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VALUATION AND MINORITY PROTECTION IN SELECTIVE CAPITAL REDUCTION: REASSESSING THE USE OF DLOM AFTER PANNALAL BHANSALI V. BHARTI TELECOM LTD.

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Abstract

The 2026 Supreme Court of India decision in *Pannalal Bhansali v Bharti Telecom Ltd.* affirmed the legality of using selective capital reduction under Section 66 of the Companies Act, 2013, to effectuate minority squeeze-outs. However, the judgment's treatment of the Discount for Lack of Marketability (DLOM) exposes a critical normative question in Indian corporate jurisprudence. While a marketability discount may accurately reflect the factual illiquidity of unlisted shares in an ordinary, voluntary market transaction, applying this deduction to a compulsory exit raises a distinct concern of distributive fairness. It financially penalises minority shareholders for an illiquidity they did not voluntarily seek to monetise, while the continuing shareholders retain the underlying going-concern value. Indian corporate jurisprudence has traditionally approached such valuation questions through the doctrine of judicial deference to expert commercial judgment established in *Miheer Mafatlal*.

To resolve this tension, this article proposes a framework of “doctrinal bifurcation.” It argues that tribunals should distinguish between the protected mechanics of baseline enterprise valuation and the legally reviewable fairness of post-valuation structural deductions. By adopting a two-stage review framework, the National Company Law Tribunal (NCLT) can defer to expert determination of underlying value while separately subjecting shareholder-level adjustments such as DLOM to a distinct statutory fairness inquiry. This approach provides a judicially manageable mechanism to protect minority shareholders from inequitable outcomes in compulsory exits without requiring tribunals to substitute their own financial judgment for that of valuation experts.

Keywords: Selective Capital Reduction; Minority Squeeze-out; Discount for Lack of Marketability (DLOM); Section 66, Companies Act, 2013; Corporate Valuation; Judicial Deference; Minority Shareholder Protection; Statutory Fairness.

I. Introduction

Corporate governance is fundamentally an exercise in balancing majority power with minority protection. Under the Companies Act, 2013, the statutory framework accommodates minority squeeze-outs through the stringent 90% threshold and procedural safeguards of Section 236. However, the intersection of selective capital reduction under Section 66 and the mechanics of corporate valuation has created a mechanism for majority shareholders to force minority exits at lower thresholds. This doctrinal friction reached its apex in the Supreme Court of India's 2026 judgment in *Pannalal Bhansali v Bharti Telecom Ltd.*, which conclusively validated the use of Section 66 to effect a minority squeeze-out as a valid corporate restructuring mechanism. While the availability of Section 66 as an alternative route to a minority squeeze-out is now settled law, *Pannalal Bhansali* exposed an important normative gap regarding how minority shares are valued during these forced expropriations. Specifically, the Supreme Court permitted the application of a 25% Discount for Lack of Marketability (DLOM), a standard accounting adjustment used to reduce the enterprise value of unlisted, illiquid shares. In a willing-buyer and willing-seller market, a DLOM reflects commercial reality. However, when applied to a statutory squeeze-out, it effectively forces the minority shareholder to subsidize the majority's acquisition through an illiquidity discount the shareholder never voluntarily sought to monetize.

While recent commentary correctly identifies the inequity of applying a Discount for Lack of Marketability (DLOM) in forced minority exits under Section 66, importing foreign appraisal remedies, such as Delaware's "entire fairness" standard, directly conflicts with India's entrenched doctrine of judicial deference to commercial wisdom. This paper argues for a doctrinal bifurcation: NCLTs must treat the methodological determination of a company's enterprise value as a protected expert domain, but must treat the normative decision to apply a DLOM to a forced exit as a question of statutory fairness under Section 66. By classifying DLOM as a legal deduction rather than a mere accounting variable, tribunals can scrutinise and, where appropriate, reject its application in involuntary exits without impermissibly entering into appellate review of expert valuation under *Miheer H. Mafatlal*.

