

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) No. 220 of 2020

[Arising out of order dated 27th October, 2020 passed by National Company Law Tribunal, Court No. 1, Mumbai Bench, in CP No. 771 of 2017]

IN THE MATTER OF:

- 1. Devinder Parkash Kalra**
S/o late Sahib Dayal Kalra,
R/o 100, Model Town
Panipat- 132 103
Haryana **.. Appellant No. 1**

- 2. Manish Mittal,**
S/o late Raj Kumar Mittal,
117, Lohiya Building, Railway Road,
Samalkha – 132 101,
Haryana **.. Appellant No. 2**

- 3. Pradeep Kumar Jain HUF,**
Represented by Pradeep Kumar Jain, Karta,
R/o Flat No. 1002, Tower Eternia,
Mahagun Maple, Sector-50,
Noida- 201 301, UP **.. Appellant No. 3**

- 4. Vinay Khanna,**
S/o late Jitendra Nath Khanna,
R/o 6A, N.S.C. Bose Road,
Flat No. 403, Tollygunge,
Kolkata – 700 040 **.. Appellant No. 4**

Vs.

Syngenta India Limited,
Regd. Office at Amar Paradigm, 110/11/3,
Baner Road, Baner,
Pune – 411 045

.. Respondent

Present:

For Appellants: Mr. Kausik Chatterjee and Ms. Samridhi, Advocates

For Respondent: Mr. Janak Dwarkada, Dr. U.K. Chaudhary, Sr. Advocates with Mr. Gyanendra Kumar, Mr. Tapan Deshpande, Mr. Robin Grover, Ms. Shikha Tandon and Mr. Jitesh Dhingra and Mr. Ankit Shah Advocates.

J U D G M E N T

(5th March, 2021)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The present appeal arises against the order dated 27.10.2020 passed by National Company Law Tribunal, Court No. 1, Mumbai Bench, Mumbai (in short NCLT) whereby NCLT Mumbai in C.P. No. 771 of 2017 allowed the Company Petition for reduction of share capital of the Respondent No. 1. Aggrieved by the same, the Appellants herein have preferred the present appeal.

Factual Matrix of the case:

2. Shri Kaushik Chatterjee, learned Counsel appearing for the Appellants submitted that they are aggrieved by the order passed by the learned NCLT and therefore have preferred this appeal before this Appellate Tribunal. He submitted that the Respondent Company proposed to reduce Company's issued, subscribed and paid-up equity share capital of the Respondent-Company comprising 11,81,036 equity shares constituting 3.59% of its entire shareholding held by the

public shareholders of the Company mostly independent individual investors. He submitted that its selective capital reduction exercised under Section 66 of the Companies Act, 2013 targeted to squeeze out and thus get rid of the public shareholders. He submitted that the company was incorporated on 23.03.2000 and it was listed with the Bombay Stock Exchange (in short **BSE**). In June, 2007, the Company voluntarily de-listed itself from the Bombay Stock Exchange. On 18.05.2020, the ownership of the company shifted to the Chinese Government and in June-July, 2017, the Respondents decided to reduce its equity share capital as mentioned above. He submitted that the Promoter Group holds 96.41% and 3.59% held by the Public/Non-Promoter shareholders.

3. The Respondent Company appointed two Valuers namely, Price Waterhouse & Co. LLP (in short PWC) and Haribhakti & Co. LLP (in short Haribhakti) independently to determine the value of the shares of the Company for the purpose of its proposed reduction of share capital. Both the Valuers have submitted their valuation Report on 25.10.2017 by PWC and on 16.10.2017 by Haribhakti. As per the valuation exercise undertaken by the PWC, the value of each equity share of the Respondent Company was Rs. 2444.70 per equity share as on 25.10.2017. While Haribhakti valued at Rs. 2333.36 per equity shares. Further, the Respondent Company obtained a fairness opinion on the valuation exercised undertaken by PWC and Haribhakti from an emerging Banker Avendus Capital Private Limited (in short

Avendus). The Respondent Company in its Board Meeting held on 01.11.2017 adopted the PWC Valuer and passed the requisite resolution and subject to the passing of Special Resolution by the equity shareholders in EGM to be held on 08.12.2017 and finally subject to approval by the Hon'ble NCLT. The Company issued notice calling for EGM in the Explanatory Statement under the caption of 'consideration', the valuation of the equity shares rounded off to Rs. 2445/- to be paid to the Minority/Public shareholder by cancelling and extinguishing 11,86,036 shares.

