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Research

M&A Lab

Lights, Camera, No Action: Collapse of the Zee-Sony Merger

September 2024

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Contact

For any help or assistance please email us on **concierge@nishithdesai.com**
or visit us at **www.nishithdesai.com**.

Key Contacts

Nishchal Joshipura
nishchal.joshipura@nishithdesai.com

Khyati Dalal
khyati.dalal@nishithdesai.com

Sach Chabria
sach.chabria@nishithdesai.com

Faiza Khanum
faiza.khanum@nishithdesai.com

Palomita Sharma
palomita.sharma@nishithdesai.com

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Prologue

The media and entertainment industry in India, known for its rapidly evolving landscape, witnessed a significant development when Zee Entertainment Enterprises Limited (**"ZEEL"**) and Sony Pictures Networks India (**"SPNI"**) announced their intention of a USD 10,000,000,000 (United States Dollars Ten Billion) merger.[1]

This Deal was poised to create a formidable entity in the Indian media sector, where the proposed structure aimed to combine ZEEL's and SPNI's linear networks, digital assets, production operations, and extensive program libraries into a single, publicly listed company. This new entity was expected to leverage the strengths of both organizations, with Sony Pictures Entertainment Inc. holding a majority stake.

The rationale behind this merger was multifaceted. Without a doubt, the merger would have created a financially stronger resultant entity. By integrating their linear networks, ZEEL and SPNI aimed to capture a larger audience share and offer a more comprehensive suite of channels. The merging of digital assets was seen as a strategic move to compete more effectively in the burgeoning digital streaming market, where global and local players are vying for dominance and the trend of consolidation is taking off. Additionally, the consolidation of production operations and program libraries was intended to enhance content creation and distribution capabilities, ensuring a richer and more diverse portfolio of offerings.

The combined company was expected to be a publicly listed entity in India, a move that would not only have enhanced transparency but also would have provided easier access to capital markets for future expansions. This merger was envisioned to create a synergy that would have positioned the new entity as a leader in the Indian media and entertainment sector, capable of driving innovation and delivering exceptional value to consumers and stakeholders alike.

However, legal and regulatory hurdles, commercial disagreements, and market dynamics played crucial roles in derailing what was once seen as a transformative deal. Understanding the implications of these factors is essential to comprehending why the merger failed and what it signifies for the future of mergers and acquisitions in the Indian media and entertainment industry.

This analysis delves into the legal, regulatory, and commercial aspects of the failed Zee-Sony merger, providing insights into the complexities and intricacies that shaped its outcome.

1 Available at: https://www.business-standard.com/companies/news/zee-entertainment-faced-rs-432-crore-merger-costs-in-failed-sony-deal-124052200263_1.html.

Glossary of Terms

Abbreviation	Meaning/Full Form
AAEC	Appreciable adverse effect on competition
AV	Audio visual
Axis Finance	Axis Finance Limited
BARC	Broadcast Audience Research Council of India
BEPL	Bangla Entertainment Private Limited
BOD	Board of Directors
BSE	Bombay Stock Exchange Limited
CEO	Chief Executive Officer
CCI	Competition Commission of India
CA 2013	Indian Companies Act, 2013
CAA Rules	Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
Deal	All the steps and transactions mentioned in the composite Scheme, including the Merger
DTH	Direct to Home
EBIDTA	Earnings Before Interest, Taxes, Depreciation, and Amortization
EGM	Extraordinary General Meeting
Essel Group	Essel Mauritius and Essel Mauritius SPV
Essel Mauritius	Essel Holdings Limited (now known as Sunbright International Holdings Limited)
Essel Mauritius SPV	Sunbright Mauritius Investment Limited
GEC's	General Entertainment Channels
HITS	Headend-in-the-sky
ICAI	The Institute of Chartered Accountants of India
ICDR	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
IDBI	IDBI Bank Limited
Interim Order	SEBI's interim order passed on June 12, 2023[1]
Invesco	Invesco Developing Markets Fund

1 SCC Online SEBI 114.

Abbreviation	Meaning/Full Form
INR	Indian Rupees
IPL	Indian Premier League
IT Act	Indian Income-tax Act, 1961
Listing Regulations or SEBI LODR	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
LoCs	Letter of Comfort
Merger Cooperation Agreement	Merger Cooperation Agreement executed between ZEEL, BEPL and SPNI on December 22, 2021
MD	Managing Director
Mad Men	Mad Men Film Ventures Private Limited
Meeting	Shareholder and creditors meeting of October 14, 2022 convened by NCLT as per section 230(6) of CA 2013
Merger	Proposed merger between ZEEL (as the transferor), BEPL (as the transferor) and SPNI (as the transferee/resultant entity), governed by the Merger Cooperation Agreement and the Scheme.
Merged Entity	SPNI post the amalgamation of ZEEL and BEPL
MoIB	Ministry of Information and Broadcasting
M&E	Media and Entertainment
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
NCLT Order	NCLT's order passed on August 10, 2023 bearing no. C.A. 151/2023[2].
NSE	National Stock Exchange of India Limited
OFI	OFI Global China Fund LLC
OTT	"Over-the-top", which refers to technology (OTT services or platforms) that deliver streamed content through internet-connected devices
PAT	Profit after tax
RoC	Registrar of Companies
SAT	Securities Appellate Tribunal as per provisions of the Securities and Exchange Board of India Act, 1992
Scheme	Composite Scheme of Arrangement amongst ZEEL, BEPL, SPNI and their respective shareholders and creditors, filed with the NCLT (Mumbai bench) on August 6, 2022[3]
SEBI	Securities and Exchange Board of India

2 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138081482022/04/Order-Challenge/04_order-Challange_004_1691750743105139567564d61157a7c97.pdf.

3 Available at: https://www.sonypicturesnetworks.com/investors-section/documents/pdf/nse/1-Certified-Scheme.pdf.

Glossary of Terms

Abbreviation	Meaning/Full Form
SEBI Circular	SEBI Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated November 23, 2021, on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub- rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957[4]
SEBI ICDR	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
SIAC	Singapore International Arbitration Centre
Sony Group	SPE Mauritius Investments Limited and SPE Mauritius Holdings Limited
Sony Group Corporation	Japanese conglomerate responsible for the Sony groups entertainment, technology and services business
SPE	Sony Pictures Entertainment Inc, the parent company of SPNI
SPNI	Sony Pictures Networks India Private Limited, which changed its corporate name to Culver Max Entertainment Private Limited in April 2022
Stock Exchanges	BSE and NSE, collectively
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
TV	Television
USD	United States Dollars
WTM	Whole Time Member
ZEEL	Zee Entertainment Enterprises Limited
ZEEL Promoters	Subhash Chandra and Punit Goenka

4 Available at: https://nsearchives.nseindia.com/web/sites/default/files/inline-files/SEBI_Circular_23112021.pdf.

Deal Details

A. Parties to the Deal

Zee Entertainment Enterprises Limited

Zee Entertainment Enterprises Limited is an Indian media, entertainment and broadcasting publicly listed company. ZEEL is the world's leading global content company from the emerging markets. The shares of ZEEL are listed on BSE Limited and NSE and it has its registered office at 18th Floor, 'A' wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai 400013.[1]

ZEEL started out as Zee Telefilms Limited (**"ZTL"**), which restructured its business and demerged its cable undertaking into Wire & Wireless India Limited and the regional and news broadcasting undertaking into Zee News Limited.[2] The demerged ZTL started trading as ZEEL, which included the international broadcasting business of Zee.[3] ZEEL serves as the flagship firm of the Essel Group[4], a conglomerate company, chaired by Subhash Chandra.[5] As per the annual report of ZEEL for FY 2023, the operating revenue of ZEEL was marked at INR 80,879,000,000(Indian Rupees Eighty Billion Eight Hundred Seventy Nine Million) [approximately USD 962,460,100] and its market cap is approximately INR 166,310,000,000 (Indian Rupees One Hundred Sixty-Six Billion Three Hundred Ten Million) [approximately USD 1,979,089,000].[6]

ZEEL operates in a variety of business segments, such as television broadcasting (with channels spread over different languages, genres and niches), digital media (content platforms such as Zee5) and films (distribution through platforms such as Zee Studios as well as producing OTT originals).[7] It has a presence in over 190 countries with around 1,300 Million viewers, and boasts 16.8% of the TV network share in terms of viewers.[8] In India, as of FY 2023, it had a presence across 11 language markets, with an audience of nearly 700 Million viewers, thus having one of the highest reaches among all Indian television networks.[9]

From giving India its first private satellite TV channel in 1992, to reaching 1.3 Billion viewers around the world through linear and digital platforms. ZEEL, today, is the global entertainment go-to.

1 Available at: https://www.zee.com/about-us/.

2 Available at: https://assets.zee.com/wp-content/uploads/2020/11/23113155/zeereleaserestructuringma292006-840f5fcedfd2e1b.pdf.

3 Available at: https://www.zee.com/in-the-news/zee-telefilms-limited-ztl-getting-demerged-demerged-ztl-shares-start-trading-from-december-18/.

4 Available at: https://www.bloomberg.com/profile/company/0763252D:IN.

5 Available at: https://www.zeebiz.com/video-gallery-dr-subhash-chandras-interview-essel-group-chairman-reveals-big-plans-of-1-bn-zee-digital-users-500-mn-wion-viewers-shares-info-on-debt-resolution-dish-tv-yes-bank-matter-180993.

6 Available at: https://www.nseindia.com/get-quotes/equity?symbol=ZEEL.

7 Available at: https://www.bseindia.com/xmldata/corpfiling/AttachHis/237daf7f-1a9f-4e59-9057-e6df27723527.pdf.

8 Available at: https://www.bseindia.com/xmldata/corpfiling/AttachHis/237daf7f-1a9f-4e59-9057-e6df27723527.pdf.

9 Available at: https://www.bseindia.com/xmldata/corpfiling/AttachHis/237daf7f-1a9f-4e59-9057-e6df27723527.pdf.

Culver Max Entertainment Private Limited (formerly known as Sony Pictures Networks India Private Limited)

In April 2022, Sony Pictures Network India Private Limited changed its corporate name to Culver Max Entertainment Private Limited, however, television channels and other digital platforms continue using the name "Sony".[10]

SPNI was incorporated on September 18, 1995[11] and has its registered at A - 18, Mohan Co-operative Industrial Estate, Mathura Road New Delhi - 110044.[12] Sony Pictures Networks India is the consumer-facing identity of Culver Max Entertainment Private Limited which owns and operates a network of television channels as an indirectly owned subsidiary of the Sony Group Corporation, Japan.[13] Its parent company is Sony Pictures Entertainment Inc.(**"SPE"**).

SPNI owns and operates a variety of channels which range from general entertainment (with 16 entertainment channels in different genres and languages), sports (10 channels exclusively dedicated to sports as a part of Sony Sports Network), movies (6 channels, both Hindi and English), factual entertainment (2 channels), regional (2 channels), content production (StudioNEXT, which is an independent business unit of SPNI used to create original content for television and digital media), kids (Sony YAY!, which hosts homegrown original content in seven language feeds) and digital (SonyLIV, the networks OTT platform).[14] As per the annual report of SPNI for the FY 2023, its turnover was INR 66,007,770,000 (Indian Rupees Sixty-Six Billion Seven Million Seven Hundred Seventy Thousand) [Approximately USD 785,492,463] and its net worth was INR 81,629,550,000 (Indian Rupees Eighty-One Billion Six Hundred Twenty-Nine Million Five Hundred Fifty Thousand) [Approximately USD 972,141,345].[15]

SPNI has been steadily growing over the years and has established an international presence with its services being available in 167 countries (with 16 feeds) and it being distributed in over 70 countries.[16] In India, it has established a distribution reach of 170 Million households and over 700 Million viewers.[17]

Bangla Entertainment Private Limited ("BEPL")

BEPL is a private unlisted company which is an Indian affiliate of SPNI, and it also is a subsidiary of the Sony Group Corporation.[18] BEPL was incorporated on February 1, 2007 under the Companies Act, 1956, and has its registered office at 4th Floor, Interface, Building No. 7, Off. Malad Link Road, Mumbai 400064.[19]

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10 https://www.business-standard.com/article/companies/zee-sony-merger-gets-bse-nse-nod-after-agreement-signed-last-december-122072901394_1.html.

11 Available at: https://www.sonypicturesnetworks.com/pdf/SPNI-Fact-sheet-Company-Profile-24th-October-2022.pdf.

12 Available at: https://www.sony.co.in/microsite/overview/f.

13 Available at: https://www.sonypicturesnetworks.com/overview .

14 Available at: https://www.sonypicturesnetworks.com/pdf/SPNI-Fact-sheet-Company-Profile-24th-October-2022.pdf.

15 Available at: https://www.sonypicturesnetworks.com/pdf/SPNI_Annual_Return_FY23.pdf.

16 Available at: https://www.sonypicturesnetworks.com/pdf/SPNI-Fact-sheet-Company-Profile-24th-October-2022.pdf.

17 Available at: https://www.businessinsider.in/advertising/media/news/as-sony-pictures-networks-india-completes-25-years-np-singh-writes-a-letter-celebrating-its-journey-so-far/articleshow/78567331.cms .

18 Available at: https://www.sonypicturesnetworks.com/overview.

19 Available at: https://www.sonypicturesnetworks.com/investors-section/documents/pdf/bse/20-Brief-Details-Annexure-VIII-(002).pdf.

BEPL secures rights to broadcast motion pictures, events, and various television content for airing on its channel. It manages, promotes, and delivers its channel to cables and satellite providers. It has two regional channels- Sony AATH and Sony Marathi. Revenue is generated through advertising aired on the channels and subscription fees from channel distribution.[20]

100% of the shareholding of BEPL is held by its promoters, South Asian Regional Investments Singapore, Pte. Ltd and South Asian Regional Investments Singapore II, Pte. Ltd.[21] Its net worth as of November 30, 2021 was INR 1,934,800,000 (Indian Rupees One Billion Nine Hundred Thirty-Four Million Eight Hundred Thousand) [Approximately USD 23,024,120].[22]

B. Chronology of Events

Date	Event
March 5, 2021	Siti Networks had borrowed INR 15,000,000,000 (Indian Rupees Fifteen Billion) [Approximately USD 178,500,000] for a working capital facility from IDBI Bank, in which ZEEL was a guarantor. However, a default occurred in maintaining this account. IDBI Bank triggered the guarantee provided by ZEEL, demanding ₹INR 619,700,000 (INR Six Hundred 19 Million Seven Hundred Thousand) [Approximately USD 7,374,430] plus interest from February 18, 2021, totaling INR 1,496,000,000 (Indian Rupees One Billion Four Hundred Ninety-Six Million) [Approximately 17,802,400] in default.[23]
September 12, 2021	Invesco and OFI, shareholders of ZEEL, send ZEEL a requisition notice for calling an EGM of the shareholders of ZEEL, the agenda of which contained the removal of certain directors (including Punit Goenka) and appointment of six new independent directors (“Requisition Notice”).[24]
September 22, 2021	Announcement of the non-binding term sheet that was entered into between ZEEL and SPNI.[25]
September 30, 2021	Invesco and OFI move to NCLT seeking a prayer to direct the board of ZEEL to hold the EGM requisitioned by them.[26]
September 30, 2021	Meeting of the BOD of ZEEL, convened to decide the course of action in relation to the Requisition Notice- it was decided by the BOD of ZEEL that the Requisition Notice was invalid as it suffered from multiple legal infirmities.[27]

20 Available at: https://www.sonypicturesnetworks.com/investors-section/documents/pdf/bse/25-AR-Financials-Zee-BEPL-and-Sony.pdf.

21 Available at: https://www.sonypicturesnetworks.com/investors-section/documents/pdf/bse/21-Brief-Details-of-Promoters-Directors-ZEE-BEPL-and-SONY.pdf.

22 Available at: https://www.sonypicturesnetworks.com/investors-section/documents/pdf/nse/16%20Brief%20Particulars%20of%20Companies%20Annexure%20E_%20(002).pdf.

23 Available at: https://www.livemint.com/companies/news/nclat-to-hear-idbis-insolvency-plea-against-zee-entertainment-today-11701825919449.html.

24 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/877be9b5-8812-4be6-9239-e7193c7c75f2.pdf.

25 Available at: https://www.sony.com/en/SonyInfo/News/Press/202109/21-0922E/.

26 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138103532021/04/Order-Challenge/04_order-Challange_004_16335870411945932987615e8f6125108.pdf.

27 Available at: https://www.cnbctv18.com/business/companies/zee-refuses-to-call-egm-sought-by-invesco-says-requisition-notice-not-valid-10963502.html.

Date	Event
October 01, 2021	ZEEL brought a suit in the Bombay High Court seeking: (i) a declaration that the Requisition Notice is illegal; (ii) a declaration that its refusal to act on the Requisition Notice is in accordance with law; and (iii) an injunction against Invesco from acting in furtherance of the Requisition Notice.[28]
October 11, 2021	Invesco released an open letter to the shareholders of ZEEL, outlining the urgent need for independent perspectives on ZEEL's BOD.[29]
October 26, 2021	Single bench of Bombay High Court grants an injunction in favour of ZEEL, restraining Invesco and OFI from taking any action in furtherance of the Requisition Notice (including holding an EGM).[30]
October 28, 2021	Appeal filed by Invesco and OFI against the judgment of the single bench of the Bombay High Court.[31]
December 21, 2021	The BOD of ZEEL considered and approved the Scheme of Arrangement between ZEEL and SPNI.[32]
December 22, 2021	Proposed merger between SPNI and ZEEL announced.Parties executed the Merger Cooperation Agreement.[33]
March 22, 2022	Bombay High Court allowed the appeal (filed on October 28, 2021) and set aside the judgment of the single judge of the Bombay High Court on all counts, stating that the resolutions contained in the Requisition Notice are legal and capable of being lawfully implemented.[34]
March 24, 2022	ZEEL received a letter from Invesco and OFI stating that they decided not to pursue the EGM as per the Requisition Notice and accordingly, they will also proceed to withdraw the application pending for that purpose before the NCLT.[35]
April 29, 2022	Notice filed with CCI pursuant to the Scheme.[36]
June 07, 2022	Order approving the application filed by Invesco in NCLT to withdraw its petition seeking enforcement of the Requisition Notice.[37]
July 29, 2022	ZEEL received observation letters from BSE[38] and NSE[39] of India, the details of which have been captured in the section "Legal and Regulatory Considerations, Part B" below. These observation letters permit the Company to file the Scheme with NCLT, Mumbai Bench.

