

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**  
**Company Appeal (AT) No. 208 of 2020**

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

**IN THE MATTER OF:**

- 1. Piyush Dilipbhai Shah**  
Nilkantha, 3<sup>rd</sup> Floor,  
North South Road No. 5,  
Juhu Scheme, Vile Parle (West),  
Mumbai- 400 056 **.. Appellant No. 1**
  
- 2. Sejal Ashish Jhaveri,**  
Nilkantha, 3<sup>rd</sup> Floor,  
North South Road No. 5,  
Juhu Scheme, Vile Parle (West),  
Mumbai- 400 056 **.. Appellant No. 2**
  
- 3. Samir Kirtikumar Hemani,**  
72, Pushpak Apartment,  
7<sup>th</sup> Floor,  
31- Altamount Road,  
Mumbai- 400 026 **.. Appellant No. 3**
  
- 4. Amish Narendra Shah,**  
202, Madhuvan,  
North South Road No. 1,  
Juhu Scheme, Vile Parle (West),  
Mumbai- 400 056 **.. Appellant No. 4**
  
- 5. Rupesh Navanitlal Jhaveri,**  
401, Anchor Tiara,  
Bajaj Road,  
Vile Parle (West),  
Mumbai- 400 056. **.. Appellant No. 5**

**Vs.**

**Syngenta India Limited,**

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

.. Respondent

**Present:**

**For Appellants:** Mr. Piyush Dilipbhai Shah (Appellant in person representing all Appellants), Sejal Ashish Jhaveri, Samir Kirtikumar Hemani, Mr. Rishikesh Gautam, Amish Narendra Shah and Rupesh Navanitlal Shah, Advocates

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

**J U D G M E N T**

(5<sup>th</sup> 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 as sought by Respondent No. 1 herein who is the Petitioner before the NCLT.

**Factual Matrix of the case:**

2. The First Appellant Party in person herein put forth his submissions on behalf of other Appellants in a virtual mode method.

He submitted that the Appellant Nos. 1 to 5 herein are the shareholders of the Respondent-Company. The 1<sup>st</sup> Appellant holds 2150 shares, Appellant No. 2 holds 150 shares, 3<sup>rd</sup> Appellant holds 1200 shares, the 4<sup>th</sup> Appellant holds 926 shares and 5<sup>th</sup> Appellant holds 500 shares. He submitted that the Respondent-Company converted into a Public Company and its shares were listed on Bombay Stock Exchange (in short 'BSE'). However, subsequently its shares were de-listed since June, 2007. He submitted that the Respondent-Company, after delisting its shares have public shareholders comprising 11,81,036 shares, which comes to 3.59% of total paid up by share capital. These shareholders are minority/non-promotor shareholders.

3. While so, there is change in promotor group of the Respondent-Company. The Respondent-Company intend to reduce its equity-share capital under Section 66 of the Companies Act, 2013 thereby extinguished all the non-promotor shareholders. The Respondent-Company issued notice dated 01.11.2017 calling for Extraordinary General Meeting (in short 'EOGM') to be held on 08.12.2017. The said EOGM intended to convene and to pass a special business and approve reduction of the equity share capital by cancelling and extinguishing in aggregate 3.59% of the total issued, subscribed and paid-up equity share capital of the Respondent-Company comprising 11,81,036 equity shares at Rs. 5/- each held by the shareholders of the Company. The Appellants submitted that they had attended the EOGM and

opposed the Resolution (along with many shareholders) for reduction of share capital of the Company. He submitted that only 45 public shareholders consisting of 29,693 shares had voted in favour and 87 public shareholders consisting of 42,678 shares had voted against the Special Resolution. He submitted that the reduction of the share capital extinguished the public shareholders/minority shareholders would drastically lose out on the future benefit and growth prospect. He submitted that the company offered a sum of Rs. 2445/- per each share as mentioned in the EOGM Notice dated 08.12.2017 under the caption 'consideration' in the explanatory statement issued along with the said Notice pursuant to Section 102 of the Companies Act, 2013 relating to Special Resolution. Appellants submitted that the Promoters of the Respondent-Company have not voted in the EGOM for reduction of share capital. He submitted that in the Explanatory Statement under the caption 'Taxation' it has been mentioned that the proposed reduction would be considered as dividend within the provision of 2(22)(d) of the Income Tax Act, 1961 and the Company will be liable to pay Dividend Distribution Tax (in short 'DDT') @ 20.358% in accordance with the provision of Section 115-O of the Income Tax Act, 1961. He submitted that as per the Explanatory Statement, the Company would be liable to pay tax on the fair price arrived at by the Company. However, pursuant to the amendment of the Finance Act, the shareholders are liable to pay tax w.e.f 01.04.2020. He further submitted that by virtue of said amendment to the Finance Act and the Income Tax Act, the shareholders will be put to heavy loss and they