4. While so, EGM held on 08.12.2017, the Resolution was passed reducing the share capital to the extent of 3.59%. However, the Appellants did not participate in the voting process. When the Respondents filed petition before the learned NCLT for final approval, a number of public shareholders intervened and objected to the scheme. However, the Appellants were not before the learned NCLT at the relevant point of time and in principle, they are not against the exiting the Company, the value arrived at by the PWC and decided by the Board in its Board meeting i.e., @ Rs 2445 per share exclusive of Dividend Distribution Tax (in short **DDT**). However, the Appellants are against the time of valuation and exclusive of DDT which is now to be payable by the shareholders in view of change in law.

5. Learned Counsel for the Appellants submitted that between November, 2017 and October, 2020 when the learned NCLT passed the order, the circumstances drastically changed with regard to the

Company's financial position thereby rendering 2017 valuation of Rs. 2445 per share completely redundant.

6. Learned Counsel for the Appellants submitted that the valuation of shares is like balance sheet is always as on date. The PWC Report dated 25.10.2017 itself says that "this valuation Report, its content and the resolution herein are specific to the purpose of valuation agreed as per the terms of our engagement and the date of this Valuation Report are based on the unaudited financial statement of the Respondent Company as on 30.06.2017". It is also stated by the Valuer that the price of each equity share determined "as on the date of report".

7. Learned Counsel for the Appellants submitted that the valuation of the Company or its share cannot remain valid till eternity. Learned Counsel relied upon an audited financial statement for the year 31.03.2020 and the comparative chart has been extracted at paragraph – 8.1.7 of the Appeal Paper Book at page -9 which is reproduced hereunder:

Syngenta India Limited

	FY 2018-19	FY 2016-17
Profit after Tax (PAT)	Rs. 503.52 Crores	Rs. 288.33 Crores
Earnings per share (EPS)	Rs. 152.84	Rs. 87.52
Net worth of the Company	Rs. 3266.45 Crores	Rs. 2523.07 Crores

8. In this regard, learned Counsel for the Appellants also relied upon the Financial Statement as on 31.03.2019 at page 99 of the Appeal Paper Book which shows 5 years' highlight. The said financial statement as on 31.03.2019 is reproduced hereunder:

Year	2018-19	2017-18	2016-17	2015-16	2014-15
Sales	2,91,513	2,71,803	2,87,356	2,92,736	2,90,475
Other Income	21,641	16,869	13,066	9,197	10,589
Total Income	3,13,154	2,88,672	3,00,422	3,01,933	3,01,064
Profit before tax	73,897	44,003	45,087	46,519	46,086
Provision for tax	23,545	15,724	16,254	14,854	7,043
Profit after tax (excluding other comprehensive income)	50,352	28,279	28,833	31,665	40,043
Dividend (including distribution tax)	1,986	1,982	1,982	1,982	1,982
Dividend percentage	100	100	100	100	100
Share capital	1,647	1,647	1,647	1,647	1,647
Reserves/Surplus (excluding capital reserves)	3,24,997	2,76,570	2,50,660	2,24,100	1,94,105
Net worth (excluding capital reserves)	3,26,645	2,78,217	2,52,307	2,25,747	1,95,752
Capital employed-a	3,26,645	2,78,217	2,52,307	2,25,747	1,95,752
ROCE(percentage)-b	15.41	10.16	11.43	14.03	20.46
RONW (percentage)-c	15.41	10.16	11.43	14.03	20.46
EPS(Rs.)	152.84	85.84	87.52	96.12	121.56