To advance this framework, this paper proceeds in five parts. **Part II** maps the fortress of judicial deference in Indian corporate law, tracing how the *Miheer Mafatlal* doctrine has historically conflated the mathematics of valuation with the equity of forced exits. **Part III** dissects the Supreme Court's 2026 decision in *Pannalal Bhansali*, examining the unresolved question of whether DLOM's application to a compulsory exit should be subject to a distinct statutory-fairness inquiry. **Part IV** examines the normative friction of involuntary illiquidity,

drawing upon recent academic critiques and comparative jurisprudence to demonstrate why DLOM functions as an oppressive penalty in Section 66 expropriations. **Part V** constructs the “doctrinal bifurcation” framework, offering Indian tribunals a judicially sound mechanism to reject DLOM in forced exits while remaining strictly within their statutory mandate. Finally, **Part VI** concludes.

II. The Fortress of Judicial Deference

Any attempt to challenge the valuation of minority shares under Indian corporate law must confront a formidable jurisprudential barrier: the doctrine of non-interference in commercial wisdom. For nearly three decades, Indian courts and tribunals have developed a strong presumption against substantive judicial interference with expert corporate valuation.¹ To understand why the application of a Discount for Lack of Marketability (DLOM) in forced exits has historically evaded closer statutory scrutiny, it is first necessary to map how this fortress of deference was constructed and how courts have traditionally approached the equitable outcomes of valuation math.

A. The *Miheer Mafatlal* Baseline

The modern standard of review for corporate restructuring was established by the Supreme Court of India in *Miheer H. Mafatlal v Mafatlal Industries Ltd.* (1996).² Adjudicating a contested scheme of amalgamation, the Court laid down the fundamental parameters of judicial intervention under company law. The Court held that the jurisdiction of the company court is peripheral and supervisory; it does not sit as an appellate authority over the commercial wisdom of the statutory majority.³ Crucially, regarding the share exchange ratio, the Court ruled that once a valuation has been worked out by a recognised firm of chartered accountants, the court will not substitute the expert’s methodology with its own unless the valuation is demonstrably “ex facie unreasonable” or “manifestly unfair.”⁴

In practice, this formulation has encouraged a binary conception of valuation review: unless a valuation is shown to be manifestly unfair, perverse, fraudulent, or otherwise legally tainted, courts have been reluctant to engage with its underlying methodology. Subsequent tribunals have frequently invoked this restraint, cementing the valuer’s report as a document that

¹ *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579; *In Re Cadbury India Ltd* (2015) 125 CLA 77 (Bom).

² *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579.

³ *ibid* [28].

⁴ *ibid* [29].

commands high deference absent glaring irregularities.

B. *Sandvik Asia* and the Validation of Compulsory Exits

While *Miheer Mafatlal* dealt with consensual amalgamations, the Bombay High Court extended this deferential framework to the much more hostile territory of minority squeeze-outs in *Sandvik Asia Ltd. v Bharat Kumar Padamsi* (2009).⁵ The High Court validated the use of selective capital reduction to effect the compulsory exit of minority shareholders.

The minority shareholders in *Sandvik Asia* argued that the compensation offered was inadequate and that a targeted reduction was inherently oppressive. The Court rejected this, not by ignoring fairness, but by concluding that the overwhelming shareholder approval and the provision of an exit at a premium satisfied equitable requirement.⁶ The judgment demonstrates that while courts remain concerned with fairness and equity, they generally approach valuation fairness through the lens of deference to independent expert valuation. *Sandvik Asia* confirmed that selective reduction resulting in the compulsory exit of minority shareholders is legally permissible, and established that the *Miheer Mafatlal* standard of deference securely applies to forced exits.

C. *Cadbury India*: Methodological Immunity v Judicial Substitution

A highly nuanced articulation of this deference occurred in the Bombay High Court's 2014 decision, *In Re: Cadbury India Limited*.⁷ In this contested minority squeeze-out via capital reduction, objecting shareholders submitted a competing valuation report challenging the company's reliance on the Discounted Cash Flow (DCF) method.

