

Pannalal Bhansali
v.
Bharti Telecom Limited & Ors.

(Civil Appeal No. 7655 of 2025)

10 March 2026

[Sanjay Kumar and K. Vinod Chandran,* JJ.]

Issue for Consideration

Issue arose whether the reduction of share capital u/s.66 of the Companies Act, 2013, and the consequent forced exit of minority shareholders, was arbitrary and unfair.

Headnotes[†]

Companies Act, 2013 – s.66 – Reduction of share capital – Appellants-minority public shareholders in the respondent company, held a fraction of 1.09% of shares – Respondent no.1 decided to reduce its share capital u/s.66, by cancelling 28,457,840 equity shares held by the minority shareholders and paying them an exit price of Rs.163.25 per share which was subsequently raised to Rs.196.80 per share by the NCLT – Said reduction approved by 99.9% of total shareholders – Minority shareholders including appellants filed appeal challenging the same on the ground that the explanatory note of the General Meeting was a tricky notice to mislead them because it did not include the actual valuation reports, and valuation was done by an internal auditor – Correctness:

Held: Notice not vitiated by non-disclosure or mis-disclosure merely for reason of the valuation and fairness report not being placed before the shareholders as there was no statutory mandate for a valuation report for the reduction of a share capital – Valuation in the process of reduction of capital was resorted to by the company only to arrive at a fair value and the fair value arrived, after the deduction of tax was disclosed in the notice and the method adopted itself was kept open for verification by the identified shareholders at the registered office – It was disclosed fully in the proceedings before the NCLT where the investors objected, despite the special resolution having been passed with a thumping majority – Reduction of share capital can be achieved by a special resolution and confirmation

* Author

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by the tribunal, without a report of valuation from an approved/registered valuer and hence, it does not fall within the ambit of a relevant material; without the full and complete disclosure of which the reduction of capital cannot be acted upon – However, company despite any legal requirement adopted a valuation exercise, which was further affirmed in a fairness evaluation by a different agency, both of which reports were retained in the Registered Office of the Company, kept open for verification by the investors – Thus, no procedural infraction or misleading disclosure to style the notice as ‘tricky notice’ – Notice contains the full disclosure as required in a measure employed for reduction of share capital u/s.66, which is the price offered by the company which translates as an exit option for the identified shareholder – Furthermore, appointment as an internal auditor, does not bring in a bias with respect to the activities of the company which would essentially go against the scope and spirit of an audit carried out of the accounts of the company as an inhouse verification, which is also a statutory requirement, available for scrutiny before a statutory auditor – Not even a probability found that the internal auditor would act in a biased manner, leave alone the valuation agency which is an affiliate of the former – Plea that arbitrarily and without legal sanction, the method of Discount for Lack of Marketability-DLOM was applied to further reduce the value of share, cannot be accepted – Applicability of DLOM cannot be held invalid and in any event, what has to be looked at by the tribunal in scrutinising the scheme of reduction of capital is only as to whether there was a fair measure employed which cannot be termed unreasonable or prejudicial to the individual shareholders – Fair and reasonable value was offered to the minority shareholders and the majority of the identified shareholders present and voting, voted in favour of the resolution – Even on a microscopic scrutiny the valuation cannot be found to be egregiously wrong especially looking at the previous offers and also the rights issue offered at par, prior to the reduction of share capital, exponentially increasing the take aways of the individual shareholders and the valuation cannot at all be said to have gone off-track, so as to make it egregiously wrong – Appellants were seasoned retail investors who made a calculated decision – Valuation is an exercise best left to experts, and the Court found no blatant unfairness – Furthermore, plea as regards the jurisdictional defect on the composition of the NCLAT and the *status-quo* order cannot be accepted. [Paras 29, 32, 34, 38, 46, 48, 50]

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Companies Act, 2013 – s.66 – Reduction of share capital – Requirements – Explained. [Para 47]

Case Law Cited

Union of India v. Madras Bar Association [2010] 6 SCR 857 : (2010) 11 SCC 1; *Madras Bar Association v. Union of India* [2015] 6 SCR 638 : (2015) 8 SCC 583; *State of M.P. v. B.R. Thakare* (2002) 10 SCC 338; *State of West Bengal v. Anwar Ali Sarkar* [1952] 1 SCR 284 : AIR 1952 SC 75; *LIC v. Escorts Ltd and Others* [1985] Supp. 3 SCR 909 : (1986) 1 SCC 264; *Claude-Lila Parulekar (SMT.) v. Sakal Papers (P) Ltd. and Others* [2005] 2 SCR 1063 : (2005) 11 SCC 73; *Devas Multimedia (P) Ltd. v. Antrix Corpn. Ltd.* [2022] 11 SCR 291 : (2023) 1 SCC 216; *N.K. Bajpai v. Union of India* [2012] 2 SCR 433 : (2012) 4 SCC 653; *Mihir H. Mafatlal v. Mafatlal Industries Ltd.* [1996] Supp. 6 SCR 1 : (1997) 1 SCC 579 – referred to.

In Re: Reckitt Benckiser (India) Ltd., 2005 SCC OnLine Del 674; *In Re: Cadbury India Limited*, 2014 SCC OnLine Bom 4934; *Firestone Tyre & Rubber Co. v. Synthetics and Chemicals Ltd.* (1971) Comp. Cases 377 (Bom.) – referred to.

British and American Trustee and Finance Corporation v. Couper (1894) SC 399; *Kiri Industries Ltd. v. Senda International Capital Ltd.* [2022] SGCA (I) 5; *Baillie v. Oriental Telephone and Electric Co. Ltd.* [1915] 1 Ch 503; *Foss v. Harbottle*, 67 E.R. 189; *Kaye v. Croydon Tramways & Co. Ltd.* [1898] 1 Ch. 358; *Thio Syn Kym Wendy and Others v. Thio Syn Pyn and Others* [2018] SGHC 54; *Liew Kit Fah and Others v. Koh Keng Chew and Others* [2020] 1 SLR 275 – referred to.

Books and Periodicals Cited

“Shareholder Oppression and ‘Fair Value’: of Discounts, Dates and Dastardly Deeds in Close Corporation” by Professor Douglas Moll (2004) 54 (2) Duke LJ 293 – referred to.

List of Acts

Constitution of India; Companies Act, 2013; Companies (Accounts) Rules, 2014; Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992; Chartered Accountants Act, 1949.

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List of Keywords

Buy-back offer; Discount for Lack of Marketability (DLOM); Fair market value; Fair value; Fairness report; Indian Accounting Standards; Internal auditor; Minority shareholders; Oppression and mismanagement; Reduction of share capital; Special Resolution; Tricky notice; Valuation report.

Case Arising From

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 7655 of 2025

From the Judgment and Order dated 03.04.2025 of the National Company Law Appellate Tribunal in CAAT No. 340 of 2019.

With

Civil Appeal No(s). 9862, 9601, 9797, 7666, 9478, 9599, 9849, and 13824 of 2025

Appearances for Parties

Advs. for the Appellant(s):

K. Parameshwar, Sr. Adv., Masoom K. Shah, Udit Gupta, Ms. Veda Singh, Prasad Hegde, N Sai Kaushal, Adit Garg, Rohan Chawla, Ms. Aashvi P. Shah, M/s. Udit Kishan And Associates.

Advs. for the Respondent(s):

Shyam Divan, Ramji Srinivasan, Percival Billimoria, Sr. Advs., Ms. Arti Singh, Kamal Shankar, Tanmay Sharma, Aakashdeep Singh Roda, Arjun Narang, Shivam Jain, Ms. Shefali Munde, Arjun Bhatia, Arpith Jacob Varaprasad, Ankur Singhal, Ms. Pooja Singh, B P Singh, Soumya Dutta, Khawaja Siddiqui, Arvind Gupta, Kshitij Arora, Ms. Rachita Sood, Ms. Priyamvada Paneru, Rahul Bhaskar.