may get meagre amount on surrendering their shares. He submitted that the Respondent-Company is financially sound and has positive networth. The reduction of the Capital may arise in different circumstances namely, accumulated business loss, erosion of networth etc. In the present case, as stated above, the Respondent-Company is making good profits and therefore the reduction of share capital especially extinguishing the public shares of the Company is unjustified. In view of the aforesaid reasoning, he sought various reliefs as prayed in page-21 of the Appeal Paper Book, namely, allow the Respondent-Company to bear DDT and direct the Respondent-Company to re-value the shares of the Company considering the growth and progress in the past three years i.e., 2018, 2019 and 2020. He submitted that the valuation was done in the year 2017 and the learned NCLT passed the order allowing the Application of the Company on 27.10.2020 thereby from the date of valuation of shares three years have elapsed and profits made during these three years have not been taken into consideration. In these three years, the Company has substantially gained profits and the Appellants are entitled to share profits of the Company for the reason that the public shareholders have substantially contributed to the growth of the Company.

4. Shri Janak Dwarkadas, learned Senior Counsel appearing for the Respondent-Company replied in detail to the submissions and averments made by the Appellants herein. He submitted that it is true

the shares of the Respondent-Company were listed on the Bombay Stock Exchange. However, in June, 2017, the equity shares of the Respondent- Company were de-listed from BSE under SEBI guidelines pursuant to which the then promoters of the Respondent-Company holding 84.02% of the share capital of the Respondent-Company provided the exit option particularly to the public shareholders of the Company at a price of Rs. 730 per share. However, certain public shareholders held approximately 3.59% shareholding did not tender their shares during de-listing offered including the Appellants. Pursuant to de-listing of shares, Respondent-Company's shares are no longer traded in any of the stock exchange and hence have lost its maintainability and legality. The public shareholders thus did not have any exit route and certain public shareholders expressed their desire to tender and/or surrender their equity shares. Therefore, the Respondent-Company decided to reduce, issued subscribed and paid-up equity shares of the Company by cancelling and extinguishing in aggregate 3.59% of the total issued subscribed and paid up equity shares of the company comprising 11,81,036 equity share of Rs. 5/- each held by public shareholders. He submitted that to maintain fairness and transparency, the Respondent-Company engaged two independent Valuers namely M/s Price Waterhouse & Co. LLT, Chartered Accountant (in short '**PWC**') and Haribhakti & Co. LLT (in short "**Haribhakti**") to undertake separate independent valuation of the equity shares of the Respondent-Company to determine the fair value of the shares. The valuers submitted their reports on 25.10.2017

by PWC and on 26.10.2017 by Haribhakti. The PWC arrived at a valuation of Rs. 2444.70 per equity share. While so, Haribhakti, Chartered Accountant arrived at a value of Rs. 2333.36 per share. The Respondent Company also appointed Avendus Capital Private Limited (in short "**Avendus**"), a SEBI registered Merchant Banker to provide a fairness opinion on the Valuation Report of the Independent Valuers. Avendus issued fairness opinion on 28.10.2017 and confirmed that the valuation of shares provided by the Independent Valuers is fair and reasonable from a financial point of view. The Board of Directors of the Respondent-Company considered the expert reports for the purpose of arriving at a conclusion for consideration of the amount payable to the public shares at the Board meeting held on 01.10.2017. The Board of Directors decided that the higher of the two valuers, arrived at by the Independent Valuers i.e., Rs. 2444.70 by PWC Auditors considered as a fair value of the equity shares, Further, the Board considered and approved the value of Rs. 2445/- per share and passed the requisite Resolution on 01.11.2017 approving reduction of the share capital.

5. Learned Senior Counsel for the Respondent submitted that Company decided to hold EOGM and issued a Notice calling for the EGM to be held on 08.12.2017 to pass special Resolution for reduction of the share capital. The EOGM was held on 08.12.2017 and in favour of the Resolution 99.87% votes were cast and against the resolution 0.13% votes were cast; thereby the Resolution was passed in the EOGM held on 08.12.2017. Thereafter, the Company filed petition

before the NCLT, Mumbai seeking its confirmation to the capital reduction.

6. Learned Senior Counsel for the Respondent further submitted, in response to the Appellants' objection that the Company passed the Resolution for reduction of share capital in selective method and the Companies Act does not permit the selective method of reduction of the share capital to a particular class of shareholders. In response to the objection of the Appellant, the learned Senior Counsel submitted that Section 66 of the Companies Act, 2013 does not discriminate any class of shareholders for the purpose of reduction of shareholders. Section 66(1) clearly provides reduction of share capital by a Special Resolution in any manner. Learned Senior Counsel for the Respondent submitted that when the words- 'in any manner' is provided under the aforesaid sub-Section emphasises that there is no discrimination with regard to any class of shares for the purpose of reduction of the share capital in the interest of the Company and the shareholders. On the point of DDT, which has to be borne out by the shareholders w.e.f. 01.04.2020, is concerned, he submitted that it is an admitted fact that in the explanatory statement to the Notice calling for EOGM dated 08.12.2017 under the caption 'taxation', it has been mentioned that the Company will be liable to pay Dividend Distribution Tax @ 20.358 % in accordance with the provision of Section 115-O of the Income Tax Act, 1961. However, in view of change of law, the DDT is now liable to be paid by an individual shareholder instead of the Company. The said



situation has been changed that DDT has now been explicitly abolished by amendment in the provision of Income Tax Act, 1961 and it is a fact that there cannot be any estoppel contrary to the statute or a legal provision. The said relief sought by the Appellants could only be granted if the Income Tax Act, 1961 abolishing the DDT is declared as unconstitutional for which the Appellate Tribunal is not the correct forum and the Appellants cannot be allowed to seek the same.