The Court engaged extensively with the valuation exercise, even directing an independent valuer to undertake an updated DCF valuation demonstrating that courts can and will scrutinise valuation to ensure basic fairness and reliability.⁸ However, the Court ultimately refused to arbitrate between the minutiae of competing financial models, holding that valuation is an inherently inexact science resting on future projections and subjective assumptions.⁹ *Cadbury India* thus stands for a more sophisticated proposition: while courts will review the process to ensure reliability, they are highly reluctant to substitute their own valuation judgment or tweak mathematical inputs when a recognised methodology has been applied by competent experts.

⁵ *Sandvik Asia Ltd v Bharat Kumar Padamsi* 2009 (3) Bom CR 57.

⁶ *ibid* [34-36].

⁷ *In Re Cadbury India Ltd* (2015) 125 CLA 77 (Bom).

⁸ *ibid* [55-58].

⁹ *Pannalal Bhansali v Bharti Telecom Ltd* (2026) 6 SCC 397.

D. The Doctrinal Distinction: Methodology v Normative Consequence

The combined legacy of *Miheer Mafatlal*, *Sandvik Asia*, and *Cadbury India* is a judicial environment where Indian courts have developed a strong and justified doctrine of deference toward expert valuation. However, this jurisprudence contains a latent analytical distinction that is vital for minority protection.

These landmark judgments establish substantial judicial deference to the methodological determination of a company's enterprise value. They establish that courts should not rewrite financial mathematics or substitute complex valuation variables. Yet, this jurisprudence does not establish that judicial deference to valuation methodology demands blind deference to the *legal consequences* of every discrete adjustment applied to that valuation. DLOM may be a recognised valuation adjustment, but its application in a compulsory statutory exit has consequences that raise a separate question of statutory fairness.

The resulting jurisprudential framework, however, has rarely required courts to distinguish expressly between the protected mechanics of enterprise valuation and the potentially reviewable fairness of a discrete valuation adjustment. The unresolved question, therefore, is whether judicial deference to DLOM as a component of expert valuation necessarily forecloses scrutiny of its application as a matter of statutory fairness in a compulsory exit. *Pannalal Bhansali* provides the critical test case for that distinction.¹⁰

III. Pannalal Bhansali and the Unresolved DLOM Problem

The tension between deferring to valuation methodology and scrutinising its normative consequences remained a dormant theoretical issue until it surfaced squarely before the Supreme Court of India in *Pannalal Bhansali v Bharti Telecom Ltd.* (2026).¹¹ The judgment definitively resolved the legality of using selective capital reduction to effect a minority squeeze-out, but in doing so, it exposed a critical unresolved question in corporate jurisprudence regarding the equitable application of marketability discounts in forced exits.

A. The Architecture of the Bharti Telecom Squeeze-Out

The factual matrix of *Bharti Telecom* represents a prototypical modern squeeze-out. Bharti Telecom Limited (BTL), an unlisted, closely held holding company, sought to extinguish the shares of its individual minority investors, representing approximately 1.09% of the shareholding, or over 28.4 million shares through a selective capital reduction under Section

¹⁰ *Pannalal Bhansali v Bharti Telecom Ltd* (2026) 6 SCC 397.

¹¹ *ibid.*

66 of the Companies Act, 2013.¹²

To execute the exit, the company appointed an independent valuer who arrived at an initial exit price of ₹163.25 per share. During the confirmation proceedings, the National Company Law Tribunal (NCLT) intervened in the computation of the exit consideration, finding the company's deduction for Dividend Distribution Tax (DDT) arbitrary, and directed an upward revision of the payout to ₹196.80 per share, which the company accepted.¹³ Despite this, objecting minority shareholders appealed, arguing that the company was weaponising the general capital reduction provisions of Section 66 to bypass the specific price-discovery safeguards codified in Section 236 for minority buyouts, and that the valuation was fundamentally unfair due to the application of a 25% Discount for Lack of Marketability (DLOM).¹⁴