28 Available at: https://www.livelaw.in/pdf_upload/zee-entertainment-enterprises-ltd-v-invesco-developing-markets-fund-and-2-others-bombay-hc-403507.pdf.

29 Available at: https://www.livemint.com/companies/news/invesco-releases-open-letter-to-zee-shareholders-amid-boardroom-battle-full-text-11633947938526.html.

30 Available at: https://www.livelaw.in/pdf_upload/zee-entertainment-enterprises-ltd-v-invesco-developing-markets-fund-and-2-others-bombay-hc-403507.pdf.

31 Available at: https://www.livemint.com/companies/news/invesco-approaches-bombay-hc-s-division-bench-11635443569481.html.

32 Available at: https://assets.zee.com/wp-content/uploads/2022/01/27131523/2-Board-Resolutions-1.pdf.

33 Available at: https://www.sonypictures.com/corp/press_releases/2021/1221/sonypicturesnetworkindiaandzeeentertainmententerprises.

34 Appeal (L) No. 25420 of 2021 in IA (L) No. 22525 of 2021 in Suit (L) No. 22522 of 2021 with IA (L) No. 25423 of 2021;.

35 Available at: https://assets.zee.com/wp-content/uploads/2022/03/24142046/SEDisclosureReg3024Mar22.pdf .

36 CCI order, available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf, page 7.

37 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138103532021/04/Order-Challenge/04_order-Challange_004_166841996617271272056372117e7f68e.pdf.

38 Available at: https://www.bseindia.com/Download/NocUnder/20220729113122-Observation%20Letter.pdf.

39 Available at: https://nsearchives.nseindia.com/corporates/offerdocument/scheme/ZEEL_29660_ZEE_OLSigned.pdf.

Deal Details

Date	Event
August 6, 2022	Scheme filed with NCLT bearing Company Application no. - C.A.(CAA) - 204/2022.[40]
August 24, 2022	Order from the NCLT directing ZEEL to convene the meeting of the equity shareholders of the Company through video conferencing or other audio-visual means on October 14, 2022 at 4:00 pm (IST) for the purpose of considering and, if thought fit, approving the proposed Scheme.[41]
October 4, 2022	Final order of CCI (conditional approval), the details of which have been captured in the chapter "Legal and Regulatory Considerations, Part E" below.[42]
October 14, 2022	Meeting of the equity shareholders of ZEEL, convened pursuant to the Order dated August 24, 2022 and requisite majority to approve the Scheme was received.[43]
November 15, 2022	The petition and the urgent listing application filed by Invesco and OFI were listed before NCLT.[44] The order of NCLT passed on June 7, 2022, disposing of the petition, was made available to ZEEL.[45]
December 14, 2022	IDBI Bank moved NCLT against ZEEL, seeking an insolvency proceeding and an action against the announced Merger.[46]
May 19, 2023	Application filed by IDBI Bank Limited dismissed by NCLT (Mumbai Bench).[47]
June 12, 2023	SEBI's Interim Order barring Subhash Chandra and Punit Goenka from being directors of any listed company for a year ("Interim Order").[48]
June 19, 2023	The appeal related to the Merger was filed by Punit Goenka and Subhash Chandra with the SAT and admitted.[49]
August 10, 2023	NCLT order approving the Scheme bearing Company Application number C.A. (CAA)-204/2022.[50]
August 14, 2023	SEBI confirmatory order (confirming the Interim Order). This confirmatory order however reduced the scope of the bar on Punit Goenka and Subhash Chandra from holding directorship in all listed entities to restricting them from holding directorships in Zee group companies, including the proposed merged entity ("SEBI Confirmatory Order").[51]

40 Available at: https://nclt.gov.in/case-details?bench=bXVtYmFp&filing_no=MjcwOTEzODA0NTQxMjAyMg==.

41 Available at: https://assets.zee.com/wp-content/uploads/2022/09/27130037/NCLT-Order_compressed-1.pdf.

42 Available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf .

43 Available at: https://assets.zee.com/wp-content/uploads/2023/12/27151709/NCLTPROCEEDING14102022.pdf .

44 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138103532021/04/Order-Challenge/04_order-Challange_004_16686004603797690086374d28ce691a.pdf.

45 Available at: https://assets.zee.com/wp-content/uploads/2023/12/27144220/SEIntimation23nov22finalinvescoorder.pdf .

46 Available at: https://www.thehindubusinessline.com/companies/idbi-bank-moves-nclt-against-zee-to-recover-dues/article66269810.ece .

47 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138018202023/04/Order-Challenge/04_order-Challange_004_168449628858676908464675fa05a8c2.pdf.

48 Available at: https://www.sebi.gov.in/enforcement/orders/jun-2023/interim-order-in-the-matter-of-zee-entertainment-enterprises-ltd-_72464.html.

49 Available at: https://www.indiatoday.in/business/story/sony-zee-merger-latest-update-news-nclt-notice-tribunal-to-re-view-case-2498231-2024-02-06.

50 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138081482022/04/Order-Challenge/04_order-Challange_004_1691750743105139567564d61157a7c97.pdf .

51 Available at: https://www.sebi.gov.in/enforcement/orders/aug-2023/confirmatory-order-in-the-matter-of-zee-entertainment-enterpris-es-ltd-_75337.html.

Date	Event
October 30, 2023	SAT order overturning the Interim Order and the SEBI Confirmatory Order, allowing Punit Goenka to hold an executive position while the probe was underway.[52]
December 17, 2023	ZEEL requested SPNI and BEPL to extend the Date required to make the Scheme effective, as per the terms of the Merger Cooperation Agreement.[53]
December 20, 2023	Communication from SPNI and BEPL that they will enter into good faith negotiations as required under the Merger Cooperation Agreement entered amongst the Parties, the Company, SPNI and BEPL, with a view to discuss the extension of the date required to make the Scheme effective by a reasonable period of time.[54]
December 22, 2023	Long stop date under the Merger Co-operation Agreement (24 months from the Merger Cooperation Agreement execution)[55]
December 21, 2023-January 21, 2024	Good faith negotiations to extend the Long Stop Date.
January 22, 2024	SPNI issued the termination notice for the merger: [56] a) terminate the Merger Cooperation Agreement dated December 22, 2021 for the Company and BEPL's proposed merger with and into SPNI; b) invoking arbitration under the Merger Cooperation Agreement and seeking emergency interim reliefs against ZEEL.
January 22, 2024	Board Meeting held and ZEEL categorically refutes all claims and assertions made by SPNI and BEPL regarding alleged breaches of the Merger Cooperation Agreement by ZEEL, including their claims for the termination fee.[57]
January 24, 2024	The following actions were undertaken by ZEEL:[58] a) The Company issued a reply to SPNI and BEPL inter alia specifically denying any breach of its obligations under the Merger Cooperation Agreement and reiterated that the Company has complied with all its obligations in good faith. b) The Company approached the Hon'ble National Company Law Tribunal, Mumbai bench inter alia seeking directions to implement the merger scheme. c) The Company initiated appropriate legal action to contest SPNI and BEPL's claims in the arbitration proceedings before SIAC.
February 04, 2024	SIAC denied the application for emergency interim relief filed by SPNI and BEPL.[59]
March 12, 2024	Scheduled date for the hearing of the application filed by Mad Men Film Ventures against ZEEL.

52 Available at: https://www.sat.gov.in/english/pdf/E2023_JO2023714_9.PDF.

53 Available at: https://assets.zee.com/wp-content/uploads/2023/12/17193505/SEintimationextension17dec23.pdf.

54 Available at: https://www.thehindu.com/business/zee-sony-to-discuss-extension-of-merger-deadline/article67659079.ece.

55 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/media/sony-zee-merger-deal-hits-a-dead-end-sony-confirms-termination-of-10-bn-deal-with-zee-entertainment/articleshow/107045520.cms?from=mdr.

56 Available at: https://www.sony.com/en/SonyInfo/IR/news/20240122_E.pdf.

57 Available at: https://assets.zee.com/wp-content/uploads/2024/01/22125113/SEIntimation22Jan24.pdf.

58 Available at: https://assets.zee.com/wp-content/uploads/2024/01/24192144/SEintimation24Jan24.pdf.

59 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/media/siac-denies-sonys-plea-to-restrain-zee-from-approaching-nclt-for-enforcing-merger/articleshow/107404575.cms?from=mdr.

Date	Event
April 17, 2024	Withdrawal application filed with NCLT by ZEEL[60]
May 23, 2024	ZEEL has on account of SPNI's and BEPL's breaches under the Merger Cooperation Agreement, terminated the Merger Cooperation Agreement by issuing a letter and sought a termination fee from SPNI and BEPL in accordance with the provisions of the Merger Cooperation Agreement[61]
June 24, 2024	NCLT Order approving the withdrawal application filed by Parties on April 17, 2024[62]

C. Structure of the Deal

The proposed Merger was to be undertaken in accordance with Sections 230 to 232 of the CA 2013, the provisions of the Listing Regulations as well as the SEBI Circular, as applicable. Some key terms and definitions from the Scheme are as follows:

Record Date

The date proposed to be fixed by the BOD of SPNI for the purpose of determining the shareholders of ZEEL and BEPL who are to be issued shares of SPNI in accordance with the Merger Cooperation Agreement, pursuant to Section II (amalgamation of ZEEL with and into SPNI) and Section III (amalgamation of the BEPL with and into SPNI) of the Scheme.

Effective Date/Appointed Date

The date on which the last of the conditions set out under Clause 5.1 of Section V of the Scheme are fulfilled, including certain conditions which are captured in the Merger Cooperation Agreement. The conditions for

ZEEL, SPNI and BELP include:

a) Obtaining requisite approval from the members;

b) Obtaining requisite approval from the secured and unsecured creditors;

c) Obtaining approval from the CCI;

d) Obtaining sanction from the NCLT along with filing of certified copies by each of the parties of the Tribunal's order with RoC Mumbai within statutory timelines;

60 Available at: https://legal.economictimes.indiatimes.com/news/litigation/zee-shareholder-mad-men-film-ventures-files-fresh-plea-in-nclt-against-sonys-move-on-merger-pact/107565158#:~:text=In%20its%20fresh%20plea%20on,for%20hearing%20on%20March%2012.

61 Available at: https://assets.zee.com/wp-content/uploads/2024/05/23195221/SEIntimationMCAtermination23May24-1.pdf.

62 Available at: https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138114302022/04/Order-Challenge/04_order-Challange_004_1719231299269224985667963 43d41f7.pdf .

e) Obtaining approval from MIB for the appointment of (i) the ZEEL director as managing director and CEO of SPNI; (ii) the independent directors to the board of SPNI; and (iii) the appointment of each of Sony Group directors to the board of SPNI;

f) Application for approval having been made in accordance with applicable laws for transfer of licenses obtained by ZEEL and BEPL in relation to the up-linking and down-linking of television channels (as applicable) to SPNI, pursuant to the Scheme;

g) The satisfaction (or waiver in writing) of such other conditions as have been mutually agreed between ZEEL, BEPL and SPNI in the Merger Cooperation Agreement; and

h) The occurrence of the closing date under the Merger Cooperation Agreement.

Share Entitlement Ratio

Upon the Scheme coming into effect on the Effective Date and in consideration of the amalgamation of ZEEL with SPNI, SPNI shall (after taking into effect the share issuance, bonus issuance and sub-division of the share capital of SPNI in accordance with Scheme and as set out below), issue and allot to each shareholder of ZEEL as on the Record Date, 85 (Eighty Five) fully paid-up equity shares of INR 1 (Indian Rupees One) each of SPNI for every 100 (One Hundred) fully paid-up equity shares of INR 1 (Indian Rupee One) each of ZEEL.

Upon the Scheme coming into effect on the Effective Date and in consideration of the amalgamation of BEPL with SPNI, SPNI shall (after taking into effect the share issuance, bonus issuance and sub-division of the share capital of SPNI in accordance with Scheme and as set out below), issue and allot to each shareholder of BEPL as on the Record Date, 133 (One Hundred and Thirty Three) fully paid-up equity shares of INR 1 (Indian Rupees One) each of SPNI for every 10 (Ten) fully paid-up equity shares of INR 10 (Indian Rupee Ten) each of BEPL.

Dissolution without winding up

Upon the Scheme coming into effect, ZEEL would, without any further act, instrument or deed undertaken by ZEEL or SPNI, stand dissolved without winding up pursuant to the order of the NCLT sanctioning the Scheme.

Upon the Scheme coming into effect, BEPL would, without any further act, instrument or deed undertaken by BEPL or SPNI, stand dissolved without winding up pursuant to the order of the NCLT sanctioning the Scheme.

Steps forming part of the composite Scheme

The steps to be undertaken for the amalgamation, as set out in the Scheme, have been provided below[63]:

1. **Sub-division of share capital of SPNI**

   Upon the Scheme coming into effect on the Effective Date, each equity share of SPNI having a face value of INR 10 (Indian Rupees Ten) would be sub-divided into 10 (Ten) Equity Shares having a face value of INR 1 (One) each. The authorized share capital of SPNI would be modified to INR 851,000,000 (Indian Rupees Eight Hundred Fifty One Million) [approximately USD 10,126,900] divided into 851,000,000 (Indian Rupees Eight Hundred and Fifty One Million) equity shares of face value INR 1 (One) each.

2. **Issue and allotment of SPNI bonus shares by way of bonus issue**

   After taking into effect the sub-division envisioned in point 1 above, the BOD of SPNI shall, without any further act, instrument or deed, issue and allot bonus shares to the existing shareholders of SPNI. The bonus issue shall be in respect of 475,346,400 (Four Hundred Seventy Five Million Three Hundred Forty Six Thousand and Four Hundred) equity shares of SPNI having a face value of INR 1 (Indian Rupee One) to be issued to the existing shareholders of SPNI in proportion to their shareholding in SPNI (**"SPNI Bonus Shares"**).

3. **Issue and allotment of the SPNI subscription shares by way of rights issue**

   The BOD of SPNI shall, without any further act, instrument or deed, but subject to receipt of the consideration of INR 79,486,908,300 (Indian Rupees Seventy Nine Billion and Four Hundred Eighty Six Million Nine Hundred and Eight Thousand Three Hundred) [approximately USD 945,894,208] issue 264,956,361 (Two Hundred Sixty Four Million Nine Hundred Fifty Six Thousand Three Hundred and Sixty One) equity shares of SPNI having a face value of INR 1 (One) each to the shareholders of SPNI by way of a rights issue (**"SPNI Subscription Shares"**).

4. **Issue and allotment of the Essel subscription shares to Essel Mauritius and Essel Mauritius SPV by way of preferential issue**

   Pursuant to the completion of the actions in point 1 to point 3, the BOD of SPNI shall, without any further act, instrument or deed, but subject to receipt of subscription amount of INR 11,013,091,800 (Indian Rupees Eleven Billion Thirteen Million Ninety One Thousand and Eight Hundred) [approximately USD 131,055,792] from the Essel Group, issue 36,710,306 (Thirty-Six Million Seven Hundred Ten Thousand Three Hundred and Six), equity shares of SPNI having a face value of INR 1 (Indian Rupee One) to the Essel Group, as per the table provided below (**"Essel Subscription Shares"**)[64]:

S.No.	Party	Essel Subscription Shares	Essel Subscription Amount (INR)
1.	Essel Mauritius	22,026,183 (Twenty Two Million and Twenty Six Thousand One Hundred and Eighty Three)	6,607,854,900 (Six Billion Six Hundred and Seven Million Eight Hundred Fifty Four Thousand and Nine Hundred) [Approximately USD 78,633,472]

63 Composite Scheme of arrangement.

64 Composite Scheme of arrangement.

S.No.	Party	Essel Subscription Shares	Essel Subscription Amount (INR)
2.	EsselMauritius SPV	14,684,123 (Fourteen Million Six Hundred and Eighty Four Thousand One Hundred and Twenty Three)	4,405,236,900 (Four Billion Four Hundred and Five Million Two Hundred Thirty Six Thousand and Nine Hundred) [Approximately USD 52,422,319]
Total		36,710,306 (Thirty Six Million Seven Hundred and Ten Thousand Three Hundred and Six)	11,013,091,800 (Eleven Billion and Thirteen Million Ninety One Thousand and Eight Hundred) [Approximately USD 131,055,792]

5. Amalgamation of ZEEL into SPNI

Upon the Scheme coming into effect on the Effective Date and with effect from the Appointed Date, ZEEL (along with all its present and future assets, investments, properties, borrowings etc.) shall stand transferred to and vested in and shall become the property of and an integral part of SPNI, subject to the existing charges and encumbrances, if any, (to the extent such charges or encumbrances are outstanding on the Effective Date), by operation of law pursuant to the vesting order of NCLT sanctioning the Scheme, without any further act, instrument or deed undertaken by either of ZEEL or SPNI.

