDBI recalling the facility.

4.15. The Hon'ble NCLT in its order dated 19 May 2023 passed in the insolvency petition filed under Section 7, IBC, by IDBI Against Zee, has observed as follows in relation to IDBI's claim;

- (i) There is no doubt that the obligation of Zee was limited to maintenance of 2 quarters' interest restricted up to Rs. 50 crores; and
- (ii) IDBI has made a claim of incorrect amount of Rs. 149.60 crore, while the demand notice was issued only for Rs. 61.96 crores, and interest has accrued on the total Working Capital Facility of Rs. 101.29 crores; and
- (iii) Zee has disputed the claim made by IDBI.

4.16. The position of law is well settled, i.e., a disputed debt cannot form the basis of objecting to a Scheme.

4.17. In any case, the DSRA Agreement also provides in Clause 26(v) that the liability of Zee under the DSRA Agreement shall not be affected by a merger or amalgamation. Even assuming that Zee owes any amount to IDBI under the DSRA Agreement, the present Scheme will not impact the purported liability of Zee. Therefore, the no ground in relation to the DSRA Agreement can be a reason for holding up the Scheme.

4.18. There is no need to reconvene a meeting of all secured and unsecured creditors of Zee, including IDBI or at all. All the secured creditors of Zee have given their consent to the Scheme. As regard unsecured creditors, Zee has complied with the Hon'ble NCLT's directions in the order dated 24 August 2022, and duly issued notices to the creditors who were owed more than Rs. 10 lakhs each. Thus, unsecured creditors have been given the

opportunity to make their representations on the Scheme. In any case, IDBI would not even be included in the meeting of unsecured creditors of Zee because it is not one.

- 4.19. IDBI has claimed that the Scheme is unfair as it fails to address IDBI's debt of Rs. 149 crores and no notice or opportunity was given to IDBI to object.
- 4.20. IDBI has claimed that Zee's statement that the Scheme contemplates no sacrifice with any creditor, is incorrect because Zee has not paid IDBI under the DSRA Agreement.
- 4.21. In any case, the Scheme does not contemplate a compromise with creditors, so it cannot be unfair to them. As per Clause 2.1(d) of the Scheme, all debts, borrowing, liabilities of Zee shall stand transferred to the merged entity. Even if there is a finding (by the DRT, before which IDBI has sought for recovery from Zee) of liability of Zee, that will be transferred to the merged entity, without compromise.
- 4.22. The net worth of the merged entity will be Rs. 44,000 crores, i.e. more than 4 times that of the net worth of Zee presently. Therefore, even assuming that Zee owes any amount to IDBI, the liability will remain unaffected by the Scheme. In fact, IDBI will, in that case, become the creditor of a much larger, financially stronger company.
- 4.23. When IDBI recalled certain facilities (in February 2021) it called upon Siti to make repayment of Rs. 135 crores (of which Rs. 118 crores were towards the Facility). On 5 March 2021, when IDBI invoked Zee's guarantee, IDBI demanded Rs. 61 crores with interest.

- 4.24. In IDBI's letter dated 9 December 2022, IDBI's claim suddenly ballooned up to Rs. 148 crores without any explanation.
- 4.25. IDBI has also filed a proceeding against Zee before DRT Delhi for recovery of the same alleged debt under the DSRA Agreement, which is currently pending. However, the amount claimed by IDBI before the DRT and Hon'ble NCLT are different. Clearly, IDBI's claims at different points of time are inconsistent and IDBI has not come with clean hands before the Hon'ble NCLT. Such an objection ought to be rejected.

**5. JC Flowers Asset Reconstruction Pvt. Ltd.**

- 5.1. JCF's claim arises from credit facilities extended by Yes Bank Limited (Yes Bank) to Essel Infraprojects Limited (EIL) of Rs. 377 crores in 2018.
- 5.2. On 14 March 2018, Dr. Chandra gave a letter of comfort (LoC) to Yes Bank stating that he will infuse funds in EIL and ensure that EIL pays.
- 5.3. By an assignment agreement dated 16 December 2022, the loan exposure under the credit facilities given by Yes Bank were assigned to JCF.
- 5.4. JCF claims that it is a creditor of the Essel Group. But for the scheme, the non-compete fee would have directly been paid to EIL and Dr. Chandra.
- 5.5. JCF further claims that "as a creditor" it is entitled to monitor assets of its debtors including any consideration that they are entitled to get.
- 5.6. Zee has submitted that JCF is admittedly not a creditor of Zee. It has no contractual or legal privity with Zee. JCF

- claims to be a creditor of a promoter of Zee and this cannot be a ground for it to object to the present Scheme.
- 5.7. But for the fact that the non-compete fee is paid to Essel Mauritius, the promoters of Zee would have full right to compete with the business of the merged entity, which would be to the detriment of the shareholders of the merged entity. Therefore, the payment of the non-compete fee actually protects the shareholders of Zee (who will be shareholders of the merged entity). Further, the non-compete fee has to be necessarily reinvested in the merged entity, thus increasing its capital base and creating more value for the shareholders.
- 5.8. Considering that the non-compete arrangements will have a direct impact on the future business as well as the capital of the merged entity, it is imperative for the non-compete arrangements to be approved by Zee's shareholders as a part of the Scheme. For this reason, the non-compete arrangement has been included in Section IV of the Scheme. Such an inclusion is not mala fide on the part of Zee.
- 5.9. But for the fact that the non-compete fee is paid to Essel Mauritius, the promoters of Zee would have full right to compete with the business of the merged entity, which would be to the detriment of the shareholders of the merged entity. The Ld. Securities Appellate Tribunal in *Tata Tea Ltd. V. SEBI [Appeal No. 136 of 2008]* has held that "...a non-compete agreement would then protect not only the target company but also its continuing shareholders".

