
POWER OF THE COURTS TO QUESTION THE LEGALITY OF THE SHAREHOLDER'S REQUISITION CALLING FOR AN EXTRAORDINARY GENERAL MEETING (EGM): A COMPARISON BETWEEN THE UK AND THE INDIAN SCENARIO

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ABSTRACT

This paper compares the evolution of Company Law in the UK and India, specifically focusing on the power of Courts/Tribunals to intervene in Shareholder's right to call an Extraordinary General Meeting (EGM). In the UK, the transition from the Companies Act 1985 to the Companies Act 2006 altered provisions related to EGMs on members' requisition (Section 368 to Section 972). Section 303 of the 2006 Act addresses Members' power to require directors to call a general meeting.

Under the Indian Companies Act, 2013, Section 100 empowers shareholders to requisition an EGM, specifying the matters for consideration. If the Board doesn't call the EGM within 21 days, shareholders can convene the meeting independently within three months. This analysis explores judicial interpretations, emphasizing the evolving landscape of shareholder rights in calling Extraordinary General Meetings. The focus of this analysis is on the power of Courts/Tribunals to interfere with the Shareholder's right to call an Extraordinary General Meeting (EGM).

I. INTRODUCTION

The evolution of Company Law in India has been akin to that in the United Kingdom (“the UK”). Several parallels can be drawn between the UK Companies Act, 2006 and the Indian Companies Act, 2013. However, the Courts have interpreted the provisions differently on certain occasions and therefore, there lies the scope for comparison and analysis of the true purport of the provisions. In this paper, I have only attempted to analyse the power of the Courts/Tribunals to interfere with the Shareholder’s right to call an Extraordinary General Meeting (“EGM”).

Over the years, the laws have evolved in such a manner that shareholder’s rights have been afforded primacy and supremacy in the affairs of the company. The role of the courts has been limited by law as far as justified when it comes to the affairs of the company. Specifically, Section 368 of the old UK Companies Act 1985 (“the 1985 Act”) dealt with the provision of Extraordinary general meeting on members' requisition. In the new UK Companies Act 2006 (“the 2006 Act”), the said provision has been made a transitory provision, by virtue of Section 972. Moreover, the provision concerning Members' power to require directors to call general meeting, has been contained in Section 303 of the 2006 Act.

The Indian Companies Act, 2013 (“the 2013 Act”) empowers the shareholders of a company to call for an EGM¹. Section 100, sub clause (3) provides that the requisition by the shareholders must set out the matters which require consideration in the said EGM. Further, Section 100 sub clause (4) provides that if the Board does not, within 21 days of receipt of a valid requisition, proceeds to call the EGM, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the Requisition.

II. COURT’S APPROACH IN DEALING WITH CHALLENGES CONCERNING LEGALITY OF EGM REQUISITION

In *B Sivaraman & Ors vs Egmore Benefit Society*², the Plaintiffs were shareholders and had been elected as Directors pursuant to a poll taken at the Annual General Meeting (“AGM”) and were thereafter acting as directors. The Defendants were directors of the Company earlier who had

¹ Section 100 of the 2013 Act.

² (1992) 75 Co Cas 198.

retired by rotation, but had not been re-elected/ reappointed as Directors at that AGM. The Defendants subsequently submitted a Requisition for an EGM to pass a resolution (i) declaring the resolutions on the appointment of the Plaintiffs as directors at the AGM as null and void and (ii) to declare the defendants [the defeated candidates] as directors of the Company. The EGM Requisition was challenged as illegal, as appointments / elections effected earlier could not be declared void by a subsequent resolution and if at all the requisitionist desired to remove any director, they could only do so by taking steps under Section 284 of the old Indian Companies Act 1956 (“the 1956 Act”). The Court held in the said case, that the Civil Court under Section 9 of Indian Civil Procedure Code 1908 (“CPC”) has jurisdiction to entertain the case even though it related to the Companies Act. The Court further held that there was a presumption in favour of the jurisdiction of the Civil Court and that exclusion of jurisdiction could only be by a clear provision of law. On merits the Court held that the law did not permit the Defendants to requisition a Meeting to dislodge the duly elected directors and declare themselves as the Directors. The Court also noticed the cases cited by the Defendants Advocate including (1) *Isle of Wight Railway Co vs Tahourdin*³ and *Life Insurance Corporation of India vs Escorts Ltd. & Ors.*⁴ and held that they “were on different facts not at all germane to the present case”. Accordingly, the Court granted an injunction restraining the Defendants from holding an EGM in pursuance of the Requisition Notice.

