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Squeezed Out: Supreme Court Upholds Selective Capital Reduction Targeting Minority Shareholders under Section 66 of the Companies Act in Bharti Telecom Case

In Pannalal Bhansali v. Bharti Telecom Ltd., the Supreme Court held that a company can selectively extinguish minority shareholders' capital under Section 66 of the Companies Act, provided the valuation is fair. It settled, for the first time, the legality of using Section 66 as a squeeze-out mechanism.



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EARLIER THIS YEAR, the Supreme Court of India in [*Pannalal Bhansali v. Bharti Telecom Ltd.*](#) (2026), upheld the articulate and lucid judgement of the National Company Law Appellate Tribunal (‘NCLAT’) in [*Shirish Vinod Shah v. Bharti Telecom Ltd.*](#) (2025) affirming that a company can carry out a selective share capital reduction to eke out minority shareholders as long as the conditions in Section 66 of the [Companies Act, 2013](#) are fulfilled and prejudice (defined by a high bar) is not being caused to the shareholders whose capital is being reduced.

Facts

Bharti Telecom Limited (‘BTL’), incorporated in 1985, was originally a listed company but was delisted from the various stock exchanges between 1999 and 2000 after the Bharti promoter group acquired more than 90 percent of its shares, leaving the remaining public shareholders as minority shareholders. Bharti Airtel Limited (‘BAL’) was initially a subsidiary of BTL. However, upon BAL’s IPO and listing in February 2002, BTL’s holding in BAL fell to 46.4 percent, with the result that BAL became an associate of BTL.

In January 2016, BTL made a rights issue to its existing shareholders at 115 shares for each 1 share held by existing shareholders at the face value of ₹10 per share, including the minority shareholders, with the stated objective of raising funds to acquire further shares in BAL and restore BAL to subsidiary status.

Using the funds raised through the rights issue to acquire BAL shares, BTL increased its holding and, on November 3, 2017, BAL again became its subsidiary. BTL thereafter functioned essentially as an investment holding company, with over 90 percent of its assets invested in BAL and, by March 31, 2019, holding 50.10 percent of BAL’s paid-up share capital. BTL thereafter sought to bring the SingTel group in as a partner and obtained a valuation from J.C. Bhalla & Co., taking January 18, 2018 as the relevant date, which valued BTL at ₹310 per equity share. BTL proceeded with a preferential allotment to SingTel with the stated purpose being to raise resources for repayment of BTL’s debts and improvement of its financial position.

The minority shareholders’ case was that their participation in the 2016 rights issue had directly enabled BTL to acquire BAL shares, regain control of BAL and enhance BTL’s value, following which BTL raised further funds from SingTel at the ₹310 valuation. BTL then proposed a selective reduction of capital under Section 66 of

the Companies Act, 2013: on June 19, 2018 its Board resolved to cancel and extinguish 2,84,57,840 equity shares held by the 4942 erstwhile public minority shareholders, representing 1.09 percent of BTL's issued share capital (Identified Shareholders), while leaving the holdings of the Bharti and SingTel group entities untouched. For the reduction, the minority shares were valued by E&Y at ₹196.80 per share which included a 25 percent discount for lack of marketability ('DLOM').

The special resolution approving the reduction was passed on July 26, 2018 with 99.90 percent of the votes cast in favour, including 75.63 percent of the Identified Shareholders. The NCLT ultimately confirmed the reduction on September 27, 2019. The appeals before the NCLAT were brought by minority shareholders whose shares stood extinguished pursuant to this selective capital reduction, principally challenging the fairness of the process and valuation.

Issues

The NCLAT considered the following issues — (1) whether BTL's reduction of share capital was valid under Section 66 of the Companies Act, 2013, including whether a selective reduction could be used to compulsorily extinguish the shares of unwilling minority shareholders; (2) whether the valuation of ₹196.80 per share adopted for the reduction was correct, particularly when compared with the ₹310 per share valuation used for the SingTel preferential allotment, and whether the valuer was independent; (3) whether the application of a 25 percent DLOM was justified and whether the minority shareholders were instead entitled to a control premium; (4) whether BTL had complied with the disclosure requirements under Section 102 in relation to the explanatory statement and the valuation materials; and (5) certain miscellaneous procedural objections, including the use of postal ballot and e-voting instead of a physical meeting.