- 5.10. Therefore, the payment of the non-compete fee actually protects the shareholders of Zee (who will be shareholders of the merged entity) and there is no question of the non-compete fee being a device.
- 5.11. If there was anyone who could have objected to the Scheme, that would be the shareholders of Zee, if they were able to show that they are receiving lesser number of shares in the merged entity as a result of the payment of the non-Compete fee.
- 5.12. Merely because the non-compete fees are being paid to an entity outside India, does not ipso facto mean that the scheme itself is outside the jurisdiction of the NCLT or that it is a device to defraud the body of creditors of Zee.
- 5.13. There is no question of the fee being diverted to Mauritius or taken out of India, because under the scheme, the non-compete fee can only be utilised by Essel Mauritius/Essel Mauritius SPV to subscribe to the shares of the merged entity (which will be an Indian entity). Thus, the non-compete fee will be brought back to India and re-invested in the merged entity, thus increasing its capital base which will further benefit public shareholders.
- 5.14. Further, the fee is a lumpsum fee being paid by SPE Mauritius to ensure that Zee, its promoter, individuals, promoter companies, and their affiliates, do not compete with the merged entity. The fee has been commercially negotiated and agreed, and it practically cannot be dissected for each promoter, each company and/or affiliate.

- 5.15. It is further submitted that under Section 2(d) of the Indian Contract Act, 1872, a contract wherein consideration is being paid to a third party (other than the promisor or the promisee) is a recognised and a valid contract. Parties have full freedom of contract to decide which party shall make and receive the payment under the non-compete arrangements. No third party can question why the arrangement has been so negotiated.
- 5.16. In any case, Yes Bank had advanced the facility to EIL based on an independent assessment of EIL's creditworthiness at a time when the non-compete fee was not even contemplated. Therefore, now JCF must pursue its claim against EIL and not try to stake a wrongful claim in the non-compete fee, which does not belong to EIL.
- 5.17. Lastly, the entire premise of JCF's objection is that Dr. Chandra owed JCF monies by virtue of a letter of comfort. However, the Hon'ble Bombay High Court has held in Yes Bank Limited Vs. Zee Entertainment Enterprises Limited & Ors., that a letter of comfort is not guarantee when the letter simply assures that the issuer will take steps to ensure repayment by the borrower. From the language of the letter of comfort, it is clear that Dr. Chandra did not guarantee that he will pay on behalf of EIL.
- 5.18. JCF claims that the disclosure made by Zee (in compliance with the directions received from BSE and NSE) are misleading since it failed to disclose the injunction granted in the order of the Supreme Court dated 5 August 2022 (Status Quo Order).

- 5.19. The Status Quo Order restrains Dr. Chandra from transferring, alienating, encumbering, or disposing of any of his assets. JCF claims that the Scheme violates the Status Quo Order as Dr. Chandra's legal rights / beneficial interest are being transferred.
- 5.20. JCF's argument that Zee has not disclosed the Status Quo Order is completely wrong.
- 5.21. Zee submits that SEBI's letter dated 28 July 2022 (and which have been reproduced in the NOC's issued by the Stock Exchanges on 29 July 2022) required Zee to "disclose all details of ongoing adjudication & recovery proceedings, prosecution initiated and all other enforcement action taken, if any, against the Company, its promoters and directors, before the Hon'ble NCLT and shareholders, while seeking approval of the scheme."
- 5.22. The disclosure made by Zee is in full compliance with SEBI's direction. Zee has sufficiently disclosed the proceeding pending before the Hon'ble Supreme Court, in which the Status Quo Order has been passed.
- 5.23. The Status Quo Order restrains Dr. Chandra from transferring, alienating, encumbering or disposing of any asset, or the legal rights or beneficial interests therein, ie, in relation to the asset. The asset being spoken about has to be a physical, tangible asset.
- 5.24. Dr. Chandra is not a shareholder in Zee and none of his assets or legal rights therein are being transferred pursuant to the scheme. Thus, the injunction does not impact the scheme or vice Versa.
- 5.25. It is admitted position that JCF is an assignee of the loan extended by Yes Bank to EIL. Being an assignee of the



loan from Yes Bank, it is trite law, under Section 132 of the Transfer of Property Act, 1882, an assignee is subject to the same equities and liabilities as that of the assignor, in respect of an actionable claim.

- 5.26. Yes Bank, after having the benefit of reviewing the composite scheme, by letter dated 15 February 2022 gave its unconditional consent to the scheme. This includes the non-compete arrangement.
- 5.27. In fact, Yes Bank, in 2021, initiated proceedings before the DRT, Delhi, against EIL, and others seeking repayment of the credit facility extended to EIL. Zee was not a party.
- 5.28. In 2022, Yes Bank had filed a commercial suit before the Hon'ble Delhi High Court, against Dr. Chandra and EIL. Seeking a declaration that the Letter of Comfort constitutes a binding agreement. Zee was not a party.
- 5.29. Despite initiating the above proceedings against Dr. Chandra and EIL, Yes Bank gave its Consent to the scheme.
- 5.30. JCF while taking over Yes Bank's claim must have been fully aware of the position taken by yes Bank, including in the above proceedings. Therefore, JCF cannot now seek to object to the Scheme considering that it is Yes Bank's assignee.
- 5.31. Even assuming, while denying, that JCF is a creditor of Zee, that is not a ground to object to the Scheme. The Scheme clearly provides (Part B, Clause 2.1(d)) that all debts, borrowings, liabilities etc. (unsecured or secured, whether provided for in the books or not) shall stand transferred to or vested in the merged entity after merger.

