

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 273 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP (IB) No. 167/Chd/Hry/2018.)

IN THE MATTER OF:

Shirish Vinod Shah (HUF)

587, Shukrawar Peth, “Mena-Moti” Bungalow,
C/o 587, Shukrawar Peth,
B/H Subhasnagar lane No. 1,
Pune-411002, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar, Phase -IV,
Gurugram, Haryana – 122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
& Haryana**

4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region,

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

**For Appellants: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.**

Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali Munde.

With

Comp. App. (AT) No. 274 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

Mr. Hasmukh Mithalal Nagori

C/o Rajat Glasses,
85/86, Mahatma Phule Peth,
Pune- 411042, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant:

Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents :

Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.

Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali Munde.

With

Comp. App. (AT) No. 275 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

1. Adwaeet A.Shah

S/o Sh. Arwind Shah,
R/o 1232 Apte Road,
Corner Success Chambers,
Deccan Gymkhana, Pune-411004.

...Appellant No. 1

2. Adwaeet A. Shah (HUF)

S/o Sh. Arwind Shah,
R/o 1232 Apte Road,
Corner Success Chambers,
Deccan Gymkhana, Pune-411004.

...Appellant No. 2

3. Arvind M Shah (HUF)

R/o 1232 Apte Road,
Corner Success Chambers,
Deccan Gymkhana, Pune-411004.

...Appellant No. 3

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower

61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 276 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

1. Mr. Mahendra A. Shah

30, Kamer Bidg,
38, Cawasji Patel Street, Fort,
Mumbai – 400001.

...Appellant No. 1

2. Dr. Kumar H. Shah

Luqman Clinic, P.O. Box- 2003,
Code – 112, Ruwi,
Muscat, S. of Oman

...Appellant No. 2

3. Mrs. Dipti K. Somaiya

P.O. Box- 660,
P.Code – 114, Ruwi,

Muscat, S. of Oman

...Appellant No. 3

4. Mr. Krishnakumar D. Somaiya

P.O. Box- 660,
P.Code – 114, Ruwi,
Muscat, S. of Oman

...Appellant No. 4

5. Mrs. Jyoti Sunil Desai

Flat No. 6 Rajaram Mansion
Tikka Road, Ghatkopar East
Mumbi- 400077.

...Appellant No. 5

6. Mr. Abhay Y. Dadbhawala

Calcot House, 1st Floor,
8/10, Tamrind Lane Fort,
Mumbai – 400001.

...Appellant No. 6

7. Mr. Vipul Jayantilal Modi

66-1-3, Hansa Villa,
BHau Daji Cross Road,
South India Gymkhana, Matunga,
Mumbai – 400019.

...Appellant No. 7

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 277 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

Mrs. Chhaya Kamlesh Parekh
502, Narsinh Sadan,
Plot No. 78 A of TPS III,
First Road, Santacruz East,
Mumbai – 400055, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited
Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
&Haryana**
4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

4. The Regional Director, Northern Region
Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,

CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 278 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

Mrs. Kanta Shah
C/o 587, Shukrawar Peth,
Pune – 411002, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited
Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
& Haryana**
4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

5. The Regional Director, Northern Region
Ministry of Corporate Affairs,

B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 279 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

Mr. Ramesh Shah
C/o 587, Shukrawar Peth,
Pune – 411002, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited
Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
&Haryana**
4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

6. The Regional Director, Northern Region
Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,

CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 280 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

Mrs. Bharti Vinod Shah
587, Shukrawar Peth, “Mena-Moti” Bungalow
C/o 587, , Shukrawar Peth,
B/H Subhasnagar Lane No. 1
Pune – 411002, Maharashtra

...Appellant

Versus

1. Bharti Telecom Limited
Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
&Haryana**

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

7. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Anirudh Suresh & Mr. Pulkit Kapoor,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 336 of 2019 & I.A. No. 443 of 2021

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

1. Akash Khandelwal

Having its address at,
B-33, New Rajender Nagar,
New Delhi – 110060.

...Appellant No. 1

2. Nitika Khandelwal

Having its address at,
B-33, New Rajender Nagar,
New Delhi – 110060.

...Appellant No. 2

3. Akash Khandelwal HUF

Having its address at,
B-33, New Rajender Nagar,
New Delhi – 110060.

...Appellant No. 3

4. Ajay Kumar

Having its address at,
C-5/55, Vasant Kunj,

New Delhi – 110070.

...Appellant No. 4

5. Charu Gupta

Having its address at,
C-5/55, Vasant Kunj,
New Delhi – 110070.

...Appellant No. 5

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

**2. The Registrar of Companies, NCT of Delhi
&Haryana**

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

Present

For Appellant:

Mr. Manoj Kumar, Advocate.

For Respondents :

Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 337 of 2019

**(Arising out of the Order dated 27.09.2019 passed by the National Company
Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59,
60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No.
167/Chd/Hry/2018)**

IN THE MATTER OF:

Shubhamm Gupta

R/o A-18, Ratan Park, Nangloi,
Delhi 110041.

...Appellant

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Sandeep Bisht, Advocate.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 338 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

1. Shri Manish Lamba

s/o Shri Nand Kishore Lamba
D6, 6052/1, Vasant Kunj,
New Delhi- 110070

...Appellant No. 1

2. Smt. Jyoti Lamba

w/o Shri Manish Lamba
D6, 6052/1, Vasant Kunj,
New Delhi- 110070

...Appellant No. 2

3. Shri Rajneesh Lamba
s/o Shri Nand Kishore Lamba
D6, 6113/8, Vasant Kunj,
New Delhi- 110070

...Appellant No. 3

4. Shri Nand Kishore
s/o Late Shri H.C. Lamba
D6, 6052/1, Vasant Kunj,
New Delhi- 110070

...Appellant No. 4

5. Versha Talwar
w/o Shri Vikram Talwar
464, Sainik Vihar, Pitampura,
New Delhi - 110034

...Appellant No. 5

Versus

1. Bharti Telecom Limited
Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana
4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region
Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Rohan Chawla, Advocate.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.

Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali Munde.

With
Comp. App. (AT) No. 339 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

Rajesh Jain

R/o KJ-150, New Kavi Nagar,
Ghaziabad 201001,
Uttar Pradesh

...Appellant

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant:

Mr. Shikhar Srivastava, Advocate.

For Respondents :

Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 340 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

Pannalal Bhansali

S/o Late Hira Lal Bhansali,
21, Dakshineswar, 6th Floor,
10, Hailey Road,
New Delhi 110001

...Appellant

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,
Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant:

Mr. Udit Gupta & Ms. Sneha Singh, Advocates.

For Respondents :

Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

With

Comp. App. (AT) No. 354 of 2019

(Arising out of the Order dated 27.09.2019 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018)

IN THE MATTER OF:

1. Mrs. Anuradha Modi

Wife of Sh. Krishan Kumar Modi

Aged about 58 years,

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 1

2. Mr. Krishan Kumar Modi

Son of Sh. SR Modi

Aged about 60 years

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 2

3. Ms. Bhavini Modi

Daughter of Sh. Krishan Kumar Modi

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 3

4. Ms. Somya Modi

Wife of Sh. Harsh Hari Modi

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 4

5. Ms. Aniha Modi

Daughter of Sh. Krishan Kumar Modi

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 5

6. Mr. Harsh Hari Modi

Son of Sh. Krishan Kumar Modi

Resident of F-155, Sainik Farms, New Delhi

...Appellant No. 6

Versus

1. Bharti Telecom Limited

Airtel Centre, Plot No. 16,

Udyog Vihar Phase- IV,
Gurugram, Haryana-122001.

...Respondent No. 1

2. The Registrar of Companies, NCT of Delhi & Haryana

4th Floor, IFCI Tower
61, Nehru Place,
New Delhi – 110019.

...Respondent No. 2

3. The Regional Director, Northern Region

Ministry of Corporate Affairs,
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex, New Delhi – 110003.

...Respondent No. 3

Present

For Appellant: Mr. Manish Kaushik & Ms. Pooja Singh,
Advocates.

For Respondents : Mr. Ramji Srinivasan, Sr. Advocate along with
Mr. Kamal Shankar, Mr. Tanmay Sharma, Mr.
Kshitiz Rao, Mr. Arjun Bhatia & Ms. Shefali
Munde.

J U D G E M E N T

(03.04.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

General Background

1. The present 14 appeals have been filed by 35 Appellants under Section 421 of the Companies Act, 2013 against the Impugned Order dated 27.09.2019 passed in CA Nos. 226, 227, 58, 59, 60, 61, 62, 63, 66, 499 & 746/2019 & 553/2018 in C.P (IB) No. 167/Chd/Hry/2018 by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (**‘Tribunal’**). All Appellants were shareholders of the Respondent No. 1/ Bharti Telecom Limited (BTL) (Company) whose

shares got extinguished after passing special resolution by the Respondent No. 1 for reduction of capital under Section 66 of the Companies Act, 2013.

2. Sh. Shirish Vinod Shah (HUF) is the Appellant in Company Appeal (AT) No. 273 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

3. Mr. Hasmukh Mithalal Nagori is the Appellant in Company Appeal (AT) No. 274 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

4. There are three Appellants in Company Appeal (AT) No. 275 of 2019 i.e., Adwaeet A. Shah, Adwaeet A. Shah (HUF) and Arvind M Shah (HUF) (**'Appellants'**). This case has been pleaded by Mr. Anirudh Suresh.

5. There are seven Appellants in Company Appeal (AT) No. 276 of 2019 i.e., Mr. Mahendra A. Shah, Dr. Kumar H. Shah, Mrs. Dipti K. Somaiya, Mr. Krishnakumar D. Somaiya, Mrs. Jyoti Sunil Desai, Mr. Abhay Y. Dadbhawala & Mr. Vipul Jayantilal Modi (**'Appellants'**). This case has been pleaded by Mr. Anirudh Suresh.

6. Mrs. Chhaya Kamlesh Parekh is the Appellant in Company Appeal (AT) No. 277 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

7. Mrs. Kanta Shah is the Appellant in Company Appeal (AT) No. 278 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

8. Mr. Ramesh Shah is the Appellant in Company Appeal (AT) No. 279 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

9. Mrs. Bharti Vinod Shah is the Appellant in Company Appeal (AT) No. 280 of 2019. This case has been pleaded by Mr. Anirudh Suresh.

10. There are five Appellants in Company Appeal (AT) No. 336 of 2019 i.e., Akash Khandelwal, Nitika Khandelwal, Akash Khandelwal (HUF), Ajay Kumar and Charu Gupta (**'Appellants'**). This case has been pleaded by Mr. Manoj Kumar.

11. Shubhamn Gupta is the Appellant in Company Appeal (AT) No. 337 of 2019. This case has been pleaded by Mr. Sandeep Bisht.

12. There are five Appellants in Company Appeal (AT) No. 338 of 2019 i.e., Shri Manish Lamba, Smt. Jyoti Lamba, Shri Rajneesh Lamba, Shri Nand Kishore & Versha Talwar (**'Appellants'**). This case has been pleaded by Mr. Rohan Chawla.

13. Rajesh Jain is the Appellant in Company Appeal (AT) No. 339 of 2019. This case has been pleaded by Mr. Shikhar Shrivastava.

14. Pannalal Bhansali is the Appellant in Company Appeal (AT) No. 340 of 2019. This case has been pleaded by Mr. Udit Gupta & Ms. Eshna Kumar.

15. There are six Appellants in Company Appeal (AT) No. 354 of 2019 i.e., Mrs. Anuradha Modi, Mr. Krishan Kumar Modi, Ms. Bhavini Modi, Ms. Somya Modi, Ms. Aniha Modi & Mr. Harsh Hari Modi (**'Appellants'**). This case has been pleaded by Mr. Manish Kaushik.

16. Bharti Telecom Limited is the Respondent No.1 (**‘Contesting Respondent’**) in all appeals.

The Registrar of Companies, NCTY of Delhi & Haryana is the Respondent No. 2 herein.

The Regional Director, Northern Region is the Respondent No. 3 herein.

17. We note that the first eight appeals have been argued by Mr. Anirudh Suresh in joint manner, whereas remaining six appeals have been argued by different counsels. However, the basic issues of all fourteen appeals remain the same.

Similarly, Counsel for Respondent No. 1 Mr. Ramji Srinivasan has argued all fourteen appeals in conjoint manner. We further note that the Respondent No. 2 and 3 are the non-contesting respondents.

In view of this, we shall deal with all fourteen appeals in conjoint manner.

18. Further, since points raised by the Appellants in all fourteen appeals are similar, we shall refer all the Appellant as (**‘the Appellants’**) herein after. Bharti Telecom Limited (BTL) (Company) is the only Contesting Respondent in all appeals and shall be referred to as Respondent No.1 hereinafter.

19. The present batch of appeals (“Appeals”) are filed by Identified Shareholders (Constituting approx. 0.11% of the shareholding of R1) who have raised certain objections with respect to the valuation of the shares for the purposes of capital reduction.

20. It is noted that the Respondent No.1, i.e. BTL was incorporated on 29th July, 1985, under the erstwhile Companies Act, 1956. Initially, BTL was listed on the stock exchanges of Delhi, Ludhiana, Kolkata, and Bombay.

21. In 1986, BTL issued a total of 16.5 lakh shares to various stakeholders, including promoters, directors, employees, associate companies, and the public and all 31,800 equity shares allocated for public subscription were successfully subscribed.

22. In the year 1991, various shareholders including the promoters, employees, and the general public again subscribed to all 1.525 crore shares offered. Similarly other subscription of all equity shares offered by BTL were also subscribed.

23. It is significant to note that in October 1999, BTL was delisted from the Bombay Stock Exchange due to the Promoter Group (Bharti) acquiring more than 90% of BTL's shares. This delisting was followed by similar actions on other stock exchanges: Kolkata, Ludhiana, and Delhi, with effective dates of 1st November 1999, 25th January, 2000, and 6th March, 2000, respectively. As a result, the remaining public shareholders became minority shareholders of BTL.

24. Bharti Airtel Limited (**'BAL'**) launched its Initial Public Offering (**'IPO'**) in January 2002 and was listed on 18.02.2002, following this IPO, BTL's shareholding in BAL got reduced to 46.4%, transforming its status from a subsidiary to an associate.