As consideration for the amalgamation of ZEEL into SPNI, the shareholders of ZEEL on the Record Date would be issued 85 (Eighty Five) equity shares (of INR 1) of SPNI for every 100 (One Hundred) equity shares (of INR 1) they hold in ZEEL, which would rank pari passu with the existing equity shares in SPNI. Those equity shares of ZEEL which were subject to lock in prior to the proposed Merger, would continue to remain locked in for the remaining lock in period, in accordance with the SEBI Circular.

Upon this allotment of the equity shares of SPNI to the ZEEL shareholders, the equity shares of ZEEL would be deemed to be automatically cancelled.

Pursuant to the order of NCLT sanctioning the Scheme and upon the Scheme coming into effect, ZEEL would stand dissolved without winding up.

6. Amalgamation of BEPL into SPNI

Upon the Scheme coming into effect on the Effective Date and with effect from the Appointed Date, BEPL (along with all its present and future assets, investments, properties, borrowings etc.) shall stand transferred to and vested in and shall become the property of and an integral part of SPNI, subject to the existing charges and encumbrances, if any, (to the extent such charges or encumbrances are outstanding on the Effective Date), by operation of law pursuant to the vesting order of NCLT sanctioning the Scheme, without any further act, instrument or deed undertaken by either of BEPL or SPNI.

As consideration for the amalgamation of BEPL into SPNI, the shareholders of BEPL on the Record Date would be issued 133 (One Hundred and Thirty Three) equity shares (of INR 1) of SPNI for every 10 (Ten) equity shares (of INR 10) they hold in BEPL, which would rank pari passu with the existing equity shares in SPNI.

Upon this allotment of the equity shares of SPNI to the BEPL shareholders, the equity shares of BEPL would be deemed to be automatically cancelled.

Pursuant to the order of NCLT sanctioning the Scheme and upon the Scheme coming into effect, BEPL would stand dissolved without winding up.

7. Transfer of the authorized share capital of ZEEL and BEPL to SPNI

On the Merger coming into effect, the authorized share capital of ZEEL (upon reclassification of the preference shares of ZEEL as equity share capital) and BEPL would have been vested in and merged with SPNI's authorized share capital. This would have resulted in the authorized share capital of SPNI being enhanced from INR 851,000,000 (Indian Rupees Eight Hundred and Fifty-One Million) [approximately USD 10,126,900] to INR 23,901,000,000 (Indian Rupees Twenty Three Billion Nine Hundred And One Million) [approximately USD 284,421,900] divided into 23,901,000,000 (Twenty Three Billion Nine Hundred and One Million) equity shares of face value of INR 1 (Indian Rupees One only) each.

8. Arrangements among SPNI, the Sony Group and the Essel Group

There were certain arrangements made among SPNI, the Sony Group and the Essel Group with respect to the Merged Entity (on and from the Effective Date), which were as follows:

i. the Sony Group (and their affiliates) and the Essel Group (and their affiliates) would be categorized as separate and independent 'promoters' of the Merged Entity, as per applicable laws;

ii. the articles of association of SPNI shall stand amended and restated in the form set out in the Scheme;

iii. The composition of the BOD shall consist of not more than 9 (nine) directors, which includes 5 (five) directors nominated by the SPNI shareholders, 3 (three) independent directors and the managing director;

iv. Punit Goenka shall be appointed as the managing director and CEO of the Merged Entity for a period of 5 (five) years;

v. Pursuant to the Non-Compete Agreements (as defined below) which would remain in force for a period of 5 (five) years, the Essel Group shall not compete with SPE Mauritius Investments Limited.

Further, as a part of the transaction, the Sony Group shall pay a non-compete fee of USD equivalent of INR 11,010,000,000 (Indian Rupees Eleven Billion Ten Million) [approximately USD 131,019,000] to the promoters of ZEEL, who would in turn invest an equal amount in SPNI prior to the closing of the transaction, to enable them to hold 3.99% (Three Point Nine Nine Percent) shareholding in the Merged Entity.

The commercial understanding was also that the Sony Group would infuse adequate money into SPNI to ensure that SPNI has (taking into account the cash infusion from the ZEEL Promoters) USD 1,500,000,000 (United States Dollars One Billion Five Hundred Million) prior to the closing of the proposed Merger. [65]

9. Conversion of SPNI into a public company and listing of its equity shares

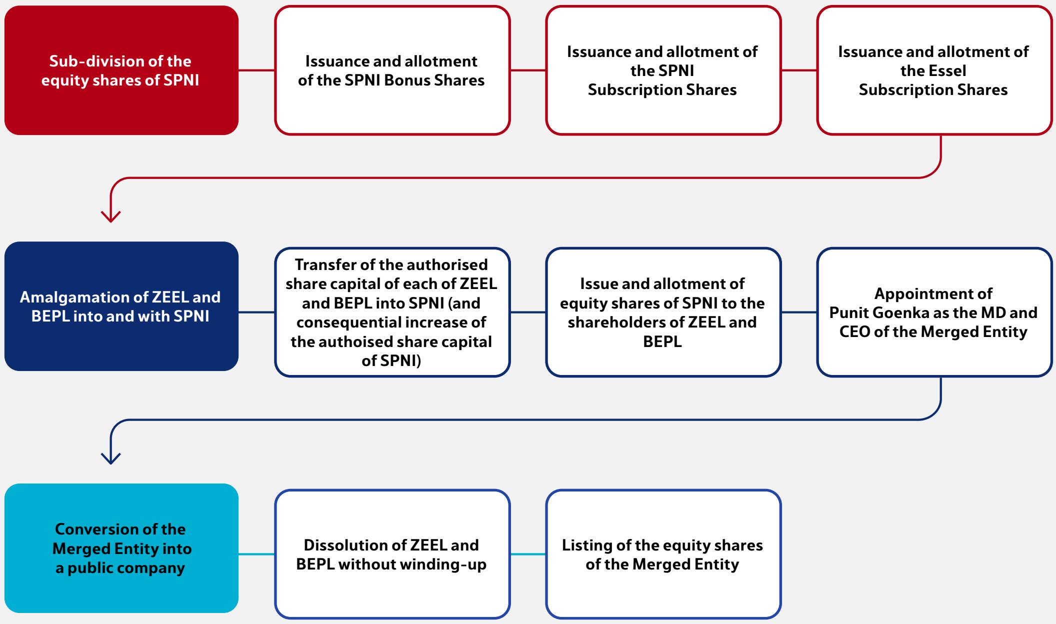
Upon the Scheme coming into effect on the Effective Date, SPNI (as the Merged Entity) would automatically be converted into a public company as per the provisions of the Scheme. As the conversion of SPNI into a 'public company' is an integral part of the Scheme, the consent of the board and members of the parties to the Scheme shall be deemed to be their consent for such conversion as required under the CA 2013 and rules made thereunder, including in terms of Sections 13 and 18 of the CA 2013 and any other applicable provisions of the CA 2013 and rules made thereunder, and provisions of the articles of association.

By virtue of the Scheme, the equity shares of the Merged Entity would be listed and admitted on the Stock Exchanges. The Merged Entity was obligated under the Scheme to obtain the final listing and trading permissions.

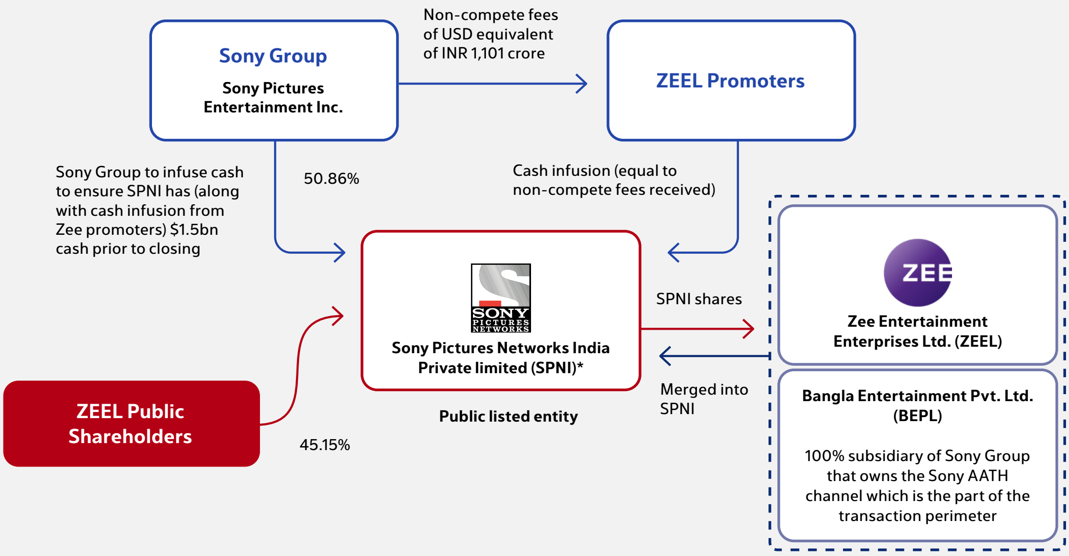
65 https://assets.zee.com/wp-content/uploads/2021/12/27115929/Analyst-Presentation-221221-1.pdf?zee.

Deal Details

A timeline of the sequence of events which would come into effect upon the Effective Date is as follows:



Below is a summary of the transaction steps as well as the arrangements envisaged between SPNI, ZEEL and BEPL[66]:



66 Available at: https://assets.zee.com/wp-content/uploads/2021/12/27115929/Analyst-Presentation-221221-1.pdf?zee.

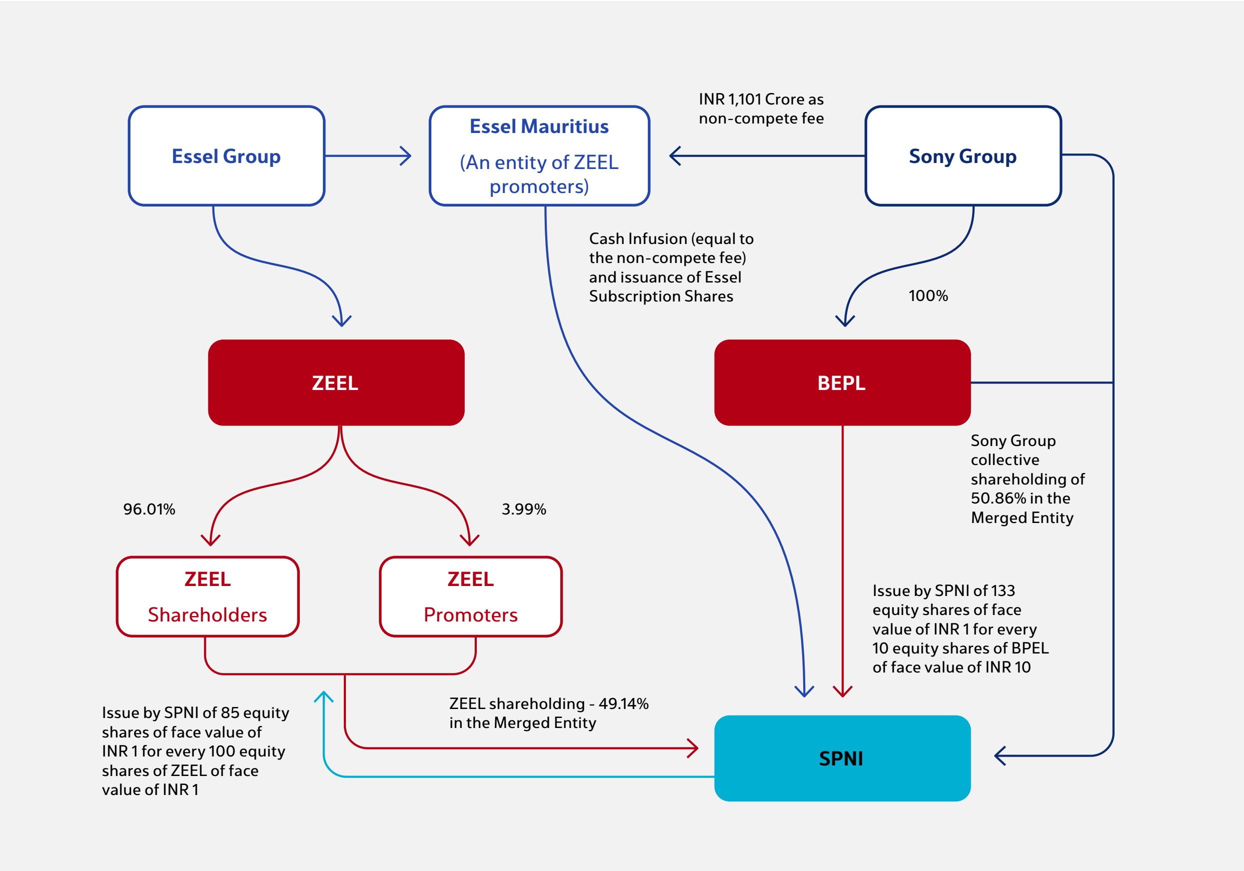
Key Documentation

As per the details available in the public domain, we note that ZEEL, SPNI and BEPL entered into the below definitive agreements to facilitate the proposed Merger:

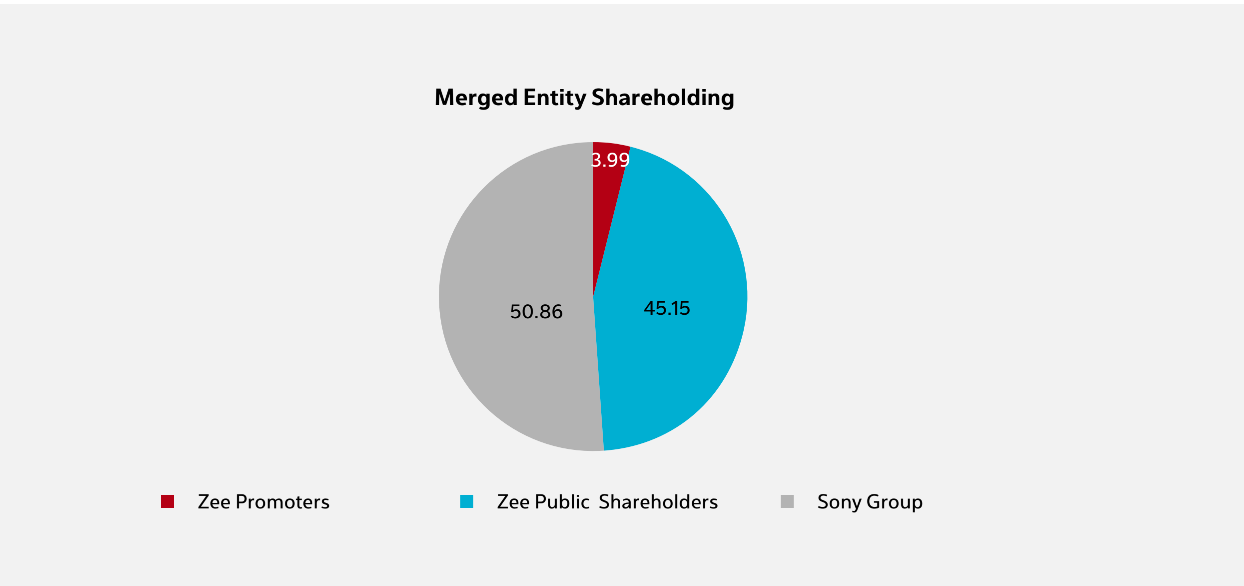
1. Merger Cooperation Agreement: The Merger Cooperation Agreement executed amongst ZEEL, BEPL and SPNI on December 22, 2021, which governs the terms and conditions on the basis of which ZEEL, BEPL and SPNI merge their assets and operations into a single entity;
2. Non-Compete Agreements (**"Non-Compete Agreements"**):
   i. Executed between Essel Mauritius and SPE Mauritius Investments Limited; and
   ii. Executed between Subhash Chandra, Punit Goenka, Amit Goenka, and SPE Mauritius Investments Limited,

   which govern the prohibition of competitive activities by the Essel Group in content creation, promotion and distribution in designated regions for a period of 5 (Five) years from the Effective Date. The parties to the Non-Compete Agreements are also restricted from engaging in "Restricted Business" for this term, which includes activities like creating, operating, and promoting linear and non-linear program services delivered via cable, broadcast, satellite, internet, or other platforms to viewers in India or the global Indian diaspora. It also covers activities related to producing, broadcasting, transmission and streaming music, sports, gaming, or non-news audio-visual content in any format or language spoken in India, for exploitation of such services in which ZEEL and its subsidiaries or SPNI and its subsidiaries conduct their business as of the closing date; and
3. Employment Agreement: The employment agreement entered between Punit Goenka and SPNI, which governs the appointment of Punit Goenka as the managing director and chief executive officer of the Merged Entity for a period of five years from the Effective Date, subject to the terms and conditions in the agreement.

Deal Snapshot



The shareholding of the parties in the Merged Entity once the transaction has closed is provided below:



Sector Overview

A. Snapshot of the Media Sector in India

The media and entertainment industry in India is a high performing, dynamic sector that encompasses a wide array of platforms, content and mediums. As per a report by EY, this sector crossed the INR 2.3 Trillion mark in 2023, and is expected to reach INR 3,10,00,00,00,00,000 (Indian Rupees Three Trillion One Hundred Billion) [Approximately USD 368,900,000,000] by 2026.[1] The segmental breakup of this sector is as follows:

Television: This is one of the largest segments in the M&E industry of India,[2] and consists of linear television (which is the traditional television format, scheduled through satellite or cable) as well as OTT, which is streamed over the internet to a specific user on demand. OTT has been on the rise in India, with international players such as Netflix, Amazon, Disney, Lionsgate, etc. taking up a major chunk of this space while also increasing competition on the linear television front.