Therefore, even if JCF were a creditor of Zee, the Scheme would not compromise with or prejudice its alleged debt.

**4. Salient Features of the Scheme**

- i. The scheme submitted for sanction before this Bench is a scheme of arrangement of merger of Zee Entertainment Enterprises Ltd. with and Bangla Entertainment Pvt. Ltd. who are transferor companies with Culver Max Entertainment Pvt. Ltd. which is a transferee company. Zee is a listed company with NSE and BSE in which the promoters Dr. Subhash Chandra and his family members are holding 3.99% shareholding. The remaining shareholding of 96.01% is held by Public shareholders that includes institutions also. The scheme of merger was duly approved by 99.997% shareholders of Zee Entertainment Enterprises Ltd. All the secured creditors along with BSE/NSE have submitted NOC for sanction of the scheme. Further, the net worth of the merged entity will be Rs. 44,000 crores (i.e., more than 4 times the present net worth of Zee). Therefore, there is no prejudice caused to any creditor of Zee.
- ii. Except the above referred applicants, no objections whatsoever from any quarter have been received in opposing the scheme. This bench also vide its order dated 11.05.2023 directed BSE and NSE to review their earlier approval on the issue of non-compete fee raised by the objectors by passing the following order:

*“...Heard the arguments on both sides in part. The counsels of NSE and BSE have raised some fresh points relating to scheme of merger and placed the recent SEBI order dated 25.04.2023 on Shirpur Gold Refinery for*

*Bench's cognizance, where the Zee Promoters' names appears in context of diversion of funds. The court hereby directs both NSE and BSE to review their earlier approval for Zee-Sone merger scheme and provide their fresh NOCs for the same before the next hearing date. The exchanges should also review and confirm that the Non-compete clause of the scheme has been reviewed and approved by them and SEBI, and the manner of payment of non-compete fee from one Mauritius Entity to another is in compliance with the SEBI policies in this regard."*

Of course the above order was subsequently set aside by the Hon'ble NCLAT in Company Appeal No. 82 of 2023 in the appeal filed by Zee citing principles of natural justice. Subsequent to the above order, BSE and NSE except once again bringing to the notice of this tribunal, subsequent SEBI order regarding a bar imposed by SEBI on Mr. Subash Chandra and Mr. Punit Goenka from holding key managerial posts in any listed entity which was already available in public domain, did not either cancel the earlier NOC given for approval of the above scheme nor placed any incriminating material before this bench.

**5. Case law regarding scope, jurisdiction and locus of objectors in opposing the Scheme submitted by Zee**

- i. Section 230(4), (proviso), Companies Act, 2013, provides that any objection to an arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt.
- ii. It is settled law as laid down in the judgements in EMCO Ltd. [(2004) SCC OnLine Bom 422], *Astorn Research Ltd.*

[2013 SCC OnLine Guj 1510] and *Mayfair Ltd.* [2003 94) Mh.L.J.663], that for a person to be able to object to a scheme of arrangement under section 230 of the Act, the objector has to establish the following, (a) the objector must be a creditor; and (b) the objector's claim must not be disputed.

- iii. In the case of *Miheer Mafatlal V. Mafatlal Industries* [(1997) 1 SCC 579], the Hon'ble Supreme Court has laid down that an objector must show that the scheme is unconscionable, illegal, unfair, or unjust to the class of shareholders or creditors for whom it is meant.
- iv. In *EMCO Ltd.* [(2004) SCC OnLine Bom 422], the Hon'ble Bombay High Court held that **"if liabilities or dues are in dispute and unless those disputes or liabilities are settled, in appropriate Court or forum pending those proceedings, sanction of such Scheme of Arrangement cannot be hauled or stopped or delayed"**.
- v. In the matter of *Mayfair Limited* [(2003)(4) Mh. L.J. 663], the Hon'ble Bombay High Court held that "the petition for a sanction of a scheme under Section 391 of the Companies Act is **not a tool in the hands of the creditor to recover the debt or to coerce the company to pay, especially when the debt is not admitted.**"
- vi. As held by the Hon'ble Bombay High Court in the judgement of *Larsen and Toubro Limited* [2004 SCC Online Bom 1082], the term "arrangement" under Section 230 of the Act, is a word of wide import.
  - a. JCF's has relied on the judgement of the Hon'ble Supreme Court in ***S.N Mathur v. Board of Revenue.* [(2009) 13 SCC 301]**, to submit that the term 'disposition' "*is a term of wide*

*import which encompasses any devise or mode by which property can pass and includes giving away or giving up by a person of something which was his own*". However, this argument is also legally untenable. The judgement was passed by the Hon'ble Supreme Court in the specific context of income tax law and the Court was deciding upon circumstances wherein the tax authorities can artificially treat an event to be taxable. This judgment was rendered under a special statute in the case of an immovable property (not a right to compete) and the findings therein cannot be applied in the present petition.

#### **FINDINGS AND OBSERVATIONS**

1. After hearing the submissions of all the above petitioners and the respondent Zee, and after perusing the entire material and the case laws relied on both parties, this bench clearly observes that as rightly contended by Zee's counsel, Mr. Dwarka Das, that none of the above petitioners are the direct creditors of Zee nor have any privity of contract with Zee whose scheme of merger is pending for approval before this bench.
2. This bench further observes that all the above petitioners are having claims against the other entities of Essel Group among which Zee is just one of the entities. In addition to the above, as rightly pointed out by Mr. Dwarka Das, the claim of JC flower being the assignee of Yes Bank who has lent credit facilities to Essel InfraProject Ltd. arises out of a letter of comfort given by Dr. Subhash Chandra. Yes bank in 2021 initiated proceedings before the DRT Delhi against EIL in which Zee is not a party. The Hon'ble Bombay High Court in *Yes Bank Ltd. Vs. Zee Entertainment Enterprises Ltd. and others* held that a letter of comfort is not a guarantee when the letter simply mentions that issuer will take steps to ensure repayment by the borrower. Thus, it

