March 2026

The manner, the method and the matter of the process of capital reduction: Supreme Court of India holds that valuation report not mandatory under Section 66 of the Companies Act, 2013

In the recent case of ***Pannalal Bhansali vs. Bharti Telecom Limited*** ("**Judgment**")[1], the Hon'ble Supreme Court of India ("**Supreme Court**") has upheld the decision of the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") and ruled, *inter alia*, that a valuation report by a registered valuer is not a statutory requirement under Section 66 of the Companies Act, 2013 ("**CA 2013**").

The decision of the Supreme Court reaffirms the settled principle that capital reduction under Section 66 of the CA 2013 is a domestic concern with various safeguards provided within the statute. It clarifies that obtaining a valuation report by a registered valuer is not one of the statutory requirements, and procedural objections on the basis of valuation elements must meet a high threshold to be considered.

Additionally, the Supreme Court also clarified that constitution of an NCLAT bench with 2 (two) Technical Members and 1 (one) Judicial Member is valid.

Brief facts

Bharti Telecom Limited ("**Respondent No. 1**") decided by a majority of more than 99.90%, to reduce its share capital under Section 66 of the CA 2013. The proposed reduction contemplated the cancellation of 2,84,57,840 (two crore eighty-four lakh fifty-seven thousand eight hundred and forty) equity shares of INR 10 (Indian Rupees ten) each, held by identified minority shareholders against payment of INR 163.25 (Indian Rupees one hundred and sixty three point two five) per equity share having face value of INR 10 (Indian Rupees ten) each. For giving effect to the proposed capital reduction, Respondent No.1 sought sanction of the Hon'ble National Company Law Tribunal ("**NCLT**").

The NCLT found that the decision to deduct the dividend distribution tax from the price fixed for the individual shares was arbitrary and revised the payout per share to INR 196.80 (Indian Rupees one hundred and ninety-six point eight zero). While Respondent No. 1 accepted the NCLT's directions, 35 (thirty-five) shareholders who had earlier voted in favour of the reduction of share capital, filed appeals before the NCLAT. The NCLAT upheld the order of the NCLT. However, 11 (eleven) of the shareholders ("**Appellants**") further challenged the decision of the NCLAT ("**Impugned Judgment**") before the Supreme Court.

Before the Supreme Court, the Appellants argued that the Impugned Judgment is flawed on 3 (three) counts, encapsulated as:

[1] 2026 SCC OnLine SC 349 (decided on 10 March 2026)

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1. 'the Manner', i.e., the procedure followed;
2. 'the Method', i.e., the measure employed in valuation; and
3. '*the Matter*', i.e., the low valuation price determined.

Primarily, the Appellants pointed to alleged procedural inadequacies, including *inter alia*, non-disclosure of the methodology adopted in valuation, and the fact that the valuation was carried out by a party related to the company's internal auditor. They further argued that the price fixation was 'wholly deficient and arbitrarily low'. It was also argued that the methodology adopted in share valuation, i.e., Discount for Lack of Marketability ("**DLOM**"), is against accepted norms of valuation, and that fair value cannot be equated with market value where the investors had stayed at the company for a long time, without payment of dividends.

An additional ground was raised with respect to the constitution of the NCLAT bench, which comprised of 2 (two) Technical Members and 1 (one) Judicial Member. The Appellants contended that this was contrary to the decision in *Union of India vs. Madras Bar Association*[2], wherein a Constitution Bench of the Supreme Court deprecated the practice of constituting Benches having a majority of Technical Members in the NCLT or the NCLAT.

Issues

1. Whether there were procedural infractions due to non-disclosure of details regarding the valuation report in the board resolution approving the capital reduction?
2. Whether there were procedural infractions due to the valuation having been carried out by an allegedly related party and the valuation report having been issued on the same date as the fairness report?
3. Whether there were procedural infractions due to the valuation and fairness reports not having been circulated along with the notice but kept for verification only at the registered office of the Respondent No. 1?
4. Whether the share value determined for the reduction of share capital was unfair?
5. Whether the constitution of the NCLAT bench with 2 (two) Technical Members and 1 (one) Judicial Member constitutes a jurisdictional defect?