Digital Media: Digital Media is the second largest segment in the M&E industry of India, and is expected to overtake television as the largest segment and grow to INR 955,000,000,000 (Indian Rupees Nine Hundred Fifty-Five Billion Rupees) [Approximately USD 11,364,500,000] by 2026, at a 13.5% CAGR.[3] The Digital Media industry encompasses a plethora of sources of online media consumption through a smartphone, laptop, tablet, etc. Digital media presents itself in the form of videos, articles, advertisements, music, podcasts, audiobooks, virtual reality, or digital art.[4]

Print: Print media is also one of the major sectors of the M&E industry, and primarily consists of media, information, news encompassing any 'ink and paper' communication that is not hand-written or hand-typed, including but not limited to books, circulars, journals, lithographs, memos, magazines, newspapers, pamphlets, and periodicals.[5] Print media is one of the oldest sources of distribution of media and entertainment content, and some of the key players in the industry include Dainik Bhaskar Corp., MPS Ltd., Jagran Prakashan etc. The primary source of revenue generation for this segment is through advertising.[6]

Filmed entertainment: This segment of the M&E industry primarily comprises of entertainment delivery pre-filmed for an audience, such as movies, tv serials, documentaries, etc.[7] While this segment was heavily affected by the Covid 19 pandemic, it rebounded and has grown by 15% in the last year to reach an all time high of INR 197,000,000,000 (Indian Rupees One Hundred Ninety-Seven Billion) [Approximately USD 2,344,300,000] .[8]

1 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

2 Available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf.

3 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

4 What Is Digital Media?, Maryville University, Mar 04, 2020, available at: https://online.maryville.edu/blog/what-is-digital-media.

5 Print Media, Oxford Reference, available at: https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100346392.

6 "Windows of Opportunity: India's media and entertainment sector – maximizing across segments", Ernst & Young and FICCI, April 2023, pp. 115, available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf.

7 Print Media Companies Listing in India, The Economic Times, available at: https://economictimes.indiatimes.com/marketstats/pid-1007,industry-id-2157,industryname-Print%20Media,exchange-NSE,sortorder-desc,sortby-percentChange.cms.

8 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

Animation and VFX: The Animation and VFX segment involves visual modification, graphic enhancement and inclusion of visual, and perhaps even audio effects. This industry has widespread global applications in game design, movie animation, music video effects, etc. The Animation and VFX industrygrew by 6% in 2023 to reach INR 114,000,000,000 (Indian Rupees One Hundred Fourteen Billion) [Approximately USD1,356,600,000] and is projected to reach INR 185,000,000,000 (Indian Rupees One Hundred Eighty-Five Billion)[Approximately USD 2,201,500,000]by 2026.[9] Nationally, the top market players in the industry include Manga Studio, Pixar, Maya Entertainment Co. and Anime Production.[10]

Live events: The Live Events industry involves organized real-time events for a live audience, such as live enactments of plays, dramas, stand-up comedy, story-telling, live poetry, etc. The industry grew by 22% in 2023, compared to the previous year, and finally exceeded the pre-pandemic levels, culminating the year with INR 88 Billion in revenue.[11] The industry remains fragmented due to the lack of any key market-dominating players. Primary revenue generation in the sector can be accredited to promotional events, advertising, venue management and increasing viewership of digitally-hosted organized events.

Out of Home media: The Out of Home Media (**"OOH Media"**) sector is an important piece of the revenue generation puzzle across the M&E Industry. This segment involves any and all forms of media consumed outdoors and not merely on indoor digital media platforms such as radio or television.

Music: The Music segment is a cornerstone of the M&E industry. Revenue generation in this sector primarily relies on a three-pronged approach, i.e., digital revenue (subscriptions and purchases), publication revenue (usage of intellectual property of artists in movies, advertising, etc.), physical purchasing (such as CDs and Vinyl's) and performance revenues (live shows, concerts, album tours, etc.). This segment generated INR 24,000,000,000 (Indian Rupees Twenty-Four Billion) [Approximately USD 285,600,000] in revenue, with film music and digital revenues growing.[12]

Radio: Audio transmission in an analog form, or radio, is one of the most elemental sectors of the M&E industry. The revenues in this segment rose by 10% (ten percent) in 2023 and is still recovering from the pandemic induced slowdown. While the segment has 1313 operational radio stations (as of 2023), it is heavily dominated by Prasar Bharti's All India Radio.[13]

While traditional media was the driving force behind the growth of this sector in India, recent trends show a decline in this activity and instead an increase in growth through digital, online gaming and VFX segments.

The proposed Merger would particularly impact the broadcasting of television channels in India, as ZEEL, BEPL and SPNI largely function in the linear television segment.

9 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

10 India Animation & VFX Market Size, Goldstein Research, available at: https://www.goldsteinresearch.com/report/india-animation-vfx-market.

11 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

12 "Windows of Opportunity: India's media and entertainment sector – maximizing across segments", Ernst & Young and FICCI, April 2023, pp. 225, available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf.

13 Available at: https://www.ey.com/en_in/news/2024/03/indian-m-e-sector-crossed-inr-2-point-3-trillion-in-2023-expected-to-reach-inr-3-point-1-trillion-by-2026-reveals-the-ficci-ey-report.

The value chain of television channels and digital platforms (**"Relevant Segment"**) contain the following three activities :[14]

i. Production of content and its aggregation;

ii. Broadcasting, which involves dissemination of content utilizing audio and video signals via conventional linear TV channels; and

iii. Content distribution to the end users via mediums such as cable, satellite or DTH services, Internet protocol television, HITS or OTT services.

Due to rapid shifts in the industry with the advent of technology and fragmentation of the market, a trend that has been witnessed is that major broadcasting corporations (including ZEEL and SPNI) have started expanding into allied activities encompassed within the segments, in order to stay competitive in the market.

The market of the Relevant Segment is such that there is a concentration of only 5-6 major players who dominate it, those being Disney-Star, Zee, Sony, Viacom, Sun and Enter 10.[15]

B. M&As in the M&E Sector

Another trend gaining prominence in the M&E industry is that of consolidation, which is being viewed as necessary for players, especially those in the Relevant Segment, if they want to remain competitive and grow in the current market.

One factor for this is that traditional TV houses are finding it increasingly hard to complete in digital media markets, which are steadily increasing in terms of customer preference. Digital media markets are currently fragmented and it is tough to gain access to them, hence consolidation is the most looked at recourse for traditional media houses to expand in this space.

Consolidation would also enable cross media alliances being formed. In a time where OTT is gaining consumer preference, as opposed to linear television, linear television participants entering into strategic partnerships with OTT platforms would give them access to the consumer base, content created, user experience as well as the technological knowledge and expertise of the OTT players.

For example, Network18 Media & Investments Ltd and TV18 Broadcast Ltd announced a consolidation of their TV and digital news businesses through a scheme of arrangement wherein TV18 Broadcast and e-Eighteen.com Ltd is proposed to merge with Network 18.[16]

14 CCI order, available at:https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf, page 7.

15 CCI order, available at:https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf, page 7.

16 https://www.cnbctv18.com/business/companies/network18-consolidate-tv-digital-news-business-tv18-moneycontrol-e18-18506461.htm.

Another reason for increasing consolidation is to scale up digital offerings and portfolios, especially with content costs (both acquisition and production) increasing steadily post the increased consumer demand created by the Covid pandemic. For example, the proposed merger between Reliance and Disney Star would result in substantial benefits for Reliance in terms of content acquisition, with the joint venture becoming the biggest player in sports with rights in several marquee cricket properties as well as exclusive streaming rights to distribute Disney films.

Consolidation is also a way that players can increase their market share and assets. For example, the PVR-Inox merger resulted in the merged entity becoming the largest multiplex chain in India.[17]

Therefore, consolidation is touted as the future for players in linear television, providing them substantial synergistic advantages and opportunities for growth.

C. How would the Deal have Potentially Impacted the sector?

If the Deal goes through, the Merged Entity would have had the potential of being one of the largest media conglomerates in the Indian M&E landscape,[18] especially cementing a strong dominance of the Merged Entity in (a) the broadcasting space; and potentially the (b) digital media space.[19]

In the broadcasting space, the Merged Entity would have had an extremely strong foothold, with its linear channel portfolio totaling 92 (Ninety Two) channels [20] across various languages and genres. Its consolidated revenue, which reached INR 133,000,000,000 (India Rupees One Hundred Thirty-Three Billion) [Approximately USD 1,582,700,000] in FY21, would translate to a network/revenue market share of approximately 27%/37%, with an anticipated 35% EBITDA margin within the linear television sector. Notably, its TV broadcasting business would surpass that of Star, the second-largest player, holding a 24% market share.[21]

In the broadcasting space, specific sub-segments where the involved parties held formidable positions even prior to the proposed Merger would result in the Merged Entity commanding most of the market share due to some overlap. Consequently, the second competitor lags notably behind in terms of market share. Recognizing this issue, the parties proposed to divest some of Zee's channels, specifically those in the Hindi language GEC category and the Hindi Films category, in order to avoid having an AAEC in the market under the Competition Act, 2002. However, despite this, the Merged Entity would still command majority of the market share in these segments (post the modifications), as illustrated below:[22]

17 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/pvr-inox-says-it-will-open-150-screens-next-fiscal-with-rs-500-cr-investment/articleshow/105629622.cms?from=mdr.

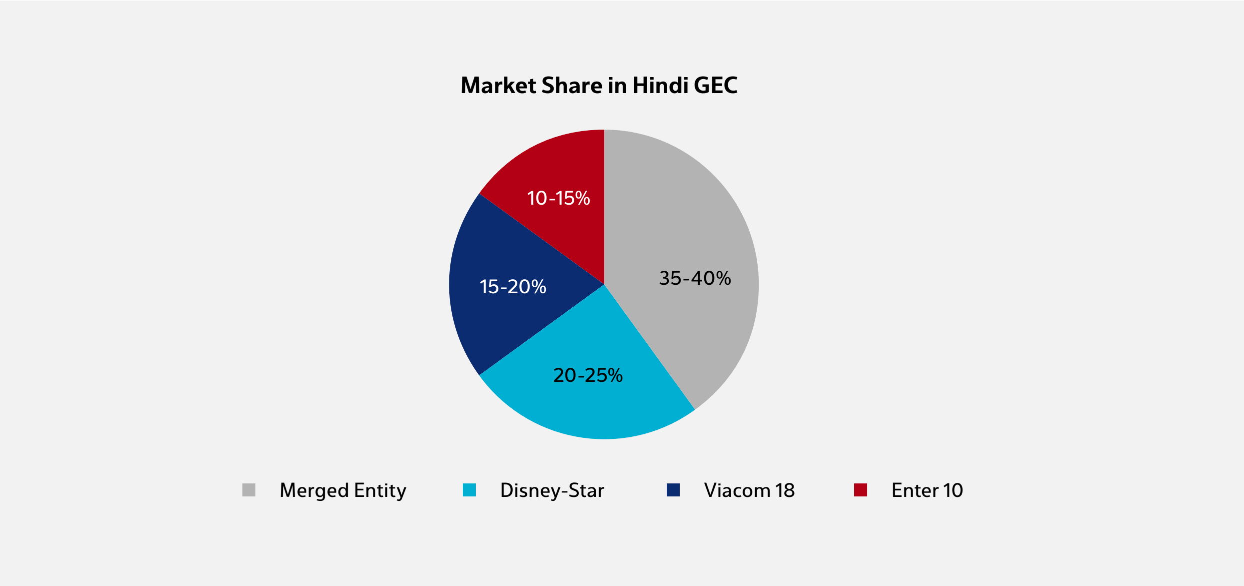
18 Available at: https://business.outlookindia.com/corporate/zeel-spent-rs-3666-crore-on-compliances-for-its-merger-with-sony.

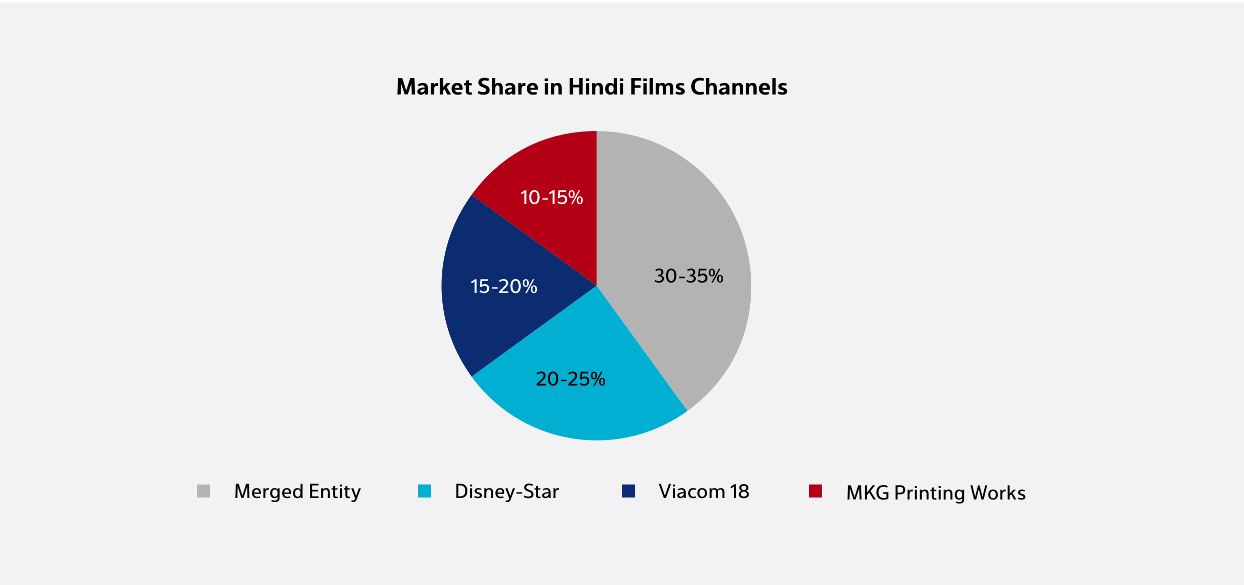
19 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

20 CCI order, available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf.

21 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

22 CCI order, available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf.





The linear television industry has always been consolidated, with the top 4-5 players having all the power. Having two of these top players merge into a single entity makes the market even more concentrated, thus impacting advertisers, distributers, content producers, viewers and other stakeholders. The Merged Entity would have increased bargaining power, thus raising prices to advertisers and influencing distribution platform operators.

Being a market leader, it may have influenced the other players in the linear television sector to follow suit and raise the price they charge to advertisers. It would also have increased power to bid on content (because of increased capital, market share and user reach), thus adversely impacting other production houses. This may have resulted in those players also having to consolidate to survive or exit the market altogether.

The OTT segment would be tougher for the Merged Entity to establish a dominant position in, considering the top three players, (being Netflix, Amazon Prime, and Hotstar), have created a right to win through global content, e-commerce, and sports content, respectively.[23] The combined market share of the Merged Entity

23 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

in this segment would have been less than 10% of the revenue/subscriber market share.[24] However, the proposed Merger could have potentially created a large scale digital opportunity as the Merged Entity has significant capital infusion (from Sony post the merger) as well as the backing of potential cash generation through its linear television business (which would generate higher revenue from its increased market share as well as revenue/EBIDTA synergy) to engage in content production for its OTT services. There could have also been potential for the Merged Entity to make inroads into the concentrated OTT segment, by leveraging its expertise and the growth potential of this segment, to create a niche space in regional, mass, or targeted tentpole content.[25]

D. How does the falling through of the Deal impact the media industry?

ZEEL and Sony were early movers, hopping onto the trend of consolidation before it fully gained traction in the industry. However, it seems now that this the way forward in an intensely competitive industry with growing costs (especially related to content acquisition). More players are getting on board with this trend, as highlighted by the plans for Reliance-Disney to merge and form a new media behemoth (a space which the Merged Entity would have occupied). ZEEL and Sony will now have to compete individually with a broadcasting business which will have close to 110 channels,[26] an inroad in the OTT space and which will change the industry dynamics of the M&E sector in India. The media industry, instead of having two major players competing (the Merged Entity vs the combined entity post the Reliance-Disney merger), will now only have one (Reliance-Disney, assuming the deal goes through), which will lead to market concentration, bargaining power, content acquisition and market dynamics disproportionately skewed in favour of the new Reliance-Disney entity.

Media players will find it extremely tough, in an already competitive environment, to individually compete with this new giant which would have 40-plus percent linear share and 50-plus percent monthly active users share.[27] If Sony and ZEEL persist in operating independently, without forming alliances with other market players, they risk facing marginalization in terms of market share. Moreover, there's a looming threat that smaller competitors in the market might be entirely squeezed out.

Therefore, the Deal falling through will intensify market competition and consolidation, prompting a heightened and more immediate need for companies to merge or establish strategic partnerships with others in the industry. Further, the entrenchment of a dominant player into the broadcasting space would make it tougher for others to gain foothold in linear television, and they may need to focus on the digital market and non-traditional sources of media instead. As quoted by Mr Utkarsh Sinha (MD of Bexley Advisors), the future of the media landscape will be *"dominated by a few marquees that have absorbed many of the players that lie scattered around the media landscape today. They will command a similar percentage of the consumer wallet, but with a larger individual share for each of the survivors."*[28]

24 CCI Order, available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf.

25 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

26 Available at: https://www.businesstoday.in/magazine/the-buzz/story/zee-sony-merger-crisis-the-merger-may-have-been-called-off-but-it-has-led-to-a-wave-of-consolidation-in-the-industry-416182-2024-02-05.

27 Available at: https://www.thehindubusinessline.com/info-tech/reliance-disney-merger-will-drive-consolidation-value-for-indias-streaming-market/article67898790.ece.