- is very clear that a OA is pending before DRT, Delhi against EIL and Dr. Subash Chandra which is seriously contested and disputed by both. In fact, this bench is unable to understand as to how Yes Bank lent such a huge amount to EIL basing on a mere letter of comfort of Dr. Chandra which is not a guarantee as per law. We can understand if such act is done by a layman without knowing law but not by a financial institution that deals with public money.
3. This bench further observes that the claims of other petitioners also arises from the alleged outstanding dues from other entities of the Essel Group and none of them are the direct lenders of Zee nor do they have any privity of contract with Zee. The only claim of IDBI against Zee is on the basis of DSRA Agreement basing on which IDBI filed Section 7 Petition before the NCLT, Mumbai Bench which was dismissed by NCLT on 19.05.2023 and Zee's liability in this regard is also in dispute.
  4. This bench further observes that as per section 230(4) (proviso), of the Companies Act any objection to an arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt which is not the case of any of the above petitioners. In addition to the above, for a person to be able to object to a scheme of arrangement under section 230 of the Act, the objector has to establish the following, (a) the objector must be a creditor; and (b) the objector's claim must not be disputed as per the law laid down in [(2004) SCC OnLine Bom 422], *Astorn Research Ltd.* [2013 SCC OnLine Guj 1510] and *Mayfair Ltd.* [2003 94) Mh.L.J.663]. None of the above petitioners meets the above litmus test in this case.
  5. This bench further observes from the pleadings of the proceedings initiated by ACF that ACF while questioning the genuineness of non-compete fee to be received allegedly by Dr. Subash Chandra on one

- breath has no objection for approval of the scheme if their money is deposited in the pending proceedings before the High Court and in the Commercial Court which clearly speaks that ACF is blowing hot and cold only to recover their amount due and payable from the other entities of Zee using the above scheme as a device which is not legally permissible.
6. This bench further observes that the above petitioners having failed in ensuring recovery of their alleged dues from other entities of Zee through the above referred legal proceedings are opposing this scheme of Zee as a last resort for their recoveries. This bench further observes that none of the above referred legal proceedings initiated by ACF & JCF binds Zee since Zee is not a party to any of the proceedings.
  7. This bench further observes that as rightly pointed out by Mr. Dwarka Das, this tribunal has very limited jurisdiction in interfering with commercial wisdom of the shareholders in approving the scheme and the NCLT/Company Court can interfere in such commercial wisdom if the objectors could establish that the scheme is unconscionable, illegal, unfair, or unjust to the class of shareholders or creditors for whom it is meant as per the law laid down by the Hon'ble Supreme Court in *Miheer Mafatlal V. Mafatlal Industries* [(1997) 1 SCC 579]. None of the petitioners proved the above legal requirements. Similarly, the shareholders of Zee in their commercial wisdom have given their blessings to the Scheme by an overwhelming majority of 99.997%. As held in *Miheer Mafatlal Vs. Mafatlal Industries*, “the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme

*for the company and its members or creditors for whom the scheme is framed”.*

8. This bench further observes that Zee is one of the entities of Essel Group and each entity of Essel group has its independent legal status with separate assets and liabilities and therefore, the scheme of merger of Zee which was approved by 99.997% of shareholders cannot be halted upon for the outstanding liabilities if any of the other entities of the same group. Even otherwise as rightly pointed out by Mr. Dwaraka Das, the assets and liabilities of Zee would merge with the new entity and the lenders of Zee will not lose their right to recovery.
9. As rightly argued by Mr. Dwarka Das that the Scheme clearly provides (Part B, Clause 2.1(d)) that all debts, borrowings, liabilities etc. (unsecured or secured, whether provided for in the books or not) shall stand transferred to or vested in the merged entity after merger and therefore, it is not just and equitable to deprive the benefits of scheme available to more than 90% of shareholders of Zee at the behest of the present petitioners/objectors.
10. With regard to the disability of Mr. Punit Goenka in holding any key managerial position in the merged entity due to the interim order dated 12.06.2023 passed by SEBI is concerned, the impugned order passed by SEBI is a very recent one that was passed much after filing the above scheme before the NCLT which cannot be anticipated at the time of approving the scheme by the board and filing before the NCLT. As rightly argued by Mr. Dwarka Das that Culver Max Entertainment Private Limited (the transferee Company) has every right to take up this issue at their board level after approval of the scheme depending upon the final outcome of the order of the SEBI for which the present scheme need not be halted on that ground. At the same time the above observations of this bench does not in any



way amount to approving the appointment of Mr. Goenka under the scheme as it is subjudice and subject to further approval of the transferee company or of any other authority required as per regulations.

11. For the aforesaid reasons, viewing from any angle this bench did not find any valid reason to withhold the approval of the scheme at the behest of the above petitioners/objectors who have no direct privity of contract with Zee and withholding such approval would seriously prejudice the interest of 99.997% shareholders of Zee and will shake the confidence of commercial wisdom of the corporate entities.
12. Therefore, this bench is of the considered opinion that there is no merit in any of the above objections raised by the objectors and all the above I.A's are liable to be dismissed in limine. Accordingly, all the above I.A's/Intervention Applications are **dismissed**.

