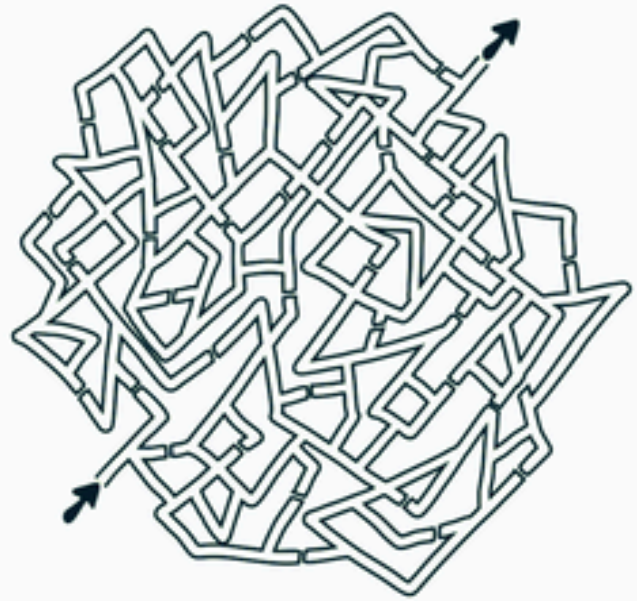




# #SIMPLIFIED



<b>CAN A MERGER BE UNILATERALLY ENFORCED?: DECODING THE SONY- ZEE MERGER CRISIS</b>	<b>02</b>
<b>THE STORY</b>	<b>03</b>
<b>ZEE-SONY MERGER TIMELINE</b>	<b>04</b>
<b>CAN A MERGER THAT HAS NCLT APPROVAL BE UNILATERALLY ENFORCED</b>	<b>06</b>
<b>FOOD FOR THOUGHT</b>	<b>07</b>

# CAN A MERGER BE UNILATERALLY ENFORCED?: DECODING THE SONY-ZEE MERGER CRISIS

PAAVANTA ARYA



You must have heard by now- the Zee-Sony merger is not happening. Well, it's taken a Bollywood-style twist. It started off like a typical family drama, with everyone excited about the union. But just when we thought it was smooth sailing, BAM! A twist straight out of the movie hits us. Suddenly, instead of wedding bells, it feels like alarm bells are ringing everywhere. It's like the merger went from a feel-good family flick to a gripping tale of intrigue and uncertainty. Talk about reel life mirroring real life, huh? Wild, isn't it? While there is a lot of drama to unfold, let's first take a quick look at how things went wrong for Zee and Sony.

This shocking or as-predicted news by legal pundits comes after months and months of effort put in by both parties. The success or failure of the merger ultimately boiled down to the potential appointment of Mr. Punit Goenka as the Chief Executive Officer (“**CEO**”) of the combined entity. Mr. Goenka is the CEO and Managing Director (“**MD**”) of Zee Entertainment Enterprises, who currently face a tremendous amount of heat for misuse of funds as a Key Managerial Personnel (“**KMP**”) in Essel entities.

## THE STORY SO FAR

See, apparently, both the parties had initially agreed to Mr. Goenka running the combined entity, but when all hell broke loose over him, including a highly publicized investigation by Securities and Exchange Board of India (“**SEBI**”), the parties desperately started renegotiating over who would then run the new company. Sony wanted their CEO and MD, Mr. NP Singh to head the combined entity. Zee, of course, wanted to retain the original terms.

This renegotiation kept being stretched, and the end date was extended after the completion of the original end date of 21 December 2023 (2 years from the date of signing), and that was still fine as long as both parties remained interested.

The ‘Master Cooperation Agreement (“**the Agreement**”)’ for this merger did have a provision for an unlimited number of extensions (30 days at a time) of the completion date, as long as both parties reached a consensus over the extension. For a long time, their minds did meet and there were extensions. However, when Sony believed that there was going to be no end to this, they first prevented an extension of the merger deadline, and then simply backed out of the merger entirely.