Judgment / Order of the Supreme Court

Judgment

K. Vinod Chandran, J.

1. The appellants, investors in a minority, cry foul on the allegation of their being arbitrarily disgorged of their shareholdings and eased out of the 1st respondent company, (BTL for brevity) in a grossly unfair manner, making a sham of an evaluation fixing the share price at an unreasonably low value. Shorn of the details, the 1st respondent,

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a closely held company having 1.09% of its shareholding with individuals, decided to reduce its share capital under Section 66 of the Companies Act 2013¹ by cancelling 28,457,840 equity shares held by the identified minority shareholders by paying an amount of Rs.163.25/- per equity share of Rs.10/- each. The resolution was passed by a Special Resolution with a majority of more than 99.90%, the sanction for which was sought before the National Company Law Tribunal (the NCLT hereinafter). The NCLT found that the decision to deduct the Dividend Distribution Tax from the price fixed for the individual shares was arbitrary and directed the BTL to pay the identified individual investors; without the tax deduction, Rs.196.80/- per equity share. BTL acceded to the NCLT's order but thirty-five of the shareholders, those who voted in favour of the reduction of share capital, filed appeals before the National Company Law Appellate Tribunal (NCLAT hereinafter), unsuccessfully, some of whom are before us; precisely eleven of them. The intervention attempted by some others were disallowed by us.

2. Sri. K. Parmeshwar, learned Senior Counsel led the arguments on behalf of appellants and forcefully urged the unfairness in the fixation of share value, which edged out the individual investors with a raw deal for the shares held for long. The Directors and the majority have a fiduciary relationship with not only the Company but also with the minority, negated totally in fixing the share prices. The challenge according to Sri. Parmeshwar is on three counts which are subtly encapsulated as the Manner, the Method and Matter, which he styles as the three objectionable Ms. The manner being the procedure followed, the method being the measure employed in valuation and the matter being the very low price determined. Insofar as the manner is concerned, it is pointed out that the Board resolution does not speak of a request made by the shareholders to give them an escape route, which is included in the notice of the General Meeting; misleading since such a request was absent. The Board peremptorily decided to reduce the shareholding and entrusted the valuation to the company's own internal auditor's associate, a related entity. Though a fairness report was obtained, it has the same date as the valuation report, indicating the hasty manner in which valuation and fairness evaluation were proceeded with, a clear sham.

1 For brevity 'the Act of 2013'

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3. Further, there were essential aspects of valuation as revealed from documents, which were relevant insofar as the consideration of the value fixed for reduction of shareholding, which was never supplied to the independent shareholders, who were in a minority. Those were merely kept in the registered office as indicated from the notice of the General Meeting, which is insufficient as has been declared by the decisions of this Court. Despite some of the shareholders having asked for a copy of the valuation and fairness reports, the same were not supplied. There are serious procedural infractions and inadequate, misleading disclosures, in violation of the mandate of Section 102 of the Act of 2013, which vitiates the entire process of reduction of shareholding. On a summing up of the procedural infractions, it is urged that the explanatory note of the General Meeting is a *'tricky notice'* for : (i) it does not have a summary of or the valuation report itself, (ii) non-disclosure of the methodology adopted in valuation; reference not being made to the share value of Bharti Airtel Limited (BAL for brevity), a subsidiary company the shareholding in which is the only business of the first respondent company and (iii) the valuation having been made by an interested entity. The *'tricky notice'* disabled an informed decision by the individual shareholders, is the contention, fortified with decisions. This encompasses the challenge to the manner in which the procedure was carried out.
4. Insofar as the methodology is concerned, it is argued that the BTL, earlier listed in the Stock Exchanges was delisted between 1999-2000 and BAL was incorporated as a subsidiary. On the BAL launching an IPO in January 2002, it was listed on the Bombay Stock Exchange and the majority shareholding of the first respondent in BAL fell considerably, making BAL & BTL associate companies. It was by a rights issue brought out in the year 2016 and the resultant capital increase in BTL, BAL again became a subsidiary of BTL. Since, the BTL's only business was the investment made in BAL, the share price fixed of BTL should have been fixed with reference to the share value of BAL. The valuation report indicates the share value of BAL at Rs.368.22/- as it's listed price while the value of BTL was calculated based on the market value of BAL and the Net Asset Value of BTL. More importantly, arbitrarily and without legal sanction, the method of Discount for Lack of Marketability (DLOM) was applied to further reduce the value of share. The method of DLOM applied is against the accepted norms of valuation as has been deprecated

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internationally too, as revealed from the judgment of the Court of Appeal of Singapore in ***Kiri Industries Ltd. v. Senda International Capital Ltd.***² The reliance on Professor Aswath Damodaran's opinion also is not relevant, since it applies to valuation of private companies plagued with illiquidity. The method applied hence is arbitrary and unfair is the contention.

5. Insofar as the material irregularity, the price fixation is argued to be wholly deficient and arbitrarily low. It is argued that in the year 2001, the first respondent had offered an exit price of Rs.96/- per share and later in the year 2006 @ Rs.400/- per share. There was a private offer by a commodity broker in the year 2007 @ Rs.2000/- per share. Reliance is also placed on the various purchase offers, as produced at Annexure 2 series, in the Convenience Compilation. It is based on the capital infusion of the rights issue that the first respondent again rose to the position of a holding company of BAL and in the year 2018 for the induction of a foreign entity, an estimate of fare share value was made by a qualified agency, which put the per share price @ Rs.310/- as is evident from Annexure A5. It is at this price SingTel purchased 49% of the shares in BTL. The reduction of the share capital then made was intended at edging out the investors from amongst the public, who were in a minority, in which circumstance there should have been a higher standard of fairness and transparency applied.
6. The reference to market value is no basis since the investors had remained in the company for long, admittedly even without payment of dividends. A fair value for their exit from the company cannot be equated with the fair market value. The several offers made for buy-back and purchase at a higher value and the value at which SingTel purchased shares in the BTL, almost simultaneous to the reduction in share capital would definitely regulate valuation under Section 66. Reference is also made to Section 68 and Section 230 of the Act of 2013, respectively of a voluntary exit and one based on compromise which procedure ought to have been applied to bring in the standard of fairness even under Section 66, which is an involuntary purchase made by the majority in oppression of the minority shareholders; a forced exit. The material defect is the low

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value of the share fixed for the exit of the minority shareholders. Sri. Parmeshwar while summing up cautions that we would be laying down the law with respect to edging out of minority shareholders, which necessarily has to satisfy the judicial conscience with a higher standard of fairness than applicable in a voluntary or optional exit or an exit by compromise, especially since it is the majority will running roughshod over the minority rights.