25. BTL again issued a Right issue on 08.01.2016 to all its existing shareholders to make BAL as its subsidiary and finally on 03.11.2017, BAL once again became subsidiary of BTL.

26. BTL transformed into an investment company, with over 90% of its total assets invested in its subsidiary, BAL, and holds 50.10% of the paid-up share capital of BAL as of 31.03.2019. Consequently, BTL has been registered with the Reserve Bank of India as a Core Investment Company Non-Deposit Systemically Important ("CIC-ND-SI") under Certificate number N-14.03465 dated 15.01.2019.

27. It is noted that the Bharti Group comprises Bharti Enterprises Private Limited and Indian Continental Investments Limited, while the SingTel Group comprises Pastel Limited, Magenta Investments Limited, and SingTel International Investments Private Limited.

Pleadings by the Appellant

28. It has been pleaded by the Appellants that the minority shareholders, who remained invested in BTL, never pursued an exit opportunity. Furthermore, the Group Company offered buyback options to these minority shareholders at prices of Rs. 96 on 17th July, 2001, and Rs. 400 on 5th May, 2006, to provide an exit opportunity post delisting from stock exchanges, however, the minority shareholders chose not to avail themselves of these opportunities, indicating their

desire to remain invested in BTL even following BTL's delisting from stock exchanges. The Appellant also brought out that one M/s Bharat Bhushan Share & Commodity Brokers Ltd proposed an offer on 19th September, 2007, to purchase shares from public minority shareholders at Rs. 2000 per share. Despite these opportunities, the minority shareholders consistently chose not to avail themselves of these exit options or monetize their shareholdings.

29. The Appellants submitted that BTL issued a Rights Issue on 08.01.2016, inviting existing minority shareholders to invest with the ultimate goal of making BAL as a subsidiary of BTL, as detailed in the Notice of Rights Issue. The Appellants stated that the minority public shareholders demonstrated their commitment by making significant investments and subscribing to this Rights Issue, indicating that they did not perceive their investments in the unlisted Company as locked up. Subsequently, on 03.11. 2017, after a gap of 15 years and 8 months from BAL's listing on 18.02.2002, BAL became a subsidiary of BTL, fulfilling the stated objective of the Rights Issue. Despite this development, the minority shareholders continued to remain invested and never sought an exit opportunity.

30. The Appellants elaborated that BTL planned to involve SingTel as partner in their telecom business and in this backdrop, a Valuation Report was obtained from J C Bhalla & Co, estimating the fair value per equity share BTL at Rs. 310/- per share, with 18th January, 2018, as the relevant date for valuation. The

Appellants clarified that the valuation was determined using the “Adjusted Net Assets Method”, considered most appropriate for an investment company and an internationally accepted pricing methodology. The Appellants clarified that this method aligns with RBI guidelines and FEMA notification no. FEMA 20(R)/2017-RB dated 7th November, 2017, concerning the Foreign Exchange Management (Transfer of Securities by a person resident outside India) Regulations, 2017, read with Master Directions on Foreign Investment in India dated 4th January, 2018, as detailed in the Notice of Postal Ballot dated 18th January, 2018, sent to the shareholders.

31. The Appellants submitted that the preferential allotment to SingTel was intended for the repayment of company debts and to improve BTL's financial position and ultimately increase the intrinsic value of its equity shares as detailed in the Notice.

32. The Appellants submitted that following the aforementioned preferential allotment BTL's authorized share capital became Rs.50,00,00,00,000, divided into Rs.5,00,00,00,000 equity shares of Rs. 10 each. The paid-up share capital is Rs. 26,10,77,41,760 divided into Rs.2,61,07,74,176 equity shares of Rs. 10 each.

33. The Appellants stated that in a meeting held on 19.06.2018, BTL's Board of Directors resolved to pursue a Reduction of Share Capital under Section 66 of the Companies Act, 2013 (the "Scheme"). This Scheme involves cancelling and extinguishing Rs.2,84,57,840 equity shares of Rs. 10 each held by minority public

shareholders, excluding Bharti Enterprises (Holding) Private Limited, Pastel Limited, Magenta Investments Limited, Singtel International Investments Private Limited, and Indian Continent Investments Limited (collectively, the "Public Minority Shareholders").

34. The Appellants stated that subsequent to the board meeting, a Notice with Explanatory Statement along with a Postal Ballot form dated 19th June, 2018 was sent to shareholders, seeking approval via special resolution for a selective capital reduction. The Appellants further submitted that, as detailed in the Notice, BTL proposed to selectively reduce the issued, subscribed, and paid-up equity share capital from Rs. 26,10,77,41,760 consisting of Rs.2,61,07,74,176 equity shares of Rs. 10/- each, to Rs.25,82,31,63,360 consisting of Rs.2,58,23,16,336 equity shares of Rs. 10/- each. This reduction was to be achieved by cancelling and extinguishing Rs.2,84,57,840 equity shares of Rs. 10/- each, representing 1.09% of the total issued, subscribed, and paid-up share capital of BTL, held by the Public Minority Shareholders.

35. The Appellants submitted that contrary to the reasons stated in the Notice, the Public Minority Shareholders did not request an exit opportunity to monetize their shareholding due to their investments being locked up, nor would BTL necessarily save administrative costs by servicing them. The Appellants argued that the Notice makes these claims, whereas relevant extracts from BTL's Annual Returns, specifically the shareholding pattern, demonstrate a significant volume

of trading in the market and off-market, indicating liquidity in BTL's equity shares and contradicting the notion of "locked up" investments.

36. The Appellants submitted that the administrative costs for servicing the Public Minority Shareholders, as cited in the Notice, was minicule and negligible, as evidenced in the extracts of BTL's Annual Returns, and is reproduced for ready reference.

Year	Total Revenue from operations	Communication Expenses	Printing & Stationery Expenses	Total Admin Expenses	Admin Overheads to Revenue (%)
2013-14	1,85,50,02,000.00	24,000.00	76,000.00	1,00,000.00	0.0054
2014-15	6,16,88,12,000.00	23,000.00	64,000.00	87,000.00	0.0014
2015-16	4,71,83,61,000	2,86,000.00	2,20,000.00	5,06,000.00	0.0107
2016-17	3,69,61,17,000	1,57,000.00	1,83,000.00	3,40,000.00	0.0092
2017-18	8,35,24,97,000	2,31,000.00	3,39,000.00	5,70,000.00	0.0068
2018-19	10,15,00,00,000.00	10,00,000.00	10,00,000.00	20,00,000.00	0.0197

37. The Appellants submitted that despite the Board of Directors claiming in the Notice that the capital reduction process would be conducted fairly and transparently, the Scheme lacked transparency. The Appellant pleaded that the Valuation Report and Fairness Opinion were not shared with the Public Minority Shareholders, despite repeated requests. It is the case of the Appellants that the lack of information prevented them from understanding the meaning, scope, and implications of the business items, thereby rendering their right to vote meaningless and undermining the purpose of the Explanatory Statement as required by Section 102 of the Companies Act, 2013.

38. The Appellants alleged that, while BTL and its Board of Directors presented the action as an investor-friendly move executed transparently and fairly, the "opportunity" described in the explanatory statement is, in reality, a "compulsion" and therefore in the view of the approval by the majority, the Public Minority Shareholders had no choice but to compulsorily surrender their shares in BTL.

39. The Appellants submitted that the Notice highlighted the substantial shareholding of the Bharti Group and SingTel Group, totalling 98.91%, and merely states that BTL will file the required application before the Tribunal under Section 66 of the Companies Act, 2013 once shareholders pass the necessary resolution. The Appellants argued that this implied that the votes of the Public Minority Shareholders were rather rendered meaningless. The Appellant argued that this is the reason 85% of the public shareholders did not exercise their right to vote, compounded by the fact that the Valuation Report and Fairness Opinion were withheld from them. The Appellants contended that these calculated and deceptive tactics employed by BTL are unlawful and contrary to public interest.

40. The Appellants submitted that had the Public Minority Shareholders aware that BTL would approach the Tribunal only after securing approval from the majority of the minority, the remaining 85% would have likely exercised their right to vote. The Appellants elaborated that only 733 shareholders out of 4942

public shareholders, or 14.8% of 4942 Public Minority Shareholders casted their votes, as evidenced by the Scrutinizer's Report.

41. The Appellants submitted that, after receiving the notice, attempts were made to obtain clarifications by calling 0124-4222222, the contact number listed on the Postal Ballot form. The Appellants submitted that despite the mention of a Valuation Report and Fairness Opinion in the Notice, these documents, necessary for understanding the items of business, were not shared with them. The Appellants stated that the documents were also not provided during personal visits to BTL's office, as per the address in the Notice. The Appellants highlighted the emails sent by the Appellant to BTL as evidence of their sincere requests to BTL for sharing the Valuation Report and Fairness Opinion, even offering to pay for photocopying, scanning, or postal charges. The Appellants contended that this lack of transparency contradicts the Board of Directors' claim in the Notice of conducting the reduction of share capital in a fair and transparent manner.

42. The Appellants submitted that the Public Minority Shareholders had invested in BTL for over two decades since its delisting in 1999 and therefore BTL's decision to conduct the share valuation at this juncture was prejudicial and oppressive to the minority shareholders, particularly considering that after 15 years and 8 months (18th February, 2002 to 3rd November, 2017), the Respondent No. 1, BTL, transitioned into a Holding Company of BAL, which inherently enhanced its value. The Appellants argued that this increase in fair valuation is

evidenced by the Consolidated P&L account for FY 2017-18, showing a rise in consolidated EPS from Rs. 8.12 to Rs. 166.26 i.e., 20 times increase as a result of becoming a Holding Company from an Associate company of BAL. The Appellants points out that the minority shareholders fully supported this shift by subscribing to the Rights Issue in January 2016 (17 years post-delisting), which was aimed at making BAL its Subsidiary, as stated in the Rights Issue Letter of Offer.

43. The Appellants submitted that after utilizing the funds from the Rights Issue to purchase shares of BAL in the market, BTL successfully made BAL its subsidiary, which enhanced its valuation, and subsequently executed a preferential allotment to SingTel at a price of Rs 310 per share. The Appellants emphasized that the substantial infusion of funds by shareholders through the Rights Offer in February 2016 increased BTL's net worth, thereby enabling it to invest in shares of BAL, which would not have been possible otherwise. The Appellants asserted that the minority shareholders stood by BTL and supported its growth by investing as required and never sought an exit opportunity.

44. The Appellants submitted that the Respondent No. 1/ BTL filed a Company Petition before the Tribunal, under Section 66 of the Companies Act, 2013 r/w Rule 2 of the National Company Law Tribunal (Procedure for Reduction of Share Capital) Rules, 2016. During the proceedings before the Tribunal, Respondent No. 1 submitted that they were proposing a Reduction of Share Capital under

Section 66(1)(b)(ii) of the Companies Act, 2013 specifically to pay off any paid-up share capital that is in excess of BTL's needs.

45. The Appellants submitted that BTL's Notice for Reduction of Share Capital offered a price of Rs. 163.25 per equity share, based on the Valuation Date of 31.05.2018. The Appellants contrasts this with the preferential allotment of equity shares to SingTel at an issue price of Rs. 310 on 12th March, 2019 where the stated objective of the preferential issue was the repayment of BTL's debts, as detailed in the notice to shareholders. The Appellants argued that BTL obtained a Valuation Report from J C Bhalla & Co, who estimated that the fair value per equity share of BTL was Rs. 310/- per share in which the relevant date considered by the valuers for the purpose of valuation was 18th January, 2018. The Appellants clarified that the said valuation was done on the basis of Adjusted Net Assets Method which is appropriate method for an Investment company being an internationally accepted pricing methodology in contrast to Multiple Option Pricing Models and empirical studies used by Ernst & Young Merchant Banking Services Private Limited in valuation in the present case. The Appellants contended that this discrepancy highlight that the Reduction of Share Capital proposed by the Respondent No. 1/ BTL does not comply with the provisions of Section 66 of the Companies Act, 2013.

46. The Appellants submitted that if the Respondent No. 1/ BTL proposed the Reduction of Share Capital on the basis of having excess capital, it would directly

contradict the fact that it raised debts to the tune of Rs. 3,100 Crores through bond sales to invest in the Rs. 25,000 Crore Rights Issue of BAL, as evidenced by the press release and website screenshots. The Appellants asserts that these actions further substantiate that BTL does not comply with the provisions of Section 66 of the Companies Act, 2013 and that BTL has acted with an oblique motive to diminish the interests of the Public Minority Shareholders.

47. The Appellants submitted that BTL filed Company Application No. 418 of 2018, including an updated list of creditors as of 24th August, 2018, and obtained No Objection Certificates ('**NOCs**'). The Appellants states that notices were issued to the Central Government through Respondent No. 2 in Form RSC-2 and to all BTL's creditors as per the updated list of 24th August, 2018, in Form RSC-3, seeking their representations or objections, if any. The Appellants further states that on 28th January, 2019, the Respondent No. 1/BTL submitted to the Tribunal, that it had received no objections from any of its creditors, including the debenture trustee, who provided their no objection and consequently given their consent on the scheme.

48. The Appellants submitted that during the pendency of BTL Petition, Company Application Nos. 553/2018, 58/2019, 59/2019, 60/2019, 61/2019, 62/2019, 66/2019, 226/2019, 227/2019, and 499/2019 were filed by various parties objecting to the Scheme. The Appellants stated that the Tribunal issued

notices on all of the aforementioned Company Applications, and the Respondent No. 1/ BTL filed replies to each individual application, opposing them.

49. The Appellants submitted that on 1st February, 2019, pursuant to the direction of the Tribunal, when the Valuation Report was served upon them, they became aware of the valuation methodology employed by Ernst & Young Merchant Banking Services Private Limited to determine the fair value of equity shares as of 31st May, 2018, for the purpose of the proposed capital reduction of Public Shareholders. The Appellants contended that Ernst & Young Merchant Banking Services Private Limited erred in conducting the valuation of shares. It is the case of the Appellants that the same Respondent No. 1/ BTL earlier obtained a Valuation Report from J C Bhalla & Co who estimated the fair value per equity share of BTL Rs. 310/- per share in which the relevant date considered by the valuers for the purpose of valuation is 18th January, 2018 and the valuation was done on the basis of Adjusted Net Assets Method which was an appropriate method.