B. Section 66 and the Compulsory Exit

The Supreme Court rejected the minority's structural contention, holding that a company is not statutorily compelled to utilise Section 236 merely because a transaction results in a minority exit.¹⁵ The Court confirmed that a selective capital reduction under Section 66 may lawfully result in a compulsory minority exit without requiring recourse to Section 236 merely because such an exit occurs.¹⁶

However, the Court did not grant majoritarian shareholders unfettered power. While confirming that Section 66 is a legally permissible route, the Court maintained that the reduction must not be unfair, inequitable, or against the public interest.¹⁷ The NCLT's own intervention regarding the DDT deduction, which the Supreme Court noted without disapproval, demonstrates that the Tribunal retains a substantive supervisory role in examining whether the proposed reduction and resulting consideration satisfy the statutory requirements of fairness and equity.¹⁸

C. Valuation Without a Statutory Registered-Valuer Requirement

This retained fairness jurisdiction becomes crucial when examining the Court's treatment of the valuation report itself. The Supreme Court observed a legislative distinction: unlike

¹² *ibid* [2].

¹³ Companies Act 2013, ss 66, 236.

¹⁴ *Pannalal Bhansali v Bharti Telecom Ltd* (2026) 6 SCC 397, paras 57-58.

¹⁵ *ibid*.

¹⁶ *ibid* [86-88].

¹⁷ *ibid* [2].

¹⁸ *ibid* [57].

compromises under Section 230 or compulsory acquisitions under Section 236, Section 66 deliberately omits any statutory mandate for a report by a “registered valuer”.¹⁹

Crucially, however, the Court did not equate this statutory omission with a license for arbitrary pricing. The Court explicitly stated that despite the absence of a strict valuer requirement, “definitely there should be some method by which a fair value is arrived at insofar as providing an exit for the identified shareholders”.²⁰ The judgment’s logic establishes a vital premise for minority protection: the absence of a statutory valuation-report requirement does not mean the absence of a fair-value requirement. The NCLT retains a substantive supervisory role in examining whether the proposed reduction and resulting consideration satisfy the statutory requirements of fairness and equity.

D. DLOM: Valuation Component or Question of Statutory Fairness?

It is within this framework of required fairness that the Court’s treatment of the 25% DLOM must be evaluated. The independent valuer had calculated the value of the shares and applied a minimum 25% discount, a valuation adjustment intended to reflect the reduced marketability of an unlisted or illiquid interest.²¹

The objecting shareholders argued that applying an illiquidity discount to a forced exit was inherently oppressive. The Supreme Court did not ignore this argument or uncritically rubber-stamp the valuation. The Court scrutinized the DLOM, examining the report “figure by figure” and noting the illiquid, closely held nature of BTL’s shares under relevant accounting standards, specifically Ind AS 113 and ICAI Valuation Standard 103.²²

The Court engaged with comparative authorities, including the Singaporean decision in *Thio Syn Kym Wendy*, where a DLOM was declined in an oppression proceeding, and academic commentary by Professor Douglas Moll distinguishing “fair value” from “fair market value”.²³ The Court considered this distinction in the context of oppression jurisprudence, but found that the present proceedings did not arise from a statutory oppression claim under Section 244. It therefore did not apply that distinction to displace the market-based valuation methodology adopted in the present case. Because BTL was unlisted, had not paid dividends, and DLOM is a standard market-based measurement under accounting guidelines, the Court concluded its

¹⁹ *ibid* [19].

²⁰ *ibid* [82].

²¹ *ibid* [26, 80-82].

²² Douglas K Moll, ‘Shareholder Oppression and “Fair Value”: Of Discounts, Dates, and Dastardly Deeds in the Close Corporation’ (2004) 54 Duke LJ 293.

²³ *ibid* [70-73].

application was not invalid.