7. Sri. Masoom K. Shah, learned counsel appearing in one of the appeals, for the appellant while adopting the submissions of Sri. Parmeshwar, points out a defect in the constitution of the NCLAT insofar as it being comprised of two Technical Members and one Judicial Member. Reliance is placed on ***Union of India v. Madras Bar Association***³ (2010-MBA) (paragraph 120 (xii)) to contend that a Constitution Bench of this Court deprecated the practice of a majority of Technical Members sitting in a Bench of the NCLT or the NCLAT, which substitutes the High Court. In anticipation, to preempt that contention, it is pointed out that there cannot be raised a ground of acquiescence, insofar as the defect going to the root of jurisdiction by reason of the illegal composition, as has been held in ***State of M.P. v. B.R. Thakare***⁴. Sri Shah also points out from the valuation report and the documents pertaining to various associates of the agency which carried out the valuation that it has an inextricable link and connection with the Internal Auditor of BTL. The one who signed the valuation report itself is in the Board of the internal auditor, thus, throwing a cloud of absence of impartiality on the valuer, coupled with a bias in favour of the majority shareholders revealing a collusion in arriving at a lower value of shares for the exit of the individual members from the public; which does not augur well on the facts of the case especially on the minority shareholders being given a raw deal and forced out of their shareholding.
8. Sri Sumit Kumar, learned counsel appearing for one of the appellants refers to Annexure A7 in C.A. No.2864 of 2021, wherein there was a status quo order, which is even now in force; and reduction of share capital having been made in the interregnum, falling flat, requiring immediate resumption of shares. The valuation made by the Custodian also is pointed out to assail the price fixed now.

3 (2010) 11 SCC 1

4 (2002) 10 SCC 338

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9. Sri Ramji Srinivasan & Sri. Shyam Divan learned Senior Counsel appearing for BTL commenced their arguments with Section 423 of the Act, which jurisdiction the appellants have invoked, wherein there should be a clear question of law raised, which is absent in the present case. Every legal requirement has been complied with for the reduction of share capital under Section 66 of the Act of 2013 and there is no violation complained of but for a mere allegation of prejudice which the appellants have failed to substantiate as real and compelling, enabling this Court to interfere. Valuation is dependent on multiple factors and not possible of mathematical certainty. It is urged that in the formation of companies, the shareholders come together and enter into a contract or charter as revealed from the Articles of Association to which each of them are bound. The decisions are of the majority of such shareholders, failing which there would be mayhem and no corporate entity would be able to perform its functions and arrive at its collective goal of realizing its objectives. In the present case, it is pointed out that the appellants, eleven in number and those before the NCLAT, thirty-five in number do not together satisfy the definition of a minority as coming out from Section 244 of the Act of 2013. Neither do they have the number of shareholders, nor do their total value of shareholding satisfy the minimum requirement thereunder of a minimum 100 persons or 1/10th of the share value, thus disabling even an application for oppression or mismanagement on their combined efforts.
10. It is pointed out that there is no valuation provided under Section 66 as would be the requirement under various other provisions of the Act of 2013 which demolishes the ground of an interested valuation having been taken up by a related agency of the internal auditor of the company. Even otherwise on that sole ground prejudice cannot be found unless it is shown in reality. Section 66 does not require a valuation and the safeguards as provided therein of a special resolution being passed in the General Meeting of the Company and more importantly confirmation by the Tribunal have been scrupulously followed. Though, a valuation is not mandated as per the Section, definitely there should be some method by which a fair value is arrived at insofar as providing an exit for the identified shareholders. A Valuer was appointed who is an agency, with its associates, having a global presence and a reputation in corporate matters including

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financial aspects. When the company could have done the valuation by itself, then thought it fit to appoint an independent valuer only to ensure transparency and to avoid a contention of bias being raised. The valuer had examined the books of accounts and submitted the valuation report, which was scrutinized by another agency who had also affirmed the valuation as fair and reasonable by its fairness report.

11. The fact that the valuer was a sister concern of BTL's Internal Auditor does not bring forth any conflict of interest or validate the contention of lack of independence. The Internal Auditor as is mandated by the guidelines issued by the Institute of Chartered Accountants of India (ICAI) is an independent agency appointed by the Company for the purpose of carrying out audit, as per the mandate of the Act of 2013. The mere fact that the signatory of the report valuing the shares of BTL was in the Board of Directors of BTL's Internal Auditor does not create any conflict or relation insofar as the affairs of BTL. The Internal Auditor acts as an independent agency and so did the valuer on accepted accounting norms. It is reiterated that the same was affirmed by an independent agency and it also was affirmed as a fair and true valuation by two other agencies having no connection with BTL or the Internal Auditor as was sought for by the Custodian who is a party in Civil Appeal No. 2864 of 2021. The valuation and fairness report being on the same date only denotes the day of issuance and is no reflection of the time taken for evaluation.
12. On facts it is pointed out that BTL having been delisted from all stock exchanges made a buy-back offer of Rs.96/- per share in the year 2001, which was the only buy-back offered by the company itself. One of the promoters of BTL, Bharti Overseas Trading Company had offered Rs.400/- per share in May 2006. But for that there is nothing substantial brought out from the various documents produced as to a clear value of the share of BTL, whose only investment was in BAL. In 2016, there was a rights issue which increased the share base exponentially causing significant lowering of the monetary value of the shares. This was followed up with a preferential allotment of shares at the rate of Rs.310/- per share in favour of a Strategic Long-Term Promoter, SingTel, so as to infuse funds into the company. The share value for the said transaction was on the basis of the prevailing market price of BAL and in accordance with the applicable FEMA regulations mandating a certain floor price. In any event, there can be no equation of the share price determined for

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preferential allotment to the present reduction of shares. Therein the investors were entering into a strategic partnership in the business which definitely would have required a premium to be paid on the share value. It is also pointed out that BAL share value fell sharply from January 2018 to May 2018 due to the tariffs imposed and the fierce competition in the telecom market, which also impacted the share value of BTL. There is no misrepresentation insofar as the shareholders having requested for a buyback, which is evident from the Minutes of the various AGMs, some of which were handed over across the Bar. The shares having been delisted and there being no payment of dividend for long coupled with a constant clamor for buy-back the reduction of share capital was proposed, by which measure the Company out of its own funds, would purchase the shares of the identified shareholders which had no marketability.

13. We were taken through the valuation report, figure by figure and page by page pointing out the manner in which the valuation was arrived at and the DLOM applied at the rate of 25%, at the minimum, for reason of the existing illiquidity, approved by Indian Accounting Standards as brought out in the ICAI Valuation Standards. The valuation as earlier pointed out was approved in the fairness report issued by a totally different agency. The same was placed in the Board of Directors and a resolution was passed subject to the approval of the shareholders for which notice was issued as per Annexure A18. The notice specifically indicated the relevant documents having been kept in the Registered Corporate Offices of BTL, available for inspection between 19.06.2018; the date of notice and 26.07.2018; the last day of receipt of postal ballot or e-voting. It is emphasized that there can be no case raised of the relevant documents having not been supplied, especially since the voting period extended over a month and in fact the Advocate of one of the investors had inspected the documents and sought for further details as is evident from the e-mail projected by the appellants themselves. It is emphatically contended that 99.90% of the equity shareholders of BTL passed and approved a special resolution and 76.35% of the identified shareholders present and voting also voted in favour of the special resolution approving the share value of Rs.196.80/-. No Objection Certificates were also received from all the creditors and hence, the petition under Section 66 of the Act seeking confirmation of the scheme of capital reduction before the NCLT.