50. The Appellants submitted that the E&Y Valuation Report is flawed because it fails to include a control premium, which is required when minority shareholders were forced out and inappropriately applied a 25% discount for lack of marketability **(DLOM)** despite evidence of liquidity. The Appellants submitted that the 25% DLOM applied in the E&Y Valuation Report is arbitrary, based on outdated data from developed economies and foreign companies (1966-

2006). The Appellants argued that as an investment holding company with over 90% of its assets in BAL of which it holds 50.10% (as of 31st March, 2019), and BAL being a liquid, actively traded index stock, BTL's shares were marketable among Public Shareholders.

51. The Appellants submitted that the act of selective capital reduction is not only unfair, unjustified, coercive, discriminatory, and illegal, but the Respondent No. 1/ BTL proposal to pass the resolution through postal ballot and e-voting without conducting an in-person/physical meeting violates the rights of the Public Shareholders. The Appellants alleges that BTL has tactfully avoided holding a physical meeting to prevent free exchange of views and ideas among the Public Shareholders and to take away their right of communication, discussion, to be heard and to give an opinion, to form an opinion based on others' views, to question, and to be certain before voting. The Appellants argues such acts of Respondent No. 1 violate Freedom of Speech as enshrined in the Basic Structure of the Constitution of India, and the resolution passed by the majority shareholders should be deemed void, illegal, discriminatory, coercive, unfair, and unjustified.

52. The Appellants submitted that on 27th September, 2019, the Tribunal approved the proposal for reducing the issued, subscribed, and paid-up equity share capital of BTL from 2,610,774,176 equity shares of Rs. 10/- each to 2,582,316,336 equity shares of Rs. 10/- each by cancelling 28,457,840 equity

shares of Rs. 10/- each held by identified shareholders and the Tribunal further directed the Respondent No. 1/ BTL to pay Rs. 196.80 per share to the Identified shareholders, a value determined by the valuer's report dated 19th June, 2018.

53. It is the case of the Appellants that the Appellants being minority shareholders have been sacrificed for benefit of majority promoter shareholders and the whole process/ scheme has been carried out in non transparent manner against all cannons of corporate governance.

54. The Appellants further pleaded that the entire scheme proposed by majority promoters is an act of fraud against the minority public shareholders who has been forced to extinguish their share despite their non inclination to do so. The Appellants further pleaded that the valuation done by Ernst & Young Merchant Banking Services Private Limited was also non transparent and the valuers themselves cannot be perceived to be independent valuer. Further the valuation report was not shared by the Appellants nor was made available for inspections as such the scheme was carried out in non-transparent and arbitrary manners which affected the legitimate rights of the Appellants.

55. The Appellants submitted that the Tribunal/ Appellate Tribunal has got jurisdiction to interfere and decline this scheme proposing selective reduction of share capitals since it has been found to be prima-facie unreasonable as the minority shareholder have not been offered a reasonable price for shares.

56. The Appellants conceded that the identified shareholders were indeed minority public shareholders as their voting strength was only 1.09%, which is not very significant in comparison to majority promoter shareholders i.e., Bharti SingTel Group who have conjoint voting strength of 98.91%. The Appellants however pleaded that being minority shareholders it was the duty of majority public shareholders as well as the Tribunal to proceed with the scheme in reasonable, unbiased and transparent manner.

57. The Appellants pointed out that they themselves appointed a registered valuer Mr. Mayur Popat holding Registration No. IBBI/RB/06/2019/1173 which categorically stated that DLOM should not have been applied in the present scheme.

58. The Appellants also pointed out the alleged irregularities by independent valuer Ernst & Young Merchant Banking Services Private Limited who contravened various provisions laid down in model code of conduct by registered valuers as laid down in Annexure-I in companies (registered valuers and valuation) Rules, 2017 and relevant Rule No. 13, 14, 15 & 17 which have been violated.

59. Concluding their arguments, the Appellants urged this Appellate Tribunal to dismiss the Impugned Order and allow their appeals.

Pleadings by the Respondent No. 1

60. Per contra, the Respondent No. 1/ BTL (who is the only contesting respondent) denied all the averments made by the Appellants in the present appeals.

61. The Respondent No.1 stated that during the pendency of the Company Petition i.e. on 1st February, 2019 and in pursuant to the Direction of the Tribunal, the Valuation Report was served upon the Appellants, and therefore the Appellants were fully aware of the methodology of valuation of shares by Ernst & Young Merchant Banking Services Private Limited to determine the fair valuation of equity shares as at 31st May, 2018 for the purpose of proposed capital reduction of Public Shareholders. It is the case of Respondent No. 1 that Ernst & Young Merchant Banking Services Private Limited have not erred in conducting valuation of shares.

62. The Respondent No. 1 submitted that it was previously listed on the Delhi, Ludhiana, Kolkata, and Mumbai stock exchanges but was delisted from all of them between 1999 and 2000, in full compliance with applicable laws. As of 15th June, 2018, Respondent No. 1 had 4,942 public shareholders, holding equity shares representing 1.09% of the share capital of the Respondent No. 1 (referred to as "Identified Shareholders").

63. The Respondent No. 1 submitted that following its delisting from the stock exchanges, its shares have become untradeable on any of the country's stock

exchanges. Consequently, the absence of a trading platform has resulted in the loss of marketability of these shares and as a result, numerous identified shareholders have consistently requested the Respondent No. 1, BTL, to provide an exit option at annual general meetings and other forums, highlighting the need for a viable solution to address this issue.

64. The Respondent No.1 submitted that the proposed capital reduction offered the opportunity for the identified shareholders to exit at a fair valuation, addressing the lack of marketability and tradability of their shares following the delisting of the Respondent's shares in 1999-2000. Furthermore, the Respondent No.1 has sufficient reserves and funds to execute this capital reduction. While the primary objective is to provide a fair exit mechanism for these shareholders, the reduction would also enable the Respondent No. 1 to save on administrative and other costs associated with servicing a dispersed and minimal percentage of shareholding across India and overseas.

65. The Respondent No.1 submitted that the Board of Directors, after a detailed examination and analysis of various available options, concluded that reorganizing the capital structure through a reduction of equity share capital held by the identified shareholders would be the most appropriate solution. This decision was made in accordance with Section 66 of the Companies Act, 2013, read with the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016, as it provides a lawful and structured

mechanism to offer an exit to these shareholders while ensuring compliance with applicable legal provisions.

66. The Respondent No.1 submitted that to ensure fair consideration for the proposed reduction of share capital held by the identified shareholders, the Respondent No. 1 appointed Ernst & Young Merchant Banking Services Private Limited as independent valuers. The independent valuers conducted a valuation of the Respondent No. 1, BTL, and submitted their Valuation Report dated 19th June, 2018, and prepared to determine an equitable valuation for the shares, given their lack of marketability post-delisting.

67. The Respondent No.1 submitted that as part of its fiduciary duty to the shareholders, it obtained a fairness opinion report from SPA Capital Advisors Limited, a SEBI-registered Category 1 Merchant Banker, which was prepared to assess the fairness of the valuation determined in the Valuation Report submitted by the Independent Valuers. The fairness opinion, dated 19th June, 2018, provided an independent evaluation to ensure transparency and equitable treatment of shareholders.

68. The Respondent No.1 submitted that during a board meeting held on 19th June, 2018, the Board of Directors proposed, subject to shareholder approval, a reduction in the paid-up equity share capital of the Respondent under Section 66 of the Companies Act, 2013. The proposal involved reducing the share capital from Rs.26,10,77,41,760 (divided into 2,61,07,74,176 equity shares of ₹10 each)

to Rs.25,82,31,63,360 (divided into 2,58,23,16,336 equity shares of ₹10 each) by cancelling and extinguishing Rs.28,45,78,400 worth of paid-up equity share capital (equivalent to 2,84,57,840 equity shares of ₹10 each) held by the identified shareholders. Based on the Valuation Report by the Independent Valuers and the Fairness Opinion obtained from SPA Capital Advisors Limited, the Board fixed a consideration of Rs.163.25 per equity share for the identified shareholders along with dividend distribution tax of Rs.33.55 per share payable by the Respondent No.1 on account of this reduction, the total value offered amounted to Rs.196.80 per equity share consistent with the valuation determined in the Valuation Report and confirmed by the Fairness Opinion.

69. The Respondent No.1 submitted that following the Board Meeting held on 19th June, 2018, a Notice of Postal Ballot and Electronic Voting, along with an Explanatory Statement, was sent to all shareholders in compliance with the provisions of the Companies Act, 2013. Subsequently, by way of a special resolution dated 26th July, 2018, passed through postal ballot and electronic voting, the shareholders approved the proposed capital reduction under Section 66(1) of the Companies Act, 2013. The Respondent No. 1 submitted that the Special Resolution was passed with an overwhelming majority of 99.90% of the total shareholders voting in favour.

70. The Respondent No.1 submitted that following the Board's approval and shareholder resolution, the Respondent No. 1 it filed a petition with the Tribunal

on 2nd August, 2018, seeking approval for the proposed capital reduction. The Respondent No. 1 also placed on record the consents and no-objections from all creditors, ensuring compliance with legal requirements. The Regional Director/ Respondent No. 3 herein, subsequently filed a no-objection report dated 23rd January, 2019, confirming that the Respondent No. 1 had adhered to due process under the law. The Respondent No. 1 submitted that after considering detailed submissions and objections raised by intervenors, including the present Appellants, the Tribunal approved the capital reduction and confirmed it through its impugned order dated 27th September, 2019.

71. The Respondent No. 1 denied that public shareholders did not seek an exit opportunity, arguing that the Appellants is misleading this Appellate Tribunal by misinterpreting the Respondent's Annual Returns. The Respondent No. 1 further clarified that BTL was delisted, and thus, there was no market platform for trading, which explains the lack of significant volume trades. Regarding off-market transactions, the Respondent No. 1 acknowledged such occurrences but submitted that these were not conducted at fair prices and were private dealings between shareholders. The Respondent No. 1 pointed out that these off-market trades involved public shareholders selling shares to the promoter company, with the intention of providing an exit opportunity to minority shareholders. This contradicts the Appellants' claim that minority shareholders were not seeking an exit.

72. The Respondent No.1 submitted that they prepared the capital reduction scheme with utmost fairness including its implementation and the valuation of equity shares offered to minority shareholders. The Respondent No.1 clarified that the capital reduction was proposed not only to provide an exit opportunity to identified shareholders but also to reduce administrative and compliance costs associated with servicing a small percentage of shareholding dispersed across India and overseas. As an investment company without active operations, maintaining such shareholding entails costs, including registrar and transfer agent (RTA) services, statutory notices, and reports. The capital reduction was thus aimed at achieving operational efficiency while ensuring fairness to shareholders.

73. The Respondent No.1 submitted that it fulfilled all legal obligations by allowing inspection of the Valuation Report at its corporate office for shareholders who requested it, as explicitly stated in the Notice of Postal Ballot/Electronic Voting and Explanatory Statement dated 19th June, 2018.

74. The Respondent No. 1 elaborated that this notice clearly mentioned that documents such as the Valuation Report, Fairness Opinion, and other related materials were available for inspection at BTL's registered and corporate offices during specified hours. The Respondent No. 1 submitted that there was no obligation to provide physical or electronic copies of these documents to the Appellants, and the Appellants had access to inspect them, as evidenced by their submissions referencing the Valuation Report in their intervention application.

75. The Respondent No.1 denied the arguments of the Appellants that the capital reduction is not in favour of or beneficial to the identified shareholders. The Respondent No. 1 emphasised that on the contrary, numerous identified shareholders had repeatedly requested an exit route following the delisting of the Respondent's shares, which rendered them unmarketable on any stock exchange in India. In compliance with legal requirements, the Respondent No. 1 sent a Notice of Postal Ballot/Electronic Voting along with an explanatory statement dated June 19, 2018, to all shareholders. The resolution for capital reduction was approved with overwhelming support, as 99.90% of the shareholders who voted were in favor, including approximately 76.35% of the identified shareholders. The Respondent No. 1 submitted that after going through entire process, the Tribunal rightly relied on the precedent set in *Reckitt Benckiser India Ltd [(2005) SCC OnLine Del]*. and observed that decisions regarding share capital reduction are matters of domestic concern, where the majority decision prevails.

76. The Respondent No.1 asserted that all shareholders, including the identified shareholders, were duly informed about the special resolution through the Notice of Postal Ballot/Electronic Voting and the explanatory statement dated 19th June, 2018. A full opportunity was provided to all shareholders to vote or raise concerns, with a one-month window for clarifications. The process complied with Section 66 of the Companies Act, 2013, which permits share capital reduction through a special resolution, provided the conditions under Section

114(2) of the Companies Act, 2013 which was complied in the present case by the Respondent No. 1.

77. The Respondent No.1 further emphasized that it voluntarily committed to proceeding with the capital reduction only if a majority of the identified shareholders consented, despite no legal mandate to do so. The resolution was passed with overwhelming support: 99.90% of voting shareholders approved it, including approximately 76.35% of identified shareholders, and therefore there was no basis for claims that the process was contrary to law or public interest. The Respondent No. 1 castigated that the Appellants' reliance on selective portions of the Scrutinizer's Report which is misleading and intended to misrepresent facts before this Appellate Tribunal. The Respondent No. 1 stated that both the Regional Director and the Tribunal have confirmed that the Respondent No. 1 followed due process under law, ensuring transparency and fairness in implementing the capital reduction scheme.

78. The Respondent No.1 refuted the Appellant's claims that the Respondent No.1 acted in a manner prejudicial or oppressive to minority shareholders. The Respondent No.1 asserted that the Independent Valuers employed internationally recognized methodologies to determine the valuation of its shares and provided a comprehensive report. This valuation was further supported by a Fairness Opinion issued by SPA Capital Advisors Limited, a reputed SEBI-registered Category I Merchant Banker. The Tribunal reviewed the Valuation Report dated

June 19, 2018, and found it to be reasonable and consistent with applicable case law and also correctly observed that the Independent Valuers, as experts, have the jurisdiction to decide on the time frame for valuation and concluded that there was no patent unfairness in their report.

