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Rethinking Minority Shareholder Protections during Corporate Arrangements, Mergers and Squeeze-Outs in India: A Statutory, Judicial and Comparative Analysis

ADITYA VINAYAK NISAL*

ABSTRACT

Minority shareholders occupy a unique position in corporate governance, helping uphold transparency and accountability and playing a significant role in corporate democracy. However, they cannot control corporate decisions and are vulnerable to exploitation by the majority. They may be adversely affected during corporate arrangements, mergers, and takeovers, where majority shareholders dominate decision-making and may abuse their authority at the expense of minority interests. Although the Companies Act, 2013 and SEBI Regulations provide adequate safeguards, their practical implementation remains questionable, particularly when the judicial approach prioritises procedural compliance, commercial wisdom and majority rule over substantive justice and fairness for minority shareholders. These factors call for a detailed study of the position of minority shareholders during corporate arrangements and mergers, and of how their concerns are addressed. In this paper, we shall undertake a doctrinal analysis of the protections available to minority shareholders in corporate arrangements, mergers, and squeeze-outs under the Companies Act, 2013 and the SEBI Regulations, and of landmark cases to understand the judiciary's approach towards minority shareholders. Further, we shall analyse international jurisdictions, particularly the United States (Delaware General Corporation Law) and the European Union, to identify and explore best practices for the protection of minority interests. Finally, the paper shall conclude by identifying systematic gaps, particularly high procedural thresholds, inadequate appraisal mechanisms, information asymmetry, and excessive judicial deference to majority-approved transactions, and by recommending reforms such as the introduction of statutory appraisal rights, enhanced disclosure obligations, reduction of threshold barriers for minority actions, and greater judicial emphasis on substantive fairness. The purpose of this paper is to shed light on the position of minority shareholders during corporate arrangements and mergers, address systematic gaps, and suggest reforms to strengthen shareholder democracy and align Indian corporate governance with international best practices.

* Author is an LLM Student at School of Law, MIT World Peace University, Pune, Maharashtra, India.

I. INTRODUCTION

A shareholder is typically a person holding at least one share in the company's share capital and is referred to as a member whose rights are determined by the extent of their shareholding. Based on shareholding, they may be divided into two classes: Majority and Minority shareholders. While the majority shareholders own or control more than half of the company's share capital and are in a position to dominate corporate decision-making, minority shareholders, on the other hand, hold less than half of the share capital, disabling them from influencing decisions and making them vulnerable to the decisions of the majority[1].

Shareholder democracy is a vital corporate governance mechanism that seeks to protect the interests of all stakeholders, including minority interests[2]. The majority shareholders also have fiduciary responsibilities toward minority shareholders because they make decisions and direct corporate actions that may affect and bind minority interests[3]. However, India follows an insider model of corporate governance, preferring insiders, such as controlling or majority shareholders, who have significant power to influence the company's management and operations[4]. Therefore, although minority shareholders are an important part of the corporate governance structure, corporate democracy is based on majority rule[5]. The majority shareholders, through their extensive powers, can expropriate minority wealth in various ways and may divest minority shareholders of their de jure control over the company[6]. Such tensions among minority and majority shareholders give rise to the agency problem, because the majority shareholders act as agents for minority shareholders, but may adversely affect the value prospects of minority shareholders by rejecting significant proposals while making decisions at the time of corporate emergency or during corporate transactions involving third parties, while protecting their own interests[7]. Therefore, as minority shareholders are vulnerable to oppression and mismanagement, protecting them from abuse of power by majority shareholders and

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[1] Ansh Goel & Sonia Rajoria, Understanding Shareholder Rights in India: Legal Framework, Developments, and Challenges, 7 Int'l J. for Multidisciplinary Rsch., no. 3, at 1, 2 (May–June 2025).

[2] Amal Singh Patel & Devansh Tripathi, Protecting Minority Shareholder Rights: Evaluating the Effectiveness of Legal Frameworks in Promoting Shareholder Democracy, 6 Int'l J. of Law, Mgmt and Humanities, No. 2 at 1748, 1749 (2023).