9. Learned Counsel for the Appellants also heavily harped upon the growth of the Company after the valuation report submitted by the independent Valuers. However, the learned Counsel also submitted that Dividend Distribution Tax (in short **DDT**) which was to be paid by the Company, however, in view of amendment to the Income Tax Act, the shareholders have to bear the said DDT. If the independent

shareholders bear the said DDT, after deduction of DDT shareholders will get a meagre amount which is a great hardship and prejudicial to their economic interest. In the EGM notice dated 01.11.2017 under the caption 'taxation' it has been specifically mentioned that the company will be liable to pay DDT @ 20.358 % in accordance with the provision of Section 115-0 of the Income Tax Act, 1961. However, the Respondent Company now says that in view of abolition of DDT, the independent shareholders will have to pay DDT. As on the date of EGM, the public shareholders/Non-promoters, as per the Valuation Report of the PWC would have got Rs. 2445 per share exclusive of DDT. Now, the stand taken by the Company is extremely unjust and unfair on the part of the Respondent Company.

10. Learned Counsel for the Appellants further submitted that the Hon'ble NCLT failed to address the situation that suddenly emerged out of abolition of DDT w.e.f. 01.04.2020 which directly affected the interest of public shares of the Respondent, by substantially reducing net amount they were to receive for extinguishing the shares by the said Scheme of the capital reduction.

11. Learned Counsel for the Appellants further submitted that the Appellants preferred this Appeal under Section 421(1) of the Companies Act, 2013 on the grounds that the Appellants are aggrieved by the impugned order dated 27.10.2020 and as per the said provision of the Companies Act, any person aggrieved by and order of the Tribunal may prefer an appeal to the Appellate Tribunal. The

Appellants herein volunteered their grievances as their interests are jeopardised and adversely affected due to impugned order. Learned Counsel for the Appellants also relied upon decisions of various Courts in support of their case.

12. Dr. U.K. Chaudhary, learned Senior Counsel appearing for the Respondent submitted that the Appellants have raised two issues i.e. the valuation was done in the year 2017 and the reduction of share capital was approved by Hon'ble NCLT in 2020 i.e., after a period of three years and in the intervening period the financial health of the Company have substantially improved. The Second objection of the Appellants is that due to amendment under Section 115-0 of the Income Tax Act, 1961, DDT, which was liable to be paid by the Company, has now been abolished w.e.f. 01.4.2020 which has resulted in tax burden for the shareholders as the dividend income is now taxable in the hands of the shareholders.

13. Learned Senior Counsel for the Respondent in answer to the first objection with regard to valuation done in the year 2017 and the same valuation is taken for the purpose of paying fair value to its non-promoter/shareholders even in the year 2020 when the Hon'ble NCLT allowed the Application. It was submitted that the delay in achieving the approval of the Hon'ble NCLT and thereby giving effect to the reduction of the share capital was not at the behest of the Respondent Company but on account of frivolous objection raised by certain objectors before the Hon'ble NCLT including the Appellants in Company

Appeal (AT) No. 208 of 2020. He submitted that during the pendency of the petition before the Hon'ble NCLT, the Respondent Company had taken reasonable steps to get the approval of the Hon'ble NCLT. Therefore, the Respondent Company cannot be held liable in any change of law. During the pendency of the Petition before the Hon'ble NCLT, it is submitted, that it is the settled principle of law of '*actus curiae neminem gravabit*' (act of Court shall prejudice no man) being fundamental to the system for justice is clearly applicable to the facts of the present case. As such, the Respondent Company cannot be prejudiced any imagined delay as alleged by the Appellants in passing of the impugned order by the Hon'ble NCLT, especially, when the same was not on account of Respondent Company.

14. In answer to the second objection i.e., DDT has to be borne by the shareholders as per the existing applicable laws, he submitted that due to delay in passing of the impugned order, the DDT stands abolished w.e.f. 01.04.2020 which has resulted in possible tax burden for the shareholders as the dividend income is now taxable in the hands of the shareholders.

15. Learned Senior Counsel for the Respondent Company submitted that the Respondent Company never promised nor admitted its liability to pay DDT even after the same may stand abolished, as sought to be alleged by the Appellants. Another statement made by the Respondent Company in 2017 in its explanatory statement regarding abolition of DDT was to be in compliance of its legal obligation and

applicable laws in 2017 and cannot, by any means, considered to be promise/estoppel made by the Respondent Company to its shareholders or admission to its liability to pay DDT.