The real problem, however, was that as soon as the merger was terminated by Sony, the parties started blaming each other. We can’t say that it was surprising to be completely honest. When it comes to Zee’s claim, although the Agreement contained a provision that said that if one party terminated the agreement in any way, the terminating party would have to pay a compensation of \$100 million, Zee doesn’t seem to be interested in the money. Instead, it has approached the National Company Law Tribunal (“**NCLT**”) asking for enforcement of the merger and has not claimed damages yet.

It is the complete opposite for Sony. It wants the \$100 million. It initiated arbitration proceedings at Singapore International Arbitration Centre, claiming that the deal fell through because of Zee’s non-compliance with some merger terms, causing a material adverse effect. Reports say that there was disagreement between the companies over more than 20 compliance issues, including over some Russian subsidiaries of Zee and a \$1.4 billion cricket broadcasting deal with Disney. Sony did not want the combined entity to continue operating companies based in countries sanctioned by the U.S.

The arbitral tribunal must now decide whether Sony must pay the termination amount, as per the terms of the Agreement, or whether it was Zee who caused a material adverse effect, and thus the breach. The NCLT proceedings will go on though, side-by-side. Zee’s argument there- as the merger was approved by the tribunal after following all procedures under the merger provisions (Sections 230 to 235) of the Companies Act, it must now compulsorily go through. This seems weird, doesn’t it? A “hostile merger!” Don’t worry, the following section addresses all this.

# ZEE-SONY

## Deal to Dispute

December 2021

Sony and Zee announce merger



February 2022

IndusInd Bank files for insolvency proceedings against Zee Entertainment

**BSE**

29 July, 2022

Stock exchanges BSE and NSE approve the merger

**NSE**



Competition Commission of India

4 October, 2022

The Competition Commission of India approved the merger

December, 2022

IDBI Bank moves the NCLT against ZEE, seeking an insolvency proceeding.

June 12, 2023

SEBI bans Subhash Chandra and Punit Goenka from holding managerial or directorial positions for allegedly siphoning off funds.



26 August, 2023

Punit Goenka moves the Securities Appellate Tribunal (“SAT”), challenging SEBI’s confirmatory order.



September, 2023

IDBI Bank and Axis Finance challenge NCLT’s approval for the merger in the National Company Law Appellate Tribunal (“NCLAT”).



November, 2023

Sony seeks NP Singh to lead the merged entity instead of Punit Goenka.

December, 2023

NCLAT issues notice to ZEE over the petitions filed by IDBI Bank and AXIS Finance.