79. The Respondent No.1 submitted that BTL allotted 85.45 million shares (1.73%) to SingTel through a preferential allotment based on the prevailing market price of Bharti Airtel Limited, which was trading at approximately ₹500 per share at the time, translating to a valuation of ₹310 per share for the Respondent No. 1's shares. The Respondent No. 1 stated that the proceeds from this allotment were utilized for deleveraging the Respondent No. 1's balance sheet, thereby benefiting all shareholders, including minority shareholders, by emphasising equity valuation. However, since the preferential allotment, telecom stocks have declined by approximately 30% due to ongoing tariff wars and industry challenges, making any comparison between the preferential allotment price and the present capital reduction price misleading.

80. The Respondent No.1 submitted that the offered price to the identified shareholders was Rs.196.80 per equity share, not Rs.163.25 as alleged by the Appellants. This includes Rs.163.25 as the base price and an additional amount accounting for dividend distribution tax.

81. The Respondent No. 1 denied that the Valuation Report failed to account for a control premium or that the Respondent orchestrated the capital reduction to

gain 100% control over the company. It is the case of the Respondent No. 1 that the question of a control premium does not arise as there is no change in control of the Respondent No.1 pursuant to the capital reduction and they, in any case, already had absolute majority in the shareholding.

82. The Respondent No. 1 further denied that the 25% DLOM was arbitrarily applied and submitted that the DLOM adjustment was determined by the Independent Valuers as necessary to reflect the lack of marketability of shares post-delisting. The Respondent No. 1 elaborated that the Independent Valuers considered various factors, including the absence of liquidity, non-payment of dividends post-delisting, and prospects for liquidity events for identified shareholders. It is the case of the Respondent No. 1 that to calculate DLOM, the Independent Valuers assessed multiple option pricing models and empirical studies, which were substantiated in detail in their Valuation Report dated 19th June, 2018. The Fairness Opinion provided by SPA Capital Advisors Limited, a Category I Merchant Banker, supported the Independent Valuers' conclusions. The Respondent No. 1 stated that the Tribunal had analysed relevant case laws and correctly held that a valuer's rationale cannot be disregarded merely because an objector holds a different view. The Tribunal also observed that courts are not required to interfere simply because another valuation method might yield a different figure.

83. The Respondent No.1 submitted that the valuation methodology adopted by the Independent Valuers fully complied with applicable regulations and was not at all prejudicial to shareholders. The Adjusted Net Asset Method referred to by the Appellants under the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("FEMA 20R") and the Master Directions on Foreign Investment in India applies only to transactions involving (i) a person resident in India and (ii) a person resident outside India or a company not owned or controlled by resident Indian citizens. The Respondent No.1 submitted that in present case, as the acquirer is owned and controlled by resident Indian citizens, these pricing guidelines do not apply.

84. The Respondent No. 1 denied that the selective capital reduction was unfair, unjustified, coercive, discriminatory, or illegal. The Respondent No. 1 stated that Section 66(1) of the Companies Act, 2013, explicitly permits companies to reduce their share capital in any manner, provided it is approved by a special resolution and complies with statutory requirements. The Respondent No. 1 submitted that Article 82C of the Respondent No. 1 Articles of Association also allows for such reduction through a special resolution. The Respondent No. 1 stated that the Articles of Association form a contractual agreement between BTL and its members, as well as among the members themselves. Therefore, the Appellants, having agreed to these terms, cannot now claim discrimination arising from their enforcement. The Respondent No. 1 submitted that judicial precedents

have consistently upheld the legitimacy of selective capital reduction when conducted in compliance with legal requirements and Courts have emphasized that such reductions are permissible if they are fair, equitable, and not malafide. The Respondent No. 1 cited the judgement *Sandvik Asia Ltd v. Bharat Kumar Padamsi*, where it was held that selective reduction is valid if non-promoter shareholders are paid fair value for their shares and an overwhelming majority approves the resolution.

85. The Respondent No.1 further denied that it avoided holding a physical meeting to suppress shareholder views. The Respondent No. 1 clarified that Section 110(1) of the Companies Act, 2013, read with Rule 22(16) of the Companies (Management & Administration) Rules, 2014, allows companies to transact business via postal ballot or electronic voting. This process ensures higher shareholder participation by providing a 30-day voting window and enabling shareholders who cannot attend physical meetings to cast their votes. The Respondent No. 1 submitted that the resolution was passed with an overwhelming majority of 99.90% of voting shareholders in favour and the Tribunal also accepted that postal ballots and e-voting are democratic processes that protect shareholder interests while addressing logistical challenges associated with physical meetings. The Respondent No. 1 has adhered to strict corporate governance norms throughout this process.

86. The Respondent No. 1 denied the that it has not complied with the provisions of Section 66 and Section 102 of the Companies Act, 2013. The Respondent No. 1 pleaded that it is incorrect to assert that Section 66 of the Companies Act, 2013 mandates uniform and non-discriminatory capital reduction or that selective capital reduction is unfair, unjustified, coercive, discriminatory, or illegal as Section 66 of the Companies Act, 2013 explicitly permits a company to reduce its share capital "in any manner whatsoever," subject to approval by a special resolution and confirmation by the Tribunal. The Respondent No. 1 submitted that the Tribunal has rightly allowed selective capital reduction in this case, relying on judicial precedents that establish its permissibility when conducted fairly and equitably. The Respondent No. 1 reiterated that many identified shareholders had repeatedly approached the Respondent No. 1 requesting an exit after the delisting of its shares from stock exchanges, which rendered the equity shares unmarketable. The overwhelming majority of 99.90% approval of the special resolution by shareholders, including 76.35% of identified shareholders, further demonstrates their desire for an exit. The Respondent No. 1 submitted that the Appellants' objections to the valuation methodology lack merit as the Independent Valuers used internationally recognized methods to calculate the valuation of shares and provided a detailed report supported by a Fairness Opinion from SPA Capital Advisors Limited, a reputed Category I Merchant Banker. The Tribunal reviewed the Valuation Report dated 19th June, 2018, and

found it reasonable and consistent with applicable case laws. The Respondent No. 1 also denied that past offers or recent transactions should be relied upon to determine the offer price under the scheme. The Respondent No. 1 took pain to explain that each transaction has its unique context and pricing considerations and the current scheme of capital reduction is distinct from a buy-back under Section 68 of the Companies Act, 2013 and has been undertaken in compliance with Section 66 of the Companies Act, 2013.

87. The Respondent No. 1 denied that the Tribunal failed to give due weight to the fact that the existing minority shareholders did not desire an exit route. On the contrary, numerous identified shareholders had repeatedly approached the Respondent No. 1 seeking an exit after the delisting of its shares from stock exchanges, which rendered them unmarketable. The Respondent No. 1 stated that the Tribunal correctly noted that delisting had effectively eliminated any market platform for trading these shares, making it impossible for shareholders to sell their shares at mutually negotiated prices.

88. The Respondent No. 1 also denied that the Tribunal failed to appreciate the fair value declared by Respondent No. 1 to SingTel during the preferential allotment. The Respondent No. 1 explained that the preferential allotment to SingTel was conducted based on the prevailing market conditions at that time, with the shares valued at ₹310 per share, reflecting the market price of BAL. The Respondent No. 1 further denied that the Tribunal failed to consider the statement

in the Valuation Report regarding the financial position of BTL between 31st March, 2018, and 31st May, 2018. The valuation for the capital reduction and the preferential allotment to SingTel are two independent transactions undertaken at different times and under different market conditions. The Respondent No. 1 clarified that the pricing for the capital reduction cannot be compared to the preferential allotment due to significant changes in market conditions, including a decline in telecom stocks post-allotment.

89. The Respondent No. 1 submitted that the allegations regarding non-disclosure or insufficient disclosure of the Valuation Report are baseless and incorrect. The Respondent No. 1 denied that he failed to share the Valuation Report with the Appellants or did not comply with Section 120 of the Companies Act, 2013, read with the Companies (Management and Administration) Rules, 2014. The Respondent No. 1 stated that the Respondent No. 1 fully complied with its legal obligations and allowed inspection of the Valuation Report to all shareholders who sought access to it at its office.

90. The Respondent No. 1 contended that the Tribunal correctly allowed postal ballot and e-voting for shareholder meetings. The Respondent No. 1 argued that these methods enhance voter participation by making it easier for shareholders to cast their votes without having to physically attend meetings, which can be burdensome. This process is seen as protecting shareholder interests and democracy.

91. The Respondent No. 1 submitted that the Tribunal thoroughly examined DLOM and considered various factors, including the lack of liquidity post-delisting and prospects for minority shareholders, before accepting the 25% DLOM in the valuation report. The Respondent No. 1 emphasized that the Tribunal's decision was well-reasoned.

92. The Respondent No. 1 denied that the valuation report was not independent. The respondent argued that the Tribunal found no evidence of a relationship between the internal auditors (Ernst & Young) and the independent valuers that would compromise the report's independence and the Tribunal also concluded that the valuation was reasonable and did not necessitate another report.

93. The Respondent No. 1 contended that the Respondent No. 1 was not obligated to allow objectors to retain their shares as the overwhelming majority of Identified Shareholders approved the scheme, and no objector had the right to amend the scheme approved by the majority.

94. The Respondent No. 1 submitted that the Tribunal correctly distinguished the judgments cited by the Appellants, noting that they were not applicable to the facts of this case and the Tribunal after a detailed analysis, allowed Respondent No. 1's Petition for capital reduction.

95. The Respondent No. 1 denied that the notice given to the shareholders implied that the votes of the Identified Shareholders would have no meaning. The

Identified Shareholders were aware of the voting on the special resolution by Notice of Postal Ballot/ Electronic Voting along with the explanatory statement dated 19th June, 2018 which was sent to all shareholders. The Respondent No. 1 submitted that full opportunity was granted to all the shareholders to vote by way of postal ballot or electronic voting and a window of 1 month was provided to all the shareholders to raise any concern or seek any clarification. It is provided in Section 66 of the Act that a company may reduce its share capital, in any manner, by way of a special resolution. Such special resolution can be passed only when as the conditions stated in Sub-section (2) of Section 114 of the Act are satisfied, which were fully satisfied. Therefore, there is no basis whatsoever to state that the remaining 85% of the Identified Shareholders would have exercised the right to vote on account of the same. The Respondent No. 1 stated that the said statement is made on basis of presumptions & conjectures.

96. Concluding his arguments the Respondent No. 1 submitted that all grounds raised by the Appellants are baseless and without merit and the Tribunal has duly considered all facts, legal provisions, and case laws before passing a reasoned order in favor of the capital reduction scheme. The Respondent No. 1 requested this Appellate Tribunal to dismiss all appeals with exemplary cost.

Findings

97. We note that 4942 public shareholders have been referred to as “identified shareholders” i.e., those shareholders who had chosen not to exit at the time of

delisting or those, who have become shareholders through private dealings/ off market dealings amongst public shareholders. Further, the number of shares as well as holding on the date of filing the petition for capital reduction has also been brought to our notice which reads as under :-

Shareholders	Number of Shares	Percentage
Bharti Group	1,305,663,496	50.01
SingTel Group	1,276,652,840	48.90
Identified Shareholders	28,457,840	1.09
Total	2,610,774,176	100.00

98. During pleadings, it has been brought to our notice that the valuation of Respondent No. 1/ BTL has been done by E&Y Merchant Banking Division which was done based on facts which have been captured in the following table. The Table reads as under :-

Sl No	Value		
i	Implied share price for Bharti Airtel	368	Rs
ii	Total shares held in Bharti Airtel	200.27	cr
iii	Implied value of holdings of Bharti Airtel	73,747	in Rs cr
iv	Net debt of Bharti Telecom	5,251	in Rs cr
v	Equity Value of Bharti Telecom	68,497	in Rs cr
vi	Discount due to lack of mobility (DLOM)	25%	%
vii	Total shares of Bharti Telecom	261.07	cr
viii	Effective price per share	196.8	Rs
ix	DDT (Dividend distribution tax)	33.55	Rs
x	Offer price to minority shareholders /share)	163.25	Rs /share

99. The Appellants have challenged the Impugned Order on several grounds based on which, we find that the various issues raised are required to be examined and determined in the present appeals.

100. **Issue No. I (a)** Whether reduction of capital by the Respondent No. 1/ BTL was in accordance with Section 66 of Companies Act, 2013.

(b) Whether selective capital reduction was permissible in terms of Section 66(1)(b)(ii) of the Companies Act, 2013.

(c) Whether the Appellants minority shareholders could have been compelled to be ousted from the equity holding by passing resolution by majority of shareholders despite unwillingness of the minority shareholders.

Issue No. (II) (a) Whether valuation of the shares carried out by E&Y @ Rs. 196.80 was correct and in accordance with law along with established valuation practices done keeping in view the valuation of the same company done @ Rs. 310 few months back while allotting preferential shares to SingTel.

(b) Whether the valuation done by E&Y Merchant banking division was really “Independent” or was biased.

(c) Whether SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations, 2009”) were applicable in the present case.

Issue No. (III) (a) Whether 25% Discount for Liquidity of Marketability (DLOM) was permitted and justifiable in determining the valuation for the purpose of offering the minority shareholders.

(b) Whether the minority shareholder who supported the Respondent company right from inception were entitled to receive “Control Premium” instead of “DLOM”

Issue No. (IV) (a) Whether the Respondent company failed to disclose and attach the required documents in the explanatory statement, enclosed along with the notice for acquisition of shares from minority shareholders was issued.

(b) Whether the Respondent company BTL violated Section 102 of the Companies Act, 2013 making the resolution passed for the approval of the scheme of reduction of share capital void and illegal.

Issue No. (V) Miscellaneous Issues.

101. Issue No. I (a) Whether reduction of capital by the Respondent No. 1/ BTL was in accordance with Section 66 of Companies Act, 2013.

(b) Whether selective capital reduction was permissible in terms of Section 66(1)(b)(ii) of the Code.

(c) Whether the Appellants minority shareholders could have been compelled to be ousted from the equity holding by passing resolution by majority of shareholders despite unwillingness of the minority shareholders.

(i) The Appellants contended in their appeals that the Respondent No. 1 has violated Sections 66 and 102 of the Companies Act, 2013. They argued that Section 66 mandates a uniform and non-discriminatory approach to capital reduction, asserting that selective reduction is unfair, coercive, discriminatory, and illegal. Conversely, the Respondent No. 1 claims that Section 66 explicitly permits share capital reduction "in any manner," thereby allowing selective capital reduction within the legal framework.