28 Available at: https://www.businesstoday.in/magazine/the-buzz/story/zee-sony-merger-crisis-the-merger-may-have-been-called-off-but-it-has-led-to-a-wave-of-consolidation-in-the-industry-416182-2024-02-05.

Commercial and Financial Considerations

A. How was the Deal valued?

The subscription amount of INR 79,486,908,300 (Indian Rupees Seventy-Nine Billion Four Hundred Eighty-Six Million Nine Hundred Eight Thousand Three Hundred)[Approximately USD 945,894,208] for the SPNI Subscription Shares was arrived at based on the valuation report dated December 21, 2021 provided by RBSA Capital Advisors LLP that had been prepared in accordance with the pricing guidelines set out under the Foreign Exchange Management Act, 1999 and rules and regulations made thereunder (including the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

The subscription amount of INR 11,013,091,800 (Indian Rupees Eleven Billion and Thirteen Million Ninety One Thousand and Eight Hundred) [Approximately USD 131,055,792] for the Essel Subscription Shares was arrived at based on the valuation reports dated December 21, 2021 provided by RBSA Valuation Advisors LLP, a registered valuer that had been prepared in accordance with the CA 2013 as well as the valuation report dated December 21, 2021 provided by RBSA Capital Advisors LLP that had been prepared in accordance with the pricing guidelines set out under the Foreign Exchange Management Act, 1999 and rules and regulations made thereunder (including the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019).

The share entitlement ratios stated in the Scheme was determined on the basis of relative equity valuation of the above reports, and has been taken on record and approved by the boards of directors of the (a) ZEEL after taking into consideration the valuation report dated December 21, 2021 provided by Grant Thornton India LLP, a Registered Valuer, and (b) SPNI after taking into consideration the valuation report dated December 21, 2021 provided by RBSA Valuation Advisors LLP, a Registered Valuer and (c) BEPL after taking into consideration the valuation report dated December 21, 2021 provided by RBSA Valuation Advisors LLP, a Registered Valuer.

A fairness opinion on the Share Entitlement Ratio arrived at by the valuers was also provided by ICICI Securities Limited and Duff & Phelps India Private Limited.

The independent valuers used the following methods: (i) Market Price Method (for determining the value of ZEEL); (ii) Comparable Companies Multiple Method (for determining the value of BEPL and SPNI); and (iii) Discounted Cash Flow Method (for determining the value of ZEEL, BEPL and SPNI).[1]

The Cost Approach (such as the Net Asset Value Method) has not been used by both the independent valuers as the assumption was that ZEEL, SPNI and BEPL are "going concerns" and an actual realization of their operating assets was not contemplated.[2]

1 Available at: https://assets.zee.com/wp-content/uploads/2022/01/27131620/4-Valuation-Report-ZEE-Sony-BEPL-1.pdf.

2 Available at: https://sonypicturesnetworks.com/investors-section/documents/pdf/nse/2%20Valuation%20Report%20%20ZEE%20Sony%20BEPL.pdf.

B. Why was the Deal Structured as an Amalgamation?

Considering the nature of business of the parties to the Deal, an important commercial rationale for the amalgamation (as opposed to an alternative structure) was to consolidate the business interests [3] of three big players in the Indian M&E industry into one entity, leading to increased financial prowess of the amalgamated single entity, benefits of synergy, strategic advantages such as value accreditation as well as the potential for the Merged Entity to be a dominant market player in the growing television and digital market of India. As per the disclosure made by ZEEL, it can be noted that the combined scale and audience reach of the Merged Entity across television and digital platforms, will also enable it to compete effectively for advertisers. Further, the financial strength of the Merged Entity will also enable it to compete effectively for acquiring upcoming rights to marquee sporting events across cricket and other sports.

While no other direct reasons have been cited by any of the parties for the reason why the Deal was structured as a merger and not a share purchase, certain alternate factors which the parties could have considered have been given below:

Management Benefits for the ZEEL Promoters

From the perspective of the promoter family of ZEEL, the proposed Merger would result in significant growth for the Merged Entity, and Punit Goenka would continue to lead this Merged Entity as MD and CEO. By contrast, a scenario involving only a share acquisition of SPNI/BEPL by ZEEL would not offer the same level of growth potential to ZEEL as the entities would still operate separately, and instead it would lead to a capital outflow for a cash strapped ZEEL.

Multiple Steps and Complexity

If the Deal was structured as share purchase and not as a composite scheme of arrangement, the same would have entailed multiple processes and steps to be undertaken to achieve the ultimate outcome. However, since the primary commercial reason for the Deal was to consolidate the business interests of the parties into a single large entity and drawing the benefits of a financially strong balance sheet, this also one of the main reasons why a composite scheme of amalgamation was preferred over a share purchase.

Takeover Code Exemption

The merger falls within the ambit of exemptions for the obligation to make an open offer under the Takeover Code. Consequently, SPNI was exempt from having to make an open offer. If SPNI had opted to structure the Deal as an acquisition of ZEEL shares, they would have had to comply with the requirements of an open offer under the Takeover Code.

3 Available at: Page 3, https://www.sonypicturesnetworks.com/investors-section/documents/pdf/bse/2-Certified-Scheme.pdf_.

Tax Benefits

The Deal being structured by way of a merger that met the conditions under the IT Act, shall be tax neutral for the parties and the shareholders under the IT Act as opposed to a share purchase which would have been subject to capital gains tax.

Listing

As a part of the Scheme and once approved, SPNI shall also have the advantage of being listed[4] while sidestepping the time-consuming and compliance-heavy process of an IPO. In the event that this acquisition had been structured as a share acquisition, SPNI would not have had the benefits of conversion into a public company and listing as provided in Section V, part 3 and part 4 of the Scheme respectively.

Advantage of Consolidated Business Interests

The proposed amalgamation and share issuance will create a financially strong Merged Entity by combining the businesses of the involved parties. This will enhance their ability to cater to various entertainment needs across different segments and age groups. The Merged Entity will be well-positioned to capitalize on the growth of the television broadcasting and digital media markets, leveraging their strong presence and recognized entertainment offerings. Additionally, the combined scale and audience reach will enable the company to compete effectively for advertisers and acquire rights to major sporting events, benefiting all stakeholders involved including the shareholders and creditors of all parties.

C. Benefits to the Parties

Benefits for both ZEEL and Sony

The Merged Entity would become a dominant force in both traditional broadcasting and potentially the digital media realm and would be positioned to capitalize on the growth of these sectors. Consolidation would lead to improved content creation across various platforms, cross media and segment collaboration, and more opportunities in the fast-changing digital landscape. Additionally, it would have the capability to bid for sports media rights and explore new avenues for growth. Furthermore, the Merged Entity could leverage its influence, technology and expertise to enhance its competitive edge and synergies on both the revenue and cost fronts over time. The combined scale and audience reach of the Merged Entity would also result in it having stronger negotiation power with content creators, distributors, and advertisers, optimizing costs by streamlining less popular channels, and benefiting from other advantages of scale and stronger brand recall. [5] There could also be increased opportunities for bundling with telecom services or apps.

4 Clause 3 of Section 5 of the Scheme.

5 CCI order, available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf, page 5.

Specific Benefits for ZEEL

ZEEL in the past few years has been facing increasing problems with its creditors (due to unpaid loans) and its shareholders, who have raised several concerns about the corporate governance of ZEEL. The proposed Merger and its capital infusion into the Merged Entity, along with the Merged Entity absorbing the debt and liabilities of ZEEL (where its total liabilities amount to approximately INR 30,064,000,000 (Indian Rupees Thirty Billion Sixty-Four Million) [Approximately USD 571,216,000] [6], would save ZEEL from unilaterally shouldering the burden of insolvency/settlement, and it would also lead to cash for expansion, operational viability and increased capital strength.

The BOD of ZEEL concluded that the Deal, aligns with their growth strategy and benefits all shareholders and stakeholders both in terms of financial value as well as strategic value. The BOD of ZEEL concluded that the Deal will be in the best interest of all the shareholders and stakeholders shall be a step towards achieving higher growth and profitability as a leading M&E company across South Asia. [7]

The public shareholders of ZEEL stand to gain from the amalgamation as they would receive shares of the Merged Entity. The primary goal of this Merger was to establish a prominent presence in both the television and digital markets, which would ultimately benefit shareholders and lead to an increase in the value of their shares consequent to the Merger coming into effect.

As majority shareholding shall be with the Sony Group Corporation, a multinational corporation, this move would improve the perception of ZEELs governance, while simultaneously enabling the ZEEL Promoters to hold on to their ownership stake (and management control, as Punit Goenka was envisaged to be the MD and CEO of the merged entity). Having the Sony Group Corporation as a parent would also enable ZEEL to gain a foothold in the digital entertainment industry, especially at an international level as Sony Pictures Entertainment is a part of six major studios,[8] Hollywood films and has a vast film library with several premium titles and franchises.[9]

Specific Benefits for the Sony Group

Sony had expressed its intention to enter into a strategic partnership with a player in the M&E industry, in order to achieve its goals of expansion and increase its market share.[10] This proposed Merger with ZEEL offered Sony a significant opportunity to fortify its position in the market, particularly focusing on regional languages, a segment where Sony comparatively lacked in offerings. ZEEL holds a dominant position, rivaling Star-Disney, in the regional languages market, providing Sony a gateway to establish itself comprehensively across major regional language markets, thus plugging up the gap in its portfolio.

6 Available at: https://www.bseindia.com/xmldata/corpfiling/AttachHis/237daf7f-1a9f-4e59-9057-e6df27723527.pdf.

7 Available at: https://assets.zee.com/wp-content/uploads/2021/09/23113731/Press-Release-22092021.pdf.

8 Walt Disney, Warner Bros, Fox Entertainment, Universal Studios, Paramount, and Sony Pictures Motion.

9 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

10 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/sony-to-enhance-its-india-presence-through-organic-inorganic-strategies-np-singh/articleshow/107105686.cms?from=mdr; https://variety.com/2023/film/news/sony-strategic-plans-music-games-anime-india-1235617171/.

The scheme of amalgamation presents a significant opportunity for the Sony Group Corporation, as it would indirectly have a majority on the board of the Merged Entity (5 directors out of 9 were to be nominated by SPNI[11]), and it also had majority shareholding in the Merged Entity (50.86%), effectively making the Merged Entity a part of the Sony Group. [12] This would also mean that the Sony Group would have greater influence and control in the operations and decisions of the Merged Entity. The Sony Group Corporation being a multinational corporation would also bring up the valuation of the Merged Entity, due to better capital allocation, corporate governance and business synergies.[13]

Moreover, Sony also faced challenges in the Hindi movies segment due to the emergence of Goldmines Telefilms Private Limited, which has garnered an extensive library of South Indian movies.[14] By merging with ZEEL, Sony could have revitalized its presence in the Hindi movie domain. The synergy between Sony and ZEEL could significantly bolster their market share, presenting an opportunity for Sony to regain its foothold in these segments.

Further, Sony's loss of broadcasting rights to the Indian Premier League (IPL) dealt a considerable blow to its revenue. Nevertheless, the merger with ZEEL offers Sony a chance to bounce back from these setbacks and regain traction in the Indian market. Given that Star & Disney India now possess the IPL broadcast rights formerly held by SPNI, the Merger provides an avenue for the Merged Entity to balance the competitive landscape, as sport content is premium and requires significant investment from market players.

11 CCI order , available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf, page 6.

12 Clause 68 of the AOA of the resultant company in the Scheme.

13 Available at: https://ftp.motilaloswal.com/emailer/Research/Z-20220209-MOSL-CU-PG018.pdf.

14 Available at: https://dreamdth.com/community/threads/sony-max-converting-into-bollywood-content-driven-channel.139533/page-2.

Legal and Regulatory Considerations

The Merger was slated to be carried out through a composite scheme of arrangement vide the Scheme under the provisions of Chapter XV of the CA 2013 (specifically, Section 230 and Section 232) and the applicable rules covered under Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. A scheme of arrangement basically includes a reorganization of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.[1]

A company or its creditors/members can apply to the NCLT for approval of a scheme of compromise or arrangement. Upon receipt of the application, NCLT may order meetings of the creditors and shareholders' to be convened to approve the scheme. Notice of the meeting must be sent to all relevant parties and should include a copy of the scheme, the statement explaining its effect, and any other prescribed documents. NCLT would require that a majority representing three-fourths in value of the creditors or members agree to the compromise or arrangement at the meeting.[2]

A notice of the aforesaid meeting along with a copy of the scheme, explanatory statement and such other documents as prescribed in CA 2013 are also sent across to the Regional Director, Registrar of Companies, Income-Tax Authorities, Official Liquidator, Competition Commission of India, the Reserve Bank of India, the SEBI and the relevant stock exchanges, as applicable or any other concerned sectoral regulator as directed by the NCLT.[3] These authorities are required to make their representations within 30 days in respect of the scheme before the NCLT, and if no representation are made within this time, then it is presumed that the regulators have no objections in respect of the scheme.[4]

NCLT shall, upon being satisfied that the procedure has been complied with and the scheme is fair and just, pass an order with or without directions/modifications and subject to conditions (if any) in respect of the scheme granting approval which has to be filed with the RoC within 30 days of receiving the order.[5] If the scheme involves the dissolution of the transferor company without winding up, the NCLT's order must explicitly state this.

A. Was the Approval of SEBI Required?

CA 2013 requires the Scheme to be presented before SEBI[6] for making any representations or comments within a period of 30 days from the date of receipt of notice of the meeting of the creditors / members as may be ordered by NCLT. In the absence of any response from SEBI within the said period, it shall be presumed that SEBI has no objection to the Scheme.

1 Explanation to Section 230 (1) of CA 2013.

2 Section 230(5) of CA 2013.

3 Section 230(5) of CA 2013 read with Rule 8 (1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

4 Rule 8 (3) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

5 Section 232 (3) of CA 2013 read with Rule 17 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

6 Section 230(5) of CA 2013.

Along with the Scheme, the designated Stock Exchange(s) are also required to provide certain documents as submitted by the listed entity to SEBI including a 'Report on Complaints' and 'Unpaid Dues Report in the manner and format set out in the SEBI Circular .[7]

Once the draft scheme of arrangement and the relevant documents in terms of Regulation 37(1) of the Listing Regulations are received by the Stock Exchange, the relevant Stock Exchange is required to forward the same to SEBI for its approval in the manner set out in Regulation 94 of the Listing Regulations .[8]

Pursuant to issuance of a no-objection / observations letter by the Stock Exchanges (as detailed in question ii of this chapter) to SEBI, SEBI shall provide its comments on the draft scheme of arrangement to the Stock Exchanges within a period of 30 days from the later of the following: (a) date of receipt of satisfactory reply on clarifications, if any sought from the listed entity by SEBI; (b) date of receipt of opinion from independent chartered accountant, if sought by SEBI; or (c) date of receipt of 'no-objection' letter from relevant stock exchanges.

For providing its comments, SEBI may seek clarifications from any person relevant in this regard including the listed entity or the Stock Exchanges and may also seek an opinion from an independent Chartered Accountant.[9]

We note that SEBI issued a letter July 28, 2022 to BSE and provided certain comments on the Scheme.[10]

B. Why was the Approval from the Stock Exchanges Required?

According to the provisions of Regulation 37 of the Listing Regulations, a listed entity undertaking a scheme of arrangement or involved in a scheme of arrangement is required to file a draft scheme of arrangement (proposed to be filed with the NCLT) with the relevant Stock Exchanges and procure a no-objection letter or an observation letter from the designated Stock Exchange before filing the same with the NCLT.

Since ZEEL is a listed company, the draft Scheme was required to be filed with the Stock Exchanges and a no-objection certificate from BSE and NSE was required. The Stock Exchanges are then required to disclose the draft Scheme and other documents as submitted by the listed entity on their websites.[11]

ZEEL received an observation letter from BSE and NSE on July 29, 2022.[12] The Stock Exchanges had no adverse observations in terms of matters relating to listing/de-listing/continuous listing requirements relevant for ZEEL to file the Scheme before NCLT subject to compliance with certain conditions, including the following [13]:

1. ZEEL shall disclose all details of ongoing adjudication & recovery proceedings, prosecution initiated and all other enforcement action taken, if any, against it, its promoters and directors, before NCLT and the shareholders while seeking approval of the Scheme.
2. ZEEL shall ensure that additional information, if any, is disclosed even after filing the Scheme with the stock exchange and is displayed on its website and the Stock Exchanges.

7 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

8 Regulation 94 of the Listing Regulations.

9 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

10 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/b8ee13a0-e689-41af-9385-f4d5f72f3245.pdf.

11 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

12 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/b8ee13a0-e689-41af-9385-f4d5f72f3245.pdf.

13 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/b8ee13a0-e689-41af-9385-f4d5f72f3245.pdf.