16. Learned Senior Counsel submitted that to show fairness and transparency, the Respondent Company engaged two independent Valuers namely, Price Waterhouse & Co. LLP, and Haribhakti & Co. LLP referred to as Independent Valuers to undertake separate valuation of the equity shares of the Respondent Company to determine the fair value of the shares for the purpose of share capital reduction. Both the valuers submitted their valuation report on 25.10.2017 and 26.10.2017 respectively. The Respondent Company also appointed Aventus Capital Private Limited, a SEBI registered merchant Banker to provide fairness opinion on the Valuation Reports of the independent Valuers. The fairness opinion issued by Aventus dated 28.10.2017 confirmed that the valuation of shares provided by the independent valuers is fair and reasonable from a financial point of view.

17. Learned Senior Counsel for the Respondent Company further submitted in the EGM held on 08.12.2017, a special resolution was passed by the shareholders holding 99.87% of the shareholding in accordance with the provision of Section 66(1) of the Companies Act, 2013. A table showing the same is extracted hereunder:

Number of valid votes (including	Number of shareholders who	Votes in favour No.	Votes in favour (in	Votes in favour	Number of shareholders who	Votes against the	Votes against the
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those voted through e-voting option) at the EGM	voted in favour of the resolution		(in %)	voted against the resolution	resolution (in Nos.	resolution (in%)
3,18,35,043	48	3,17,92,365	99.87	87	42,678	0.13

18. Learned Senior Counsel for the Respondent also referred to e-voting pattern as mentioned in paragraph-16 of the Reply at page-6.

19. Learned Counsel also submitted that the Appellants failed to establish before this Tribunal that the valuation arrived at by the two independent valuers is *ex facie* unreasonable, as such, the same cannot be accepted despite the fact that the Valuation Report is of 2017 and the reduction of the capital shares has been approved in 2020. He submitted that this Appellate Tribunal cannot be called upon to validate the valuations determined by the independent experts. Learned Senior Counsel submitted that the valuation of Rs. 2445 per share as arrived by the valuers factors in view of protection of the Respondent Company. Therefore, by getting the fair value of the shares as determined by the Independent Valuers, the public shares of the Respondent Company are *ifso facto* keep the benefit by the expected future growth of the Respondent Company.

20. In view of the above reasons, leaned Senior Counsel for the Respondent requested the Bench to dismiss the Appeal as it is devoid of merits.

21. Learned Counsel for the Appellants, by way of Rejoinder, submitted that 10 years projected value of the shares in the valuation report is concerned, he submitted that in the valuation report dated 25.10.2017 in the source of information it is mentioned that it received management projections from the Company. However, the period is not mentioned anywhere. There is nothing in the report wherefrom it can be inferred that the projected value of 10 years was submitted by the Respondent Company.

22. Learned Counsel for the Appellant submitted that non-promotor/shareholders cannot be deprived the fruits of growth of the Respondent Company between 2017 to 2020. The DDT as per the prevailing law and as mentioned in the explanatory statement to the Notice calling for EGM, it is specifically mentioned that the Company will bear the DDT. The Respondents have to abide by the statements and cannot take a U-turn and say that in view of amendment to Section 115-0 and in view of abolition of DDT, the shareholders are liable to pay the DDT.

23. Learned Counsel for the Appellants relied upon the decision of the Hon'ble Supreme Court in the matter of **Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay** reported in MANU/SC/0072/1954 at paragraph-8 it has been held as under:

..

8. ... *It is true that the shareholders of the company have the sole determining voice in administering the*

affair of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the Company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the Company. The Company is a juristic person and is distinct from the shareholders. It is the Company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray

observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that then profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it.”

24. Learned Counsel for the Appellants submitted that in view of the decision of the Hon’ble Supreme Court and the Financial Statement shows that the Company has strong networth and made good profits and the Appellants are entitled to share the profits of the Company. Learned Counsel for the Appellants submitted that in view of the fact, as stated above, he requested the Tribunal to set aside the impugned order dated 27.10.2020 in so far as the Hon’ble NCLT failed to take

into account the financial growth of the Respondents between 2017 to 2020 leading to substantial increase in the value of shares. However, the Appellants further prayed this Tribunal to appoint independent registered Valuer for the purpose of carrying out fresh (as on today) valuation of the Respondent Company.