(ii) It may be noted that, in the first instance, the shareholders of Respondent No. 1 ratified the capital reduction by passing a Special Resolution through a postal ballot and electronic voting, with a majority of 99.90% of total shareholders in value voting in favour of selective capital reduction. Additionally, 76.35% of the Identified Shareholders present and voting approved the Special Resolution for selective capital reduction, thereby complying with Section 66(1) of the Companies Act, 2013. It is observed that Respondent No. 1 had not accepted any deposits and was not in arrears of repayment of principal or interest. Consequently, the proviso to Section 66(1) does not apply. Section 66(1) states that: -

*“66 (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, **reduce the share capital in any manner** and in particular, may—(a) extinguish or reduce the liability*

on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares, —

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

*(ii) **pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:***

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.”

(Emphasis Supplied)

(iii) Further, the Tribunal issued notices to the Central Government, the Registrar, and all creditors of the company. Since Respondent No. 1 was an unlisted company, notice to the Securities and Exchange Board of India (SEBI) was not required, thereby fulfilling the requirements of Section 66(2). Furthermore, No-objection certificates from 100% of the creditors were placed on record and acknowledged in the Tribunal’s order dated 01.02.2019. The Regional Director report dated 23.01.2019, confirmed that Respondent No. 1 adhered to the due process of law. Based on these NoCs, the Tribunal approved the capital reduction sought by Respondent No. 1,

thereby satisfying the proviso to Section 66(2) and Section 66(3). The said sub-section mentioned above states that: -

“(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless 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 this Act and a certificate to that effect by the company’s auditor has been filed with the Tribunal.”

(iv) It is also noted that although there was no specific direction from the Tribunal on publishing the order, Respondent No. 1 published a newspaper advertisement on 30.09.2019, stating that the Tribunal had approved the capital reduction scheme and notified the record date. This action fulfilled the requirements of Section 66(4) which is stated below: -

“(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.”

(v) Also, the Respondent No. 1 filed a certified copy of the order with the Registrar, who issued a certificate to that effect. This satisfies the requirements of Section 66(5) as mentioned below: -

“(5) The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing-

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(6) Nothing in this section shall apply to buy-back of its own securities by a company under 68 Section.”

(Emphasis Supplied)

(vi) It is observed that the necessity to reduce share capital can arise for various reasons, such as significant losses or a decline in the value of assets etc. These circumstances may lead to a situation where the initial capital is either lost or the company finds itself with excess resources that cannot be utilized effectively. Consequently, it becomes essential to realign the balance between the company's capital and its assets.

(vii) In ***Punjab Distilling Industries Ltd. v. CIT***, [(1965) 57 ITR 1], the Hon'ble Supreme Court of India outlined the process of capital reduction i.e. the company's general body must pass a resolution approving the reduction of capital, often involving the distribution of accumulated profits to shareholders. An application for court (now NCLT) approval must be submitted. Once the court (now NCLT) confirms the reduction, it must be registered with the Registrar of Companies. Notices are issued to shareholders inviting applications for refunds of share capital and finally, upon receiving these applications, the company distributes the refunded amount.

(viii) It is to be understood that in instances where proper notice has been given to members and creditors and no objections are raised, resolutions for capital reduction will be valid. This interpretation is supported by a judgement in the case of ***Shakuambari Sugar & Allied Industrial Ltd., Re*** (2010) 97 SCL 138 (All).

(ix) In this connection, we would like to refer to the judgement delivered by Hon'ble High Court of Delhi in the case of ***Reckitt Benckister (India) Ltd. [(2005) SCC OnLine Del 674]***. Para 21 of the said judgement is self-explanatory which reads as under: -

“21. The principles, which can be distilled from the aforesaid judicial dicta, are summarised as under:

- (i) *The question of reduction of share capital is treated as matter of domestic concern, i.e. it is the **decision of the majority which prevails.***
- (ii) *If majority by special resolution decides to reduce share capital of the company, it has also right to decide as to how this reduction should be carried into effect.*
- (iii) *While reducing the share capital company can decide to extinguish some of its shares without dealing in the same manner as with all other shares of the same class. Consequently, it is purely a domestic matter and is to be decided as to whether each member shall have his share proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally, receiving a just equivalent.*
- (iv) *The company limited by shares is permitted to reduce its share capital in any manner, meaning thereby a selective reduction is permissible within the framework of law (see Re. Denver Hotel Co., 1893 (1) Chancery Division 495).*

(v) When the matter comes to the Court, before confirming the proposed reduction the Court has to be satisfied that (i) there is no unfair or inequitable transaction and (ii) all the creditors entitled to object to the reduction have either consented or been paid or secured.”

(Emphasis Supplied)

(x) Above judgement categorically establish rules of majority as required by Companies Act, 2013. It has also been held that the company can do selective capital reduction in any manner and it is a domestic decision of the company and in parlance of Insolvency and Bankruptcy laws, it is commercial wisdom of the Committee of Creditors (**‘CoC’**) which is akin to majority of shareholders in the case of company like present case, leaving with very limited scope or judicial scrutiny or judicial intervention. We hold that just like CoC in Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016, the Shareholder of the company are true owners and understand what is in interest of the company as well as owners (shareholders) and therefore shareholders have exclusive jurisdiction to decide on the issue of capital reduction in any manner including selective capital reduction and if so, in what manner. There are no conditions attached to the terms “in any manner” as stipulated under Section 66 of the Companies Act, 2013.

(xi) Now, we look into yet another case law in the case of **R.S. Livemedia. Pvt. Ltd. Co.** [(2014) SCC OnLine Del 1346] delivered by the Hon'ble High Court of Delhi and the relevant portion reads as under:-

“37. In view of the above discussion, the questions viz,:
*Whether it is permissible for a company to reduce its share capital in a disproportionate manner and whether it is permissible that consideration payable to different shareholders on account of reduction of share capital is calculated at different rates, must be answered in the affirmative. **The mode, manner and incidence of reduction has been regarded as a matter of domestic concern and there is no restriction under the Act which curtails the discretion of a company in adopting the manner in which the company chooses to reduce its capital.**”*

(Emphasis Supplied)

(xii) Yet another case i.e. **Chandra Bhan Gandhi vs. Reckitt Benckiser (India) Pvt. Ltd.** [(2012) 129 DRJ 93 (DB)] amplifies the freedom of shareholder to decide capital reduction as required. The relevant portion reads as under: -

“The division bench approved the decision of the Single Judge who held as follows:

6. The Learned Company Judge in the impugned judgment has observed/found/held: —

- (i) that Section 100 of the Act expressly permits a Company if so authorized by its Articles of Association, to reduce its share capital by following the procedure prescribed therein;
- (ii) Clauses (a), (b) and (c) of Section 100(1) of the Act are mere illustrations and not the only manner in which share capital of a company can be reduced; the power of reduction of capital else is general and extends to any possible method of reduction subject to compliance with the applicable provisions;
- (iii) that the judgments relied upon by the appellant were pertaining to a Scheme of Arrangement under Section 391 of the Act and had no applicability to reduction of share capital under Section 100 of the Act;
- (iv) that the Articles of Association of the respondent Company permitted such reduction; the respondent Company had only one class of shareholders and the equity shares of the respondent Company were delisted from the Bombay, Calcutta and National Stock Exchanges between the years 2003-05 in accordance with Regulation 21(3)(a) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- (v) Section 100 of the Act required passing of a Special Resolution by equity shareholders and does not require passing of a separate class resolution as provided for under Section 391 r/w Rule 61 in the case of a Scheme of Arrangement; that the procedure prescribed for sanction of a Scheme of Arrangement could not be applied to reduction of share capital; thus the resolution of the majority under

Section 100 was of the entire body of shareholders of the company and not minority public shareholders;

(vi) the fact that the minority shareholders are Indian and the majority promoter shareholders are foreigners is of no relevance as long as the mandate of law is complied with;

(vii) there was nothing in the Act requiring the reduction to be spread either equally or rateably over all the shareholders of the company. Reliance was placed on *Sandvik Asia Limited v. Bharat Kumar Padamsi*(2009) 92 SCL 272 where the Division Bench of the Bombay High Court had observed that once it was established that the non-promoter shareholders were being paid fair value of their share, the Court will not be justified in withholding its sanction to the resolution;

(viii) Reliance was placed on *Organon (India) Ltd., In Re*, (2010) 98 CLA 480 where the Bombay High Court had rejected the arguments of forcible acquisition of public shareholders in the context of a Scheme of Reduction;

(ix) that the valuation of shares is a technical matter requiring considerable skill and experience and the report of the valuation is not to be interfered with by the Court in the absence of any fraud or illegality even though there were bound to be differences of opinion amongst accountants as to the correct value;

(x) that the valuation report produced by the other objector (s) stood withdrawn on withdrawing their objections; no reliance could be placed thereon by the appellant;

.....

(xiii) that the objection to the validity of the form of representation was untenable as the principles of notarization as applicable to proxy form were not attracted;
(xiv) Section 77A was a facilitating provision enabling a company to buy-back its shares without approaching the Court and had no application to a proceeding under Section 100;

.....

(xvi) that the reduction in share capital was a commercial and business decision approved by 99.999% of the equity shareholders of the respondent Company and did not require any interference.”

(Emphasis Supplied)

(xiii) Another judgment passed by the Hon’ble Bombay High Court in the matter of ***In Re: Cadbury India Limited vs. ----*** [(2014) SCC OnLine Bom 4934] decided on 09.05.2014 which highlights the meaning of “prejudice”.

The relevant portion of the said judgment reads as under :-

"7.1.1. Section 100 requires three things: that (1) the Articles of Association of the company must permit such a reduction of share capital; (2) the scheme for reduction must be approved as a special resolution, i.e., at an extraordinary general meeting called for that purpose; and (3) the Court's sanction must be obtained to such a resolution, if passed by the requisite majority.

7.1.2. In considering the application for sanction, the Court must ensure that (1) the scheme is not against the public interest; (2) the scheme is fair and just, and not unreasonable; and (3) the scheme does not unfairly discriminate against or prejudice a class of shareholders.

7.1.3. **"Prejudice" here must mean something more than just receiving less than what a particular shareholder may desire.** It means a concerted attempt to force a class of shareholders to divest themselves of their holdings at a rate far below what is reasonable, fair and just. Prejudice in this context must connote a form of discrimination, a stratagem by which an entire class is forced to accept something that is inherently unjust.

7.1.4. One test of such reasonableness might be to consider the past open offers, extinguishments or buy-backs, and the rate at which these were effected. Where it is found, for instance, that the present offer is significantly higher than previous ones, **the burden on an objector is exponentially higher to show that even this enhanced rate, price or valuation is unfair or unreasonable.**

7.1.5. Before a Court can decline sanction to a scheme on account of a valuation, **an objector to the scheme must first show that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted. That unreasonableness must exist on the face of the valuation: one so apparent that "he who runs can read." To upset a valuation, a wrong approach must be demonstrated clearly and unequivocally, and the result must be plainly**

invidious. A plausible rationale provided by a valuer is not be readily discarded merely because an objector has a different point of view.

7.1.6. In considering an application for sanction will ask itself if, at a minimum, these tests are met: Is a fair and reasonable value

being offered to the minority shareholders? Have the majority of non-promoter shareholders voted in favour of the resolution? **Can it be said, on reading a valuation as any fair-minded and reasonable person would do, and without microscopic scrutiny, that the valuation is so egregiously wrong that the judicial conscience will not permit it? Has the valuer gone so far off-track that the results his valuation returns cannot but be wrong?**

7.1.7. A court called upon to sanction such a scheme is not bound by the ipse dixit of a majority. It must weigh the scheme and look at it from all angles. It must see whether the scheme is fair, just and reasonable, not unconscionable and is not contrary to any provisions of law and it does not violate any public policy. But it must also balance the commercial wisdom of the shareholders expressed at a properly convened meeting against the desires and fancies of the few. The court will take into account, but not be bound by, the views of the majority. In particular, the court will see what the views are of most of the non-promoter (minority) shareholders at the meeting. **If the bulk of them have voted in favour, the court will not lightly disregard this expression of an informed**

view, one that lies in the domain of corporate strategy and commercial wisdom.

7.1.8. The unfairness must apply to a class, even if that class is of one. This class is not to be identified not by a shared ire against the petitioning company or even an ideological animosity, but by the character or nature of their holding, **and by the way that class is sought to be singled out for differential, unfair treatment.**

7.1.9. **The sanctioning court has no power or jurisdiction to exercise any appellate functions over the scheme.** It is not a valuer. It does not have the necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate. **The Court is not "a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel; the effort is not to emphasize the loopholes, technical mistakes and accounting errors".**

7.1.10. Valuation is not an exact science. Far from it. It is always and only an estimation, a best-judgment assessment. The fact that a particular estimation might not catch an objector's fancy is no ground to discredit it. All valuations proceed on assumptions. To dislodge a valuation, it must be shown that those assumptions are such as could never have been made, and that they are so patently erroneous that the end result itself could not but be wrong, unfair and unreasonable. **The court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden**

that is no part of its remit or expertise, and no part of a statutory obligation. In particular, the court must guard against the seductiveness of a proposition that suffers from the fallacy of the undistributed middle: all x is z; some y is z; ergo, all y is z.⁶ The errors and consequent unreasonableness must be shown to be patent and self-evident.

7.1.11. It is impossible to say which of several available valuation models are "best" or most appropriate. In a given case, the CCM method may be more accurate; in another, the DCF model. There are yet others. **No valuation is to be disregarded merely because it has used one or the other of various methods. It must be shown that the chosen method of valuation is such as has resulted in an artificially depressed or contrived valuation well below what a fair-minded person may consider reasonable**

(xiv) There is yet another judgment passed by the Hon'ble Supreme Court of India which refers to the technical and complex problems of the valuation of shares in the matter of ***Miheer H. Mafatlal vs. Mafatlal Industries Ltd.*** [(1997) 1 SCC 579]. The relevant portion of the said judgment reads as under :-

“40. It was submitted that the exchange ratio of equity shareholders so far as the transferee-company is concerned works very unfairly and unreasonably to them. As per the proposed Scheme 5 equity shares of transferor-company are to be exchanged for 2 equity shares of transferee-company. So far as this contention is concerned it has to be kept in view-

that before formulating the proposed Scheme of Compromise and Amalgamation an expert opinion was obtained by the respondent-company as well as the transferor-company, namely, MFL on whose Board of Directors appellant himself was a members. M/S. C.C. Chokshi & Co., a reputed firm of Chartered Accountants, having considered all the relevant aspects suggested the aforesaid exchange ratio keeping in view the valuation of shares of respective companies. **It must at once be stated that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the filed of accountancy.....It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme.**

We may also refer to a decision of the Gujarat High Court in Kamala Sugar Mills Limited (1984) 55 Comp Cas 308 (Mad) dealing with an identical objection about the exchange ratio adopted in the Scheme of Compromise and Arrangement. The Court observed as under :

"Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor-company has been worked out by a recognized firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two

companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be detrimental to their interest."

pr 28(7), 28(8), pr 34 and pr 37 of this judgment were relied upon by the intervenors."