The critical issue, however, is not that the Court failed to examine the DLOM, but rather *how* it examined it. The Court ultimately addressed DLOM within the broader framework of valuation methodology and the circumstances of the proposed exit. What the judgment does not separately establish, however, is whether the involuntary character of a Section 66 exit should itself alter the legal justification for applying a marketability discount.

The judgment leaves unresolved whether judicial deference to DLOM as a component of expert valuation necessarily forecloses scrutiny of its application as a matter of statutory fairness in an involuntary exit. If Section 66 permits and the Supreme Court recognises a Tribunal inquiry into whether the consideration represents fair value, then judicial scrutiny of DLOM's normative consequences need not require the Tribunal to become an appellate valuer.

IV. The Normative Friction of Involuntary Illiquidity

The Supreme Court's reluctance in *Pannalal Bhansali* to displace a recognised valuation standard is doctrinally consistent with the long-standing deference established in *Miheer Mafatlal*. However, by ultimately addressing the Discount for Lack of Marketability (DLOM) primarily through the framework of valuation methodology, the jurisprudential framework has yet to grapple with the profound normative friction that arises when this discount is applied to a compulsory exit. To understand why DLOM operates as a distributive penalty in a Section 66 squeeze-out, it is necessary to examine the economic rationale underlying the discount and how comparative jurisdictions have isolated the problem of involuntary illiquidity.

A. The Economic Rationale of DLOM and the Willing-Seller Fallacy

In corporate valuation, DLOM is a standard adjustment applied to the value of an equity interest in closely held or unlisted companies. Its economic premise is straightforward: an investor purchasing shares in an unlisted company demands a discount because the shares lack a ready secondary market and cannot be rapidly converted into cash without incurring transaction costs and delays.²⁴ The Indian Accounting Standards (Ind AS 113) formally anchor this measurement to the concept of a hypothetical transaction between a “willing buyer and willing seller” in an orderly market.²⁵

²⁴ Shannon P Pratt and others, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* (4th edn, McGraw-Hill 2000) 394.

²⁵ Indian Accounting Standard (Ind AS) 113, ‘Fair Value Measurement’, Appendix A <<https://ca2013.com/indian-accounting-standard-ind-113/>> accessed 5 October 2026.

This premise is analytically sound in a voluntary transaction. If a minority shareholder actively seeks to liquidate their unlisted shares, they must accept the commercial reality of their illiquidity. However, a selective capital reduction under Section 66 is fundamentally incompatible with the willing-seller paradigm. The minority shareholder is not voluntarily entering a restricted secondary market to seek liquidity; rather, their shares are being statutorily extinguished by the company upon the passing of a special resolution. Because the transaction is forced, the shareholder is never given the choice to retain their illiquid asset. Imposing a marketability discount in this context penalises the shareholder for an illiquidity they never sought to monetise.

B. The Distributive Inequity: Subsidising the Majority

The application of DLOM in a forced exit does not merely reduce the payout to the minority; its distributive effect is to reduce the consideration received by the exiting minority while leaving the underlying going-concern value with the continuing shareholders. A marketability discount does not reflect a fundamental flaw in the company's underlying assets, cash flows, or profitability. It is purely a shareholder-level adjustment.

When a 25% DLOM is applied to the value attributable to a minority shareholder's interest, the deducted amount does not correspond to a destruction of the company's underlying going-concern value. In a compulsory cancellation, the economic effect of that deduction is borne by the exiting minority, while the underlying corporate value remains with the continuing shareholders.²⁶ As recent academic commentary on the *Bharti Telecom* dispute has highlighted, this creates a deeply inequitable outcome: the minority shareholder is effectively forced to subsidise the majority's consolidation of corporate control.²⁷ The statutory mechanism of Section 66 is thus inadvertently weaponised not just to effect an exit, but to acquire the minority's proportionate share of the company's going-concern value at a steep discount.