Sd/-  
MADHU SINHA  
Member (Technical)

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT -III, MUMBAI BENCH**

**CP(CAA) No. 209/MB/2022**

**In**

**CA(CAA) No. 204/MB/2022**

*In the matter of the Companies Acts,  
2013 (18 of 2013)*

*And*

*In the matter of Sections 230 to 232 and  
other applicable provisions of the  
Companies Act, 2013 read with Rule 3 of  
the Companies (Compromises,  
Arrangements, Amalgamations) Rules,  
2016, also read with Rules 11, 23 and 34  
of the National Company Law Tribunal  
Rules, 2016*

*And*

*In the matter of*

*Composite Scheme of Arrangement  
amongst*

*Zee Entertainment Enterprises Limited*

***(Petitioner / Transferor Company  
No. 1)***

*And*

*Bangla Entertainment Private Limited*

***(Transferor Company No. 2)***

*And*

*Culver Max Entertainment Private  
Limited (formerly, Sony Pictures  
Networks India Private Limited)  
(Transferee Company), and their  
respective shareholders and creditors*

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

CP(CAA) No. 209/MB/2022  
In  
CA(CAA) No. 204/MB/2022

**Zee Entertainment Enterprises Limited**

CIN: L92132MH1982PLC028767

... Petitioner Company

**Order Reserved On: 10.07.2023**

**Order Pronounced On: 10.08.2023**

**Coram:** Hon'ble Shri. H.V. Subba Rao, Member (Judicial)  
Hon'ble Ms. Madhu Sinha, Member (Technical)

*Appearances:*

For the Petitioner Company : Mr. Janak Dwarkadas, Mr. Navroz Seervai and Mr. Zal Andhyarujina, Senior Advocates along with Mr. Nitesh Jain, Mr. Siddharth Ranade, Ms. Vatsala Kumar, Mr. Aniruddha Banerji, Ms. Shreya Mundra, Mr. Atharva Gade, Mr. Anuj Tiwari, Mr. Ashwini Gawde i/b Trilegal

For Regional Director (WR) : Ms. Rupa Sutar, Deputy Director, Office of the Regional Director, Mumbai.

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COURT -III, MUMBAI BENCH

CP(CAA) No. 209/MB/2022

In

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**ORDER**

1. Heard the Learned Counsel for the Petitioner Company and Representative of the Regional Director, Western Region, Mumbai.
2. The Learned Counsel for the Petitioner Company states that there are certain objectors who have come before this Tribunal to oppose the Composite Scheme of Arrangement vide an **Company Application bearing No. 151 of 2023** (J.C. Flowers Asset Reconstruction Private Limited v. Dr. Subhash Chandra), **Intervention Petition No. 1 of 2023** (IDBI Bank Limited v. Zee Entertainment Enterprises Limited), **Intervention Petition No. 3 of 2022** (Imax Corporation v. Zee Entertainment Enterprises Limited), and **Interlocutory Application No. 124 of 2022** (Axis Finance Limited v. Zee Entertainment Enterprises Limited).
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Composite Scheme of Arrangement amongst Zee Entertainment Enterprises Limited (Petitioner / Transferor Company No. 1), Bangla Entertainment Private Limited (Transferor Company No. 2) and Culver Max Entertainment Private Limited (formerly, Sony Pictures Networks India Private Limited) (Transferee Company), and their respective shareholders and creditors. These objection and intervention applications were heard and disposed of by a separate common order.

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4. The Learned Counsel for the Petitioner Company submits that the Petitioner Company have their registered office in the State of Maharashtra and the subject matter of the Company Petition is within the jurisdiction of this Tribunal.
5. The Learned Counsel for the Petitioner Company submits that the Board Meeting of the Petitioner Company was held on 21 December 2021. The Board Meeting for the Transferor Company No.2 and the Transferee Company was also held on 21 December 2021. Copies of the respective Board resolutions are annexed to the Company Scheme Petition.
6. The Learned Counsel for the Petitioner Company submits that the Transferor Company No. 2 and the Transferee Company has filed a similar petition before the National Company Law Tribunal, Mumbai Bench having CP(CAA)/214/MB/2022.
7. The Learned Counsel for the Petitioner Company states that the Company Scheme Petition has been filed in consonance with the order dated 24th August 2022 passed in the Company Scheme Application No. 204 of 2022 of the Tribunal.
8. The Learned Counsel for the Petitioner Company states that the said order directed the Petitioner Company to convene and hold meeting of its equity shareholders. The Learned Counsel further submits that as directed, the Petitioner Company has convened and held the meeting of its equity shareholders through video conference / other audio-visual means for the purpose of considering and if thought fit, approving the Scheme. At the meeting of the Equity Shareholders of the Petitioner Company on 14 October 2022, the Scheme was

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approved by 99.9979% of the equity shareholders of the Petitioner Company, present and voting. The Chairperson appointed for the said meeting has filed Chairperson's Report showing the conduct and results of the said meetings, which are annexed as Annexure "Q" to the Company Scheme Petition.

9. The Learned Counsel for the Petitioner Company further states that the Petitioner Company have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance before this Tribunal.
10. Learned Counsel for the Petitioner Company submits that by an order dated 15 December 2022, this Tribunal admitted the Company Petition and fixed 12 January 2023 as the date for hearing and final disposal. By the said order, the Petitioner Company was directed to publish the notice of hearing of the Company Petition, at least 10 (ten) days before the date fixed for final hearing in the newspapers, 'Business Standard' in the English Language and a Marathi translation thereof in 'Navashakti', both circulated at Mumbai. Learned Counsel for the Petitioner Company submits that the Petitioner Company published the notice of hearing of the Company Petition in the said newspapers on 30 December 2022 and filed an Affidavit showing compliance dated 11 January 2023 evidencing publication in the said newspapers.
11. The Learned Counsel for the Petitioner Company submits that the Petitioner Company is a listed public limited company and is engaged *inter alia* in the business of engaged in the business of TV content development, broadcasting of regional and international

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entertainment satellite television channels, movies, music, and digital business.