Now, if the decision in *Isle of wight Rly (supra)* is analysed, it emerges that the Court observed that a Requisition Notice calling for an EGM could be restrained if it could not be legally acted upon. The Court observed: “*It appears to me that it must be very strong case indeed which would justify this Court in restraining a meeting of shareholders. I do not mean to say that there could not be a case in which it would be necessary and proper to exercise such a power. I can conceive a case in which a meeting can be called under such a notice that nothing could be done under it. Possibly in that case an injunction to restrain the meeting might be granted*”.⁵ The Court further observed: “*If the object of a requisition to call a meeting were such , that in no manner and by no*

³ [1884] 25 Ch 320.

⁴ (1986) 1 SCC 264.

⁵ *Isle of Wight Railway Co vs Tahourdin* [1884] 25 Ch 320 (Lindley LJ).

*machinery could it be legally carried into effect , the directors would be justified in refusing to act upon it ”.*⁶

Subsequently, in the case of ***Queensland Press Ltd vs Academy investments No 3 Pty Ltd***⁷, the Supreme Court of Queensland, Australia restrained the Defendants from acting on a Requisition/ convening an EGM on the ground that it “*seeks a decision by shareholders on a matter which under the Articles, is solely within the authority of the directors to determine*”. The Court held “ I agree with respect with the opinion expressed by Needham J in ***Turner vs Berner***⁸ that the decision in ***Isle of Wight (supra)*** establishes the proposition that if an object of the Requisition cannot be lawfully effectuated at the meeting, then the directors are at least entitled to omit that object from the Notice. It seems to me to follow that if the sole object of a requisition is to do something which cannot be lawfully effectuated at a meeting, the directors are entitled to refuse to convene the meeting”. It was further held that “if the only objects stated are such that the general meeting is invited to do something which at law it has no power to do, directors are entitled to refuse to convene the meeting.”

In yet another case, ***Rose vs Mc Givern and others***⁹, the Court declined an order requiring the Company to call an EGM pursuant to a requisition. The Court held, “if the EGM called pursuant to the requisitions could only be for the purposes of passing ineffective resolutions, then, as a matter of commercial common sense, the directors need not call such an EGM. Such a proposition is supported by an observation of Fry J in *Isle of Wight Rly Co vs Tahourdin* where he said:“ If the object of a requisition to call a meeting were such that, in no manner and by no machinery could it be legally carried into effect, the directors would be justified in refusing to act upon it ””.

In line with the dictum of the judgments quoted above, in the case of ***Kaye & Anr vs Oxford Press (Wimbledon) Management***¹⁰, the peculiar provision contained in Section 303 of the 2006 Act was taken note of. It was noted that the 2006 Act introduced Section 303 sub-clause (5), which provides that a Resolution may properly be moved at a Requisitioned Meeting unless : “(a) it would , if

⁶ ibid (Fry LJ).

⁷ [1987 No 110].

⁸ [1978] 1 NSWLR 66

⁹ (1998) 2 BCLC 593.

¹⁰ (2019) EWHC 2181 Ch.

passed be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise; (b) it is defamatory of any person; (c) it is frivolous or vexatious ”.

From the precedents cited above, it appears that the Courts have limited jurisdiction to entertain a challenge to a Requisition calling an EGM, when the agenda of the meeting, if acted upon, will result into an illegality. However, a contrary view was taken in the case of *Cricket Club of India vs Madhav L Apte*¹¹ wherein the Court held that a Civil Court cannot restrain a Requisition/ Meeting even if it is illegal, contrary to law.

Pertinently, in another case in *Centron Industrial Alliance Vs P K Vakil & Anr*¹², the Court restrained the Company from acting on a Requisition to call an EGM for passing a Resolution requiring the Company to withdraw a Company Petition pending in the Court for sanctioning a Scheme of amalgamation of the Company with Brooke Bond Ltd. The Court considered the decision in *Cricket Club of India (supra)* held that “ left to myself I would rather lend my humble support to the weighty pronouncement of Lord Justice Lindley rather than the stand taken by my learned brother Desai J, when he stated that that the requisitioned meeting must be called even if the resolution proposed at the requisitioned meeting was illegal. To my mind there can be no point in calling a meeting for passing a resolution which would be wholly illegal. In any event, in the present case, it is not necessary to decide one way or the other on this aspect, because there are various reasons why the meeting sought to be requisitioned in the present case is not covered by the considerations which have led courts in the past to refuse to injunct such meetings.”