Analysis and findings

On the issues of procedural irregularities, the Supreme Court held that there were none. It noted that the process of reduction of share capital is a statutory process safeguarded by multiple levels of approvals contemplated within Section 66 of CA 2013, with a valuation report by a registered valuer not being one of them. Such a capital reduction requires a sanction by a special resolution in an extraordinary general meeting, with a further sanction by the NCLT, before whom, the Central Government and the Registrar of Companies are also entitled to give their opinions. In light of this, the Supreme Court held that:

1. considering the multiple levels of sanctions already provided statutorily, there is little basis to find that a specific request for exit from the investors is necessary, and there is no infirmity in the notice on that ground;
2. the notice in the present case is not a 'tricky notice' vitiated by non-disclosure merely because the valuation and fairness report were not placed before the shareholders. While Section 66 of the CA 2013 requires various sanctions/protections, obtaining or circulating a valuation report is not one of them. *Per contra,* where valuation reports were considered necessary, statutory provisions such as Section 62 (further issuance of share capital), Section 230 (compromise, arrangement and amalgamation) and Section 236(2) (buyback of minority shares), specifically provide for them. Section 66 of the CA 2013 notably lacks this requirement;

[2] 2010) 11 SCC 1

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3. There was no perceivable bias in the valuation merely on the ground that the valuer was an associate/affiliate of the company's internal auditor. The internal auditor, in the present case being an external agency, cannot be regarded as related to the company merely by virtue of its appointment. The Supreme Court observed that such appointment does not, in itself, give rise to any presumption of bias in relation to the company's activities, as this would be contrary to the scope and purpose of an internal audit. An internal audit is intended to function as an in-house verification mechanism of the company's accounts. Such audit remains subject to examination and scrutiny by the statutory auditor;
4. the valuation and fairness reports being of the same date does not lead to any procedural infirmity as this only denotes the day of issuance and is not a reflection of the time taken for evaluation; and
5. despite the absence of any such legal requirement, Respondent No. 1 undertook a valuation exercise, which was further confirmed in separate unrelated fairness evaluations. The valuation report and the fairness Reports were available at the registered office of Respondent No. 1 and the notice clearly mentioned this. Thus, there is no procedural infraction to term the notice as a 'tricky notice' on this ground.

On the issue of method and manner, i.e., the share value determination, the Supreme Court held that the DLOM principle is applicable, as the shares are not listed or marketable and the company had not been paying any dividend on the shares. Notably, it was held that DLOM is not prohibited by the statutory scheme and may be applicable depending on the facts of each case. Moreover, a certificate to the effect that the accounting treatment for the reduction is in conformity with accounting standards specified in Section 133 or any other provision of the CA 2013 has been furnished. Further, as per the Indian Accounting Standards, fair value determination is a market-based measurement. Thus, the Supreme Court held that there is no obvious or blatant unfairness in the present case, and therefore, there is no ground to reject the plausible methodology adopted by the valuer.

On the issue of the constitution of the Bench, the Supreme Court rejected the contention of the Appellants. It relied on Section 418A of the CA 2013, which requires benches of the NCLAT to have at least 1 (one) Judicial Member and 1 (one) Technical Member, and Section 219 of the CA 2013, which requires benches of the NCLT to be constituted of 1 (one) Judicial Member and 1 (one) Technical Member. It held that the provisions do not require a majority of Judicial Members in the benches of the NCLT or the NCLAT, and re-affirmed that while judicial experience is valuable, administrative officers and technocrats who are statutorily permitted to be included on the bench to aid and assist a holistic adjudication, cannot be treated lower in status or in quality than Judicial Members.

Conclusion

The decision of the Supreme Court is significant in clarifying the contours of capital reduction process under Section 66 of the CA 2013. By holding that a valuation report is not a statutory precondition under the provision, the Supreme Court has clearly distinguished the legislative framework for capital reduction from other corporate actions, such as preferential allotments, schemes of arrangement, or minority squeeze-outs, where valuation reports are expressly mandated. The decision goes a long way in clarifying requirements under Section 66 of the CA 2013 and the thresholds for procedural infirmity and re-affirms capital reduction as a domestic concern.

The ruling also settles an important procedural concern by clarifying that the statutory scheme governing the constitution of benches of the NCLT and NCLAT does not require a majority of Judicial Members, thereby reaffirming the legislative intent to combine judicial expertise with technical and commercial experience in company law adjudication.

For companies contemplating capital reduction, particularly in the context of exit opportunities for minority shareholders, the decision provides welcome clarity that the focus of judicial review will remain on the fairness of process, rather than on examining commercial or valuation judgments.

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