(xv) Another case clarifying the right of majority shareholders and valuation being technical in nature has been highlighted in the matter of ***In Re: Organon (India) Limited*** [(2010) 157 Comp Cas 287]. The relevant portion of the said judgment reads as under :-

34. In the case of ***Re Tata Oil Mills Co. Ltd.*** [(1994) 81 Comp Cases 754 (Bom)], this Court observed thus:

*"...the exchange ratio arrived at by Mr. Malegam has received the approval of shareholders holding more than 99 percent (in number and value) shares at the meetings. **No one except the shareholders holding the minimum percentage of shares has complained before me. The valuation has been confirmed by two eminent firms of auditors. It would be extremely difficult to hold that the same is unfair. In any case, it has been approved by an overwhelming majority of persons affected and there is no basis to doubt their judgment.**"*

35. In the landmark case of ***Gold Coast Selection Trust Ltd. v. Humphey*** (30 TC 209) it was posited as follows:

"Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible"

36. Mr. Tulzapurkar has also relied on an unreported decision of the Learned Single Judge of this Court (Coram: A.M. Khanwilkar, J.) in the case of **Reliance Industries Ltd. [Company Application No. 288 of 2009]**, dated 29.6.09. The learned Single Judge in the said decision has dealt with the criticism of the objectors that the contents of the valuation report does not give any forecast or disclose any logic but only conclusion and the opinion of the Valuers/Experts is based on the information provided by the Company, in the following terms:

“In so far as the criticism with regard to the contents of the valuation report either on the ground that it does not give any forecast or disclose any logic but only conclusion. Even this argument does not commend to me. As aforesaid, on reading the reports clause by clause and as a whole, no fault can be found with the ultimate opinion reached by the experts regarding share swap ratio, which is founded on tangible material and basis. I am not at all impressed by the argument of the objectors that the report is manifestation of conflicting opinion in any manner. The fact that the language of the report would give an impression that the Expert does not take the responsibility of the accuracy of the figures furnished to them by the Company or that they have not made any independent valuation of the assets and liability of the companies on their own, does not mean that the relevant factors for determination of swap ratio have not been considered by the experts. Obviously, the opinion of the Experts is based on the information provided by the

Company. There is nothing to show that the figures available in the Books of Accounts provided to the Experts were incorrect or otherwise. Thus, there is nothing in the said Reports to indicate that the consideration weighed with the Experts in arriving at the opinion is impermissible or unacceptable. It is not possible to countenance the grievance of the objectors that the reports deprive the Court from basic information regarding justification of share swap ratio.”

In the said decision, the learned Single Judge noted that-
“Even in the present case, no one has doubted the integrity and honesty of the valuers, who have given their share valuation report or fairness report, as the case may be. Nor the objectors have been able to point out that the method adopted by the valuers was impermissible or absurd. If so, I find no reason to discard the valuation of shares or the swap ratio determined by the Experts” (para 14)

37. In the present case, the petitioner company does not have any secured creditors as set out herein above. Not a single unsecured creditor has raised objection qua the reduction in capital proposed by the Petitioner Company. The hearing of the petition was advertised by the Petitioner Company as directed by this Court in two local newspapers and in the Maharashtra Gazette. However, except for Mr. Lakhani, none of the public shareholders have come forward to oppose the petition. I find that the valuation of the shares by the Petitioner Company is therefore also accepted by all the shareholders and creditors with the single

exception of Mr. Lakhani. Mr. Lakhani himself has also not attributed any motives to Grant Thornton nor commented on its independent professional status or competency. In fact the Petitioner Company has taken the pains of getting a response of Grant Thornton to every objection raised by Mr. Lakhani pertaining to the valuation carried out by Grant Thornton. The report of Grant Thornton sets out the basis for arriving at the final opinion. The report clearly mentions that valuation is done by giving predominant weightage to the value computed under the Market Multiple Method and Discounted Cash Flow Method, with a lower weight being given to the value computed under the NAV method.

38. In view thereof, **keeping in view the observations of the Hon'ble Apex Court as well as this Court, I see no reason why the Valuation Report of Grant Thornton, which I find to be fair, reasonable and based on cogent reasoning and which has also been accepted by all the non-promoter shareholders of the Petitioner Company,** with the lone exception of Mr. Lakhani, should not be accepted by this Court M/s Grant Thornton had in its report stated that it is common to apply a discount for lack of marketability in the range of 25% to derive the Fair Value of equity of an unlisted company. The Hon'ble Bombay High Court, considered the same and approved the fair value arrived at by the petitioner in the said case.”

(Emphasis Supplied)

(xvi) The Hon'ble Supreme of India had passed a judgment in the matter of ***Hindustan Lever Employees' Union vs. Hindustan Lever Ltd*** [(1995)]

Supp (1) SCC 499]. The relevant portion of the said judgment reads as under:-

“3. But what was lost sight of was that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction. It exercises a jurisdiction founded on fairness. It is not required to interfere only because the figure arrived at by the valuer was not as better as it would have been if another method would have been adopted. What is imperative is that such determination should not have been contrary to law and that it was not unfair to the shareholders of the company which was being merged. The Court's obligation is to be satisfied that valuation was in accordance with law and it was carried out by an independent body. The High Court appears to be correct in its approach that this test was satisfied as even though the chartered accountant who performed this function was a Director of TOMCO but he did so as a member of a renowned firm of chartered accountants. His determination was further got checked and approved by two other independent bodies at the instance of shareholders of TOMCO by the High Court and it has been found that the determination did not suffer from any infirmity. The company court, therefore, did not commit any error in refusing to interfere with it. May be as argued by the learned counsel for the petitioner that if some other method would have been adopted probably the determination of valuation could have

been a bit more in favour of the shareholders. But since admittedly more than 95% of the shareholders who are the best judges of their interest and are better conversant with market trend agreed to the valuation determined it could not be interfered by courts as,

“[c]ertainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.”
[Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, (1981) 1 SCC 568, 588-89, para 47 : (1981) 2 SCR 52. See Buckley on Companies Act, 14th Edn., pp. 473 & 474 and Palmer on Company Law, 23rd Edn., para 79.16].”

(Emphasis Supplied)

(xvii) We note that above judgement is quite relevant to present appeals where the Appellants feel that if some other valuation method would have been adopted it would have been better. The above judgement categorically rejects such arguments and caution courts to resist from interference in such matter.

(xviii) After going through various judgment of the Hon'ble Supreme Court of India and Hon'ble High Courts, we can draw the following principles about capital reduction :-

- The mode of capital reduction as mentioned in the Companies Act, 2013 are the only illustrative and not exhaustive.
- It is the prerogative of majority of shareholders of the company to decide about reduction of share capital in any manner as long as it complies with the laws of the land and company's own Article of Association.
- Companies Act, 2013 although requires passing of special resolution by equity shareholders but does not require passing of separate class of resolution as required in the scheme of arrangements.
- Companies Act, 2013 do not stipulate reduction to be spread either equally or ratables overall of the shareholders of the company.
- Valuation of shares is a technical matter requiring suitable skills and expertise and courts are not supposed to interfere, when such valuation report have been prepared by experts.
- The difference of opinion between the minority shareholder and the majority shareholders regarding valuation should not be over emphasised and it is the majority will which should prevail.
- Reduction of share capital is pure commercial and business decision of the equity shareholder and cannot be interfered by the Tribunal.

(xix) As regard, issue whether the Appellants being minority shareholders could have been compelled to be ousted from the equity holding of the Respondent No.1/ BTL by passing a special resolution by the majority shareholders despite their unwillingness, we find that in the Companies Act, 2013 and the relevant regulations, certain protections have been given to minority shareholders. But no vested rights have been conferred on the minority shareholders for their continuation as shareholders of the company. The minority shareholders prima-facie have got rights of protection from the oppression and mismanagement, i.e., if the company is being run in a way which is unfair or harmful to the corporate entity or to the shareholder. Similarly, the shareholders including minority shareholders have got right to inspect company record including MoA, AoA, financial statement etc. Minority shareholders have got right to be called for the general meeting and also right to cast their votes in proportionate to their voting shares. However, we must understand that in the corporate world, it is the corporate democracy i.e., will of the majority which need to prevail. Although protection to minority shareholder have been provided in few cases, minority shareholders are not given any Veto Right.

(xx) In the present case, we have seen that the Respondent No. 1/ BTL company has complied to complete process and to all Rules and Regulations, especially Section 66 of the Companies Act, 2013.

(xxi) In view of this, we hold that there is no vested right of minority shareholders to continue as shareholders in case of reduction of share capital and therefore, they can be ousted from shareholding if a special resolution is passed by the majority of the equity shareholder, which happened precisely in the present case where special resolution was passed by 99.92% of voting shares.

(xxii) We note that unless there is gross unfairness in determination of fair value for the shares, it is not open to the courts to withhold sanction for reduction of capital. We have already noted that the Respondent No. 1/ BTL passed the special resolution for reduction of share capital by paying off non promoter equity shareholders to provide them with an option to exit after receiving fair consideration for their shares, because otherwise de-listing of shares consequent upon public shareholding below 10% would deprive them of trading at the stock exchange. Therefore, when the valuation made by the valuers was fair and based on cogent reasoning, the proposed reduction had to be allowed. This is supported by the judgment in the case of **Organon (India) Ltd.** In Re, [(2010) 98 CLA 480 (Bom)].

(xxiii) The role of the court while approving the scheme of reduction of share capital is limited to the extent of ensuring that it is not unconscionable or illegal or unfair or unjust. Merely because some other method of valuation could be resorted to, which would possibly be more favourable that it cannot

mitigate against granting approval to the scheme propounded by the company alone. The court's obligation is to be satisfied that the valuation was in accordance with the law and it was carried out by an independent body. This is supported by the judgment in the case of **Warsila India Ltd., In Re [(2010) 160 Com Cases 508 (Bom)]**.

(xxiv) Valuation shares in the scheme of reduction of capital is an important aspect, but merely because the determination of the share exchange ratio or the valuation of shares is done by a different method which might result in a different conclusion would not justify interference of the court unless found to be unfair. The court does not have the expertise nor jurisdiction to delve into the deep commercial wisdom exercised by the creditors and members of the company who have approved the scheme by requisite majority. Thus, where the valuer has used widely accepted methodologies i.e. the discounted cash flow methodology and the comparable company's methodology which inter alia includes P/E multiple analysis for valuation of shares, there is no reason why the valuation report of the valuer should not be accepted. This is supported by the judgment in the case of **Wartsila India Ltd v Janak Mathuradas, [(2010) 99 CLA 463 (Bom)]**.

(xxv) We note that the provisions of SEBI (LODR) Regulations, 2015 are applicable to only listed companies. We also note that at the relevant time,

the Respondent No. 1 company BTL was an unlisted company as such the provisions of SEBI (LODR) Regulations 2015 were also not applicable.

(xxvi) Thus, we hold that reduction of capital by the Respondent No. 1/ BTL was in accordance with the Section 66 of the Companies Act, 2013. We also held that the selective capital reduction was permissible in terms of Section 66(1)(b)(ii) of the Companies Act, 2013. We further hold that Section 66 is applicable in case of any capital reduction, be it listed company or non listed company and therefore, the Respondent No. 1 was supposed to comply with Section 66 of the Companies Act, 2013.

(xxvii) In fine, we do not find any merit in the contentions of the Appellant on these issues and we do not find any error in the Impugned Order on this account.

102. Issue No. (II) (a) Whether valuation of the shares carried out by E&Y @ Rs. 196.80 was correct and in accordance with law along with established valuation practices done keeping in view the valuation of the same company done @ Rs. 310 few months back while allotting preferential shares to SingTel.

(b) Whether the valuation done by E&Y Merchant banking division was really “Independent” or was biased.

(c) Whether SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations, 2009”) were applicable in the present case.