Appraisal:

25. Heard the learned Counsel for Appellants and learned Senior Counsel for the Respondent-Company, perused the records, documents and citations relied upon by them.

26. Paragraphs 28 & 29 of the impugned order dated 27.10.2020 passed by NCLT, Mumbai reads as under:

...

“28. In the light of above, the bench is only concerned with the first issue of objection of the 3.59% of the minority shareholders as a whole, is with regard to their legitimate expectation to be adequately compensated with regard to value of shares. The rights of minority shareholders qua the Valuation of shares as per the two Valuers and the Fairness report has to be examined.

29. The second issue regarding method of valuation and assumptions carried out by the Valuers is

examined below. The method of valuation by both valuers is as extracted below for ready reference:

27. The first Issue as framed in paragraph-28 is that the minority shareholders adequately compensated to their legitimate expectation with regard to valuation of shares.

In paragraph-29, the Second Issue is with regard to method of valuation and assumptions carried out by the Valuers was examined.

Learned NCLT, Mumbai has taken into consideration the report filed by M/s Price Waterhouse & Co. LLP, and the method adopted by the said Auditors in their Valuation Report. We have seen that the Valuation Report filed by M/s Price Waterhouse & Co. LLP, which it arrived at a fair value of share Rs. 2444.70. However, in the valuation Report (para-6/7) under the caption – Asset Approach- Net Asset Value Method, Second part of that report reads as under:

“SIL is a going concern with positive earnings and the historical book values of assets and liabilities are not considered representative of the earnings potential of the Company. Accordingly, the NAV method has not been adopted”

28. From the NAV method it is amply clear that the Company is going concern with positive networth. Learned NCLT has taken into consideration the valuation report which was made in the year 2017 which was submitted on 25.10.2017 by PWC and on 26.10.2017 by Haribhakti. Learned NCLT, Mumbai passed its order on 27.10.2020,

almost three years after the submission of valuation report. In our view the valuation reports as made in 2017 are not as on date, when the learned NCLT passed its order on 27.10.2020.

29. We have not gone into the veracity of the methodology adopted by the Valuers. Even though the learned NCLT framed an issue with regard to whether the public shareholders constituting 3.59 % adequately compensated or not. However, the learned NCLT, Mumbai failed to consider the vital point that the valuation was done in the year 2017 and by the time learned NCLT, Mumbai passed the order, three years have passed. It is an admitted fact that the Company is a going concern and the learned NCLT, Mumbai ought to have considered the value of the shares for the current year.

30. In respect to the Second Issue, it is made clear that we have not gone into the merits/demerits of methodology adopted by the Auditors. We are concerned only the economic interest of the public shareholders who by virtue of cancellation and extinguishing the shares whether they get their legitimate expectation of the fair value and whether they have been paid the fair value considering the performance of the Company.

31. The objection of the Appellants that the Company adopted a selective method for the reduction of the share capital is concerned, we are not in the agreement with the submission of the Appellants.

Sub-Section 1 of Section 66 of the Companies Act, 2013 reads as under:

“66. Reduction of share capital

(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.”

....

32. In view of the above, we are of the view that the aforesaid Section permits the Company to reduce the share capital in any manner. We are also of the view that there is no discrimination adopted by the Company in the present case. It is also an admitted fact that the shares

of the Company were de-listed from the BSE and the shares of the public shareholders cannot be tradable.

33. Learned NCLT, Mumbai in paragraph-31 at page 29 (running page 65 in Appeal Paper Book) has given its views, which is reproduced as under:

..