C. Comparative Perspectives: Rejecting Discounts in Forced Exits

Comparative jurisprudence provides important examples of courts refusing to apply marketability discounts in particular forms of compulsory exit. Delaware supplies two related but analytically distinct reference points: *Weinberger's* entire-fairness framework for

²⁶ Douglas K Moll, 'Shareholder Oppression and "Fair Value": Of Discounts, Dates, and Dastardly Deeds in the Close Corporation' (2004) 54 Duke LJ 293, 320-21.

²⁷ Hardik, 'Oppression or Involuntariness? Reassessing the Marketability Discount in Bharti Telecom' (Oxford Business Law Blog, 24 August 2026) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2026/08/oppression-or-involuntariness-reassessing-marketability-discount-bharti>> accessed 5 October 2026.

conflicted controller transactions, and *Cavalier Oil*'s treatment of discounts in statutory appraisal.²⁸ While importing Delaware's "entire fairness" standard would conflict with Indian judicial deference, its appraisal jurisprudence isolates the exact economic injury of DLOM.

In *Cavalier Oil Corp. v Harnett*, the Delaware Supreme Court explicitly barred the application of marketability discounts in statutory appraisal proceedings.²⁹ The Court reasoned that the objective of an appraisal is to value the corporation as an operating entity and to award the dissenting shareholder their proportionate, undivided share of that going-concern value. The Court held that applying a marketability discount "fails to accord the minority shareholder the proportionate value of the corporation" and unjustly enriches the majority who retain the going-concern value.³⁰

Similarly, Singaporean jurisprudence has recognised the friction of applying DLOM to involuntary exits, particularly in the context of oppression remedies. In *Thio Syn Kym Wendy v Thio Syn Pyn*, the Singapore High Court declined to apply a DLOM in a court-ordered buyout, recognising that a discount is fundamentally inappropriate when a shareholder is forced to sell their stake.³¹

D. The Inadequacy of the "Oppression" Prerequisite

In *Pannalal Bhansali*, the Supreme Court of India engaged with this comparative jurisprudence but distinguished it on a strict procedural ground. The Court noted that cases like *Thio Syn Kym Wendy* arose in the context of statutory oppression. Because the minority shareholders in *Bharti Telecom* did not establish an independent claim of oppression under Section 244 of the Companies Act, 2013, the Court reasoned that the comparative distinction between fair value and fair market value could not be applied to displace the valuer's methodology.³²

That distinction is doctrinally understandable, because the statutory sources of jurisdiction differ. It nevertheless leaves a normative gap: the absence of an oppression petition does not change the involuntary character of the shareholder's exit. The normative injury of DLOM does not arise from the malice of the majority; it arises from the involuntariness of the exit.³³ Section 66 provides the majority with a "no-fault" mechanism to force a minority squeeze-out. If a minority shareholder is compelled to surrender their shares by a valid Section 66 resolution,

²⁸ *Weinberger v UOP Inc* 457 A 2d 701, 711 (Del 1983); *Cavalier Oil Corp v Harnett* 564 A 2d 1137, 1145 (Del 1989).

²⁹ *ibid* 1145.

³⁰ *ibid*.

³¹ *Thio Syn Kym Wendy v Thio Syn Pyn* [2018] SGHC 54.

³² *Pannalal Bhansali v Bharti Telecom Ltd* (2026) 6 SCC 397 [73-78].

³³ Hardik (n 27).

the economic reality of their exit is just as involuntary as a buyout ordered under a Section 244 oppression petition.

Treating the availability of an oppression remedy as the principal basis for rejecting DLOM creates a difficult asymmetry: it allows majority shareholders to lawfully extinguish minority shares under Section 66, while leaving the minority exposed to a discount precisely because the exit is compulsory. The unresolved question is not whether the valuer's mathematics were correct, but whether Indian tribunals possess the statutory jurisdiction to remedy this specific distributive inequity. The answer lies not in overturning *Miheer Mafatlal*, but in reclaiming the NCLT's supervisory fairness mandate under Section 66.