12. The Learned Counsel for the Petitioner Company further submits that the Transferor Company No. 2 is a private limited company and is engaged *inter alia* in the business of acquisition, production, distribution and broadcast of audio-visual content for exploitation of such program services on a worldwide basis.
13. The Learned Counsel for the Petitioner Company further submits that the Transferee Company is a private limited company and is engaged *inter alia* in the business of (a) creating, owning, operating, programming, providing, transmitting, distributing and promoting linear and non-linear non-news program services, including sports program services, delivered by any means primarily to viewers in India and the Indian diaspora globally, and (b) production, exhibition, broadcast, re-broadcast, transmission, re-transmission or other exploitation of non-news audio-visual content, including sports content, in any format or in any language spoken in India (including English) for exploitation of such program services.
14. The Learned Counsel for the Petitioner Company submits that the Scheme provides for:
  - a. sub-division of the share capital of the Transferee Company, Bonus Issuance and Share Issuance as provided for in the Scheme and amalgamation of the Transferor Companies with the Transferee Company;

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- b. subsequent to the amalgamation of the Transferor Companies with the Transferee Company, the dissolution of the Transferor Companies without winding up; and
  - c. Certain arrangements amongst the Sony Group and the Essel Group.
15. The Learned Counsel for the Petitioner Company submits that the rationale for the proposed Scheme is as under:

*“The Transferee Company is inter alia engaged in the business of (1) creating, owning, operating, programming, providing, transmitting, distributing and promoting linear and non-linear, non-news program services, including sports program services, delivered by any means primarily to viewers in India and the Indian diaspora globally, and (2) production, exhibition, broadcast, re-broadcast, transmission, re-transmission or other exploitation of non-news audio-visual content, including sports content, in any format or in any language spoken in India (including English) for exploitation of such program services.*

*The Transferor Company 1 is inter alia engaged in the business of TV content development, broadcasting of regional and international entertainment satellite television channels, movies, music and digital business.*

*The Transferor Company 2 is inter alia engaged in business of acquisition, production, distribution and broadcast of audio-visual content for exploitation of such program services on a worldwide basis.*



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*With a view to consolidate the business interests of the Parties (as defined below), the Parties have decided that the Transferor Company 1 and the Transferor Company 2 with all their business interests, be amalgamated with the Transferee Company.*

*The Parties believe that (a) the proposed sub-division of the share capital of the Transferee Company, the Bonus Issuance to the SPNI Shareholder(s) and Share Issuance to the SPNI Shareholder(s) and Essel Mauritius and Essel Mauritius SPV; (b) the proposed amalgamation of the Transferor Company 1 with and into the Transferee Company; (c) the proposed amalgamation of the Transferor Company 2 with and into the Transferee Company, and (d) the other arrangements contemplated under this Scheme, would be to the benefit of the shareholders and creditors of each of the Parties and would, inter alia, have the following benefits:*

- (a) the proposed amalgamation and Share Issuance will enable the Parties to combine their businesses and create a financially strong amalgamated company. Each of the Parties bring well recognized entertainment offerings across platforms that will enable the amalgamated company to cater to the entertainment needs of viewers across various segments and age groups;*
- (b) the Parties have a history of bringing quality entertainment content to audiences across India. The amalgamated company will be well positioned to capitalize on the growth in the television broadcasting market;*
- (c) each of the Parties have a strong presence in the digital media space. Transferor Company 1 and Transferee Company are*

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*amongst the leading over the top platforms. Each of the Parties' content and strengths when combined will position the amalgamated company to capitalize on the rapid growth in the digital market and compete with market leaders;*

*(d) the combined scale and audience reach of the amalgamated company across television and digital platforms, will also enable it to compete effectively for advertisers. The financial strength of the amalgamated company will also enable it to compete effectively for acquiring upcoming rights to marquee sporting events across cricket and other sports; and*

*(e) each of the Parties have a strong brand recall across both television and digital media markets and as both markets evolve and grow, the amalgamated company will be well positioned to compete effectively with its peers in these markets. The transactions contemplated by the Scheme provides an opportunity that benefits all the stakeholders of the Parties.*

16. The Regional Director has filed his Report dated 10 January 2023 *inter alia* making the following observations in Paragraphs 2 (a) to (o) which are reproduced hereunder along with the responses of the Petitioner Company:

<b>Para no.</b>	<b>Observation by the Regional Director</b>	<b>Responses of the Petitioner Company</b>
2(a)	<i>The Official Liquidator vide Affidavit dated 03.01.2023 has submitted a detailed</i>	The Official Liquidator in his Affidavit has referred to the insolvency petition [CP(IB)(MB) No.

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	<p><i>separate report along with the copy of report of a Chartered Accountant viz. Harsh Rupalia and Company in the matter of subject Petitioner u/s. 230-232 of CA, 2013 filed before Hon'ble NCLT, Mumbai Bench. The Hon'ble NCLT may consider the submissions and the observations of the OL, Mumbai in this regard.</i></p>	<p>221 of 2022] filed by IndusInd Bank Limited under Section 7 of Insolvency and Bankruptcy Code, 2016, against the Petitioner Company before this Tribunal. The petition was allowed on 22 February 2023 and thereafter on appeal by the Petitioner Company, the order was stayed on 24 February 2023. Subsequently, the Petitioner Company and IndusInd Bank Limited have settled their dispute, which is recorded in the order dated 29 March 2023 of the Hon'ble NCLAT. Pursuant to the settlement IndusInd has given its consent to the Scheme and withdrawn its objections thereto as recorded in the order of this Hon'ble Tribunal dated 30 March 2023.</p>
<p>2(b)</p>	<p><i>On examination of the report of the Registrar of Companies, Mumbai dated 22.11.2022 for Petitioner Companies (Annexed as Annexure A-1) that the</i></p>	<p>The Petitioner Company's responses are given below.</p>