“In view of the ratio laid down in the above judgements, this bench is of the view that the objector to the scheme has not shown that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted, the valuation method adopted by the valuers are unacceptable, or are based on patently erroneous assumptions and lastly if the Valuations are vitiated by fraud or malafides. The Minority shareholders are objecting to the said scheme on three basic grounds that the petitioner company after a lapse of 10 years and post delisting are opting for reduction of capital, that the China Chem company is buying out the petitioner company and the scheme is sanctioned by CCI and finally their legitimate expectation of receiving certain amounts in lieu of rights attached to the shares in comparison to the price offered by Buyer. The minority shareholders have not obtained an independent Valuation Report nor have

they pointed out the defects of the valuation reports and fixation of share price looking at the past values and projected values for the next ten years. This 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.”

..

34. Learned NCLT, Mumbai was of the view that the minority shareholders having not obtained an independent valuation report nor have pointed out the defects in the Valuation Report and fixed the share price looking at the past valuation and projected values for the next 10 years. Further it is observed that the NCLT has no power or jurisdiction to exercise any appellate functions. It is not a valuer. It does not have necessary skills or expertise. It cannot substitute its own opinion for that of the shareholders. Its jurisdiction is peripheral and supervisory, not appellate.

35. Having observed, we have already indicated that we are not going into the merits of the valuation. However, public shareholders expect best price for their shares. The share is a movable property and the holders of the share has every right to expect best price and fair value of its shares.

36. In this regard, Hon'ble Supreme Court in the matter of **Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay (AIR 1955 SC 74)**, at paragraph-8 held as under:

“The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that then profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it.”

37. As per the judgment of the Hon'ble Supreme Court, the shareholder has every right and entitle to participate for the profits of the Company.

38. Learned NCLT, Mumbai in paragraph-36 has reproduced the judgement of the Hon'ble Bombay High Court in **Wartsila India Limited Vs. Janak Mathuradas reported in 2011(1) Bom. C.R. 600** as under:

...

“whether the special resolution which proposes to wipe out a class of shareholders after paying them just compensation can be terms as unfair and inequitable”

In the affirmative observed that “... *In our opinion, once it is established that non-promoter shareholders are being paid fair value of their shares... the court will not be justified in withholding its sanction to the resolution.*”

Even the Hon’ble Bombay High Court is also of the view that a non-promotor shareholders are being paid fair value of their shares... the Court will not be justified in holding its sanction to the Resolution. The vital point from the judgment of the Hon’ble Bombay High Court is that even non-promotor shareholders shall be paid fair value of the share. What constitutes fair value?

Definition of a fair value (fair market value): “As *per Wharton’s law lexicon, the fair market value of a property, other than an immovable property means the value determined in accordance with the method as may be prescribed*”. If a fair value arrives 3 years prior, can the fair value still subsists or even long lasts for eternity. Even after 3 years, even though the company as a going concern making good profits and whether the shareholder’s are not entitled to the profits of the Company? as held by the Hon’ble Supreme Court, (supra) in ***Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay (AIR 1955 SC 74)***. In our view it is unfair and unjust depriving the fruits of

the Company to its shareholder's. The NCLT erred in not considering this aspect.

39. Learned NCLT, Mumbai allowed the application by reducing share capital. We are of the view that the learned NCLT ought to have taken latest financial statement of the company to analyse and arrive at a true and fair value of the company on the basis of current financial statement.

40. In so far as DDT is concerned in the explanatory statement to the Notice calling for the EOGM, the Company under the caption 'taxation' has clearly stated that at page-100, Volume-1 of the Appeal Paper Book that the Company will be liable to pay DDT in accordance with the provision of Section 115-O of the Income Tax, 1961. However, in the changed circumstances, the Company has stated that the DDT was abolished by the Central Government under the Finance Act, 2000 w.e.f. 01.04.2020, thereby the Company will not be in any obligation to pay DDT. In the Written Submission filed by the Respondent, vide diary No. 23805 dated 03.12.2020 at paragraph-4, page-2 it is stated that provision of Income Tax, 1961 as amended by the Finance Act, 2020, the obligation of the Respondent-Company to pay DDT has been abolished by an amendment in the provision of the Income Tax, Act, 1961. Unless the said amendment is challenged and declared as illegal, the amendment made in the Income Tax will exist and the same is enforceable and in operation by the said amendment. We agree with the submissions of the learned Senior Counsel for the Respondent. The

Appellants have not questioned/challenged the amendment to the DDT. Therefore, we do not interfere with the said provision of law as amended unless the same is abolished and declared as void by the Competent Courts.