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14. The NCLT as is the mandate, called for a report from the Regional Director of the Department who confirmed compliance of the procedure prescribed under the Act for reduction of capital. The NCLT having confirmed the capital reduction after looking at the objections filed by public shareholders, the NCLAT has also approved the same. There is hence no scope for interference, especially since no prejudice is shown. It is pointed out that the capital reduction was proceeded with immediately after the rights issue which put the identified shareholders in a position enhancing their shareholding exponentially, especially since the rights issue offered 115 shares at par for Rs.10/-, as against every single share held by an investor. Hence, the capital reduction after the rights issue put the investors in a very favorable position and the appellant in Civil Appeal No. 7655 of 2025 who would have obtained Rs.16 lakhs before the rights issue, on the very same valuation went home with an astronomical amount of Rs.47.30 crores. The fair value cannot be fixed at the *ipse dixit* of the investor, and it has to be with reference to the market value. There cannot be a fair value fixed divorced from the market value, especially in the case of BTL which had no other commercial activity other than the investment in BAL. The shares of BAL were listed in the stock market, and the value therein could not have been adopted for BTL which was the holding company, having only investment in the listed company; the shareholdings of which holding company was not marketable by reason of the delisting. It is pointed out that the identified investors are neither fly-by-night operators nor persons unfamiliar to investor domains but are shrewd operators who have earned substantial payouts; though not by way of periodic dividends which were practically absent, in the reduction of share capital, despite their shares being locked in for long. They have waited patiently and benefited with bountiful yields and crave more on an impulsive caprice, with nothing more and in total absence of any real prejudice having been shown to have visited them.
15. Both sides have placed reliance on a host of decisions to buttress their contentions which we shall refer to, as are applicable, in the course of our adjudication. We also refer from the documents in the Convenience Compilation and otherwise from the specified volumes of the numbered appeals.

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16. The contention first taken is of the constitution of the Bench of the NCLAT running foul of the mandate declared in **2010-MBA³**. The Constitution Bench in **2010-MBA³** considered the challenge against the Companies (Second Amendment) Act, 2002, constituting the NCLT & NCLAT; pointedly for our purpose, with reference to Section 10-FL insofar as the constitution of Benches. Paragraph 120(xii), one of the several corrections suggested, required two members of the Tribunal to always have a Judicial Member and any Larger or Special Benches constituted to have more Judicial Members than Technical Members.
17. Section 10-FL by sub-section (1) provided for the Tribunal to exercise the powers conferred by Benches constituted by the President out of which one shall be a Judicial Member and another a Technical Member. The first proviso empowered the President of the Tribunal by general or special order to permit Members to sit single and exercise the jurisdictional powers and authorities of the Tribunal with respect to such class of cases or matters with respect to a class of cases, as specified. The above provision is no more applicable since the Companies Act, 1956 has been replaced by the Companies Act, 2013. Sections 418A and 419 of the new statute speak of Benches of the NCLAT and that of the NCLT. The proviso to sub-section (1) of Section 418A requires a Bench of the NCLAT to have at least one Judicial Member and one Technical Member and the proviso to Section 419(3) mandates a similar composition in constitution of Benches of two Members. Section 419 further provides that the Tribunal shall exercise the powers in respect of such class of cases or such matters pertaining to a class of cases as the President by general or special order specifies, by a Bench consisting of a Single Judicial Member.
18. The provisions leading to the constitution of the NCLT and NCLAT were again challenged in **Madras Bar Association v. Union of India⁵ (2015-MBA)**. Section 419, as we see from the law reports, was not challenged before the Constitution Bench and Section 418A came to be introduced by Act 29 of 2020, later to the decision. Three issues

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arose in the **2015-MBA**⁵, which were with respect to (i) the constitution of NCLT and NCLAT, held to be valid; (ii) qualification of President and the Members of NCLT and NCLAT, Section 409(3)(a) & (e) as also Section 411(3) held invalid as making eligible a person other than a Secretary or Additional Secretary to be a Technical Member and (iii) the constitution of the Selection Committee for Members; held to be possible if comprising of only four Members, two from the Judicial side being the Chief Justice of India or his nominee and a Senior Judge of the Supreme Court or the Chief Justice of a High Court and two Secretaries, one from the Ministry of Finance and Company Affairs and the other from the Ministry of Law and Justice, with the Chief Justice of India or his nominee having a casting vote; following the earlier judgment. Thus, ensuring that the Judiciary has the final say, untrammelled by any governmental influence or interference in the appointment of a Member of the Tribunal, be it a Judicial Member or a Technical Member.

19. The provisions as of now do not require a majority of Judicial Members in the Larger Benches of the NCLT or the NCLAT. We cannot but notice the extract made in **2010-MBA**³ from **State of West Bengal v. Anwar Ali Sarkar**⁶ in the context of Article 14, applies equally to the issue raised before us, attempting a distinction drawn between judicial members and technical members. The extract was made consequent to the finding in paragraph 102 that “*The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the persons rights adjudicated by a forum which exercises judicial power in an impartial and independent manner, consistent with the recognized principles of adjudication*” (sic). **Anwar Ali Sarkar**⁶ held that even a criminal is entitled to set up a defense, and a special trial, as was contemplated in the legislation under challenge though is in public interest, would interfere with his fundamental rights.
20. Examining the special law contrasted with the ordinary law of the land, Vivian Bose J. in paragraph 87; **Anwar Ali Sarkar**⁶ opined that the test is not merely academic, for equality should be tested on the collective conscience of a sovereign democratic republic as to whether substantially equal treatment would be found by ‘*men of*

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resolute minds and unbiased views’. Whether these men would find it right or proper in a democracy of the kind we have proclaimed ourselves, is the true test. We respectfully adopt the definition as applicable to adjudications in every sphere and branch involving interpretation and resolution of disputes, complex and simple, both. All adjudicators first and foremost are or should be *reasonable persons* having *resolute minds and unbiased views*. Though judicial experience is valuable, administrative officers and technocrats; to whom judicious consideration is not alien in their long tenures of service dealing also with quasi-judicial matters, statutory appeals and the like, when permitted by the legislature to be included as Tribunal Members to aid, assist and promote a holistic adjudication of disputes and interpretation of laws, having administrative and technical ramifications, we cannot after permitting them to sit side-by-side treat them or their capabilities, with disdain or label them lower in status or in quality.

21. In the present case, we also have to notice that the Bench was headed by a Judicial Member and had two Technical Members, and the opinion was unanimous at the NCLAT. We also find no parallel infirmity as arising from ***B.R. Thakare***⁴, wherein a single Member of the Tribunal, an Administrative Member, was tasked with the adjudication of a dispute relating to cadre determination involving interpretation of the respective rules. It was held as a measure of proper administration of justice that ‘... *while allotting work to a Single Member, whether judicial or administrative, the Chairman should keep in mind the nature of the litigation and where questions of law and its interpretation are involved, they should be assigned to a Division Bench of which one of them is a Judicial Member*’ (sic). No distinction was drawn with reference to the source from which the Members come and there is no application to the facts of the present case. As of now, the Companies Act permits a Single Bench to sit only in the NCLT and that too a Bench of a Judicial Member. The NCLAT as provided in Section 418A always comprises of two Members, one of whom is a Judicial Member or such larger composition where the prescription is only of the presence of a Member from the Judicial side and not in the majority.
22. We find absolutely no reason to interfere with the order on the question raised of the composition of the Bench of the Appellate Tribunal. We also notice the further contention taken based on the

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order of *status quo*, wherein the first respondent company was not a party, to only reject it immediately. Obviously, the matter arose from a scam in which a Custodian was appointed for the sale of assets of the person involved in the scam, the assets being represented by the legal representatives. The Custodian had proceeded to sell the properties belonging to the legal representatives in which circumstance this Court had issued a *status quo* order which binds the Custodian and not the first respondent company, who was not a party to that proceeding. The *status quo* order is only insofar as the preservation of the assets, which in the circumstance of a reduction of shareholding, as is the subject matter of the present case, would only have the consequence of the shareholding being converted to money which would be held by the Custodian, the disbursement and adjustment of which would depend on further orders passed by this Court in the pending appeal. Reference is also made to Annexure-22 in Civil Appeal No. 2864 of 2021 to contend that the undertaking before the Custodian to disclose the Special Courts order before the NCLT was not complied with. The Special Courts order or even this Court's as we perceive it has no bearing on the share capital reduction of BTL. What assumes relevance is the custody of certain shares being with the Custodian, in which circumstance the proceeds with respect to that, on reduction of share capital, will have to be submitted to the Custodian. It does not have any significance to the reduction of share capital or the proceedings before the NCLT.