V. Doctrinal Bifurcation: Reclaiming Statutory Fairness

The normative injury of involuntary illiquidity cannot be remedied by simply importing foreign appraisal doctrines. Attempting to transplant Delaware's "entire fairness" standard directly into Indian corporate law would sit uneasily with the entrenched doctrine of judicial deference to commercial wisdom established in *Miheer Mafatlal*. However, abandoning minority shareholders to the mechanical application of marketability discounts is equally untenable. The solution lies in a doctrinal bifurcation: separating the protected mechanics of enterprise valuation from the legally reviewable fairness of post-valuation deductions.

A. Methodology vs. Consequence

The historical conflation of valuation methodology and its normative consequences has paralysed Indian tribunals. Because NCLTs are not financial experts, they have treated the entirety of a valuer's report, including structural shareholder-level discounts as an indivisible mathematical exercise. This approach mischaracterises the nature of DLOM in a compulsory exit.

Determining a company's underlying enterprise value, projecting cash flows, calculating the weighted average cost of capital, and selecting comparable metrics is an exercise in financial forecasting. It ordinarily belongs within the expert valuer's domain. However, deciding whether an identified class of shareholders should bear a financial penalty for an illiquidity they did not choose to monetise is a question of distributive equity. A tribunal should not ask whether the valuer was wrong to recognise DLOM as an economic reality of the unlisted asset. It should ask whether applying that otherwise legitimate valuation adjustment to a compulsory Section 66 exit is consistent with the statutory fairness of the transaction.

B. DLOM as a Statutory Fairness Question

Treating DLOM as a legally reviewable deduction, rather than merely an accounting variable, would bring its application within the NCLT's supervisory inquiry under Section 66. As the Supreme Court acknowledged in *Pannalal Bhansali* when it noted the NCLT's intervention regarding the Dividend Distribution Tax (DDT) deduction, the Tribunal retains the authority to scrutinise the computation of the exit consideration to ensure it is just and equitable.³⁴

Treating DLOM as a question of statutory fairness requires tribunals to look beyond the Ind AS 113 definition of an orderly transaction between market participants. In a selective capital reduction, the transaction is non-consensual. By evaluating the discount through the lens of Section 66 fairness, the NCLT can recognise that while the shares may be factually illiquid in the abstract, it is inherently unfair to enforce that illiquidity penalty in a forced exit where the underlying going-concern value remains fully intact and accretes to the continuing majority.

C. The Two-Stage Review

To operationalise this doctrinal bifurcation, Indian tribunals should adopt a two-stage standard of review for minority squeeze-outs under Section 66:

Stage One: Methodological Review. In the first stage, the tribunal assesses the baseline determination of the company's enterprise value or unadjusted equity value. At this stage, the deferential standard reflected in *Miheer Mafatlal* and *Cadbury India* applies. Unless the objectors can demonstrate manifest fraud, ex-facie perversity, or a fundamental breach of accounting standards in the core financial modelling, the tribunal must not interfere with the valuer's baseline mathematics.

Stage Two: Fairness Review of Adjustments. In the second stage, the tribunal shifts from a financial inquiry to a legal one. It must isolate any structural discounts applied to the baseline value, specifically DLOM or minority interest discounts and assess them against the statutory standard of fairness. Even accepting the valuation methodology, the tribunal must ask whether the particular shareholder-level adjustment should be imposed in this compulsory exit. This inquiry should be guided by five criteria:

1. *What economic feature does the DLOM purport to capture?*
2. *Does that illiquidity actually burden the minority shareholder in the context of this specific exit transaction?*
3. *Did the corporate transaction itself force the involuntary realisation event upon the*

³⁴ *Pannalal Bhansali v Bharti Telecom Ltd* (2026) 6 SCC 397 [2].

shareholder?

4. *Who receives the accretive financial benefit of the deducted amount?*
5. *Is there an overriding, transaction-specific justification for imposing the discount despite the compulsory nature of the exit?*

Under this framework, the company should ordinarily be required to explain why the discount remains equitable in a transaction where the minority is being involuntarily expelled.