[3] Zipora Cohen, Fiduciary Duties Of Controlling Shareholders: A Comparative View, Penn Carey Law: Legal Sch. Rep., at 379, 380 (2014).

[4] Taniya Bansal, Corporate Governance Through the Eyes of a Minority Shareholder, 5 Int'l J. of Law, Mgmt and Humanities, No. 2 at 816, 818 (2022).

[5] Umakanth Varottil, Minority Shareholders' Rights, Powers And Duties: The Market For Corporate Influence, NUSL Working Paper No. 2020/06, at 1, 2 (Feb 2020).

[6] Naveen Kumar & J.P. Singh, Corporate Governance in India: Case for Safeguarding Minority Shareholders Rights, 2 Int'l J. of Mgmt & Business Studies, No. 2 at 7, 7 (Apr – June 2012).

[7] Shanthy Rachagan, Agency Cost in Controlled Companies, Singapore J. of Legal Studies, at 264, 269 (Dec 2006)

safeguarding them from financial loss is imperative[8].

In contemporary times, it has become essential to protect minority shareholders from the implications of various corporate actions, such as capital alterations, corporate restructuring, and mergers, because, during corporate arrangements or mergers, the majority shareholders may take such decisions, which may provide minorities with limited options[9] and make them vulnerable to squeeze-outs, which leads to the forced acquisition of minority shareholders in one way or another[10]. There are various safeguards under the Companies Act, 2013 and SEBI Regulations to protect minority shareholders, which guarantee that minorities receive equitable treatment in mergers, takeovers, and restructurings and protect them from the adverse effects of majority shareholders' decisions. However, in real-life scenarios, minority shareholders suffer as majority shareholders put their interests ahead of the company, due to influence over the management and decision-making process[11].

The Companies Act, 2013, permits dissenting shareholders to challenge a scheme approved by the majority in court. However, analysis of various judicial precedents discussed below reveals that judicial authorities tend to favour the majority rule, prioritising procedural fairness over substantive fairness, often overlooking minority shareholders' concerns. Minority shareholders face issues like information asymmetry and unfair valuations, which are advantageous for the majority but cause hardships and financial distress for smaller investors. These problems leave minority shareholders vulnerable, as they depend heavily on the majority's decisions and have limited means to contest them, despite the availability of redress mechanisms under the Companies Act, 2013, and SEBI Regulations.

An analysis of international jurisdictions, such as the Delaware regulations (USA) and Directives and Regulations set out by the EU, reveals that these jurisdictions have developed robust mechanisms for protecting minority shareholders during corporate transactions by introducing appraisal rights and greater disclosure requirements. These mechanisms may be transplanted in Indian law, thereby making minority shareholder protection more robust and strengthening corporate governance.

The purpose of writing this research paper is to shed light on the position of minority

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[8] Amal Singh Patel & Devansh Tripathi, Protecting Minority Shareholder Rights: Evaluating the Effectiveness of Legal Frameworks in Promoting Shareholder Democracy, 6 Int'l J. of Law, Mgmt and Humanities, No. 2 at 1748, 1751 (2023).

[9] Tanvi Chedda, Tug of war: Majority v. Minority shareholders and the way ahead.

[10] Vikramaditya Khanna & Umakanth Varottil, Regulating Squeeze Outs in India: A comparative perspective, NUSL Working Paper 2014/009, 4, (Jul 2014).

[11] Supriya Pathak, Takeover Mechanisms And Rights Of Minority Shareholders In India: A Critical Legal Analysis, National Law University – Assam, 56 (Jun 2023).

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shareholders during corporate arrangements, mergers and amalgamations. In this paper, we shall understand the concept of minority shareholders, analyse the legal framework impacting minority shareholders during corporate arrangements and mergers, examine judicial decisions to understand the approach of judicial authorities towards minority interests, explore and analyse legal frameworks of international jurisdictions to identify best practices that may be implemented in India, and finally recommend reforms and conclude the research. By assessing the rights of minority shareholders during corporate arrangements and mergers, I am positioning this paper at the intersection of corporate governance and merger and acquisition law.