41. The stand of the **Respondent** that the statement made by the Respondent-Company in 2017 in its explanatory statement regarding payment of DDT was to be in compliance of its legal obligation and applicable law as in 2017 and cannot by any means considered promise/estoppel made by the Respondent-Company to its shareholders.

42. While so the valuation was done and reports have been submitted by M/s Price Waterhouse & Co. LLP, and Haribhakti & Co. LLP on 25.10.2017 and 26.10.2017 respectively taking into consideration the Company's performance prior to October, 2017. Whether the Company's stand is justified that the valuation report which was done in 2017 and even after three years, the same report could be taken into consideration. We are of the view that the said stand is against the Principles of equity and fair play and also violates principles of natural justice.

43. In our view when the statement made in the explanatory statement with regard to payment of DDT by the Company now taken a stand that the said DDT was abolished and the shareholders are under the obligation to pay the same. When in such a situation, the

Company takes its stand in a changed scenario, the Company also should follow the same principles by adopting a method of re-valuation of shares. The Company cannot take dual stand to its advantage.

44. The Appellants in their Written Submissions, vide diary No. 23722 dated 25.11.2020 at page-3 at paragraph-h have given a table showing fair value of shares. However, the Appellants at page-9, paragraph- 8.1.7 of Appeal Paper Book, the audited financial statements for the years 2018-2019 and Financial Year 2016-17, a comparative chart in a tabular form has been produced and detailed notes to Financial Statements as on 31.03.2019 has been filed at Annexure-A6 at page 98 onwards. Page 99 of the same volume of the Appeal Paper Book shows the Five Years Highlights of the Company's Finance which is reproduced hereunder:

“Syngenta India Limited
Annual Report 2018-19
Securing the Future
Through Growth, Sustainability and Safety.

Notes to financial statements as at 31 March 2019

(continued)

(Currency: Indian Rupees in Lakhs, except share data)

Financials: Five years' highlights

Year	2018-19	2017-18	2016-17	2015-16	2014-15
Sales	2,91,513	2,71,803	2,87,356	2,92,736	2,90,475
Other Income	21,641	16,869	13,066	9,197	10,589
Total Income	3,13,154	2,88,672	3,00,422	3,01,933	3,01,064
Profit before tax	73,897	44,003	45,087	46,519	46,086
Provision for tax	23,545	15,724	16,254	14,854	7,043
Profit after tax (excluding other comprehensive income)	50,352	28,279	28,833	31,665	40,043
Dividend (including distribution tax)	1,986	1,982	1,982	1,982	1,982
Dividend percentage	100	100	100	100	100
Share capital	1,647	1,647	1,647	1,647	1,647
Reserves/Surplus (excluding capital reserves)	3,24,997	2,76,570	2,50,660	2,24,100	1,94,105
Net worth (excluding capital reserves)	3,26,645	2,78,217	2,52,307	2,25,747	1,95,752
Capital employed-a	3,26,645	2,78,217	2,52,307	2,25,747	1,95,752
ROCE(percentage)-b	15.41	10.16	11.43	14.03	20.46
RONW (percentage)-c	15.41	10.16	11.43	14.03	20.46
EPS(Rs.)	152.84	85.84	87.52	96.12	121.56

45. We have considered the Annual Report of the Financial Year 2018-19 of the Company for the purpose of better appreciation. From the bird's eye view, it is crystal clear that the Profit After Tax (**PAT**) for the Financial Year 2016-17 has been shown as Rs. 288.33 lakhs whereas for the Financial Year 2018-19 it shows Rs. 503.52 lakhs. The earning per shares (EPS) for the Financial Year 2016-17 has been shown as 87.52 lakhs whereas for the Financial year 2018-19 it shows as Rs. 158.24 lakhs. The net worth of the Company for the Financial Year 2016-17 is shown as Rs. 2,52,307 lakhs whereas for the Financial Year 2018-19 it is shown Rs. 3,26,645 lakhs. In a broad look at the

figures, it is amply clear that the Company had made its growth substantially and also made good profits.