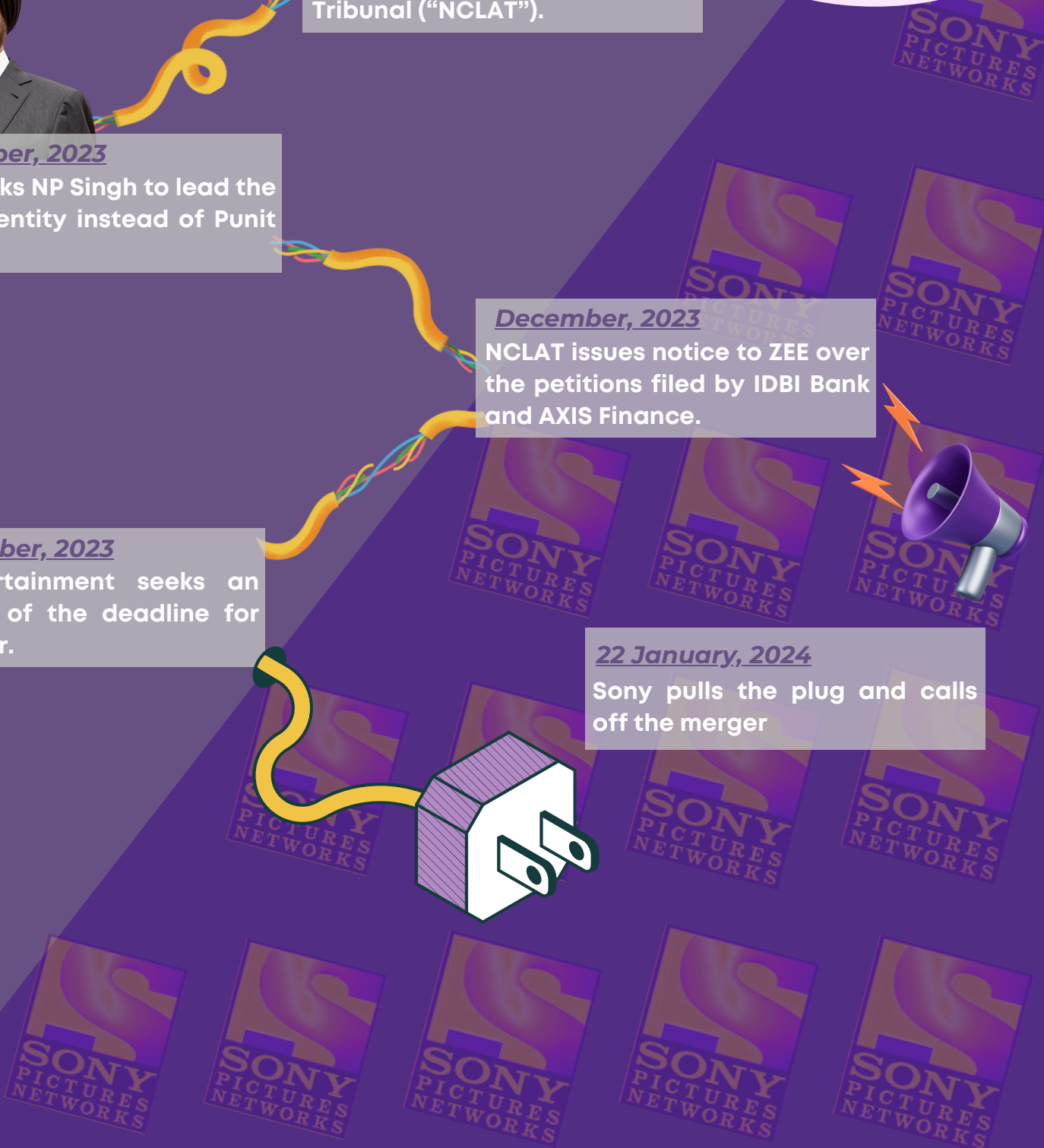
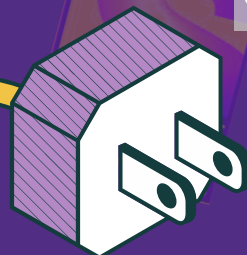


17 December, 2023

Zee Entertainment seeks an extension of the deadline for the merger.

22 January, 2024

Sony pulls the plug and calls off the merger



## CAN A MERGER THAT HAS NCLT APPROVAL BE UNILATERALLY ENFORCED?

Once a scheme of arrangement (for a merger in this case) is signed and duly approved by the NCLT under [Section 232](#) of the Companies Act 2013, it stands [legally binding](#) on both parties and cannot be walked away with a claim of [termination fee](#). The purpose of termination fees is to compensate for valid reasons preventing deal closure. So how exactly does Sony think it can get out of this deal and also get paid for it? Sony's attempt to exit the deal while claiming a termination fee raises [eyebrows](#).

### Section 232, Companies Act

- Section 232 deals with the merger and amalgamation of companies, outlining the process for companies looking to unite or blend their operations.
- It distinguishes between amalgamation and merger, where properties and liabilities are transferred in merger, leaving the transferor company with only its name.
- The section requires the circulation of draft schemes, reports on the effect of the compromise, and expert valuations for the proposed merger or division.
- It covers aspects like the transfer of undertakings, property, liabilities, and the exchange ratio in case of mergers, ensuring a transparent and legally compliant process.

Well, if see it from a judicial point of view, the Hon'ble Supreme Court in [M/s Miheer H. Mafatlal v. Mafatlal Industries Ltd](#), emphasized the general principle that courts typically refrain from intervening in cases where a scheme of arrangement proceeds smoothly without objections and lacks any identified fraud or illegality.