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	<p><i>Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2021.</i></p> <p><i>The ROC has further submitted in report dated 22.11.2022, that:</i></p>	
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	<p>1. <i>No Inquiry, Investigations, Prosecutions, Technical Scrutiny are pending against the Petitioner Companies.</i></p>	<p>With reference to Sr. No. 1, the Petitioner Company confirms that no enquiry, investigations, prosecutions, technical scrutiny are pending against the Petitioner Company.</p>
	<p>2. <i>Inspection proceeding under Companies Act, 2013 against Zee Entertainment Enterprises Limited is pending vide EMSRN :- I00063059, W0007459, W00007460, Z01393727, Z01405691.</i></p>	<p>With reference to Sr. No. 2, the Petitioner Company undertakes to comply with all documents and information that the Ministry of Corporate Affairs requires in the inspection proceedings pending against the Petitioner Company. The Petitioner Company submits that the inspection proceedings do not have any impact on the present Scheme.</p>
	<p>3. <i>Complaint against Zee Entertainment Enterprises Limited are pending vide SRN No. I00004463 regarding company has not intimated the court injunction order/FIR to the stock exchange and thereby violated clause 13 of the listing agreement, take a</i></p>	<p>With reference to Sr. No. 3, the Petitioner Company submits that it has replied to and provided all required details in relation to the complaint to the Registrar of Companies, Mumbai. The Petitioner Company submits that the complaint does not have any impact on the present Scheme.</p>

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	<p><i>strict action against the company and the management and also levy heavy penalty for default. (Copy of ROC, Mumbai letter dated 06.01.2023 attaching the complaint vide SRN I00004463 is attached as Annexure A-2)</i></p>	
	<p><i>4. Interest of the Creditor should be protected.</i></p>	<p>With reference to Sr. No. 4, the Petitioner Company submits that the interest of creditors will be and remains protected in the Scheme and post-Scheme, as provided in Part B, Clause 2.1(d) of the Scheme.</p>
	<p><i>5. It is submitted that as per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee</i></p>	<p>With reference to Sr. No. 5, the Petitioner Company undertakes that the Transferee Company will comply with the provisions of Section 232(3)(i) of the Companies Act, 2013, as directed by the RD.</p>

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	<p><i>company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferee company on the increased authorized capital subsequent to the amalgamation</i></p> <p><i>Hence, the Petitioner Companies shall undertake to submit reply against observations mentioned above.</i></p>	
2(c)	<p><i>Transferee company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i></p>	<p>The Petitioner Company undertakes that Transferee Company will comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</p>

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2(d)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	The Petitioner Company submits that in addition to compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.
2(e)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>	The Petitioner Company undertakes that the Scheme enclosed to Company Application and Company Petition, are one and same and there is no discrepancy or change made. The Petitioner submits that it shall file an affidavit to this effect, is so directed by the Tribunal.
2(f)	<i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which</i>	The Petitioner Company confirms that notices have been served to the concerned authorities (i.e., Ministry of Corporate Affairs, Registrar of Companies, Income



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	<p><i>are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>Tax authority, Official Liquidator, BSE Limited, NSE Limited, SEBI, Competition Commission of India, Ministry of Information and Broadcasting) which are likely to be affected by or involved in the amalgamation / arrangement.</p>
<p>2(g)</p>	<p><i>As per Definition of the Scheme,</i></p> <p><i>“Appointed Date” shall mean the Effective Date;</i></p> <p><i>“Effective Date” has the meaning assigned to such term in Clause 5.1 of Section V of this Scheme.</i></p> <p><i>Any references in this Scheme to “upon this Scheme becoming effective” or “upon the effectiveness of this Scheme” or “upon this</i></p>	<p>The Petitioner Company submits that the Appointed Date is the Effective Date from which the Scheme shall be effective, and the Scheme shall be deemed to be effective from such date and not at a date subsequent to the Appointed Date. Further, the Petitioner Company undertakes to comply with the requirements of Circular No. F.No.7/12/2019/CL-1 dated 21 August 2019 issued by the Ministry of Corporate Affairs.</p>

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	<p><i>Scheme coming into effect” means and refers to the Effective Date.</i></p> <p><i>“Record Date” means the date to be fixed by the Board of the Transferee Company for the purpose of determining the shareholders of the Transferor Company 1 and the Transferor Company 2 that are to be issued shares of the Transferee Company in accordance with the Merger Cooperation Agreement, pursuant to Section II and Section III of this Scheme.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
2(h)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned</i></p>	<p>The Petitioner Company undertakes to comply with the</p>

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	<i>sectoral Regulatory, if so required.</i>	directions of the concerned sectoral regulatory, if so required.
2(i)	<i>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.</i>	The Petitioner Company undertakes to comply with the directions of Income Tax department, if any.
2(j)	<i>Petitioner Companies shall undertake to comply with the guidelines of RBI, FEMA and FERA as Petitioner companies have foreign shareholders.</i>	The Petitioner Company undertakes to comply with the guidelines of the RBI, FEMA and FERA.
2(k)	<i>The scheme provides for payment of USD equivalent INR 11,01,30,91,800 to the promoters as non-compete fees, therefore the Petitioner may satisfy that the said payment is not pre-judicial to the non-promoter shareholders/Petitioner Company.</i>	The Petitioner Company submits that, under the Scheme, payment of USD equivalent to INR 11,01,30,91,800 will be made in the form of non-compete fees, to Essel Mauritius, i.e., Sunbright International Holdings Limited (based in Mauritius) or Essel Mauritius SPV, i.e., Sunbright Mauritius Investment Limited, which amount shall be utilized to subscribe their portion of shares in the resultant company. The Petitioner Company submits that the non-compete fee will not be