3. ZEEL and the other entities involved in the Scheme shall ensure compliance with the all the applicable SEBI circulars issued from time to time.
4. ZEEL shall ensure that the financials in the Scheme including financials considered for valuation report are not for period more than 6 months old.
5. ZEEL shall ensure that the Scheme shall be acted upon subject to the applicant complying with the relevant clauses mentioned in the scheme document.
6. No changes to the draft Scheme except those mandated by the regulators/ authorities / tribunals shall be made without specific written consent of SEBI.
7. ZEEL is advised that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before NCLT and the company is obliged to bring the observations to the notice of NCLT.
8. ZEEL is advised to comply with all applicable provisions of the CA 2013, rules and regulations issued thereunder including obtaining the consent from the creditors for the proposed Scheme.
9. It is to be noted that the petitions are filed by ZEEL before NCLT after processing and communication of comments/observations on the draft Scheme by SEBI/stock exchange. Hence, the company is not required to send notice for representation as mandated under section 230(5) of CA 2013 to SEBI again for its comments / observations / representations.
10. ZEEL shall ensure that all details submitted with SEBI are also incorporated in the explanatory statement accompanying resolution to be passed sent to the shareholders while seeking approval of the Scheme, inter alia, including the following:
    i. Detailed rationale behind sub-division, rights issue, bonus issue and preferential allotment;
    ii. List of names and shareholding of promoters of post-Scheme SPNI; and
    iii. Details of non-compete agreements, parties thereto, consideration involved, source and mode of payment, utilization of fee for subscription to SPNI shares, etc.
11. The entities involved in the Scheme to ensure that the Scheme does not impact any pending proceedings (including pending cause of actions) for enforcement or those that are in the pipeline against ZEEL (whether pending on the appointed date or which may be instituted any time in the future) shall not abate, be discontinued or in any way prejudicially affected by reason of the amalgamation of ZEEL or of anything contained in the Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against SPNI in the same manner and to the same extent as would or might have been continued, prosecuted and/or enforced by or against ZEEL as if the Scheme had not been implemented.
12. ZEEL shall ensure that adequate redressal has been done of any complaints received during the intervening period regarding the Scheme.

Additionally, since the Scheme involves a merger between a listed and an unlisted company, the following requirements need to also be fulfilled [14]:

1. The listed entity shall include the applicable information pertaining to the unlisted entity which is involved in the Scheme in the format specified for abridged prospectus as provided in Part E of Schedule VI of the ICDR Regulations, in the explanatory statement or notice or proposal accompanying resolution to be sent to the shareholders while seeking approval of the Scheme. The accuracy and adequacy of such disclosures shall be certified by a SEBI Registered Merchant Banker after following the due diligence process.

14 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

2. The percentage of shareholding of the pre-scheme public shareholders of the listed entity and the Qualified Institutional Buyers (QIBs) of the unlisted entity, in the post Scheme shareholding pattern of the "merged" company on a fully diluted basis shall not be less than 25%.
3. Unlisted entities can be merged with a listed entity only if the listed entity is listed on a stock exchange having nationwide trading terminals.

C. What are the Disclosures that are Required to be made as per the Listing Regulations?

The Listing Regulations provide that every listed entity shall make disclosures with the stock exchange of any events or information which, in the opinion of the Board of such listed company, is material in order to enable the shareholders and the public to apprise the position of such company, and to avoid the establishment of a false market in its securities. [15]

Further, as per the Listing Regulations [16], the events specified in Para A of Part A of Schedule III of the Listing Regulations are deemed to be material events and a listed entity shall make disclosure of such event, as soon as reasonably possible and in any case not later than the following: (i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken; (ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity; (iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity. A scheme of arrangement is included in the list of events set out in Part A of Part A of Schedule III.

As such, on December 22, 2021, ZEEL filed a letter of intimation to BSE and NSE informing them of the Scheme immediately after the Board meeting approving the Merger on the same day.[17]

The following disclosures were required and were made by ZEEL [18]:

1. Name of the entity(ies) forming a part of the Scheme, details in brief such as, size, turnover, etc.;
2. Draft Scheme of amalgamation/ merger and rationale for the Scheme;
3. Pre and post amalgamation shareholding pattern of the unlisted entity;
4. Audited financials of last 3 years (financials not being more than 6 months old) of the unlisted entity;
5. Report from the audit committee recommending the draft Scheme;
6. Fairness opinion by a SEBI registered merchant banker on valuation of assets/shares;
7. Valuation report accompanied with an undertaking from the listed entity stating that no material event impacting the valuation has occurred during the intervening period of filing the Scheme documents with stock exchange and period under consideration for valuation; [19]

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15 Regulation 30 of Listing Regulations.

16 Regulation 30(2) of the Listing Regulations.

17 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/2a193a82-0d3d-47d3-99a6-2763a1aa6fbc.pdf and https://nsearchives.nseindia.com/corporate/ZEEL_22122021081329_Reg302212021SchofArr.pdf.

18 Regulation 69(2) of the Listing Regulations and SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

19 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

8. Auditor's certificate to the effect that the accounting treatment contained in the Scheme is in compliance with all the accounting standards specified by the Central Government under Section 133 of the CA 2013 read with the rules framed thereunder or the Accounting Standards issued by ICAI, as applicable;
9. Detailed compliance report (duly certified by the company secretary, chief financial officer and the managing director) confirming compliance with various regulatory requirements specified for schemes of arrangement and all accounting standards;
10. Report from the committee of independent directors recommending the draft Scheme, taking into consideration, inter alia, that the Scheme is not detrimental to the shareholders of the listed entity;
11. Declaration from the listed entity on any past defaults of listed debt obligations of the entities forming part of the Scheme; and
12. No-objection Certificate from the lending scheduled commercial banks/ financial institutions debenture trustees.

D. What Approvals were Required from the Ministry of Information and Broadcasting, Government of India?

Since both SPNI and ZEEL are satellite TV Channels, they have to comply with applicable laws as may be issued by MoIB.[20] As per the Scheme, MoIB's approval shall also be required for the appointment of Mr. Punit Goenka, as the MD and the CEO of the Merged Entity; (ii) the appointment of each of the independent directors to the BOD of the Merged Entity; and (iii) the appointment of each of the Sony Group director(s), to the BOD of the Merged Entity.

Further, as per the Scheme, MoIB's approval shall be required for the transfer of licenses for broadcasting obtained by BEPL and ZEEL to the Merged Entity [21]. The consent was for the transfer of the licenses obtained by ZEEL and BEPL in relation to the up-linking and down-linking of television channels (as applicable) to the Merged Entity, pursuant to the Scheme.

E. Why did the Takeover Code not get Triggered?

Regulation 10(d) of the Takeover Code exempts any acquisitions pursuant to a scheme:

"of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or tribunal under any law or regulation, Indian or foreign, from the obligation to make an open offer".

Accordingly, the Merger being undertaken through the Scheme of arrangement under section 232 of the CA 2013, shall not trigger an open offer under the Takeover Code.

20 Available at: https://mib.gov.in/about-us/about-the-ministry.

21 Available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1874717 and https://mib.gov.in/sites/default/files/FAQs%20on%20Uplinking%20and%20Downlinking%20Guidelines%202022.pdf.

F. Were there any Anti-trust Implications of the Deal?

As per the Competition Act 2002 [22] read with CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 [23] requires companies from entering into 'Combinations' that cause or are likely to cause an 'appreciable adverse effect on competition' (**"AAEC"**) in the relevant Indian market. India has a suspensory merger regime, meaning any combinations exceeding the thresholds in Section 5 of the Competition Act, 2002 are subject to prior notification to CCI, and no step or transaction can be consummated unless CCI's clearance is obtained.

A "combination" under Section 5 of the Competition Act, 2002, India refers to mergers, acquisitions, or amalgamations that exceed specified asset or turnover thresholds and may impact competition in the market.

The following are the said specified thresholds were applicable to ZEEL at the time of notifying CCI: [24]

1. At an enterprise level — either in India, the assets of value of more than INR 20,000,000,000(Indian Rupees Twenty Billion) [approximately USD 238,000,000] or turnover more than INR 60,000,000,000(Indian Rupees Sixty Billion) [approximately USD 714,000,000]; or worldwide, the assets of value of more than USD 1,000,000,000 (United States Dollars One Billion) with at least INR 10,000,000,000 (Indian Rupees Ten Billion) [approximately USD 119,000,000] worth of it in India or worldwide turnover of more than USD 3,000,000,000 (United States Dolar Billion) with at least INR 30,000,000,000 (Indian Rupees Thirty Billion) [approximately USD 357,000,000]) of it in India.
2. At a group level — either in India, the assets of value of more than INR 80,000,000,000 (Indian Rupees Eighty Billion) [approximately USD 952,000,000] or turnover more than at least INR 24,000,000,000 (Indian Rupees Twenty Four Billion) [approximately USD 285,600,000]; or worldwide, the assets of value of more than USD 4,000,000,000 (United States Dollars Four Billion) with at least INR 10,000,000,000 (Indian Rupees Ten Billion) [approximately USD 119,000,000] worth of them in India or turnover more than USD 12,000,000,000 (United States Dollars Twelve Billion) with at least INR 30,000,000,000(Indian Rupees Thirty Billion) [approximately USD 357,000,000] worth of it in India.

Further, according to the previous notification issued by the Central Government [25], a 'de-minimis target exemption' was provided which stated that in the event that the assets or turnover of the target enterprise forming part of a "combination" are less than either of: (i) assets of less than INR 3,500,000,000 (Indian Rupees Three Billion Five Hundred Million) [approximately USD 41,650,000] ; or (ii) turnover of less than INR 10,000,000,000 (Indian Rupees Ten Billion) [approximately USD 119,000,000] , the transaction would not be subject to prior approval of the CCI.

However, it may be noted here vide two separate notifications released by Ministry of Corporate Affairs on March 7, 2024, the aforesaid thresholds provided herein have been revised. [26]

Accordingly, and considering that the Deal exceeded the thresholds as set out under the Competition Act, 2002, the Merger was notified to the CCI on April 29, 2022, by the parties to the Deal under section 6(2) of the Competition Act 2002. [27]

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22 Available at: https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf.

23 Available at: https://www.cci.gov.in/images/combinationlegalframeworkregulation/en/cci-procedure-in-regard-to-the-transaction-of-business-relating-to-combinations-regulations-2011.pdf.

24 Section 5 of the Competition Act, 2002 and Notification S. O. No. 675 (E) dated March 4, 2016.

25 Notification S.O. 988 (E) No. 881 dated March 27, 2017 and Notification S.O. 1193 (E) No. 1153 dated March 16, 2022.

26 Notification S.O. 1131 (E) No. 1074 dated March 7, 2024 and Notification S.O. 1130 (E) No. 1073 dated March 7, 2024.

27 Combination Registration No. C-2022/04/923 dated October 4, 2022 available at: https://www.cci.gov.in/images/caseorders/en/order1666779994.pdf.

While CCI had certain prima facie concerns in respect of the Deal as set out below, on 26 October 2022[28] the CCI approved the combination transaction between ZEEL, BEPL and SPNI. The approval was granted by CCI on account of certain voluntary remedy proposals (including in the nature of behavioral commitments) under Regulation 25(1A) of the of the Combination Regulations being offered by the parties during the period of September 2022–October 2022.

CCI noticed that businesses of both ZEEL and SPNI overlapped (both horizontally and vertically) in relation to operation and wholesale supply of television channels in India. For this purpose, CCI reviewed SPNI and

ZEEL's presence in the following markets:

1. Operation and wholesale supply of TV channels in India (narrow markets: (i) Hindi GEC; (ii) Regional GEC; (iii) film channels; and (iv) infotainment & lifestyle channels)
2. Retail supply of OTT AV content in India
3. Supply of advertising airtime on TV channels in India
4. Licensing of AV content in India
5. Production and supply of films to third-party distributors and exhibitors for theatrical release in India
6. of music rights in India in CCI's analysis

On a prima facie assessment, CCI believed that the proposed Deal was likely to result in appreciable adverse effect on competition on account of the following [29]:

1. The proposed Deal is a typical horizontal combination between two competing broadcasting houses present across the TV and digital platforms value chain.
2. The Merged Entity would be the largest broadcasting house in India with ~92 television channels, vast content, higher market shares in Hindi GEC, Hindi Films, Marathi GEC, and Bengali GEC. It is likely to enjoy an un-paralleled dominant position and be an indispensable partner to downstream players.
3. A Merged Entity with a strong market position is likely to have the ability and incentive to increase the price of advertisers, Distribution Platform Operators, and viewers in the high market shares television channels categories.
4. Merged Entity would also have the ability and incentive to engage in differential pricing and behaviour with Distribution Platform Operators.

As part of the voluntary remedies submitted by the parties, a divestiture by ZEEL of Big Magic (operating in the Hindi GEC market) as well as Zee Action and Zee Classic (operating in the Hindi Films channels market) was proposed and approved by CCI. This sale includes the licensing of trademarks, channel names, logos, etc., and the transfer of relevant licenses, permits, and authorizations. Additionally, agreements related to content licensing will be transferred to the purchaser, along with the employees working with these TV channels. In order to enable this divestiture to fulfill its purpose, CCI ousted Star India Private Limited or Viacom18 Media Private Limited (including their respective affiliates) who are competitors to SPNI and ZEEL from bidding for the divested channels.

On account of the voluntary remedies proposed by the parties, the Deal got a green signal from the CCI.

28 Ibid.

29 Ibid.

G. Were there any other Approvals Required?

Apart from the specific approvals and consents captured above, the Deal would require the receipt of approvals from the following regulators and entities:

1. National Company Law Tribunal — As per CA 2013, the Merger would require the approval of the NCLT. The approval of NCLT was received on August 10, 2023.
2. Upon the Scheme coming into effect on the Effective Date, the Equity Shares of SPNI were proposed to be listed and admitted for trading on the Stock Exchanges by virtue of the Scheme and in accordance with the provisions of applicable laws (including the SEBI Circular, Listing Regulations). As per the no-objections letter issued by the Stock Exchanges [30], the listing of equity shares of SPNI shall be subject to SEBI granting relaxation under Rule 19(2)(b) of the Securities Contract (Regulation) Rules, 1957 and compliance with the requirements of SEBI Circular and subject to SPNI complying with Securities and Exchange Board of India Act, 1992, applicable rules and regulations, directions of SEBI and any other statutory authority and rules, byelaws, and regulations of the Stock Exchanges.
3. As per the Listing Regulation, the Non-Compete Agreements to be entered between Essel Group and SPE Mauritius Investments Limited in respect of which the non-compete fees determined would require the approval of the public shareholders of ZEEL. However, as per the Scheme, approval of the BOD and the members of each of the parties pursuant to Sections 230-232 of CA 2013 and other relevant provisions of CA 2013 and rules made thereunder, the SEBI Circular and the Listing Regulations, if applicable, it shall be deemed that the BOD and the members of each of the party has also accorded their consent under applicable provisions of the Listing Regulations, as may be applicable for payment of non-compete fees by SPE Mauritius to Essel Mauritius under the Non-Compete Agreements.

H. What are the Modalities for the Conversion SPNI into a Public Company?

As per the provisions laid out under the CA 2013, typically, the following brief steps are required to be undertaken by a private company into a public company:

1. Consent of the board and shareholders (special resolution) of a company is required for the conversion and the alteration of memorandum of association in terms of Sections 13, 14 and Section 18 of CA Act 2013 to reflect the conversion of the company from private to public.
2. Pursuant to obtaining the above approvals, necessary filings [31] are made with the RoC for their approval. Once approved by the RoC, a fresh certificate of incorporation is issued to the converting company. [32]
3. Thereafter, certain compliances such as updating the company's name on the documents, letterheads etc. have to be undertaken and the company is required to ensure compliance by a public company of the requirements laid out under the CA 2013.

Such conversion of a company from one class to another does not exonerate it from its debts, liabilities, obligations or contracts effected before the conversion.

30 SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021 /000665 dated November 23, 2021.

31 Form MGT-14 and Form INC-27 as set out under the CA 2013.

32 Section 13(3) of CA 2013 and Rule 29 (2) of Companies Incorporation Rules, 2014.

However, in respect of the current Deal and as an integral part of the Scheme and upon the Scheme coming into effect on the Effective Date, SPNI was to be deemed converted into a 'public company' in terms of CA 2013. The consent of the BOD and shareholders for such conversion as required under the CA 2013, including in terms of Sections 13 and 18 of the CA 2013 and any other applicable provisions of the CA 2013 were deemed to be provided. As such, no further resolution or actions were required by SPNI and SPNI was only required to file all the necessary documents/ intimations with RoC and the governmental authorities (if any).

I. What were the Corporate Governance Alleged in Respect of ZEEL? What are the Good Governance Measures and Disclosure Requirements in this Regard?

From open letters[33] to various statements which had been issued by the creditors and former directors of ZEEL[34], many incidents including media reports were instrumental in drawing attention to the inadequate corporate governance practices of ZEEL. However, it was not until SEBI's Interim Order that these corporate governance lapses within ZEEL were closely examined. To put things into perspective, the following were the broad allegations on corporate governance against ZEEL:

1. Promoters had issued Letter of Comfort on behalf of ZEEL to YES Bank and RBL Bank without consultation and/or approval of ZEEL or its BOD, [35] leading to a violation of the Listing Regulations, which lay down some of the duties of the BOD such as the duty to act in good faith, with due diligence and care and in the best interest of the company and its shareholders; and to maintain high ethical standards uploading the interests of the various stakeholders, respectively.
2. Based on the analysis of the bank statements of ZEEL and other associate entities, it was observed that the funds purported to have been paid towards the INR 2,000,000,000 (Indian Rupees Two Billion) [approximately USD 23,800,000] debt owed to Yes Bank had followed a circuitous route where funds originated from ZEEL/listed companies of Essel Group, passed through various entities owned or controlled by Promoter family and ultimately ended up with ZEEL[36] — Violation of Regulation 4(2)(f)(ii)(6) of the Listing Regulations, which lays down one of the key functions of the BOD for monitoring and managing any conflict of interests between the management and shareholders, including misuse of corporate assets and abuse in related party transactions.
3. On account of misrepresentation and false submissions made by the Promoters before SEBI [37] — violation of section 4(1) and section 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003, which lay down the prohibition of manipulative, fraudulent and unfair trade practices within the definition of which reporting financial statements knowing them to not be true is also included.

33 Available at: https://www.livemint.com/companies/news/invesco-releases-open-letter-to-zee-shareholders-amid-boardroom-battle-full-text-11633947938526.html.

34 Available at: https://www.livemint.com/companies/news/two-ex-directors-at-zeel-resigned-over-management-decisions-11574867254538.html.