The Supreme Court, in appeal, principally considered — (1) whether there was a jurisdictional defect in the composition of the NCLAT; and (2) whether the challenge to the capital reduction on the grounds of the "Manner, Method, and Matter" of the transaction was sustainable.

For the purposes of this article, we are concerned only with the legality of the selective capital reduction and the valuation methodology adopted for determining the consideration payable to the minority shareholders.

Section 66 of the Companies Act, 2013

Section 66 of the Companies Act, 2013 permits a company, by special resolution and subject to confirmation by the National Company Law Tribunal ('NCLT'), to reduce its share capital "in any manner". This may include extinguishing or reducing unpaid liability on shares, cancelling paid-up capital which is lost or unrepresented by available assets, or paying off paid-up capital which is in excess of the company's requirements. The Tribunal is required to notify the Central Government, Registrar of Companies, SEBI (in the case of listed companies), and the company's creditors, and may confirm the reduction only after satisfying itself that the claims of creditors have been discharged, determined, secured or consented to. Once confirmed, the company must file the NCLT's order and approved minutes with the Registrar, following which the reduction takes effect.

The provision therefore gives companies considerable flexibility in restructuring their capital, but subjects that power to shareholder approval by special resolution and creditor protection, blessed by a confirmation from the NCLT. Notably, Section 66 makes no mention of prejudice to the class of shareholders whose capital is being reduced. Only the accounting treatment needs to conform with the Act and prescribed accounting standard certified by the company's auditor.

NCLAT's holding on the principles of capital reduction

Drawing from earlier judgments of the Supreme Court and High Courts, the NCLAT summarised the governing principles on reduction of share capital as follows: The Companies Act, 2013 does not prescribe any single mode of capital reduction and it is for the majority shareholders to decide whether, and in what manner, the company's capital should be reduced, subject to compliance with the Act and the Articles of Association. While a special resolution of the equity shareholders is required, the Act does not mandate a separate class resolution, nor does it require the reduction to operate equally or proportionately across all shareholders. The NCLAT also emphasised that valuation is a technical exercise best left to experts and that a mere difference of opinion between the minority and majority shareholders on valuation should not ordinarily invite judicial interference. Ultimately, reduction of share capital was characterised as a commercial and business decision of the shareholders in which the Tribunal should not generally interfere, unless the valuation is *ex facie* unreasonable or grossly unfair.

The Supreme Court's Holding

The Supreme Court rejected the argument that a selective reduction of share capital is, by itself, impermissible under Section 66 of the Companies Act. It held that

reduction of capital is principally an internal corporate decision. Once shareholders decide by the requisite special resolution that capital should be reduced, the majority is also entitled to determine the manner in which that reduction is carried out. This can include extinguishing the shares of some shareholders while retaining those of others, even where they belong to the same class. A reduction, therefore, need not operate proportionately across the entire shareholding and can validly be selective. Citing the Delhi High Court's decision in [*Reckitt Benckiser \(India\) Ltd., In re*](#) (2005), it echoed the NCLAT's holding that capital reduction is a strictly domestic concern depending on the decision of the majority.

This did not mean that the majority had an unrestricted power to force out minority shareholders. The Tribunal still has to sanction the reduction and satisfy itself that it is lawful and fair. Citing the Bombay High Court's judgment in [*Cadbury India Ltd., In re*](#) (2014), it held that the relevant considerations include whether the scheme is against public interest, unfair or unreasonable, or unfairly discriminatory or prejudicial to a class of shareholders. Where a minority is being compulsorily bought out, the fairness of the consideration offered therefore remains central to the exercise.

Applying these principles, the Court upheld BTL's reduction. The special resolution had been passed overwhelmingly by the shareholders as a whole. Significantly, it was also supported by more than three-fourths of the identified shareholders who actually voted. The appellants argued that only 733 of the 4,942 identified shareholders had voted and that approval by three-fourths of this small participating group could not represent the minority shareholders as a whole. The Supreme Court rejected this argument. Section 66 did not prescribe any separate majority requirement for the identified shareholders and those who chose not to vote were treated as having left the decision to those who participated.

What about DLOM?