- i.** We take into account the grievances of the Appellants that disparity between the Valuation Report and the valuation done by J. C. Bhalla for the Singtel preferential allotment was significant. In this connection, we note that, position, at the time of preferential allotment to SingTel was different as, the prevailing market price of BAL was higher. However, since the preferential allotment, the telecom stocks had declined by approximately 30% as was informed to us by the Respondent No. 1 during pleading based on market information.
- ii.** We also note from the submissions of the Respondent No. 1 in the case of preferential allotment, money was coming directly to the company and when the allottee SingTel was non-resident, shares could have been allotted below a floor price, in accordance with FEMA regulations. Thus, it seems appropriate considerations for a preferential allotment to SingTel where the Respondent No. 1/ BTL was raising resources for its specific needs, are very different and cannot be compared with considerations for providing exit to minority shareholders (the Appellants) with approx. 1% unlisted shares.
- iii.** The Appellants alleged that valuation report discounts almost Rs.11,500 Crore from the value of Respondent No. 1 in order to calculate the share price offered to Identified Shareholders. In this connection, we observe that the market capitalization of a listed company may tend to change with market movement and investors sentiment towards the company and cannot

be said to be fixed for the entire financial year. The Respondent No. 1 brought to our notice that, at the relevant time the market capitalization for BAL's shares held by Respondent No. 1 was Rs. 73,748.5 Crores as noted in the Valuation Report. We also need to bear in mind that the Valuation Report gave detailed formula and steps for arriving at Adjusted Net Asset Value of Respondent No. 1 by factoring in requisite deductions, such as, total current liabilities, zero coupon non-convertible debentures and bank debt from market value of Respondent No. 1 investment in BAL which comes to Rs. 68,498 Crores. Thus, it appears that alleged variation may be on account of the applicable deductions and variables, which have also been detailed out in the Valuation Report. As such, although the Appellant's arguments look attractive on the face of it, however the same is needed to be taken with a pinch of salt.

iv. We find that Share valuation under the Companies Act, 2013, involves the process of determining the value of shares, which is crucial in various corporate transactions. This process is governed by several provisions of the Act, particularly emphasizing the role of registered valuers. Valuation is essential in ensuring that shares are issued at a fair price, preventing undervaluation or overvaluation that could impact shareholder rights. We understand that valuation of shares involves determining the fair value of a company's shares, which is significant for both listed and unlisted

companies. This valuation can be used and becomes desirable in cases like selling a business, securing loans using shares as collateral, mergers and acquisitions, converting share types and compensating shareholders in case of capital reduction like the present case. The valuation methods may include absolute techniques like the Discounted Cash Flow and Dividend Discount Model, which focuses on a company's financial fundamentals, and relative methods like the Price-Earnings (P/E) ratio, which compare a company's valuation with its peers. In addition to these method, asset-based valuation assesses a company's net asset value, while market capitalization reflects the total value of outstanding shares based on market price. These methods help investors and companies to assess the intrinsic value of shares beyond market fluctuations.

v. It needs to be appreciated that, which valuation method is to be used will entirely depend in the context of need of valuation, and is best to leave the domain of valuation experts who will choose the most appropriate methodology for valuation of shares. We hold that there cannot be any straight line formula for the same.

vi. We have already noted the contentions of the Appellants that, share valuation as done by the E&Y Merchant Banking Division in the present case, was not appropriate and this Appellate Tribunal should reject the same. In this connection, we would like to refer to ratio laid down in the case of

Cadbury India Ltd. (Supra) which noted that before a court can decline sanction to a scheme on account of valuation, an objector to the scheme must first show that the valuation is ex-facie unreasonable i. e. so unreasonable that it cannot be accepted. It was also held that plausible rationale provided by a valuer is not be readily discarded merely because an objector has a different view. It was held that valuation is not an exact science and all valuations proceed on assumptions and to dislodge a valuation, it must be shown that those assumptions as such as could never have been made, and that they are so patently erroneous that the end result itself could not, but be wrong unfair and unreasonable.

We find the ratio laid down in case of ***Cadbury India Ltd. (Supra)*** is quite explicit and hardly leaves any scope for interference by this Appellate Tribunal on the issue of valuation.

- vii.** The said judgement noted that the jurisdiction of the court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test, and the court is not required to interfere only because the figure arrived at by the valuer was not as better as it would have been if another method would have been adopted. It was held that what is imperative is that such determination should not have been contrary to law and that it was not unfair to the shareholders of the company which was being, merged.

viii. We have also noted concerns of the Appellants that the Independent Valuer was an affiliate of E&Y LLP, the internal auditors of BAL subsidiary of the Respondent No.1/ BTL and therefore could not take up valuation of its Parent Co. i.e., the Respondent No. 1/ BTL under Section 247 of the Companies Act, 2013 and the Companies (Registered Valuers & Valuation) Rules 2017-

ix. On the other hand, we have noted pleadings of the Respondent No. 1 that there is no requirement for a company to procure a valuation report, let alone from a 'registered valuer' as per Section 66 of the Companies Act, 2013 or the National Company Law Tribunal (Procedure for reduction of share capital of company) Rules 2016, for reduction of its share capital. The same is also evident from Chapter 4 of the 'Handbook on Best Practices for Registered Valuers' issued by the ICAI Registered Valuers Organisation along with the Valuation Standards Board of ICAI, which discusses the requirement of valuation under various laws such as the Companies Act, 2013, the Insolvency & Bankruptcy Code 2016, the Income Tax Act 1961 etc., but significantly ICAI guidelines do not refer to Section 66 of the Companies Act, 2013 as required to have a registered valuer provide a valuation report. Therefore, Section 247 Companies Act, 2013 is inapplicable for the purposes of Section 66 of the Companies Act, 2013.

- x. The case relied by the Appellants i.e. ***Cushman & Wakefield v. Union of India*** [(2019) SCC Online Del 6863] to argue principles governing a registered valuer, is not inapplicable to the present case due to different facts.
- xi. The Appellant has also relied upon the NCLAT judgement passed in *Company Appeal (AT) No. 220 of 2020* in the matter of ***Devinder Parkash Kalra & Ors. vs. Syngenta India Limited*** which was further appealed in the Hon'ble Supreme Court of India in ***Syngenta India Limited vs Devinder Parkash Kalra & Ors.*** vide Civil Appeal No. 1809 of 2021, where it has been dismissed. The relevant paragraph is reproduced as under: -

“In view of these developments and the acceptance of the offer by the respondents, this Court hereby directs as follows:

1. Syngenta shall remit to all public shareholders (to 3.59% of the all shareholders) who were to be given the valuation accepted by the NCLT i.e. ₹ 2445 per equity share, a sum equivalent to 20.56% of the said amount (Rs. 2445) within eight weeks ₹ from today. This direction would apply obviously to the respondents in these appeals who were also the appellant(s) before the NCLAT.

2. The impugned order is hereby set aside; the approval granted by the NCLT shall stand modified in terms of (1) above.

The appeals are partly allowed in the above terms.”

Thus, the judgment cited by the Appellant does not help their cause.

- xii. Under Indian law, theoretically speaking an internal auditor is free from any undue influence of company in its auditing. This is also mandated by the

ICAI standard on Internal Audit (SIA) 2, which states "the Internal Auditor shall be free from any undue influences which force him to deviate from the truth. This independence shall be not only in mind but also in appearance". This cardinal principle of independence recognized by the ICAI conclusively puts to rest any doubt with regard to independence of Ernst & Young LLP and therefore any purported influence that it may have on the Independent Valuation by one of its distinct legal entity alleged part of global Ernst & Young Group.

xiii. We have noted that Ernst & Young Merchant Banking Services Pvt. Ltd. was not the Internal Auditor of Respondent No. 1 and is an independent SEBI registered Category-I merchant banker and is bound by code of conduct and regulated by SEBI.

xiv. The Appellants argument is that even if an Associate entity like Ernst & Young Merchant Banking Services Pvt. Ltd. of Global E&Y Group firm provides any service to BAL, then it is conflicted from providing any other service to BTL. However, we do not find any specific provisions in the law to establish that such restriction exists. Such restrictions are neither contemplated under law nor have been justified on any count.

xv. The Appellants also raised the issue regarding violation of Rules 13, 14, 15 and 17 of the Model Code of Conduct annexed as Annexure I to the Companies (Registered Valuers and Valuation) Rules, 2017 by the

independent valuers i.e., Ernst & Young Merchant Banking Services Pvt. Ltd. Hence, we will deal with the issue raised by the Appellant regarding alleged valuation of Rules 12, 13, 15 & 17 of model code of conduct to the Companies (Registered Valuers and Valuation) Rules, 2017.

In this connection, we note that the Rules 13, 14, 15 and 17 reads as under

:-

“Rule 13: A valuer shall not take up an assignment if he/it or any of his/ its relatives or associates is not independent in terms of association to the company.

Rule 14: A valuer shall maintain complete independence in his/ its professional relationships and shall conduct the valuation

independent of external influences.

Rule 15: A valuer shall wherever necessary disclose to the clients, possible sources of conflicts of duties and interests, while providing unbiased services.

Rule 17: A valuer shall not indulge in "mandate snatching" or offering "convenience valuations" in order to cater to a company or client's needs.”

xvi. From above, Rule 13 we note that the valuer is obligated not to take any assessment if he or his relatives or associates is not independent in terms of association of the company. In this regard, during entire pleadings, we could not see any fact establishing the same.

xvii. Similarly, Rule 14 stipulate that the valuer shall conduct the valuation independent of external influence. No pleadings or documents have been brought to our notice to establish that the independent valuer were influenced externally. We hold that mere suspiciousness is not valid ground as such, Rule 14 is also not seen to have been violated.

xviii. Under Rule 15, the duty has been imposed on the valuer to discuss and disclose any possible source of conflict of duties and interest to the client. Since, no such genuine and real conflict has been established, we do not find that Rule 15 is also not applicable.

xix. Rule 17 simply says that valuation should not be involved “Mandate Snatching” or offering “convincing valuations” to the client. We have seen that the valuer was not involved in any of such activity and rather has given fairly detailed valuation report indicating assumption, presumption, facts and figures and methodology therein.

xx. In fine, we do not find any violation of Rule 13, 14, 15 and 17 by the independent valuers as alleged by the Appellants and the contention of the Appellants on this account stands rejected.

xxi. We note that as the Respondent No. 1 also obtained a Fairness Opinion' dated 19.06.2018 on the Valuation Report by a Category I Merchant Banker - SPA Capital Advisors Limited, which too affirmed the conclusion arrived at, in

the Valuation Report by Ernst & Young Merchant Banking Services Pvt. Ltd, and to which none of the Appellants have raised any objection.

xxii. The Appellants have questioned non-application of ICDR Regulations, 2009 in the present case. In this connection, we find that the said regulations do not apply to the valuation of shares of an unlisted company as in the present case. The Regulation 76 of the ICDR Regulations 2009 is only applicable (i) in cases of preferential allotment of shares of a listed company as can be seen from the heading provided for Chapter VII of the ICDR Regulations 2009; and (ii) in relation to frequently traded shares, both are not in the instant case.

xxiii. Noting that ICDR Regulations 2009 do not apply to the Capital Reduction in question, the current position with respect to period to be considered for the purpose of pricing has changed from 26/2 weeks to 90/10 days under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (as amended in 2022) further shortening the period to examine the days for the purpose of valuation, wherein 26 weeks was noted to be too long a period to value shares especially as price can be very volatile over a period of 26 weeks. Therefore, it is the judgement of a valuer on the historic price to be considered of a volatile listed share, that would represent the value of such shares correctly. This seems quite logical.

xxiv.As regard, further evidence that the valuation done by independent valuers was appropriate and correct in the given context, it has been brought to our notice that certain shares of the Respondent No. 1/ BTL were attached by custodian under provisions of TORTS Act and in this connection additional independent valuers were also appointed by the custodian. We note that out of the 2,84,57,840 shares that were approved to be extinguished/ reduced by the Tribunal total 23,21,276 shares were attached by the Custodian under the provisions of the Special Courts (Trial of Offences Relating to Transaction of Securities) Act, 1992 ("**TORTS Act**"). The Custodian filed an application (Misc. Appl. No. 10 of 2020) before the Special Court under the TORTS Act (presided by a sitting judge of the Bombay High Court), inter alia seeking permission to accept the offer of Respondent No. 1 in terms of the Impugned Order. Along with the said application, the Custodian also submitted reports by two other independent valuers, namely ICICI Securities Ltd and SBI Caps Securities Ltd., who were appointed by the said Custodian in 2019, based on objections raised before the Custodian by certain identified shareholders, with respect to the valuation of shares. Both the said independent valuers, namely ICICI Securities as well as SBI Caps Securities Ltd., have confirmed and reaffirmed that the valuation report obtained by the Respondent No. 1 from Ernst & Young Merchant Banking Services Pvt. Ltd is fair and proper.

- xxv.** The Special Court (TORTS) allowed the Application filed by the Custodian vide its order dated 11.12.2020, while also considering objections raised by the original shareholders, including inter alia on the issue of valuation. The said order of the Special Court was not interfered with by the Hon'ble Supreme Court of India vide order dated 02.05.2023, in an appeal filed by the notified parties [*Civil Appeal No. 2684 of 2021*].
- xxvi.** We note that the process of valuation as done by Ernst & Young Merchant Banking Services Pvt. Ltd, in the present case has also passed through judicial scrutiny at Mumbai High Court as well as before the Hon'ble Supreme Court of India in Civil Appeal No. 2684 2021. Thus, we find this additional information as quite relevant to establish the fact that there the valuation conducted by the Ernst & Young Merchant Banking Services Pvt. Ltd, was just and fair and it has been correctly dealt by the Tribunal in the Impugned Order while approving the scheme of Respondent No. 1/ BTL.
- xxvii.** The allegation that Ernst & Young LLP on account of being the internal auditor of BAL and therefore amenable to influence by Respondent No. 1 is found to be untenable.
- xxviii.** We find the ratio stipulated by Hon'ble Supreme Court judgment in the matter of ***Cadbury India (Supra)*** to be very categorical and is required to be treated as guiding principles for valuation in the present case. Therefore, we

hold that the Tribunal has correctly complied the same, in the present appeal and we do find any merit in the pleading of the Appellants on this ground.

103. Issue No. (III) (a) Whether 25% Discount for Liquidity of Marketability (DLOM) was permitted and justifiable in determining the valuation for the purpose of offering the minority shareholders.

(b) Whether the minority shareholder who supported the Respondent company right from inception were entitled to receive “Control Premium” instead of “DLOM”

i. We need to understand clearly that valuation of shares is rather intricate and subjective matter for experts who has got domain knowledge of not only the valuation methodology but also have fair knowledge about relevant industry for which valuation is being done with the help of the relevant financial facts and figures. While doing these valuations there may be more challenges in case of valuation of unlisted companies like the Respondent No. 1/ BTL as the relevant market shares dates is not available.

ii. By no stretch of imagination, someone can expect that the court/ tribunal shall have such expertise to go into the correctness or otherwise of the valuation done by the independent valuers. The only duty of the court/ tribunal is to ensure that the whole process has been fair and unbiased and has not caused any prejudice to the rights of shareholders including and especially the minority shareholders.