The Court then granted the injunction restraining the calling of an EGM based on the Requisition, on the basis that under Section 391 of the Companies Act, after the Scheme had been approved at the statutory meetings of the shareholders and creditors. A Petition had been filed before the Court for sanctioning the Scheme of Amalgamation, opposition to the Scheme could be expressed only in terms of Section 391 “and not by the shareholders requisitioning a meeting to compel the company to withdraw the Scheme Petition.” and “ thus the requisition is wholly misconceived”. In effect, the Court granted the injunction as the Requisition and the Resolution proposed to be

¹¹ (1975) 45 Co Cas 574.

¹² (1982) SCC Online Bom 318.

passed thereat would be contrary to the scheme/ provisions of Section 391 of the Companies Act. The Judgement in *Centron (supra)* on this issue was confirmed in Appeal.

III. JUDGMENT IN *LIC vs ESCORTS LTD*: WHETHER ALTERS THE ABOVE POSITION?

The judgement of the Supreme Court of India in the case of *LIC vs Escorts Ltd (supra)*, does not alter the above settled legal position, that a civil court can entertain a suit impugning diverse matters arising under the Companies Act, including inter alia a Requisition issued under Section 100, on the ground of the Requisition and proposed Resolutions being contrary to law/ illegal.

The *LIC vs Escorts Ltd (supra)* dealt with two separate and distinct matters:

- (i) the challenge to the Reserve Bank of India's circular and permission letter dated 18th September 1983 [granting permission to the Caparo Group to purchase shares in Escorts], which were alleged to be illegal as being contrary to the FERA and the RBIs Circulars and the Securities Contracts Regulation Act;
- (ii) The challenge to the LICs Requisition / EGM as being "malafide" and part of a concerted action by the Union of India , the RBI, and the Caparo Group , to coerce the company to register the transfer of shares and to withdraw the writ petition.

In the *LIC vs Escorts Ltd (supra)* judgement the Hon'ble Supreme Court only considered, dealt with and decided the case urged by Escorts, that the action of the LIC in issuing a Requisition for an EGM to replace Escorts' non-executive directors was malafide and part of a concerted action by the Union of India, the RBI, and the Caparo Group to coerce the company to register the transfer of shares and to withdraw the writ petition". It was in the context of this case that the Hon'ble Supreme Court held that "the allegation of malafides against the LIC are baseless" and that " the Notice requisitioning a meeting of the Company by the LIC was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition ". In the *LIC vs Escorts Ltd (supra)* judgement, the Supreme Court had no occasion to consider or decide whether a Requisition for calling an EGM could be enjoined by a Court on the grounds of it being illegal/contrary to law, as no such case of the Requisition Notice being illegal, was urged before the Supreme Court in that case.

A perusal of the Supreme Court's judgement in *LIC vs Escorts Ltd (supra)*, makes it clear, that the Requisition was not impugned in the Supreme Court on the ground of illegality, and that the Supreme Court has accordingly neither considered nor decided that a Requisition / EGM cannot be enjoined by a Court, on the ground that it is illegal/contrary to law.

On settled principles, the observations in the judgement must be read in the context of the facts of that case – i.e. the case which had been urged against LICs requisition i.e. of malafides and concerted/ collusive action, as recorded in the judgement of the Hon'ble Supreme Court. In fact the Hon'ble Supreme Court was careful to condition its order by providing that a Requisition “was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition”. There is accordingly no basis whatsoever for extrapolating from the judgement, the existence of any absolute bar or a prohibition against a Court enjoining a Requisition / EGM, even on the ground of it being illegal/contrary to law.