The Manner; The procedural infraction:

23. Under this head is raised issues of; (i) a request from the shareholders, though disclosed in the notice having not been indicated in the Board Resolution; (ii) the 'tricky notice' issued insofar as the elements constituting valuation having not been disclosed, especially the valuation and fairness reports; (iii) the valuation having been effected by a related agency; (iv) the fairness report having been issued on the very same date of the valuation report and (v) the valuation and fairness reports having not been sent along with the notice and kept out of reach of the investors by making it open for verification only at the Registered Office of the Company. As was pointed out by the respondent company, the shares of the company remained locked in for long after the initial buyback offer, pursuant to delisting. There were also no dividends paid, in which circumstance the individual

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investors had sought for an exit option at the Annual General Meetings (AGM), the minutes of which were handed over to us, across the Bar. That the investors herein did not opt for the buyback offer and had been holding the shares despite no payment of dividend for long is crystal clear from the minutes of the AGM. Also, it is revealed that there were requests made for buyback or another opportunity by which an exit is provided to the shareholders. That the company resorted to reduction in share capital, which in turn provided an exit option, as sanctioned under the Act of 2013 cannot also be disputed.

24. Even when the request made by the individual shareholders from the minutes of the AGM was pointed out, there was stiff opposition by the appellants on the ground that they never asked for a forced exit from the company. Be that as it may, when it cannot be denied that the reduction of capital is a valid means, legally permissible under the Act of 2013 which is also hedged in by safeguards insofar as a sanction being required by a special resolution in an extraordinary general meeting with a further sanction by the Tribunal, wherein the Central Government and the Registrar of Companies is entitled to offer their opinions; there is little room to find a request for exit from the investors being necessary. The Board having decided to go in for a reduction in capital, which definitely is not a buyback option but would all the same be an exit measure, there is no infirmity in the notice having indicated the request made by the investors. Especially since the shares of the company were locked in and it was decided that the capital reduction process is the best possible route to provide an exit opportunity in a fair and transparent manner. The observations in the notice though not a part of the resolution would have weighed with the Board of Directors in arriving at a decision for reduction of capital by purchase of the shares held by the identified investors, members of the public.
25. The further contention is with respect to a 'tricky notice' which is argued on the basis of reliance placed on various decisions of the High Courts and this Court relying on **Baillie v. Oriental Telephone and Electric Co. Ltd.**⁷ We would in that circumstance, look at the decision from the source, which coined the term 'tricky notice' and in that context a bit of the history of corporate law would be apposite.

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Foss v. Harbottle⁸ is a leading precedent in corporate law which brought in the principle of ‘proper plaintiff rule’ wherein the alleged wrongs against a company had to be agitated by the company itself. There were exceptions, subsequently carved out, by judicial precedents, sanctioning an individual action in the event of (i) *ultra vires* actions, (ii) a fraud on the minority, (iii) an illegal action by the majority and (iv) a ‘tricky notice’ without relevant material or without sufficient disclosure, the last of which is the contention herein.

26. The term itself was coined in **Kaye v. Croydon Tramways & Co. Ltd.**⁹ which was concerned with an agreement between two companies for sale of one to the other. The company which was to be sold called a meeting of its shareholders by a notice issued for approval of the agreement. The purpose for convening the meeting as disclosed in the notice was to confirm the agreement of sale with the purchase price specified and the compensation to be paid for loss of office of the Directors and the Secretary. The compensation was based on an arrangement; in deviation of the original proposal to take over the Directors and the Secretary, to relieve them of their duties. It was found that the notice was artfully framed to mislead the shareholders that the entire purchase price would come to the selling company, making it a ‘tricky notice’, playing with words to mislead the shareholders to consider a contract of sale, concealing from them that a large portion of the purchase money would go into the pockets of the Directors and Secretary.
27. **Baillie**⁷ was again a case in which the decision of the company was annulled on the ground of a ‘tricky notice’ without proper disclosure. Therein two special resolutions were under challenge with respect to enhancement of remuneration of the Directors in a subsidiary company, completely controlled by the holding company. The increased remuneration of the Directors of the subsidiary included 20% of the net profits of that company. On an auditor’s report pointing out that the remuneration fixed in the subsidiary company required authorization by the holding company, a meeting was convened with three resolutions, one of which required ratification of all actions taken with respect to the subsidiary, including ratification of the

8 67 E.R. 189

9 [1898] 1 Ch. 358

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remuneration already paid to the Directors and the other, authorising the articles to be altered, bringing in sweeping changes with respect to the remuneration of the Directors in the subsidiary company. On a challenge made by the individual shareholder it was found that there was no disclosure of the actual amount received by the Directors which was alleged to be enormous and sedulously concealed. The notice was found to be *not frank, not open, not clear and not in any way satisfactory*, making it a 'tricky notice'.

28. ***LIC v. Escorts Ltd and Others***¹⁰ is an authority for the proposition that a shareholder calling an extraordinary general meeting of the company is not bound to disclose its reasons as is incumbent on the management so to do under Section 173(2) of the Companies Act, 1956. ***Claude-Lila Parulekar (SMT.) v. Sakal Papers (P) Ltd. and Others***¹¹ dealt with transfer of shares denying the right of pre-emption to the existing shareholders, the appellant therein. The decision to raise the issued capital of the company and to allot the shares at par, to any person whether a member of the company or not was to be ratified by a General Body Meeting. The notice issued subsequently for an Annual General Meeting contained the details of ordinary and special business but no indication whatsoever of the increase in the share capital and allotment of shares. It was argued by the respondents that after the notice of AGM, the Ministry of Finance had given notice extending the validity of a sanction for a foreign exchange loan, clarifying that no further extension would be granted, based on which the foreign financier advised the company to increase its share capital in view of its expansion programme. This Court held that since the increase in share capital did not fall within the exceptions carved out in Article 94, which reflected the substance of Section 173 of the Act of 1956, it was incumbent for notice to be given not only indicating the issuance of share capital as a special item of business but also setting out all material facts relating thereto.
29. We do not think that the notice in the present case is vitiated by non-disclosure or mis-disclosure merely for reason of the valuation and fairness report not being placed before the shareholders. As we

10 (1986) 1 SCC 264

11 (2005) 11 SCC 73

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found, the measure adopted was a reduction in capital as permitted by Section 66, hedged in by various protections but does not require a valuation report as would be required in other circumstances. A valuation in the process of reduction of capital was resorted to by the company only to arrive at a fair value and the fair value arrived, after the deduction of tax was disclosed in the notice and the method adopted itself was kept open for verification by the identified shareholders at the registered office. It was disclosed fully in the proceedings before the NCLT where the investors objected, despite the special resolution having been passed with a thumping majority. The NCLT did not reject their contentions *in limine* on the ground that they had participated in the extraordinary meeting convened and voted in favour of the capital reduction with a majority of 99.90% of the total shareholders and 76.35 % of the identified shareholders present and voting in favour of the resolution, but dealt with the contention of an unfair value having been fixed and rejected the same on an examination of the attendant facts and figures. We are quite conscious of our confined jurisdiction under Section 423 of the Act of 2013, which is to consider a question of law. As held in ***Devas Multimedia (P) Ltd. v. Antrix Corpn. Ltd.***¹² when NCLT & NCLAT have recorded concurrent findings it is not for this Court to reappraise evidence in the usual course. However, we are obliged to look into the question of whether there is any perversity in the findings, which it is trite is one of law.