Statement of Problem:

Minority shareholders are a vulnerable class of shareholders who have no control over the decisions of a company. As majority rule is followed in India, corporate decisions approved by a majority are preferred and are binding on minority shareholders. During corporate arrangements and mergers, if the transaction is approved by the majority of shareholders, it is binding on the minority even if the transaction is disadvantageous to them. Moreover, minority shareholders face additional problems such as information asymmetry, high thresholds for applying to the Court against schemes approved by the majority, and rigid valuation mechanisms. As if this were not sufficient, minority shareholders face a challenge from the judicial system as well. The Courts in many cases prefer procedural compliance over substantive justice, which acts as a setback to the aggrieved shareholder. These problems adversely impact minority shareholders and leave them with limited rights and options against a corporate transaction that is not in their favour.

II. Concepts of minority shareholders, corporate arrangements, mergers and amalgamations and sqeeze outs:

The Companies Act, 2013, does not specifically define minority shareholders. However, the term is defined by LexisNexis as members holding less than fifty percent of shares having voting rights and unable to block general or special resolutions passed by the company[12]. Therefore, minority shareholders may be regarded as those who have a small number of shares in the company and do not have complete control over its business[13].

Corporate arrangements mean an arrangement that includes the reorganisation of the company's share capital[14]. On the other hand, a merger can be defined as a combination of two companies

[12] LexisNexis, Minority Shareholder, Legal Glossary (2026).
[13] Palomita Sharma, Minority Shareholder Rights: A Conundrum, 4 Int'l J.L. Mgmt. & Human. (6) 832 (2021).
[14] Companies Act, 2013, § 230, No. 18, Acts of Parliament, 2013 (India).

into one, which can be done by either combining two entities into one entity or the absorption of one company into another. While amalgamation can be referred to as a combination of two or more companies to create a new company, wherein all existing companies lose their identity in favour of the new company and all assets and liabilities vest with the new company[15].

A squeeze-out is a transaction in which the majority shareholders of the company strip minority shareholders of their shareholdings by purchasing their stakes despite their opposition[16]. Such a situation arises when the majority or controlling shareholders force the minority shareholders to sell at a predetermined price, which may be unfair or unreasonable. This compels minority shareholders to sell their shareholdings at a predetermined price and on predetermined terms, potentially benefiting the majority shareholders.

III. Analysis of Legal Framework Related to Corporate Arrangements, Mergers and Minority Shareholder Protection

The regulations setting out provisions related to corporate arrangements, mergers and minority shareholder protections are primarily provided in the Companies Act, 2013 and SEBI Regulations. We shall analyse relevant provisions of the Companies Act, 2013, SEBI (SAST) Regulations and SEBI (LODR) Regulations.

A. Companies Act, 2013:

The following are relevant provisions affecting minority shareholders:

1. Voting Rights:

Section 47[17] empowers every shareholder to vote on resolutions passed during a general meeting. The right to vote is to be proportional to the share held by him in the paid-up share capital of the company.

2. Alteration of Capital:

Section 61[18] allows a company limited by shares to make changes in its share capital by altering the memorandum in a general meeting if authorised by the articles of association.

Section 66[19] allows the company to reduce its share capital after prior permission of the Tribunal. The company may, after confirmation from the tribunal, reduce its share capital after

[15] S.R. Myneni, Law of Merger and Acquisitions, New Era Law Publication (2021).
[16] Pammy Jaiswal & Rahul Maharshi, Minority Squeeze Out: A Strong New Provision Under Section 236 of the Companies Act, 2013 (Jan. 4, 2022).
[17] Companies Act, 2013, § 47, No. 18, Acts of Parliament, 2013 (India).
[18] Companies Act, 2013, § 61, No. 18, Acts of Parliament, 2013 (India).
[19] Companies Act, 2013, § 66, No. 18, Acts of Parliament, 2013 (India).

approval by special resolution, by extinguishing or reducing liability on its shares or reduce its capital by cancelling any paid-up capital which is unrepresented by available assets or paying off share capital which is in excess of the requirements of the company. After the company makes an application to the tribunal to reduce share capital, the tribunal is required to give notice of such application to SEBI, the Registrar, the Central Government, and the stock exchange for representations, if any, within the prescribed period. The tribunal may also satisfy itself, before granting confirmation, that either the creditors have been discharged or their consent has been obtained.