7. Learned Senior Counsel submitted that as stated supra, Section 66(1) of the Companies Act, 2013 expressly permits the Company to reduce its share capital in any manner including by way of selective reduction subject to compliance of prescribed procedural requirements. He submitted that it is a settled principle of law that reduction of share capital of a Company is a matter of domestic concern and commercial wisdom of the Company and while reducing the share capital, the Company can decide to extinguish some of its shares without dealing with the same manner as with all other shares of the same class. He further submitted that the Courts and Tribunals in India, in a number of cases, have permitted the selective reduction of share capital treating the same as an internal matter of Company.

8. Learned Senior Counsel for the Respondent Company relied upon a judgment of Delhi High Court in the case of **Reckitt Benckiser (India) Ltd.**, (2005) 122 DLT 612, the Hon'ble High Court held as under:

*“(i) The question of reduction of capital is a matter of domestic concern and the shareholders, passing the special resolution, can also decide the manner in which the reduction should be carried into effect.*

*(ii) It is for the company to decide whether each member shall have his shares proportionately reduced, or whether some members shall retain their shares unreduced, the shares of others being extinguished totally receiving a just equivalent;*

*(iii) Selective reduction is permissible within the frame work of law; and*

*(iv) The court should be satisfied that the transaction is not unfair or inequitable, and that all the creditors entitled to object to the reduction have either consented or have been paid or secured.*

*[Emphasis supplied]*

9. Learned Senior Counsel for the Respondent-Company relied upon a decision of the Hon’ble Supreme Court in the matter of **Competition Commission of India Vs. Fastway Transmission Pvt. Ltd. & Ors.** (2018) 4 SCC 316 has also held that the words “in any manner” are words of wide import and that the said words must be given their natural meaning. Learned Senior Counsel also relied on other judgments in support of his contentions.

10. Learned Senior Counsel submitted that to pay fair price to the public shareholders, the Company *suo moto* appointed two independent Valuers and also appointed Aventus to provide fair opinion on the Valuers Report of the independent Valuers thereby the Company has acted in good faith to protect the interest of the public shareholders and offered higher of the two valuations given by M/s Price Waterhouse & Co. LLP and Haribhakti & Co. LLP.

11. Learned Senior Counsel for the Respondent submitted that though the order of NCLT allowing the Application on 27.10.2020, however, the valuation arrived in 2017 does not vitiate for the reason that the time taken for the judicial process cannot be considered for changing the terms on which the Special Resolution was passed.

12. It is submitted that since the Respondent-Company is not a listed Company, the question of public participation in the equity market as regards the Respondent Company does not arise. In this regard learned Senior Counsel relied upon judgment of the Hon'ble Gujarat High Court in Nirma Limited (2013) SCC Online Guj 8532 observed as under:

*“On the contrary it may be noted that as the Petitioner-Company is already de-listed the shares cannot be traded in the stock exchanges and, therefore, it cannot be said that the resolution in question for reduction of share capital is not in the interest of public or shareholders.”*

(emphasis supplied)

13. Learned Senior Counsel further submitted that it is well settled that it cannot be presumed a reduction is against the public interest merely on the basis of hypothetical assumptions and unless something specifically shown to administer the same, the burden lies on the above Appellants to prove the same. However, the Appellants failed to prove the same.

14. In view of the reasons above, learned senior Counsel submitted that the Appeal is devoid of merits and liable to be dismissed.

**Appraisal:**

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

16. 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:*

17. 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”*

18. 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 learned NCLT passed its order on 27.10.2020.

19. 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.

20. 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.

21. 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.”*

....

22. 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.

23. 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.”*

..

24. 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.

25. 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.

26. 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.”*

27. 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.

28. 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-promoter 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-promoter 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 share holder's. The NCLT erred in not considering this aspect.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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, from the Company Appeal (AT) No. 220 of 2020 filed challenging the same impugned order by other shareholders 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

35. Since the Company Appeal (AT) No. 220 of 2020 also arises out of the same impugned order, therefore, we have taken into consideration 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.

36. 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.

37. 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.

38. 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.”

39. 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.

40. 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:**

41. 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 27<sup>th</sup> October, 2020 passed by National Company Law Tribunal, Mumbai in above terms.

42. 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)**

**New Delhi**

*Atc*