30. A comparison was attempted to be drawn from other provisions, which also are exit options available to the shareholders. Section 62 dealing with further issuance of share capital by sub-section (1)(c) requires a valuation report from a registered valuer, which in that circumstance would have to be enclosed with the notice to the existing shareholders. Likewise, Section 230 of the Act of 2013 under Chapter XV deals with compromise, arrangement and amalgamation with creditors and members. When a compromise or arrangement is made with the creditors or the members, the provision speaks of two motions before the Tribunal, one to convene a meeting of the creditors or a class of creditors or members or a class of members to be held and conducted in such manner as the Tribunal directs. In the first motion made before the Tribunal, as is evident from

¹² (2023) 1 SCC 216

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sub-section (2)(v), a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable of the company by a registered valuer is required to be annexed. If the meeting sanctions the resolution by 3/4th majority, then again the compromise or arrangement has to be sanctioned by the Tribunal by an order, for which a second motion is stipulated by sub-section (6).

31. An amalgamation or merger as contemplated in Section 232 also stipulates a report of the expert with regard to valuation by sub-section (2)(d). So does Section 236(2) in the context of a buyback or purchase of minority shares, which is conspicuously absent in a reduction of share capital, which also results in an exit of certain shareholders. Similarly, a buyback under Section 68 is optional and it is for the shareholder to decide whether the buyback is accepted or not, looking at the value at which the buyback is offered, which provision also does not stipulate a valuation report. Hence, whenever a valuation report was found expedient, it was statutorily required, but not under Section 66.
32. Reduction of share capital can be achieved by a special resolution and confirmation by the Tribunal, without a report of valuation from an approved/registered valuer and hence, it does not fall within the ambit of a relevant material; without the full and complete disclosure of which the reduction of capital cannot be acted upon. However, it is pertinent to notice that the company despite any legal requirement had adopted a valuation exercise, which was further affirmed in a fairness evaluation by a different agency, both of which reports were retained in the Registered Office of the Company, kept open for verification by the investors. As has been factually found one of the investors, through his advocate had verified the reports and made a subsequent request only for the details of the shareholders and raised no dispute against the value adopted. We have to pertinently also notice that as argued by the learned Senior Counsel for the respondent, the individual investors are not fly-by-night operators, but are shrewd investors who are aware of the changing trends in businesses especially when the respondent company is only having the business of holding shares in a telecom company. We do not find any procedural infraction or misleading disclosure to style the notice as a 'tricky notice'. The notice contains the full disclosure

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as required in a measure employed for reduction of share capital under Section 66, which is the price offered by the company which translates as an exit option for the identified shareholder.

33. On the finding that there was no statutory mandate for a valuation report for the reduction of a share capital, we could reject the arguments raised of a related agency having been employed for valuation, but we proceed to consider the ground of a perceivable bias raised. The specific argument is that the valuer was an associate/affiliate of the internal auditor of the company. It was buttressed by reference to documents, including the valuation report displaying the same logo, having common partners/directors and the internal auditor having a controlling interest in the valuer. There was a contention by the respondent that no allegation of *mala fide* or bias can be raised without making the entity against whom such an allegation is raised, a party to the *lis*. We are not persuaded to reject the contention only on that ground since here the *lis* was initiated by the company for the purpose of obtaining a confirmation of the special resolution, which is strictly not adversarial in nature, but in which the stakeholders are entitled to raise their objections and argue against such confirmation. Hence, when an objection is raised as to the independence or lack of it, of a valuer, it is for the Tribunal to look into it and if satisfied implead that entity or otherwise reject it *in limine*; which later procedure was adopted in the present case.
34. Before us, the learned Senior Counsel appearing for the respondent company had produced the Basic Principles Governing Internal Audit which mandates that the internal auditor shall be free from undue influence and shall resist any undue pressure or interference in establishing the scope of the assignments or the manner in which the audit is conducted and reported. The internal auditor in the nature of an in-house vigilance machinery, is mandated by the Act of 2013, under Section 138 read with The Companies (Accounts) Rules, 2014. Rule 13 of the said Rules by its Explanation also permits an employee to be appointed as an internal auditor, which in the present case has not been resorted to. Though, distinguished from statutory audits under Chapter X, the internal auditor, here an outside agency, merely by their appointment by the company cannot be said to be related in any manner to the company. Appointment as an internal auditor, does not bring in a bias with respect to the activities of the company which would essentially go against the scope and spirit of

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an audit carried out of the accounts of the company as an in-house verification, which is also a statutory requirement, available for scrutiny before a statutory auditor. It has been held in **N.K. Bajpai v. Union of India**¹³ that bias should be demonstrably real and present to vitiate an action. Where it is shown that there exists a real danger of bias the action would attract judicial chastisement while, if it is only a mere probability or even a preponderance of probability it cannot affect the action adversely, was the law declared. We do not find even a probability that the internal auditor would act in a biased manner, leave alone the valuation agency which is an affiliate of the former.

35. We have to further notice that the fairness report has been obtained from a different agency which has no connection with the internal auditor and in any event, the valuation report is accepted as valid and proper by the ICICI Securities Limited and SBI Caps Securities Limited, totally unrelated to the respondent company as is revealed from Annexures A-30 & A-31 produced in Civil Appeal No. 2864 of 2021 as obtained by 'The Custodian, Appointed under Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992' the 2nd respondent in that appeal. All the more as per the proviso to Section 66(3) the Tribunal considering the reduction of capital measure has to obtain a certificate from the Company's auditor that the accounting standards adopted is in conformity with that specified in Section 133, which is produced as Annexure A13 in the application under Section 66 before the NCLT produced as Annexure-A/14 in the Convenience Compilation.
36. The fairness report signed on the same day as the valuation report does not raise any apprehension of levity since the fairness is of the approach in valuation, which does not require a threadbare analysis or a reverification of the books of accounts. The figures are more than explicit and so is the method adopted as discernible by financial experts. We also reckon the contention raised by the respondent company that the date of the report indicates the day of issuance and not necessarily the time taken or the diligence exercised in arriving at the valuation or even affirming the fairness.
37. One other contention is of the reports being kept in the Registered Office not being sufficient based on **Firestone Tyre & Rubber**

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Co. vs. Synthetics and Chemicals Ltd.¹⁴ highlighting the difficulty and disinclination of shareholders to travel to the Registered Office. We cannot subscribe to the said view at least in today's scenario of ease of travel, especially since most of the 35 appellants before the NCLAT lived in Delhi, when the Registered Office was in Gurgaon, Haryana. Some had their residence at Mumbai & Pune and only three were abroad, as revealed from the cause title of the order of the NCLAT. None except one thought it fit to verify the reports. We hence find absolutely no reason to sustain the procedural infraction on the grounds of non-disclosure or bias, as alleged by the appellants.

The Method and The Matter; DLOM and the share price:

38. The above aspects are considered together since they are inextricably linked. The share value determined for reduction of share capital is termed unfair solely because of the application of DLOM, which is said to be inapplicable in a situation of this kind where there is a forced exit of the shareholders. Both sides relied on **Kiri Industries Ltd.**². On a reading of the same, we do not find any international denouncement of the application of DLOM in all situations, as argued by the appellants. True, in the aforesaid case wherein there was a forced buyout as per the order of the Singapore International Commercial Court, wherein the minority shareholders were asked to be bought out by the majority shareholders, DLOM was declined. Insofar as the DLOM principle is concerned, the decision in **Thio Syn Kym Wendy and Others v. Thio Syn Pyn and Others**¹⁵ and the decision in **Liew Kit Fah and Others v. Koh Keng Chew and Others**¹⁶ were referred to. **Liew Kit Fah**¹⁶ held that liquidity, after all is a valuable attribute of an investment and the lack of it is a depreciatory factor, giving rise to application of DLOM in the valuation of unquoted shares. However this was observed to be laid down in a consent order where there was no Court order on account of a finding of oppression. The principle laid down in **Thio Syn Kym Wendy**¹⁵ that DLOM will apply to illiquid privately held shares, save in exceptional circumstances proven by the party alleging it, was held to be an incidental observation which cannot be elevated into

¹⁴ (1971) Comp. Cases 377 (Bom.)