D. Reconciling the Framework with *Miheer Mafatlal*

This two-stage review preserves the core holding of *Miheer Mafatlal* while restoring the minority protections intended by the Companies Act. *Miheer Mafatlal* prevents the tribunal from substituting its own valuation judgment for that of competent experts; it does not necessarily prevent statutory scrutiny of whether the resulting consideration satisfies the fairness requirements governing a particular corporate transaction.³⁵

Under the proposed bifurcation, the NCLT is not substituting the valuer's Discounted Cash Flow analysis with its own, nor is it debating the appropriate beta or terminal growth rate. By isolating the DLOM at Stage Two, the Tribunal accepts the expert's financial determination of the asset's underlying illiquidity, but exercises its statutory prerogative to declare that the *application* of that specific deduction to a forced exit operates unfairly or inequitably under Section 66. This approach provides Indian tribunals with a judicially manageable framework for addressing the normative gap exposed by *Pannalal Bhansali*, offering a mechanism to reject unfair valuation adjustments without unravelling the fortress of judicial deference to commercial methodology.

E. Limits and Safeguards

To prevent this framework from opening the floodgates to frivolous valuation challenges, its application must be strictly bounded. Its primary application should be confined to involuntary or compulsory exits, such as selective capital reductions under Section 66 or schemes of arrangement under Section 230 that result in a forced minority squeeze-out.

Furthermore, this scrutiny is limited only to post-valuation structural discounts that target the nature of the shareholder's interest (like DLOM or minority discounts). It does not grant tribunals a license to unpack entity-level financial adjustments, such as deductions for corporate debt or contingent liabilities, which remain protected within the valuer's

³⁵ *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579 [28].

methodological domain. By adhering to these limits, the doctrinal bifurcation offers a razor-sharp, judicially manageable remedy to the exact normative gap exposed by *Pannalal Bhansali*.

VI. Conclusion

The Supreme Court's decision in *Pannalal Bhansali v Bharti Telecom Ltd.* conclusively affirmed the legality of selective capital reduction as a mechanism for minority squeeze-outs under Section 66 of the Companies Act, 2013. However, its treatment of the Discount for Lack of Marketability (DLOM) exposes a critical question in Indian corporate jurisprudence: whether deference to expert valuation methodology should necessarily extend to the normative consequences of applying a particular valuation adjustment in a compulsory exit. While a marketability discount may accurately reflect the factual illiquidity of unlisted shares in an ordinary market transaction, its application to a forced exit raises a distinct question of distributive fairness. The minority shareholder is compelled to realise an interest that they did not voluntarily seek to monetise, while the continuing shareholders retain the underlying going-concern value.

To address this tension without undermining the entrenched doctrine of judicial deference established in *Miheer Mafatlal*, this paper has proposed a doctrinal bifurcation. Under the proposed two-stage framework, the National Company Law Tribunal (NCLT) would defer to expert determination of the company's underlying enterprise or equity value while separately scrutinising structural, shareholder-level adjustments for their consistency with the statutory fairness requirements governing the transaction. The inquiry would therefore not require the Tribunal to determine whether the valuer's financial methodology was technically correct, but whether applying a particular discount remains equitable where the corporate transaction itself compels the shareholder's exit.

Ultimately, minority protection in corporate restructuring cannot depend exclusively upon the availability of a separate statutory oppression remedy. The involuntary character of a Section 66 exit raises a distinct fairness concern that can arise even where the majority has acted within its statutory powers. The proposed framework therefore seeks to preserve the legitimate sphere of expert valuation while recognising that valuation methodology and the legal consequences of applying that methodology are not necessarily identical questions. By subjecting post-valuation structural deductions to a distinct fairness inquiry, Indian corporate law can accommodate judicial deference without treating it as an absolute bar to scrutinising the equitable consequences of involuntary exits.