- iii.** In the present case, we do not find any such reason to come to the conclusion that whole process has been biased or unfair
- iv.** Fundamentally, the valuation is a matter of perception, assumptions and presumptions, in addition to various empirical data. It may be perception of the minority shareholders like the Appellants in the present case that the valuation could have been better and control premium should have been given to them and to buttress the point, the Appellants indeed engaged yet another valuer Mr. Manish Popat, who opined that DLOM should not have been applicable in the present case.
- v.** In this connection, we note the pleadings of the Respondent No. 1 that Mayur Popat was a partner in Bathiya Legal, i.e. the law firm with which the advocate of majority of Appellants before this Appellate Tribunal, namely Mr. Anirudh Suresh was associated at the time of filing of those appeals. The Respondent no. 1 alleged that this material fact has been concealed from this Appellate Tribunal which demonstrates patent conflict of interest and unreliability of such valuation report. The Respondent No. 1 further argued that the LinkedIn profile of Mr. Mayur Popat evidences the same. However, we just note the pleadings of the Respondent No. 1 and do not wish to go deeper in such allegation of the Respondent No. 1.
- vi.** We note that Ernst & Young Merchant Banking Services Pvt. Ltd, has used ‘Multiple Option Pricing Model’ and empirical data to come to a conclusion

of the fair valuation of Rs. 196.80 paise which was offered to the Appellants as minority shareholders, which including 25% discount i.e., DLOM. This valuation was also confirmed by fairness opinion given by yet another entity SPA Capital Advisors Ltd. Thus, prima-facie we do not find any merit in the contentions of the Appellants that the valuation done earlier by the JC Bhalla & Co adopting certain methodology which gave a rate of Rs. 310 per share was better and thus share could not have been reduced to Rs. 198.20 paise within a short period.

vii.As discussed, the context in which valuation was done, the time frame in which it was done, the market conditions, other factors like the cost of ill-liquidity in form of DLOM were factored into while arriving to price of Rs. 196.80 paise.

viii.We note that the Independent Valuer has given detailed reasons for applying DLOM and used various approaches and after noting that the DLOM broadly ranges between 19% to 30%, the valuer used 25% DLOM to arrive at fair value of equity shares held by the minority shareholders i.e., Rs. 196.80 per share.

ix.We understand that the Discount for Lack of Marketability (DLOM) is an important valuation adjustment applied to an asset's price and it is relevant for privately held companies, as it accounts for their lower liquidity compared to publicly traded assets. We observe that assessing the DLOM is

rather complex aspect of business valuation because the illiquidity of a company's shares cannot be directly quantified. We understand that there are several methods used to determine DLOM, which can generally be categorized into quantitative and qualitative approaches. Quantitative methods rely on mathematical models and empirical data, while qualitative methods focus on the unique attributes of the company and its shares.

x. The main quantitative methods commonly used to determine the DLOM are:-

- The Restricted Stock Method: This approach compares the price of restricted shares—those with sales limitations—to the price of freely tradable shares in the same company. The restriction typically involves a period during which shares cannot be sold or transferred.
- The IPO Method: This method compares the share price before and after a company goes public. The difference in price between pre-IPO and post-IPO shares helps to identify the discount due to the limited marketability of the stock prior to the offering.
- The Option Pricing Method (OPM): This is to calculate DLOM assuming that the limited liquidity of an asset is similar to put option and consider several factors including-The volatility of the asset, which reflects price fluctuations over time, the expected holding period until a liquidity event, indicating how long the asset will

remain illiquid, the company's dividend yield and the risk-free interest rate, used as a baseline for comparison etc.

- xi.** There are also Qualitative Approaches in addition to mathematical models, which are also crucial in determining the DLOM, as they allow for specific evaluation based on the unique circumstances of the company being valued which includes Company-Specific Factors like financial health and size of the company, Company-Specific Risks, Market and Industry Conditions, Legal and Contractual Considerations.
- xii.** For valuations of non-listed companies, like the Respondent No. 1/ BTL, the DLOM is particularly important because it reflects the reduced marketability of shares compared to publicly traded stocks. This ensures a more accurate reflection of the company's true value and allows for a more precise assessment of its assets.
- xiii.** It is the case of the Appellants that instead of DLOM, the valuation should have provided Control Premium since promoters acquired shares from the minority shareholders forcefully. Hence it would be desirable to understand the concept of Control Premium and its applicability in the present case.
- xiv.** Equity Shares may be subject to premium or discounts, depending upon the context of valuation including whether they represent controlling or minority interests.

- xv.** Controlling Equity Shareholders have the ability to elect directors or appoint management, lay down policies, decide on composition of management, decide on dividend outflow quantum and timing and determine when and how to sell the company and so on i.e., all major decisions of the company are taken by the Board of Directors.
- xvi.** The ownership of a non-controlling interest in a company does not have the ability to dictate such items, which generally makes it less valuable than a controlling ownership interest. The range of premiums could be anywhere and any determined value depending on host of factors. Thus, we may assume control premium to be as difference between the pro-rata controlling interest and the pro-rata non-controlling interest and therefore, control Premium is the extra amount a buyer has to pay (compared to buying a minority stake), if they are buying a controlling stake. Control premiums are only applicable in valuations where one is starting with lack of control value and is trying to arrive at control value.
- xvii.** We have already examined the concept of DLOM which is the discount for market illiquidity a buyer gets for buying a minority stake (compared to buying a controlling stake) to compensate them for the fact they don't have control of the company.
- xviii.** From above, we observe that the contention of the Appellants that Ernst & Young Merchant Banking Services Pvt. Ltd. submitted flawed Valuation

Report as it failed to include a control premium, is not found convincing. The majority shareholders in the Respondent No. 1/ BTL already had control over majority of the shares and the remaining of 1.09% of shareholders were not in any significant position or say in the dealing with the company matters. Further, this percentage of minority shareholders did not have the ability to influence any major decision of the Respondent No. 1. Thus, the question of a control premium does not arise as there is no change in control of the Respondent No. 1 pursuant to the capital reduction.

xix. We find that the independent valuer has discussed the issue regarding DLOM in great details which has also been taken note by the Tribunal while passing the Impugned Order. Independent Valuers have taken into consideration various factors including the event of no liquidity post delisting of the shares and the prospects of liquidity event for minority shareholders, and non-payment of dividends post delisting. Similarly, the Tribunal also considered the issue at length, considering various case laws mentioned therein and accepted the 25% DLOM arrived at, in the Valuation Report.

xx. Thus, we hold that there is no error in the Impugned Order which allowed scheme based on Independent Valuer report which provided 25% discount for DLOM in arriving at fair value of Rs. 196.80 per shares. We have already noted that in the present case, there seems to be no case of control

premium which the Appellants have claimed, simply as majority of shareholder has brute majority of 98.91%.

104. Issue No. (IV) (a) Whether the Respondent company failed to disclose and attach the required documents in the explanatory statement, enclosed along with the notice for acquisition of shares from minority shareholders was issued.

(b) Whether the Respondent company BTL violated Section 102 of the Companies Act, 2013 making the resolution passed for the approval of the scheme of reduction of share capital void and illegal.

- i.** It is the case of the Appellants that they were not given a copy of the valuation report in compliance with Section 102 and 120 of the Companies Act, 2013 r/w Rule 27 to Rule 29 of the Companies (Management and Administration) Rules, 2014 and therefore the whole voting should be void.
- ii.** At this, we will take into account the relevant section of the Companies Act, 2013 and Rules. These reads as under :-

“Section 102- Statement to be annexed to notice- —(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—*
 - (i) every director and the manager, if any;*

- (ii) every other key managerial personnel; and
- (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1), —

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

- (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
- (ii) the declaration of any dividend;
- (iii) the appointment of directors in place of those retiring;
- (iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special:

Provided that where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

(3) Where any item of business refers to any document, which is to be considered at the meeting, the time and place

where such document can be inspected shall be specified in the statement under sub section (1).

(4) Where as a result of the non-disclosure or insufficient disclosure in any statement referred to in sub section (1), being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

[(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.]

Section- 120- Maintenance and inspection of documents in electronic form- Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc., —
(a) required to be kept by a company; or

(b) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

• **Rule 27- Maintenance and inspection of document in electronic form-**

(1) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

Explanation- For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data shall be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

(2) The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit,

Provided that –

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

(b) the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;

(c) the records must be capable of being readable, retrievable and reproducible in printed form;

(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;

(e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

(f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Explanation: - For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

28. Security of records maintained in electronic form-

(1) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

(2) The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;

(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered records;

(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;

(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

(h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

- (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

29. Inspection and copies of records maintained in electronic form-

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made thereunder to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.”

(Emphasis Supplied)

- iii. On the other hand, the Respondent No. 1 pleaded that Section 102 of the Companies Act, 2013 has been complied with the company as the explanatory statement was sent along with notice to shareholder containing

all information and facts that may enable members to understand the meaning, scope and implications of the capital reduction.

iv. It is the case of the Respondent No. 1 that the requirement under Section 102(3) of the Companies Act, 2013 is merely to allow inspection of a document mentioned in the notice at the specified place, date and time, which has been duly complied with in the present case. The Respondent No. 1 submitted that the notice specifically provided that all relevant documents including the valuation report could be inspected at the registered office of Respondent No. 1.

v. We will take into account the relevant portion of the Notice of Postal Ballot/ Electronic Voting and Explanatory Statement dated 19.07.2018 which reads as under :-

“(f) The Memorandum of Association and the Articles of Association of the Company, and other related documents, including the Valuation Report by the Independent Valuers, Fairness Opinion and list of creditors of the Company, are available for inspection at the Registered Office and Corporate Office of the Company on all working days between 11.00 a.m. (IST) to 1.00 p.m. (IST) up to and including the last date of voting on the Postal Ballot/E-voting”

(Emphasis Supplied)

vi. We find that the notice was therefore in compliance with Section 102 of the Companies Act, 2013.

- vii.** The Respondent No. 1 brought to our notice that vide email dated 12.07.2018, an inspection was provided to the counsel of the Appellant and the same fact has also been recorded by the Tribunal in the Impugned Order upon appreciation of the relevant materials on record. It is the case of the Respondent No. 1 that there were similar responses issued to other Identified Shareholders as well.
- viii.** The Respondent No. 1 also brought to our notice that annexing valuation reports to the notice of meeting is not a common practice as can be seen from similar notices for capital reduction issued by other companies such as Syngenta India Ltd and Philips India Limited, where only inspection of such valuation reports were permissible. We find it logical.
- ix.** The Appellants have alleged that the valuation report for the preferential allotment to SingTel was annexed with the notice to shareholders while the same was not provided for the present scheme of capital reduction to the Appellants. In this connection, we note that under the Companies Act, 2013 Section 62 allows for a Preferential Allotment of shares like in the case of SingTel. Under Section 62(1)(c) read with Companies (Share Capital and Debentures) Rules, 2014, Rule 13, it is mandatory for a company to (a) obtain a valuation report and (b) send the valuation report along with the notice under Section 102 of the Companies Act, 2013. This requirement of law was duly complied for the SingTel Preferential Allotment.

x. In contrast to the above provision relating to Preferential Allotment, in the case of Capital Reduction under Section 66 of the Companies Act, 2013 there is no such stipulated requirement to send the valuation report along with the notice. The only requirement is to permit an inspection by virtue of Section 102 (3) of the Companies Act, 2013 which was duly complied by the Respondent No. 1 company. Thus, we are not convinced with the arguments of the Appellants that failure to send the valuation report together with the notice has caused legal infirmity or any prejudice to the interest of the Appellants. In fact, the right to inspect was availed from by some of the Appellants as is evident from the email dated 12.07.2018, where an inspection was provided to the counsel of the Appellant.

105. Issue No. (V) Miscellaneous Issues

- i. Now we will take up the issue raised by the Appellants that the meeting should have been convened in physical mode at one location and as it would have given a chance and interaction amongst various shareholders, giving an opportunity to them to take an informed decision. In this connection, we note that there is no stipulation in the Companies Act, 2013 and the relevant regulations that the meeting of AGM/ Extraordinary General Meeting need to be held in physical mode. In fact, the law provides for holding meetings in virtual mode and passing the resolutions through electronic mode or postal ballots.

- ii.** Further we also find that the passing of the resolution through postal ballot and e-voting without conducting personal/physical voting was not violative of the rights of the Identified Shareholders and it was not meant to avoid free exchange of views and ideas amongst the Identified Shareholders. We also find that the Tribunal correctly held that the present business at the meeting was not covered by the exceptions and postal ballot helped voter participation and Postal Pallot process is a process to protect the interest and democracy of shareholders. We note that the Tribunal has rightly accepted the Respondent No. 1's submission that where, the Annual / Extraordinary General Meetings are held at any one location, the shareholders find it burdensome and very difficult to travel all the way to such location just to attend the meeting in person and therefore the process of Postal Ballot and e-voting helped in increased voter participation and were steps in the right direction.

We tend to fully agree with the decision of the Tribunal on this ground.

- iii.** In the present era of electronic IT and AI revolutions, it can be no one's case to go back in history of physical mode. In modern time, everyone wants thing to be done at a single click, sitting in their comfort zone. The argument of the Appellants that had it been physical voting there would have been more voting of identified shareholder. For argument's sake, even if 100% of identified minority shareholders would have participated

and voted against special resolution, still result would have been positive with 98.91% i.e., combined strength of Bharti Group and SingTel Group and the result of passing special resolution would have been the same. Thus, we do not find any merit in contention of the arguments of the Appellants on this ground.

Conclusion

106. Thus, we hold that :-

- (i)** Reduction of capital by the Respondent No. 1/ BTL was in accordance Section 66 Companies Act, 2013.
- (ii)** Selective capital reduction was permissible in terms of Section 66(1)(b)(ii) of the Companies Act, 2013.
- (iii)** The Appellants minority shareholders could have been compelled to be ousted from the equity holding by passing resolution by majority of shareholders despite unwillingness of the minority shareholders.
- (iv)** The valuation of the shares carried out by E&Y @ Rs. 196.80 was correct and in accordance with law along with establish valuation practices.
- (v)** The valuation done by E&Y Merchant banking division was Independent.
- (vi)** The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations, 2009”) were not applicable in the present case.

(vii) 25% Discount for Liquidity of Marketability (DLOM) was permitted and justifiable in determining the valuation for the purpose of offering the minority shareholders.

(viii) The minority shareholder who supported the Respondent company right from inception were not entitled to receive “Control Premium” instead of “DLOM”.

(ix) The Respondent No. 1/ BTL did not fail to disclose and attach the required documents in the explanatory statement enclosed along with the notice for acquisition of shares from minority shareholders was issued.

(x) The Respondent No. 1/ BTL did not violate Section 102 of the Companies Act, 2013 and therefore making the special resolution passed for the approval of the scheme of reduction of share capital was valid.

107. In fine, all the appeals, devoid of any merit, stand rejected. No Costs. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

**[Mr. Indavar Pandey]
Member (Technical)**

Sim