35 Para 8 of SEBI Interim Order.

36 Para 11 of SEBI Interim Order.

37 Para 37 of SEBI Interim Order.

4. On account of failure of the Promoters to discharge their duties as directors of ZEEL[38]— violation of Regulation 4(2)(f)(i)(1) & 4(2)(f)(i)(2) of the Listing Regulations, which lay down responsibilities of the BOD in terms of disclosure of information relating to any conflict of interest affecting the company and fostering of operational transparency.

Separately, one must note that listed companies have additional disclosure requirements as compared to private unlisted companies under the applicable laws. Listed companies are required to make regular disclosures to stock exchanges[39] and shareholders regarding financial performance[40], material events[41], related party transactions[42], corporate governance practices[43] and other such relevant information. These disclosures promote transparency and allow stakeholders to be aware of the company's affairs.

Further, by virtue of the amendments to Listing Regulations in 2023, corporate governance of listed entities has been tightened to a large extent. Below are some of the major changes relevant in the context of the Deal:

1. Disclosure of agreements binding listed entities[44] — When parties such as shareholders, promoters, promoter group entities, related parties, directors, KMPs and employees of a listed entity or of its holding, subsidiary and associate company) know about any agreement or have entered into any agreement that directly, indirectly, actually or potentially impacts the management or control of the listed entity, or imposes any restriction or create any liability upon the listed entity, the same needs to be disclosed.

2. Speculations[45] — The top 100 listed entities (from October 1, 2023) and the top 250 listed entities (from April 1, 2024) are required to confirm, deny, or clarify any reported events or rumours going around in the media which relate to any material event or information that can impact the company.

3. No permanency of the BOD[46] and requirement of shareholder's approval for granting of special rights to any shareholder[47] — Any special rights that are granted to shareholders of a listed entity need to be approved by the rest of the shareholders through a special resolution once every 5 years starting from the date of grant of such rights. Further, shareholders' approval will be required for a director to continue on the board at least once every 5 years from the date of his/her appointment or reappointment.

Besides the above provisions of the SEBI LODR which provide for corporate governance norms to be followed by listed companies, CA 2013 is the principal law on the said subject. The basic idea behind corporate governance is to ensure that the company's interests are in line with those of its stakeholders and that it is governed in an ethical, accountable and transparent manner. Accordingly, the CA 2013 provides for the framework on role of board of directors, shareholder's rights, disclosures required to be made by the company and so on.

38 Para 37 of SEBI Interim Order.

39 Regulation 30 of SEBI LODR.

40 Ibid.

41 Ibid.

42 Regulation 23 of SEBI LODR.

43 Regulation 34 of SEBI LODR.

44 Regulation 30A read with Paragraph 5A of Part A of Schedule III of SEBI LODR.

45 Regulation 30(11) of SEBI LODR.

46 Regulation 17(1D) of SEBI LODR.

47 Regulation 31B of SEBI LODR.

Consultancy groups such as Institutional Investor Advisory Services India (IiAS), a proxy advisory firm and InGovern also highlighted certain other corporate governance issues including the appointment of Punit Goenka as a member of the Audit Committee when two independent directors Ashok Kurien and Manish Chokhani had resigned .[48]

In September 2021, Invesco developing Markets Funds, which owned 17.88% stake in ZEEL along with its subsidiary — OFI Global China Fund LLC filed a petition under sections 98(1) and 100 of CA 2013 before the NCLT [49] for calling an EGM with the objective of removing Punit Goenka, the MD/CEO of ZEEL, as well as two independent directors, Ashok Kurien and Manish Chokhani, who had subsequently, resigned. Invesco also spearheaded the appointment of six new independent directors. Invesco's activism began when media reports and SEBI's action against ZEEL for corporate mis governance had surfaced. It was alleged that as a result of corporate governance issues at ZEEL, attributable to Punit Goenka and the aforementioned independent directors, significant losses were caused to ZEEL, adversely affecting the shareholders.

In fact, it was speculated that the Merger was a counter to shareholder's activism, as initiated by ZEEL's Promoters to safeguard their positions within ZEEL. While NCLT did not pass a favourable order, when the matter went to the Bombay High Court, Invesco was able to partly receive a favourable order and convene an EGM.[50] However, based on consultancy firms and experts' analysis, the Merger could have resolved most of the corporate governance issues with the possibility of a new management for the Merged Entity.[51]

J. What was the Impact of the Interim order by SEBI that barred Essel Group Chairman Subhash Chandra and his son Punit Goenka on the Deal?

Following the resignation of two independent directors from ZEEL in November 2019[52], Mr. Sunil Kumar and Ms. Neharika Vohra, due to concerns regarding multiple matters, including the appropriation of certain fixed deposits from ZEEL by Yes Bank for the purpose of settling a loan taken by related parties of Essel Group, SEBI investigated the matter.

As per the interim order passed by SEBI on June 12, 2023 in the matter of ZEEL[53], SEBI revealed that Subhash Chandra and Punit Goenka had signed letters of comfort (**"LoCs"**) in respect of a loan of INR 20,000,000,000 (Indian Rupees Twenty Billion) [Approximately USD 238,000,000] in favour of Yes Bank and RBL Bank without notifying the same to the BOD of ZEEL. Following the examination of ZEEL and its related parties' bank statements, it appeared that ZEEL Promoters had siphoned funds and made false representations in respect of INR 2,000,000,000 (Indian Rupees Two Billion) [Approximately USD 23,800,000] owed by them which was ultimately paid off with ZEEL's funds.

48 Available at: https://www.financialexpress.com/business/industry-iias-raises-corporate-governance-issues-at-zee-entertainment-2327523/.

49 Available at: https://www.business-standard.com/article/news-cm/zeel-slips-as-invesco-moves-nclt-over-egm-call-121093000691_1.html.

50 Available at: https://www.livelaw.in/pdf_upload/zee-entertainment-enterprises-ltd-v-invesco-developing-markets-fund-and-2-others-bombay-hc-403507.pdf.

51 Available at: https://www.thehindubusinessline.com/companies/sony-zee-merger-will-address-corporate-governance-issues-say-advisory-firms/article36616951.ece.

52 Available at: https://www.sebi.gov.in/enforcement/orders/jun-2023/interim-order-in-the-matter-of-zee-entertainment-enterprises-ltd-_72464.html.

53 Ibid.

Accordingly, as per the Interim Order, SEBI prohibited the ZEEL Promoters from holding senior management positions in any listed company or its subsidiaries. As a result, the Scheme which provided for Punit Goenka to be named MD/CEO of the Merged Entity was at a risk.

In the meantime, the ZEEL Promoters challenged the Interim Order before the SAT which on July 27, 2023 upheld the Interim Order and directed SEBI to appoint another Whole Time Member (**"WTM"**) for examining the contentions of ZEEL Promoters.[54]

Following the order of the SAT, the WTM passed a confirmatory order dated August 14, 2023 against ZEEL Promoters before SAT, confirming the findings of the Interim Order[55] with certain modifications.

On October 30, 2023 (**"SAT Order"**), the SAT allowed the appeal by Mr. Punit Goenka and set aside SEBI's Interim Order by holding that Mr. Punit Goenka had provided sufficient explanation backed by genuine documents to prove their innocence as against SEBI which besides the bank statements had no other conclusive proof to establish its claims against the ZEEL Promoters.[56] However, the SAT Order also stated that in the event any material comes out against Mr. Punit Goenka during the course of investigation then appropriate actions may be undertaken as per applicable laws.

In the NCLT Order, it stated that SEBI Interim Order was a recent development which was unanticipated at the time the BOD approved the Scheme and the Merger was filed with NCLT Mumbai. Further, NCLT concluded that SPNI is free to discuss this matter at the BOD level following the approval of the Scheme and therefore, the Scheme doesn't have to be interrupted until a final order has been passed by SEBI in the said matter. Accordingly, the Scheme received NCLT's approval on August 10, 2023.

In process of granting approval, NCLT has clarified the position of law in respect of creditors who can object to a scheme of arrangement under CA 2013. NCLT based reliance on rulings in Emco Ltd.[57], Astorn Research Ltd.[58] and Mayfair Ltd.[59] which provided that the objector to a scheme must be a direct creditor holding at least 10% of the company's shares or constitute at least 5% of the debt owed by the company.[60] Further such claims from the creditors should not be disputed. Accordingly, the objections of IDBI Trusteeship, IDBI Bank, Axis Finance, etc were not accepted by NCLT. However, the aforesaid lenders subsequently filed an appeal against NCLT Order before NCLAT.[61]

Based on the above facts, it can be concluded that SEBI's Interim Order could have led to modification of Scheme to the extent that Punit Goenka is not appointed as the CEO/MD of the merged entity.[62] However, due to the NCLT Order, this situation was thwarted.

54 Available at: https://sat.gov.in/english/pdf/E2023_JO2023492_9.PDF.

55 2023 SCC Online SEBI 178 and https://sat.gov.in/english/pdf/E2023_JO2023714_9.PDF.

56 Available at: https://sat.gov.in/english/pdf/E2023_JO2023714_9.PDF.

57 (2004) SCC Online Bom 422.

58 (2013) SCC OnLine Guj 1510.

59 (2003 94) Mh.L.J.663.

60 Section 230 (4) CA 2013.

61 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/zee-sony-merger-idbi-bank-files-appeal-against-nclt-order/articleshow/103404867.cms?from=mdr.

62 Section 231(1) of the CA, 2013.

Tax Considerations

A. What are the Tax Implications of the Merger?

Direct Tax

The ITA does not use the term "merger" but defines an "amalgamation" under Section 2(1B) as the merger of one or more companies with another company, or the merger of two or more companies to form a new company. For the purpose of the ITA, the merging company is referred to as the 'amalgamating company', and the company into which it merges, or which is formed as the result of the merger is referred to as the 'amalgamated company'.

The ITA provides that an 'amalgamation' must satisfy all the below conditions:

i. All the properties and liabilities of the amalgamating company immediately before the amalgamation must become the properties and liabilities of the amalgamated company by virtue of the amalgamation; and

ii. Shareholders holding at least 3/4th in value of shares in the amalgamating company (not including shares held by a nominee or a subsidiary of the amalgamated company) become shareholders of the amalgamated company by virtue of the amalgamation.

It is only when a merger satisfies all the above conditions, that the merger will be considered an 'amalgamation' for the purposes of the ITA. Generally, any income from the sale or transfer of an asset/undertaking is subject to taxation. Where a merger qualifies as an amalgamation, subject to fulfilling certain additional conditions, the amalgamation may be regarded as tax-neutral and exempt from capital gains tax in the hands of the amalgamating company and in the hands of its shareholders (discussed below). In the context of a merger/ amalgamation, Section 47 of the ITA specifically exempts the following transfers from capital gains tax[1]:

Transfer of Capital Assets, in a Scheme of Amalgamation, by an Amalgamating Company to the Amalgamated Company, if the Amalgamated Company is an Indian Company.

In such cases, the cost of acquisition of the capital assets for the amalgamated company will be deemed to be the cost for which the amalgamating company had acquired such assets, increased by the cost of any improvement incurred by the amalgamating company.[2] Further, the period of holding of such assets by the amalgamated company (for determination of short term or long term nature of gains arising at the time of their alienation) would include the period for which the assets had been held by the amalgamating company.[3]

1 Section 47 of the ITA.

2 Section 49(1)(iii)(e) of the ITA.

3 Section 2(42A), Explanation 1(b) of the ITA.

Transfer by a Shareholder, in a Scheme of Amalgamation, of Shares of the Amalgamating Company if both the conditions below are satisfied: (a) The Transfer is made in Consideration for Allotment of Shares to the Shareholder in the Amalgamated Company (except where the shareholder itself is the Amalgamated company); and (b) the Amalgamated Company is an Indian Company.

In the above case, the cost of acquisition of shares of the amalgamated company will be deemed to be the cost at which the shares of the amalgamating company had been acquired by the shareholder.[4]

Additionally, the period of holding of the shares of the amalgamated company will include the period for which shares of the amalgamating company has been held by the shareholders.[5]

Consequently, if an amalgamation does not meet the conditions of the exemption under Section 47 of the ITA, the transfer of shares could be regarded as a taxable transfer under the ITA.

In the case at hand, the Merger would be considered as an amalgamation under Section 2(1B) of the ITA due to the following reasons:

i. all properties of ZEEL and BEPL would become the property of SPNI;

ii. all liabilities of ZEEL and BEPL would become the liabilities of SPNI;

iii. the current shareholders of ZEEL and BEPL would become the shareholders of SPNI,

Further, since the only consideration that the shareholders of ZEEL and BEPL would receive are the allotment of shares in SPNI, an Indian company, the conditions under Section 47 to receive an exemption are fulfilled.

Hence, the transaction would be considered as a tax neutral transaction. Please refer to our research paper titled 'Tax Issues in M&A Transactions' available here for a detailed analysis on the tax considerations and issues in respect of mergers and amalgamations.

Indirect Tax

Since a business is transferred on a 'going concern' basis under an amalgamation, the Goods and Service Tax (**"GST"**) should not be applicable.

B. What are the Tax Considerations in Respect of the Non-Compete Fees Paid Pursuant to the Non-Compete Agreement?

The ITA provides that sums received, or receivable, under an agreement for not carrying out any activity in relation to any business or profession; or for not sharing any know-how, patent, copyright, trade-mark, license, franchise or any other business or commercial right of a similar nature or information or technique likely to assist in the manufacture or processing of goods or provision of services shall be income chargeable to income tax under the head "Profits and gains of business or profession". The ITA provides for exceptions for receipts on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on business or profession chargeable under the head "Capital gains".

4 Section 49(2) of the ITA.

5 Section 2(42A), Explanation 1(c) of the ITA.

There is no single criterion or test to determine whether an item of expenditure is to be characterized as having been made on the revenue account or on the capital account. Such a determination would be dependent on the nature of the transaction, looking at the aim and object of expenditure and the commercial necessities of making such expenditure. Another important aspect noted by various high courts is whether the advantage derived by the taxpayer was enduring in nature (based on the length of time the non-compete agreement would be in effect). However, courts have been careful to note that the length of time of the advantage may not be decisive in all cases, and that the determination of whether the expenditure is of a revenue or capital nature depends on the facts of each case.

Accordingly, and depending on the exact terms of the non-compete, the taxability of the non-compete fees shall be assessable.

Please refer to our research paper titled 'Tax Issues in M&A Transactions' available **here** for a detailed analysis on the tax considerations of non-compete payments.

Termination Considerations

A. Why did the Deal fall through?

The collapse of the proposed Merger between ZEEL and SPNI was multifaceted, with a confluence of challenges leading to its fall. As per the information available in the public domain, Sony Group and ZEEL disagreed over more than 20 compliance issues, including ZEEL's failure to dispose of some Russian assets and its USD 1,400,000,000 (United States Dollars One Billion Four Hundred Million) Disney cricket rights deal.[1]

The Merger encountered several complications stemming from a variety of issues, such as[2]:

Inability to complete the conditionalities of the Merger Cooperation Agreement

The Merger was contingent on the parties agreeing to extend the closing date beyond the deadline stipulated in the Merger Cooperation Agreement i.e. 24 (twenty-four) months from the execution date. The inability to reach an accord on this extension was a significant procedural hitch that ultimately contributed to the Deal's termination.

As per the press release published by Sony Group [3],

"Although we engaged in good faith discussions to extend the end date under the Merger Cooperation Agreement, we were unable to agree upon an extension by the January 21 deadline. After more than two years of negotiations, we are extremely disappointed that closing conditions to the merger were not satisfied by the end date. We remain committed to growing our presence in this vibrant and fast-growing market and delivering world-class entertainment to Indian audiences".

Breach of terms of the Merger Cooperation Agreement

SPNI alleged that there were several breaches of the Merger Cooperation Agreement that were committed by ZEEL and such breaches were not remediable and any further attempts to mutually discuss would be an empty formality, especially given it would be simply denied by ZEEL.[4]

Further, SPNI also claimed that the breaches committed by ZEEL were not 'procedural or technical' in nature and will have a substantive impact on the Deal.

1 Available at: https://www.livemint.com/companies/news/what-led-to-zee-sony-10-billion-merger-failure-report-show-russia-assets-cricket-rights-and-other-details-11706701103028.html.

2 Available at: https://indianexpress.com/article/explained/explained-economics/sony-zee-merger-plan-collapse-reasons-9123020/.

3 Available at: https://www.sony.com/en/SonyInfo/IR/news/20240122_E.pdf and https://www.sonypicturesnetworks.com/news-details/0/630/issuance-of-termination-notice-for-the-merger-of-sony-pictures-networks-india-private-ltd-and-zee-entertainment-enterprises-ltd.

4 Available at: https://www.reuters.com/business/media-telecom/sony-scrapped-10-bln-india-merger-zee-failed-meet-financial-terms-notice-2024-01-29/.

Financial Deterioration

The Merger Cooperation Agreement outlined specific financial thresholds and cash availability standards that ZEEL needed to meet to ensure financial stability and viability for the merger. However, ZEEL struggled to maintain these thresholds due to declining financial performance over the years leading up to the merger.[5]

This raised red flags for SPNI regarding ZEEL's financial health and stability, prompting a reassessment of the Merger's viability. ZEEL's financial health suffered a pronounced erosion in profitability amidst challenging industry dynamics.