The Court also upheld the 25 percent DLOM applied in valuing BTL's shares. It did not hold that a DLOM is invariably permissible. Rather, it treated its applicability as a question that depends upon the nature of the asset and the circumstances in which the valuation is undertaken. It referred to the fair value framework under Ind AS 113 and valuation standards which recognise that restrictions on the ability to sell an asset and the effort required to find a buyer may legitimately affect value.

The Court distinguished the Singapore decision in [*Thio Syn Kym Wendy v. Thio Syn Pyn*](#) (2018), where a DLOM had been declined in an oppression proceeding. It held

that this was a fact-specific determination and not a universal rule against marketability discounts. On the other hand, it referred to [*Liew Kit Fah v. Koh Keng Chew*](#) (2020), where lack of liquidity was recognised as a relevant depreciatory factor in valuing an investment.

On valuation, the court concluded saying that it is an exercise best left to the experts as held in [*Miheer H. Mafatlal v. Maftalal Industries*](#) (1996).

The Supreme Court's criticism of the appellants

The Supreme Court was also critical of the manner in which the valuation challenge had been pursued. It emphasised that the appellants were not unsophisticated investors but “seasoned retail investors” who knew that BTL’s principal investment was its holding in listed BAL, knew the publicly available value of BAL shares, were aware of the 2016 rights issue and many had participated in it, and were also aware of the P310 per-share SingTel transaction. In the Court’s view, they therefore had sufficient material to take an informed decision on the reduction.

The Supreme Court went further and noted that the appellants had continued to hold shares in an unlisted company with what it described as “zero listing, zero marketability, zero dividend payment, zero exit options”, despite earlier purchase offers. It observed that the objections crystallised only after the appellants discovered that a DLOM had been applied, even though they had known the price offered when the special resolution was considered. The judgment uses striking language, comparing their conduct to a feline waiting patiently for its prey and later remarking that there could be no “second pounce”. The substance of the criticism was that the appellants could not knowingly remain invested, reject earlier exit opportunities and participate in or acquiesce in the process, and then attack the valuation merely because they later disagreed with one component of the methodology.

Conclusion

As the law currently stands, a selective reduction under Section 66 was effectively the only available statutory route to achieve a squeeze-out for the Identified Shareholders in *Pannalal Bhansali*. A buy-back under Section 68 could not have been an option because buybacks must be offered proportionately to the existing shareholders and cannot be selectively directed only at a minority.

A consolidation of share capital under Section 61(1)(b) could, in principle, also operate as a squeeze-out mechanism where minority holdings are converted into

fractional entitlements that are then paid out. But that route is necessarily fact-dependent and remains subject to scrutiny where consolidation is used principally to eliminate a minority rather than for a genuine capital restructuring (as held by the NCLAT in [M/s Chembra Peak Estates Ltd. v. Registrar of Companies, Karnataka](#) (2019)).

Section 236 on “purchase of minority shareholding” would also not have been available merely because the promoters already held an overwhelming majority. That provision is triggered only where an acquirer or person acting in concert becomes the registered holder of 90 percent or more of the issued equity share capital pursuant to an amalgamation, share exchange, conversion of securities, or for any other reason. The NCLAT’s judgment in [S. Gopakumar Nair & Ors. v. OBO Bettermann India Pvt Ltd](#) (2019) held that this any other reason must be read *ejusdem generis* and cannot be interpreted expansively to include ordinary or piecemeal acquisitions as was the case in *Bhansali*.

Notably, Section 66 itself does not require a testing of prejudice against a specific class of shareholders, public interest, or general unfairness. This came from case law under the Companies Act, 1956 such as *In Re Cadbury*. Therefore, it is interesting that the Supreme Court in *Pannalal Bhasali* recognised the test and it stands endorsed even for reduction of share capital under the Companies Act, 2013.

The judgment is also welcome in as much as it appears to be the first pronouncement by the Supreme Court on the legality of selective capital reduction under Section 66 of the Companies Act, 2013, and should lay to rest any doubts about the use of Section 66 to squeeze out minority shareholders. It fits within the broader line of cases recognising considerable latitude for majority-backed corporate restructuring, provided the statutory process is followed and the transaction survives scrutiny on fairness and valuation.

Until next time,

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