In the *LIC vs Escorts Ltd (supra)*, Escorts had filed a writ petition challenging Circular No 18 dated 19th September 1983 and a letter dated 19th September 1983 whereby the RBI had conveyed its permission to the Caparo Group of Companies [Mr. Swaraj Paul] purchasing shares in Escorts Limited, on the ground that the same were illegal and void as being contrary to the Foreign Exchange Regulation Act , the Circulars of the RBI and the provisions of the SCRA. Subsequent to the filing of the Writ Petition, the LIC who along with other financial institutions held 52% of the shares of Escorts, issued a Requisition to the company to hold an EGM for the purpose of removing nine of the part-time directors and for nominating nine others in their place. Further, Escorts amended the Petition by joining the LIC and by impugning the Requisition on the ground “ that the action of the LIC was malafide and part of a concerted action by the Union of India, the RBI, and the Caparo Group to coerce the company to register the transfer of shares and to withdraw the writ petition ”.

The High Court had allowed the writ petition filed by Escorts. In the Appeal preferred by LIC, the Hon'ble Supreme Court considered Escorts case that the action of the LIC was malafide and part of a concerted action by the Union of India, the RBI, and the Caparo Group, to coerce the company to register the transfer of shares and to withdraw the writ petition ”.

The Supreme Court finally rejected Escort's case that the RBI Circular and permission letter dated 18th September 1983 were illegal as being contrary to the FERA. The Hon'ble Supreme Court separately held that "the allegation of malafides against the LIC are baseless" and that "the Notice requisitioning a meeting of the Company by the LIC was not liable to be questioned on any of the grounds on which it was sought to be questioned in the writ petition". The conclusions of the Supreme Court refusing to injunct the Requisition for an EGM, and the observations in the judgement that a shareholder cannot be restrained from Requisitioning an EGM, has necessarily to be viewed in the context of the facts and the case urged before the Supreme Court for impugning LICs Requisition for an EGM. The Supreme Court's judgement cannot be construed as sub silentio deciding a question, which was admittedly not urged before it and which it admittedly has neither considered nor decided: i.e. the power/jurisdiction of a Court to restrain a Requisition/ EGM on the ground of it being illegal/contrary to law.

IV. JUDGMENT IN ZEE ENTERTAINMENT VERSUS INVESCO DEVELOPING MARKET FUNDS

In the recent past, the Bombay High Court was faced with a suit filed by one of the India's largest Media Enterprises, Zee Entertainment Enterprises Ltd. ("Zee") against its own investors seeking injunction against a Requisition calling for an Extraordinary General Meeting seeking removal of 3 (three) Non-Independent Directors of the Company. The Learned Single Judge of the Bombay High Court allowed the suit¹³ and held thereon that, *"Sometimes, it happens that a company must be saved from its own shareholders, however well-intentioned. If a shareholder resolution is bound to cause a corporate enterprise to run aground on the always treacherous shoals of statutory compliance, there is no conceivable or logical reason to allow such a resolution even to be considered. Shareholder primacy or dominion does not extend to permitting shareholder-driven illegality"*. However, the judgment of the Learned Single Judge, was set aside in Appeal¹⁴, whereby the Division Bench held that the power given to shareholders of a Company by Section 160 of the Indian Companies Act and more importantly, the proviso thereto, cannot be rendered infructuous. The Court concluded in the facts of the said case, that the concerned Requisitions

¹³ *Zee Entertainment Enterprises Ltd. vs Invesco Developing Markets Fund, through its Investment Adviser and Others* 2021 SCC OnLine Bom 13946

¹⁴ *Invesco Developing Markets Fund, through its Investment Adviser and Others vs Zee Entertainment Enterprises Ltd.* 2022 SCC OnLine Bom 630.

were neither illegal nor incapable of being lawfully implemented. However, the Hon'ble Division Bench did not directly address the question of the Court's power to question the legality of a Requisition calling for an EGM.

V. CONCLUSION

It is well settled that “the ratio of a decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it” and that “a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”¹⁵; and also that “Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of context.”¹⁶. Accordingly, the law laid down in *LIC vs Escorts (supra)* must be read in its attending facts and circumstances. Consequently, *LIC vs Escorts (supra)* does not bar or prohibit the Civil Court from entertaining a challenge to a Requisition for an EGM, on the ground that the Requisition and the proposed Resolutions are illegal/contrary to law.

¹⁵ See *Bank of India vs K Mohandas* (2009) 5 SCC 313

¹⁶ *UP SEB vs Pooran Chandra Pandey* (2007) 11 SCC 92