46. As held by Hon'ble Bombay High Court **Wartsila India Limited Vs. Janak Mathuradas reported in 2011(1) Bom. C.R. 600**, supra, once it is established that non-promoters' shareholders are being paid fair value of their shares, Court will not be justified in withholding its sanction to the resolution.

47. We are of the view that the public shareholders/non-promoters' shareholders have not been adequately compensated for the reason that the valuation done in the year 2017 had been taken into consideration even after three years it was passed. We are of the view that there is a drastic change in the growth of the Company. We are also of the view that the public shareholders kept away from participation in the profits, which is against the principle laid down by the Hon'ble Apex Court in Bacha F. Guzdar case.

48. As held by the Hon'ble Supreme Court in **Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay (AIR 1955 SC 74)**, supra, "on buying the shares an Investor becomes entitled to participate in the profits of the Company in which he holds the share if and when the Company declares, subject to the Articles of Association that the profits or any portion thereof should be distributed by way of dividends among the shareholders."

49. The principle laid down by the Hon'ble Supreme Court is that the shareholders are entitled to the profit of the Company, the only way to do justice to the public shareholders/non-promotor shareholder is to revalue the shares of the Company by appointing independent valuers and whatever the fair price arrived at by independent valuers, the same shall be paid to the public shareholders. It is clear that if the Company makes profits, the same need to be shared with the public shareholders/non-promotor shareholders which are exiting from the Company by surrendering their shares. As stated supra, we are not going into the veracity of the fairness of the valuation reports and not finding fault with the valuation done by the Valuers. We also hold that the reduction of the share capital is in accordance with law and we do not interfere with the same. We are concerned that the public shareholders/non-Promotor shareholders, economic interest need to be protected by paying latest fair value arrived at by the independent valuers whichever is higher.

50. One of the submissions made by the learned Senior Counsel for the Respondent that post 2017 if the Company makes losses whether the public shareholders/non-promotor shareholders will bear the losses. In answer to the said query in a share market, the shareholders always expect better price. For example, if the shares are traded in stock exchange, the shareholders will not be having any control over the market. Essentially, one has to go by the trading of shares in the

stock exchange, whereas in the case of unlisted shares, the shares are controlled by the Board/management and admittedly, from the Annual Report it shows that the Company is making profits and has good net worth. The shareholders in a Company has every right to sell their shares as and when they get good price meaning thereby the shareholders have every right to trade shares as and when they get good price. However, in the present case the Company passed its resolution for reduction of the share capital to an extent of 11,81,036 equity shares constituting 3.59 %. Since in the EGM, the majority shareholders approved the reduction of share capital, public shareholders/non-promotor shareholders have no option except to surrender their shares to the Company by extinguishing their shares and exit from the Company whatever price is fixed by the Company. Therefore, the shareholders in the present case expects justification from the Courts/Tribunals. Even though the public shareholders/non promotor shareholders had objected to the reduction of share capital in the EGH but the majority shareholders i.e. promotor group having majority, passed the resolution in favour of reduction of share capital.

CONCLUSION:

51. In view of the foregoing reasons, we pass the following orders:

- i) The Company is hereby directed to revalue the shares by a registered/independent valuers to value the shares of the Company and the Company shall pay the fair price

arrived at by the valuer based on the latest audited accounts of the Company;

- ii) The Company is directed to place all the audited accounts of the Company as required by the valuer to value the shares;
- iii) Further the Company is directed to pay higher value of share arrived at by the valuer.
- iv) We accordingly modify the order dated 27th October, 2020 passed by National Company Law Tribunal, Mumbai in above terms.

52. We clarify that we do not interfere with the reduction of share capital as allowed by the learned NCLT Mumbai. However, we only direct to revalue the shares by taking into consideration the latest balance sheet and statement of accounts. Further, we do not interfere with respect to the Dividend Distribution Tax (DDT) since there is an amendment to the Income Tax Act, 1961. The Appeal is allowed in above terms.

No orders as to cost.

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

**(Kanthi Narahari)
Member(Technical)**

Ahc