¹⁵ [2018] SGHC 54

¹⁶ [2020] 1 SLR 275

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a principle of law. In the context of a Court ordered buyout in an action alleging oppression, DLOM was found to be inapplicable, not as a universal principle but more on the facts of that case.

39. Interestingly the Court referred to an article of Professor Douglas Moll titled *"Shareholder Oppression and 'Fair Value': of Discounts, Dates and Dastardly Deeds in Close Corporation"* (2004) 54 (2) Duke LJ 293, wherein the distinction between fair value and fair market value was brought out which we have read, as available on the internet. 'Fair value', as distinguished from 'fair market value', is the enterprise value; the pro-rata portion of the company's overall value as an operating business. 'Fair market value' on the other hand involves the Court valuing the minority's share by considering what a hypothetical purchaser would pay for them. Professor Moll was of the opinion that in a 'fair market value' situation, a marketability discount is applied since a hypothetical purchaser is likely to pay less for shares which lack a ready market. Professor Moll was also of the opinion that valuation is inherently contextual and buyout proceedings in the context of an oppression setting, would make the marketability discounts inappropriate. The report is an interesting read and affords insights in the context of an oppressive setting with respect to Close Corporations, in the United States of America. The illustrative reference to minority with a 33% shareholding in an oppressive setting also is distinguishable from the instant case, which deals with a far lesser minority and in the Indian setting. The statutory language was also pertinently pointed out as standing against a marketability discount being applied, when the specific term used was 'fair value' as distinguished from 'fair market value', employed in comparable statutes.
40. It is recognised even by Prof. Moll that investors generally pay a premium for liquidity and conversely extract discounts for illiquidity. In the present case, there is no oppression complained of by the minority shareholders and in any event, 11 appellants do not, by their sheer number or with their combined holdings, constitute a collective which could validly raise an allegation of oppression under Section 244 of the Act of 2013. We have to immediately also notice that the shareholders identified for the purpose of capital reduction, together far exceeded the minimum number; one hundred under Section 244. There was no complaint of any oppressive action existing. All the same in the setting of the present proceedings, even the objection

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raised by an individual shareholder as to the reasonableness of the price fixed has to be looked into, which pertinently is not in a setting of oppression.

41. In *Baillie*⁷, the decision in *Foss v. Harbottle*⁸ was noticed and the exception carved out to the ‘proper plaintiff’ rule even while rejecting the challenge against the action of its Directors enabling purchase of the personal properties of the Directors for prices far exceeding its actual value that too by mortgaging and encumbering other properties of the company and applying these proceeds to make the purchases. However, it was observed that it would not be proper to hold that a society of private persons associated together in an undertaking, are deprived of their civil rights *inter se*, because the Crown or the Legislature has conferred on them a corporate character to make more attainable, the common objects. The ‘claims of justice’ then would be found superior to any difficulties arising out of technical rules regarding the mode in which the corporations are required to sue. Even in *Foss v. Harbottle*⁸ it was held that if a case arises as to an injury to a corporation or to some of its members, for which no adequate remedy remains except that of a suit by an individual corporator in their private character, requiring protection of those rights entitled in their corporate character, then the ‘claims of justice’ would override procedural technicalities. It is the said principle that is enshrined in the Act of 2013 where even when a special resolution is passed the Tribunal is required to scrutinise a reduction in capital under Section 66, after hearing all the stake holders, *ex debito justitiae*.
42. Coming back to the present case, here the measure employed was of a reduction in capital as permitted by the statute. *In Re: Reckitt Benckiser (India) Ltd.*¹⁷ encapsulated the principles regulating a reduction of share capital after referring to *British and American Trustee and Finance Corporation v. Couper*¹⁸. The broad principles distilled were that (i) reduction of share capital is a strictly domestic concern depending on the decision of the majority, (ii) if reduction of share capital is approved by a special resolution, the majority also has the right to decide how it should be carried out, (iii) reduction of share capital can be brought about by extinguishing some of the

¹⁷ 2005 SCC OnLine Del 674

¹⁸ (1894) SC 399

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shares while retaining others even in the same class or making a proportionate reduction for all or even for some, while for others it is totally extinguished. The reduction thus can be in any manner and even if it is selective it is permissible.

43. The reduction of capital was sanctioned by the Board and it was put up as a special resolution before the general meeting convened. The special resolution was passed by not only the majority shareholders but also by 3/4th of the majority individual shareholders, present and voting, identified for the purpose of reduction of share capital, which makes it consensual. Even the appellant in C.A. No.7655 of 2025, who holds the majority of the minority shareholding voted in favour of the special resolution. An argument was raised that only 733 out of the 4942 identified shareholders voted and the 3/4th majority from those present and voting is a mirage. We cannot accept the said contention, first for reason of the statute not prescribing any majority from the identified shareholders. Then, the others thought it fit to abstain and in a democratic set up where the will of the majority reigns supreme, the abstainers are deemed to have left the choice to those who vote and they acquiesce to the majority will of those present and voting in the extraordinary general meeting. It is only later, finding the application of DLOM that an objection was taken. Thus there is no oppression setting in the present case and there can be no distinction drawn from the statutory words employed of a 'fair value' and a 'fair market value'.
44. The statutory scheme also does not restrict the use of DLOM. Examining the statutory scheme under Section 66, in addition to the special resolution and notice to the Central Government and the Registrar of Companies, sanction is accorded by the Tribunal for capital reduction only if it is satisfied that the accounting treatment proposed by the company for such reduction is in conformity with the accounting standards specified in Section 133 or any other provision of the Act and a certificate to that effect by the company's auditor has been filed with the Tribunal, as per the proviso to Section 66(3); which we have found was furnished. Section 133 enables the Central Government to prescribe accounting standards as recommended by the Institute of Chartered Accountants of India constituted under Section 3 of the Chartered Accountants Act, 1949 in consultation with and after examination of the recommendations made by the National Financial Reporting Authority, constituted under Section 132 of the

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Act of 2013. The Indian Accounting Standards (Ind AS) 113 provides for fair value determination as a market based measurement and not an entity specific measurement, quite contrary to the statutory scheme found in the United States as described by Professor Moll.