As such schemes are typically formulated based on the [collective](#) wishes of shareholders, creditors, experts, and professionals, following a comprehensive examination of the companies' accounts and affairs. Therefore, absent significant objections or harm to any party, courts are often hesitant to reassess the merits of the scheme. Oh wait, here comes that “however”. However, such schemes can be rejected by the tribunal despite its early approval if it stands in violation of [public interest](#).

In the current scenario, where the Agreement has been duly approved by the NCLT Mumbai, questions arise regarding the need for the NCLT to reassess the agreement's merits and enforce it anew.

### What is Scheme of Arrangement?

The Scheme of Compromise and Arrangement in India lets companies restructure by merging, splitting, acquiring, or reorganizing. They apply to the National Company Law Tribunal, which checks the plan, calls meetings for shareholders and creditors to vote, and if approved, allows the companies to make the changes.

Interestingly, this situation draws parallels with the Twitter acquisition case, wherein modern-day- Willy Wonka- Elon Musk attempted to back out of the deal. Subsequently, legal action was initiated by Twitter in the Delaware Chancery Court to enforce the deal and obtain a specific performance order compelling Musk to honor the agreement. Although Musk ultimately honored the deal before the trial's conclusion, the case underscored instances where sellers may need to compel buyers to fulfill their obligations.

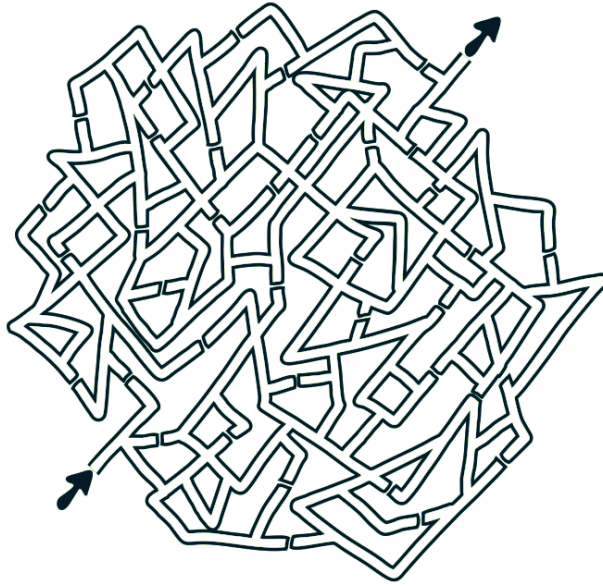
Well, in this case, Zee is pursuing a similar course of action as Twitter did, seeking a specific performance order. So, this means that NCLT may unilaterally enforce the merger that it initially sanctioned unless Sony can demonstrate that the agreement is illegal and would materially impact the company and its shareholders. Thus, this high-stakes squid game between Sony and Zee mirrors the lousy landscape of Indian corporate governance where two giants to gain dominance have formed or forged alliances where both want to walk away with candy in hand without honoring the terms of the agreement.

## **FOOD FOR THOUGHT**

After diving into the dramatic breakup of Zee and Sony's billion-dollar merger, one can't help but ponder the ease with which such colossal decisions are made, neglecting the voices of investors and shareholders—the very lifeblood of these companies. Don't worry the picture has not yet ended, there are more surprises in store. If the NCLT wants to go ahead with the merger, shouldn't there be another set of shareholders' and creditors' meetings as so much has transpired between the original approval and the termination? After so much hostility, is there any guarantee that the members and creditors of both companies still want a merger?

Now, imagine Zee's best-case scenario: NCLT enforcement. Does this open the floodgates of litigation, sidelining stakeholders' interests? What if the tribunal favors Sony? Would it trample corporate governance, handing a victory on a silver platter? Shouldn't laws govern enforced mergers' aftermaths?

Ending on an anti-competitive note, will Zee-Sony's demerger complicate Disney-Reliance's merger, potentially monopolizing the digital OTT sector? As the curtains fall, not every story has a happy ending. We leave our reader to think about this as we wait for yet another twist in this riveting narrative.



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