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		<p>prejudicial to the non-promoter shareholders/ Petitioner Company. The non-compete fee will ensure that the promoter group of the Petitioner Company is barred from starting a competing business with the resultant company (in which the present shareholders of the Petitioner Company will hold shares after the amalgamation). The Petitioner Company submits that the non-compete fee is, therefore, in the interest of the non-promoter shareholders of the Petitioner Company. Further, the Scheme (including the provision for payment of non-compete fees) has been approved by the BSE, NSE, SEBI, CCI, and 99.9979% of the equity shareholders of the Petitioner Company.</p>
2(1)	<p><i>The Petitioner Company has written off the debts/ Provision for debts/ receivable as disclosed in the financial statements of the</i></p>	<p>The Petitioner Company undertakes that Transferee Company will continue to take adequate steps for recovery off bad debts / provisions created by the</p>

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	<i>company. In this regards, Petitioner Companies shall undertake to continue to take adequate steps for recovery off bad debts / provisions created by the Petitioner listed Company including ICDs given by the Petitioner Company to protect the interest of the shareholders of the company.</i>	Petitioner listed Company including ICDs given by the Petitioner Company to protect the interest of the shareholders of the company.
2(m)	<i>The Ministry of Corporate Affairs has ordered the inspection of books of account u/s. 206 (5) of CA, 2013 vide order dated 05.12.2019 to examine various complaints received against the Zee Entertainment Enterprise Limited on the issue of corporate governance, related party transactions, role of independent directors, CSR expenses and other irregularities &amp; non-compliance of provisions of Companies Act, 2013, since</i>	The Petitioner Company undertakes to comply with notice / order, prosecutions, adjudications which may be taken by the Ministry of Corporate Affairs as per law on submission of inspection report in the matter of subject company.

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	<p><i>inspection is under process by the IOs appointed in this matter, the Petitioner Companies, Directors, KMP and any other connected persons may be directed to undertake to comply with notice/ order, prosecutions, adjudications which may be taken by the Ministry of Corporate Affairs as per law on submission of inspection report in the matter of subject company.</i></p>	
2(o)	<p><i>Transferor Company No. 1 is a listed public limited company and BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") have issued observations letter dated 29.07.2022. Therefore, the Petitioner listed Company shall undertake to comply with the SEBI Regulations as the SEBI is sectoral Regulator of a listed Company and also</i></p>	<p>The Petitioner Company undertakes to comply with the SEBI Regulations as the SEBI is sectoral Regulator of a listed Company and also undertakes to comply with SEBI observations, if any, received on compliance of section 230(3) of CA, 2013 r/w Rule 8 of the Companies (CAA) Rules, 2016 by the Petitioner listed Company in respect of notices served to statutory Authorities in Form CAA-3.</p>

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<p><i>undertake to comply with SEBI observations, if any, received on compliance of section 230(3) of CA, 2013 r/w. Rule 8 of the Companies (CAA) Rules, 2016 by the Petitioner listed Company in respect of notices served to statutory Authorities in Form CAA-3.</i></p>	
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17. The observations made by the Regional Director have been explained by the Petitioner Company in Para 17 above. Further heard, Ms. Rupa Sutar, Authorised representative of Regional Director, MCA (WR) Mumbai, who was present at the time of final hearing. She stated that they have no objection for approving the scheme by this Tribunal.
18. The Official Liquidator has filed his report on 3 January 2023 in the Company Scheme Petition No. 209 of 2022, *inter alia*, stating therein that the affairs of the Petitioner Company have been conducted in a proper manner.
19. From the material on record, the Composite Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 209 of 2022 is made absolute in terms of paragraphs 22 to 50 of the said Company Scheme Petition.

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21. The Petitioner Company be dissolved without winding up.
22. The Counsel submits that the Scheme is conditional upon receipt of various regulatory approvals and pre-conditions. The regulatory approvals as mentioned in Clause 5.1 of Section V of the Scheme are:
  - a. Approval from Competition Commission of India (“CCI”)
  - b. Approval of Ministry of Information and Broadcasting (“MIB”), Government of India, for (i) the appointment of the ZEEL Director as the managing director and the chief executive officer of the Transferee Company; (ii) the appointment of each of the Independent Directors to the Board of the Transferee Company; and (iii) the appointment of each of the Sony Group Director(s), to the Board of the Transferee Company.
  - c. Making an application to the MIB for obtaining the approval of the MIB, for the transfer of the licenses obtained by Petitioner Company and Transferor Company No. 2 in relation to the up-linking and down-linking of television channels (as applicable) to the Transferee Company, pursuant to the Scheme.
23. The CCI has already given its approval to the Scheme by way of its letter dated 4 October 2022. The Learned Counsel for the Petitioner Company submits that the Scheme requires approval of MIB for appointment of persons specified in clause (b) above and Scheme will come into effect post receipt of MIB approval. The Petitioner Company is to file this order with the RoC Mumbai within a period of 30 days from receipt of the order. In case the Scheme does not become effective in terms of Clause 5.1 of the Scheme, within 30 days of



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receipt of this order, then the Petitioner Company is to file an intimation with RoC Mumbai within 30 days of the Effective Date.

24. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
25. All authorities concerned to act on a copy of this order along with the Composite Scheme of Arrangement duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
26. The Appointed Date is the Effective Date.
27. Ordered Accordingly. **CP(CAA) No. 209/MB/2022 is allowed and disposed off.**

**SD/-**

**MADHU SINHA**  
**MEMBER (TECHNICAL)**  
//Renuka//LRA//

**SD/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**