From 2021 to 2023, ZEEL experienced significant drops in profitability, with notable declines in EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) and PAT (Profit After Tax). These financial challenges were exacerbated by rising costs and falling advertising revenues, which further strained ZEEL's financial health. The erosion in profitability raised red flags for SPNI, prompting them to reassess the merger's feasibility and ultimately decide against proceeding with the deal.[6]

A substantial factor complicating ZEEL's financial situation was the loan taken for Disney rights. ZEEL had secured broadcasting rights for certain Disney content, which involved a financial commitment of approximately USD 1,400,000,000 (United States Dollars One Billion Four Hundred Million). This loan added to ZEEL's financial burden, and the subsequent deal cancellation exacerbated the company's financial instability. The inability to generate expected revenues from the Disney rights deal further strained ZEEL's cash reserves and profitability, making it challenging to meet the financial conditions set forth in the Merger Cooperation Agreement.[7]

Regulatory Challenges

Regulatory interventions, exemplified by SEBI's actions against the ZEEL Promoters, introduced a layer of regulatory ambiguity which further caused contentions for SPNI over the Merger's viability. The saga surrounding ZEEL's investment in Margo Networks[8], entangled in contractual disputes following the cancellation of a significant content streaming agreement with Indian Railways, proved to be another thorn in the Merger's side. In 2020, ZEEL invested INR 5,200,000,000 (Indian Rupees Five Billion Two Hundred Million) [Approximately USD 61,880,000]) in Margo, which entered into content streaming contract with Indian Railways. However, the contract was later cancelled, and Margo moved the court. As part of the Merger conditions, SPNI wanted ZEEL's Margo investment to be disposed of and not included in the Merged Entity. As of date, the matter has not closed yet. SPNI's insistence on the exclusion and disposal of ZEEL's Margo investment from the Merged Entity further caused trouble between the parties.

5 Available at: https://www.businesstoday.in/latest/corporate/story/will-find-another-opportunity-in-india-post-zee-merger-collapse-sony-417848-2024-02-16.

6 Available at: https://www.reuters.com/business/media-telecom/sony-scrapped-10-bln-india-merger-zee-failed-meet-financial-terms-notice-2024-01-29/.

7 Available at: https://www.livemint.com/companies/news/what-led-to-zee-sony-10-billion-merger-failure-report-show-russia-assets-cricket-rights-and-other-details-11706701103028.html.

8 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/media/zee-to-invest-rs-522-crore-in-tech-subsidiary-margo-networks/articleshow/75071370.cms?from=mdr.

Leadership Disagreements

Another key hurdle was a disagreement over the leadership roles within the Merged Entity, particularly underscored by the controversy surrounding ZEEL's MD & CEO, Punit Goenka. An important juncture arose with SEBI's Interim Order in June 2023, barring Punit Goenka and Subash Chandra from assuming any management roles in any listed company due to allegations of fund misappropriation. Despite a reprieve granted by the SAT, the lingering regulatory scrutiny over the alleged diversion of funds cast a shadow of uncertainty over the leadership dynamics of the Merged Entity.

It is pertinent to note that Mr. Punit Goenka, MD & CEO of ZEEL, was agreeable to step down in the interest of the Merger and proposals in this regard were discussed, including for appointment of a director on the Board of the Merged Entity, protections for conduct of pending investigations and legal proceedings in the best interest of ZEEL's directors and shareholders and the consequent modifications to the scheme to incorporate the same.[9]

SPNI envisioned NP Singh, a veteran in the Indian media industry, to take a leading role in the Merged Entity. Conversely, ZEEL's CEO Punit Goenka had reservations about this appointment, which signalled deep-seated disagreements over the future direction and control of the Merged Entity.

Diverse Business Engagements

ZEEL's business involvements with entities in Russia posed a significant hurdle, as SPE, being an American entity, faced restrictions in engaging with Moscow-linked organizations. Similarly, ZEEL's foray into the African market, while violating the terms of the agreement, compounded the complexity of the Merger. Despite SPNI's entreaties, ZEEL persisted in maintaining its African ventures without divestment.[10]

Collectively, these intricate and interwoven challenges culminated in the unravelling of the ZEEL-SPNI Merger.

B. Legal recourses undertaken by the Parties

On January 22 2024[11], SPNI and BEPL issued a notice for (a) termination of the Merger Cooperation Agreement, citing compliance issues and demanded a termination fee of USD 90,000,000 (United States Dollar Ninety Million) from ZEEL and (b) invoking arbitration against ZEEL and seeking emergency interim reliefs against ZEEL (**"SPNI Termination Notice"**).

9 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/5d71e74d-ee2f-4399-b075-68f26eda9a51.pdf.

10 Available at: https://www.businesstoday.in/markets/company-stock/story/zee-sony-merger-6-likely-reasons-for-the-deal-falling-through-414470-2024-01-23.

11 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/5d71e74d-ee2f-4399-b075-68f26eda9a51.pdf.

Please see below the difference proceedings commenced by the parties to the Deal:

A. Proceedings by SPNI before SIAC

Pursuant to the SPNI Termination Notice, invoking the arbitration before SIAC, ZEEL initiated appropriate legal action to contest the claims of SPNI and BEPL in the arbitration proceedings before SIAC.

In an effort to secure interim relief against ZEEL's move to approach the NCLT to implement the Merger, SPNI approached the SIAC for emergency arbitration. However, the SIAC ruled on February 4, 2024[12], denying the emergency interim relief requested by SPNI.[13] The emergency arbitrator's decision emphasized that SIAC did not hold the jurisdiction or the authority to enforce ZEEL's plea against SPNI, marking a significant procedural development in the dispute.

Currently and pursuant to the Withdrawal Order (*defined hereinafter*) the arbitration proceedings between the parties are ongoing.

B. Proceedings filed by ZEEL before the NCLT

On January 22, 2024[14], the Board of Directors of ZEEL acknowledged receipt of communications from SPNI and BEPL. As per the press release by ZEEL, all the allegations made by SPNI against ZEEL in relation to the breach of the Merger Cooperation Agreement terms were denied by ZEEL. ZEEL categorically refuted the claims for the termination fee and asserted that it will vigorously contest these allegations in the arbitration proceedings initiated by SPNI and BEPL.

On January 24, 2024, ZEEL filed an application with the NCLT and approached the NCLT to, inter alia seeking directions to implement the Merger. In response to the termination, ZEEL sought to reverse SPNI's move by approaching the NCLT and undertaking appropriate legal actions to contest the claims made by SPNI before the SIAC. ZEEL requested NCLT to appoint a panel to oversee the implementation of the Merger. During the proceedings, ZEEL argued that SPNI's demand for a USD 90 Million termination fee was baseless and that SPNI's termination of the Merger Cooperation Agreement was unjustified.

However, after seeking legal advice, ZEEL decided to withdraw its aforesaid application from the NCLT and filed a withdrawal application (**"Withdrawal Application"**), with liberty to file a subsequent application before the NCLT seeking necessary directions, as and when required. The Withdrawal Application was listed before the NCLT on April 23, 2024, on which date the NCLT heard submissions by all parties and reserved the matter for orders. The Withdrawal Application was thereafter listed on June 24, 2024, for pronouncement of orders.

12 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/f02e81e4-24dc-4510-9692-fd7e0116c1b7.pdf.

13 Available at: https://economictimes.indiatimes.com/industry/media/entertainment/siac-denies-emergency-interim-relief-to-sony-group-cos-against-zee/articleshow/107402487.cms?from=mdr.

14 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/5d71e74d-ee2f-4399-b075-68f26eda9a51.pdf.

By order dated June 24, 2024, the NCLT, inter alia, allowed the Withdrawal Application and permitted the withdrawal of the Implementation Application, with liberty to ZEEL to pursue its remedies as and when warranted and in accordance with law.[15] This move was part of ZEEL's broader strategy to focus on other growth opportunities and to continue pursuing its claims against SPNI in the ongoing arbitration proceedings at SIAC.[16]

Further, on May 23, 2024, ZEEL has, on account of SPNI's and BEPL's breaches under the Merger Cooperation Agreement, terminated the Merger Cooperation Agreement by issuing a letter dated May 23, 2024, and sought a termination fee from SPNI and BEPL in accordance with the provisions of the Merger Cooperation Agreement.[17]

C. Why and against whom has Mad Man Film Ventures Private Limited, a Shareholder of ZEEL, filed a Fresh Application in the NCLT?

Pursuant to the termination of the Merger Cooperation Agreement by SPNI, Mad Man Film Ventures Private Limited (**"Mad Man"**), a shareholder of ZEEL, has filed a fresh application in the NCLT on February 2, 2024 against SPNI, BEPL and ZEEL[18]. The application seeks NCLT's intervention to ensure that SPNI and BEPL adhere to the NCLT Order, which sanctioned the merger of ZEEL and Sony's Indian entities, being SPNI and BEPL.

The fresh plea by Mad Men requests the NCLT to restrain SPNI from taking actions contrary to the NCLT's earlier decision while the matter remains under judicial consideration.

SPNI objected to the maintainability of Mad Man's application and pointed out that Mad Man had no locus in the matter. [19]

The next hearing was scheduled for June 25, 2024.[20]

D. Implications of the Deal falling through on the Parties and their Future

A Merger that would have created a media powerhouse in the world's most populous nation, has now led to missed opportunities for synergies and growth, increased competition in the Indian media landscape, and potential strategic shifts for both companies to address the evolving market dynamics, particularly with major players like Reliance and Disney expanding their presence.

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15 Available at: https://www.businesstoday.in/latest/corporate/story/zee-sony-deal-zee-withdraws-merger-implementation-application-from-nclt-425801-2024-04-16.

16 Available at: https://assets.zee.com/wp-content/uploads/2024/06/25205921/SEDisclosure25June24Order.pdf.

17 Available at: https://www.bseindia.com/xml-data/corpfiling/AttachHis/83a4836a-ae03-469f-96a2-9adc0f2b155e.pdf.

18 Company application no. COMP.APPL - 40/2024.

19 https://legal.economictimes.indiatimes.com/news/litigation/zee-shareholder-mad-men-film-ventures-files-fresh-plea-in-nclt-against-sonys-move-on-merger-pact/107565158.

20 https://nclt.gov.in/case-details?bench=bXVtYmFp&filing_no=MjcwOTEzODAxMzk5MjAyNA=.

A. Implications for SPNI

The termination of the merger between ZEEL and SPNI has significant implications for SPNI across several dimensions. Strategically, the failed merger disrupts SPNI's plans to expand its market presence and enhance its competitive position, particularly in content-rich segments where ZEEL's extensive library would have provided substantial leverage. This setback necessitates a reassessment of SPNI's growth strategies, potentially prompting the search for new partnerships or acquisitions to fill the gap left by ZEEL.[21] Financially, SPNI incurs considerable sunk costs from the extensive due diligence, negotiations, and planning involved in the merger process, although the diversified nature of SPNI's operations allows it to absorb these costs without significant distress. However, the immediate market reaction to the merger's collapse could negatively impact shareholder sentiment and stock prices, reflecting perceived missed opportunities for growth.[22] From an industry perspective, the failed merger affects SPNI's reputation, potentially weakening its negotiation position in future deals and allowing competitors to capitalize on its perceived vulnerability. Additionally, the competitive landscape remains fragmented without the combined ZEEL-SPNI entity, shifting the dynamics within the media and entertainment sector and highlighting the significance of other potential mergers and alliances.[23]

B. Implications for ZEEL

The termination of the merger between ZEEL and SPNI has several implications for ZEEL across strategic, financial, and industry dimensions. Strategically, ZEEL must reassess its growth and market expansion plans, as the merger with SPNI was intended to bolster its market position and create synergies in content distribution.

I. Strategic Vulnerability:

Market Positioning: For ZEEL, the implications are more adverse. Deals with international conglomerates like SPNI often come with benefits such as technological investment, globalization of content, and strengthened market positioning. Without this, ZEEL might have to independently intensify its focus on innovation and global market strategies to keep up with competitors.

II. Financial Challenges

Stock Market Reaction: Investor confidence could see a more noticeable dip compared to SPNI, given ZEEL's more focused operation in the entertainment and media industry. This could impact its ability to attract future investments or partnerships. On the news around termination of the merger between ZEEL and SPNI coming to the notice of the public stakeholders, share price of ZEEL had the highest-ever single-day fall and plunged 32.7% on January 23, 2024. 24

21 Available at: https://www.strategyboffins.com/strategy_journal/sony-zee-merger-termination-and-its-implications/.

22 Available at: https://www.strategyboffins.com/strategy_journal/sony-zee-merger-termination-and-its-implications/.

23 Ibid.

24 Available at: https://economictimes.indiatimes.com/markets/stocks/news/zee-shares-plunge-over-30-after-sony-calls-off-merger/articleshow/107095848.cms?from=mdr.

Operational Funding: A significant part of such deals often involves financial investments into the company being acquired or merged with. For ZEEL, losing out on SPNI's financial muscle could mean reassessing budget allocations, potentially reducing spend on content creation or technology upgrades, which are critical for staying competitive.

Financially,[25] the termination involves substantial sunk costs from due diligence and negotiations, which are now irrecoverable, and potential legal liabilities, including a disputed USD 90,000,000 (United States Dollars Ninety Million) termination fee. ZEEL's merger-related costs were INR 2,560,000,000 (Indian Rupees Two Billion Five Hundred Sixty Million) [approximately USD 30,464,000]) in 2023-24 and INR 1,760,000,000 (Indian Rupees One Billion Seven Hundred Sixty Million) [approximately USD 20,944,000]) in FY 2022–2023.[26]

III. Future Opportunities and Challenges

Strategic Alliances: The failure of this deal necessitates the exploration of alternative alliances or partnerships. Given the fast-paced evolution of media and entertainment, staying competitive would require ZEEL to either find other partners, invest heavily in content and technology, or both.

Adaptation to Industry Changes: Both companies need to stay adaptive. For ZEEL, this means possibly reevaluating its content distribution strategies, capitalizing on digital platforms, and exploring niche markets to maintain its standing.

The future for both companies, post a failed deal, while challenging, is far from bleak. SPNI's diversified interests and ZEEL's stronghold in content creation provide solid foundations to recalibrate their strategies. ZEEL is attracting investor interest again due to its improving financial performance, highlighted by a significant increase in operating profit and a return to profitability in its latest quarterly results.[27]

For SPNI, it's about reassessing and possibly diversifying its approach to expansion and content acquisition. For ZEEL, the focus shifts to leveraging its content prowess while seeking new partnerships and investment avenues. Both entities need to remain agile and innovative, responding proactively to industry trends to capitalize on future opportunities.

25 Available at: https://www.hindustantimes.com/business/zeel-spent-rs-366-crore-on-now-failed-sony-merger-asked-to-pay-90-million-more-101705941550045.html.

26 Available at: https://www.business-standard.com/companies/news/zee-entertainment-faced-rs-432-crore-merger-costs-in-failed-sony-deal-124052200263_1.html.

27 https://economictimes.indiatimes.com/markets/stocks/news/zee-entertainment-back-on-investor-radar-amid-improving-financials/articleshow/110338217.cms?from=mdr.

Epilogue

The downfall of the Sony-Zee merger saga marked a significant setback in the media and entertainment industry. Despite initial optimism, the merger unraveled due to insurmountable regulatory , financial and commercial conflicts.

The Zee-Sony Merger saga underscores the multifaceted nature of corporate mergers, where financial valuations, regulatory landscapes, and strategic ambitions intersect. This complex saga was fraught with financial disputes, regulatory challenges, and strategic realignments, ultimately culminating in an allegedly failed merger that provides profound lessons for stakeholders.

For future stakeholders, this case serves as a reminder of the importance of thorough due diligence, transparent communication, and strategic flexibility. As ZEEL and SPNI move forward, their experiences from this Merger will likely inform their future endeavors and contribute to the evolving narrative of corporate mergers in India.

The events of January 2024, where SPNI issued a termination of the merger citing compliance issues and demanded a USD 90,000,000 (United States Dollar Ninety Million)termination fee, were pivotal. ZEEL's initial legal response involved seeking NCLT intervention to enforce the merger. However, by April 2024, ZEEL's strategic shift to withdraw the application and focus on arbitration at SIAC demonstrated a pragmatic approach to resolving disputes.

This resolution allows ZEEL to explore new strategic opportunities and focus on growth while navigating the legal complexities of the arbitration with SPNI.

The decision reflects a broader trend in corporate governance where companies must balance aggressive growth strategies with regulatory compliance and stakeholder management.

This epilogue encapsulates the journey of the Zee-Sony Merger, highlighting the critical moments and lessons learned. It serves as a comprehensive reflection on the challenges and strategic decisions that shaped this significant corporate event, offering valuable insights for future mergers and acquisitions in the media industry and beyond.

We have always taken initiatives to provide updates and analysis on the latest legal developments. M&A Lab is one such initiative which provides insight and analysis of the latest M&A deals. We believe in knowledge sharing and hence would appreciate any feedback or comment. Feel free to direct your comments/views on this Lab to **concierge@nishithdesai.com**.

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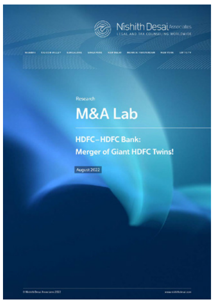

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LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
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SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA

Tel +1 650 325 7100

BENGALURU

Prestige Loka, G01, 7/1 Brunton Rd
Bengaluru 560 025, India

Tel +91 80 6693 5000

SINGAPORE

Level 24, CapitaGreen
138 Market St
Singapore 048 946

Tel +65 6550 9855

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

Tel +91 22 6159 5000

NEW DELHI

13-H, Hansalaya Building, 15
Barakhamba Road, Connaught Place
New Delhi 110 001, India

Tel +91 11 4906 5000

NEW YORK

1185 6th Avenue, Suite 326
New York, NY 10036, USA

Tel +1 212 464 7050

GIFT CITY

408, 4th Floor, Pragya Towers
GIFT City, Gandhinagar
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concierge@nishithdesai.com