45. The definition of fair value as per the Ind AS 113 is *'the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date'(sic)*. It is required that when measuring fair value, an entity shall take into account the characteristics of the asset or liability, if market participants would take those characteristics into account when pricing the asset or liability at the measurement date. These characteristics include, not exhaustively, but as stated in the Ind AS 113, as an example, the condition and location of the asset and restrictions if any on the sale or use of the asset. Hence, the approved accounting standards, as statutorily brought out, treats the fair price as one linked with the market especially in the context of Section 66, reduction of share capital. The Valuation Standards Board ICAI and the ICAI Registered Valuers Organisation of the Institute of Chartered Accountants of India has brought out 'ICAI Valuation Standard 103-Valuation Approaches and Methods'. The Discount for Lack of Marketability (DLOM) is one of the subheadings under the heading "Adjustment and Valuation". It is stated therein that *'DLOM is based on the premise that an asset which is readily marketable commands a higher value than an asset which requires longer period/ more efforts to be sold or an asset having restriction on its ability to sell.'* *'Determining an appropriate level of DLOM can be a complex and subjective process. Accordingly, the specific nature and characteristics of the asset and the acts and circumstances surrounding the valuation should be considered.'*
46. Looking at the valuation report it definitely reckoned the share value of BAL for a reasonable period since that would have a nexus in deciding the value of shares of BTL whose only business is investment in the listed BAL. BTL admittedly was not listed having been delisted in the year 1999-2000 and continued without any payment of dividend to the shareholders. The only buyout, which was statutorily prescribed, was offered at the rate of Rs.96/- per share, long back in the year 2001. In 2006, one of the promotor firms of BTL had offered to purchase the shares of public shareholders at Rs.400/- per share. More importantly, BTL conducted a rights issue in 2016 whereby the

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existing shareholders were offered and issued 115 shares for every one share held by them which resulted in diminishing the monetary value of BTL shares. The various offers relied on in the Convenience Compilation, at Annexure 2, even though not authenticated, reveals only a price of Rs.35-Rs.55 that too before the rights issue of the shares. A commodity broker is said to have offered an amount of Rs.2000/- in the year 2007 that too, far prior to the rights issue. The further issue of share capital for the purpose of bringing in an investor as a strategic long-term promoter made a valuation at Rs.310/- per equity share which is not parallel with the reduction of capital now attempted by the respondent company. The marketability of the shares is absent, and it has to be reiterated that the company had not been paying any dividends. There were also requests made by the shareholders for an exit option as is revealed from the minutes of the AGMs. In the totality of the circumstances, the applicability of DLOM cannot be held invalid and in any event, what has to be looked at by the Tribunal in scrutinising the scheme of reduction of capital is only as to whether there was a fair measure employed which cannot be termed unreasonable or prejudicial to the individual shareholders.

47. ***In Re: Reckitt Benckiser (India) Ltd.***¹⁷ held that when the matter comes to Court, the satisfaction of the Court is as to whether (i) there is an unfair or inequitable transaction and (ii) whether the creditors entitled to object to the reduction have either consented or are paid or are secured. ***In Re: Cadbury India Limited***¹⁹ examined Section 100 of the Act of 1956; analogous to the purpose of Section 66, to find three requirements; (i) the Articles of Association should permit a reduction of share capital; (ii) the scheme for reduction should be approved by a special resolution and (iii) the Court's sanction (sic- now the 'Tribunal') must be obtained if the special resolution is passed. The consideration of sanction of the scheme of reduction is regulated insofar as being (i) not against public interest; (ii) fair and just and not unreasonable and (iii) not unfairly discriminatory or prejudicial against a class of shareholders. As for prejudice it was held to be something more than just receiving less than what a particular shareholder may desire. To find prejudice there should be an attempt to force a class of shareholders to divest themselves

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of their holding at a rate far below what is reasonable, fair and just; a strategy by which an entire class is forced to accept something that is inherently unjust. It was also held that reasonableness can be tested on the basis of past open offers, extinguishments or buy-backs and the rates at which they were effected. If the rates offered in the scheme of reduction is more than the past offers then, the burden on the objector is exponentially high when raising the plea that the offer is unfair or unreasonable, to establish real prejudice, palpable bias and demonstrable arbitrariness. Allegation of violation of principles of fairness, when raised should be substantiated by obvious and blatant unfairness as revealed from the consequent action; which is absent here.

48. Unless the valuation is especially unreasonable it would be a wrong approach to reject a plausible rationale provided by the valuer on the mere ground that the objector has a different point of view. The test insofar as considering a sanction as held in ***In Re: Cadbury India Limited***¹⁹ is as to whether (i) a fair and reasonable value was offered to the minority shareholders? (ii) The majority of the non-promoter shareholders have voted in favour of the resolution? (iii) the resolution read by any fair-minded and reasonable person, without microscopic scrutiny, finds it to be egregiously wrong offending the judicial conscience? (iii) the valuer has gone so off-track that the result of valuation return can only be wrong? We cannot but notice that all the above tests are satisfied in the above case. We have already found that a fair and reasonable value was offered to the minority shareholders and the majority of the identified shareholders present and voting, voted in favour of the resolution. Even on a microscopic scrutiny the valuation cannot be found to be egregiously wrong especially looking at the previous offers and also the rights issue offered at par, prior to the reduction of share capital, exponentially increasing the take aways of the individual shareholders and the valuation cannot at all be said to have gone off-track, so as to make it egregiously wrong.
49. In this context, we cannot but notice that the share value now fixed by the Board and approved by the majority of the shareholders of the company which on modification by the Tribunal stands at Rs.196.80/- for each equity share. Even taking the highest offer at Rs.2000/- by a commodity broker as claimed by the appellants, prior

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to the rights issue, as of now on a further purchase of 115 shares at par, expending Rs.1150/- in the rights issue, the single share available with the identified shareholders becomes 116 at the rate of Rs.196.80/-, which by no stretch of imagination or any standard of scrutiny adopted, can be said to be unreasonable. Arguments raised on the valuation initiated at the behest of the Custodian, is available at Annexure A-9 & A-11, both in the year 2012, based on the purchase offers received. The purchase offers ranged between Rs.550/- to Rs.3,650/-. The valuation too by SBI Caps Securities and ICICI Securities ranged between Rs.12,707/- to Rs.20,215/- after applying discounts ranging from 20% to 30%. The above valuation was in the year 2012, while consequent to the reduction of share capital, the Custodian had sought for a verification of the valuation conducted by the very same agencies. ICICI Securities by Annexure A-30 while affirming the valuation as fair specifically noticed that the adverse effect by reason of the huge liability created on BAL, by a ruling of the Supreme Court was not captured in the earlier valuation. They also emphatically notice that the Valuation was by a reputed international firm and the Fairness Report by a SEBI registered category-I merchant banker. SBI Caps Securities also confirmed the valuation by A-31.

50. We cannot but reiterate that the appellants herein are not wary investors, cautious retirees or mere speculators, but seasoned retail investors who blend in equal measure prudence with quite calculation. The share value of BAL was in the public domain, being a listed company. The appellants were aware of the fact that BTL had only investment in BAL, which confined its operations. The appellants were aware and many had participated in the rights issue brought about and if not participated, at their peril. The shareholders were also aware of the price at which SingTel was brought in, as a strategic long-term promoter, pursuant to which the reduction of share capital was attempted which gave them enough material for making an informed and calculated decision as to whether they should opt for it. Far from the bullish and bearish trends that regulate the flexible share value of listed companies in a volatile market, the appellants held on to the shares of BTL; with zero listing, zero marketability, zero dividend payment, zero exit options also declining purchase offers, with the stoic resolve of a feline waiting patiently for its prey.

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The move was made when the AGM was constituted quite realising the price offered for each equity share, which was even minus the taxes payable by the company. The decision taken at the EAGM passing the special resolution clinches the issue. Only on finding the DLOM having been applied, the objections were raised despite the fact that at the time of EAGM the appellants were satisfied with the price offered. The objection is only in applying DLOM with nothing in substantiation as to how the price fixed is unreasonable. The identified shareholders voted in majority or abstained, finding the price offered to be reasonable and not prejudicial, which though pounced upon was resiled from later. The nature's wild offers no second pounce at the prey nor do the hinterlands of financial wilderness and in any event, valuation is an exercise which is best left to the experts as has been held in **Mihir H. Mafatlal v. Mafatlal Industries Ltd.**²⁰

51. On the above reasoning, we reject the appeals.
52. Pending applications, if any, shall stand disposed of.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Nidhi Jain