3. Corporate Arrangements and Merger Schemes:

Section 230[20] provides that where any scheme of compromise or arrangement is proposed between the company and its members or creditors or any class of them, an application is to be made to the tribunal, which may call and hold a meeting of such members or creditors. The applicant is required to disclose all material facts and such details prescribed under sub-section (2) to the tribunal. The notice of meeting disclosing details of the scheme, valuation report, impact on stakeholders and such other matters is required to be sent to all the creditors or members or any class of them. The notice may allow voting through postal ballot to be made at least one month before the meeting, and persons holding at least ten percent of shareholding may object to such a scheme. If the scheme is agreed by three-fourths of members or creditors, the tribunal may sanction the scheme and such scheme shall be binding on all stakeholders. If the scheme is confirmed by ninety percent of members or creditors by way of affidavit, the tribunal may dispense with the meeting. Further, any aggrieved party may make an application to the tribunal, and it may pass relevant orders as it deems fit.

Section 231[21] provides that, if the tribunal sanctions a scheme, it is authorised to supervise the implementation of a scheme of arrangement or compromise, it may make orders and provide directions on any matter necessary for the proper implementation of the scheme. The tribunal may order the winding up of the company if it is satisfied that the scheme has not been implemented properly.

Section 232[22] sets out the process for the tribunal's approval of the scheme of merger or amalgamation. According to the Section, if through the application made under Section 230, it is brought to the notice of the tribunal, that the proposed scheme of compromise or an arrangement contains a scheme for reconstruction of the company or merger or amalgamation

[20] Companies Act, 2013, § 230, No. 18, Acts of Parliament, 2013 (India).
[21] Companies Act, 2013, § 231, No. 18, Acts of Parliament, 2013 (India).
[22] Companies Act, 2013, § 232, No. 18, Acts of Parliament, 2013 (India).

of two or more companies, or assets and liabilities of a company are to be transferred to another company or divided between the companies, the tribunal may arrange a meeting of the company and creditors or members or any class of them and conduct matters as per Section 230. However, at the tribunal meeting, the merging companies are required to disclose a draft of the terms of the scheme adopted by their directors, a report by an expert justifying the valuation, and any other disclosures mandated by this provision. The tribunal may approve and sanction the scheme if it is satisfied with certain requirements as provided in the section, including whether the provisions for dissenting shareholders have been made and whether provisions for payments to dissenting shareholders against shares held by them have been made at a price which is predetermined according to the pre-determined pricing formula.

4. Squeeze-out of Dissenting and Minority Shareholders:

Section 235[23] provides that where the scheme involving transfer of shares or class of shares to another company has been approved by shareholders holding not less than nine-tenths of total shareholding within four months from making of the offer of such scheme, then in such case, within two months from the expiry of the four months, the transferee company has to provide notice to dissenting shareholders of its intention to acquire their shares. Thereafter, the transferee company is entitled and bound to acquire such shares of dissenting shareholders, on the same terms as the acquisition of shares of assenting shareholders, within one month from the date of notice or within one month from the order of the tribunal, which is not contrary, in case a dissenting shareholder had approached the tribunal against such scheme.

Section 236[24] permits the acquirer, who has acquired ninety percent or more of the equity shareholding, to notify the company of its intention to buy remaining shares, at a price determined by the registered valuer. The minority shareholders may also offer their shares to be purchased by the acquirer at the determined price. The acquirer is required to deposit the amount of compensation to be paid to minority shareholders for acquiring their shares into a separate bank account of the transferor company for a minimum of one year, and the payments shall be distributed within a period of sixty days. If the shares of minority shareholders are acquired, however, subsequently, minority shareholders holding seventy-five percent or more reach a higher amount through negotiation for the transfer of shares, such additional compensation shall be shared with minority shareholders on a pro-rata basis. The provisions of this section shall continue to apply to remaining minority shareholders even in the case of failure of majority

[23] Companies Act, 2013, § 235, No. 18, Acts of Parliament, 2013 (India).
[24] Companies Act, 2013, § 236, No. 18, Acts of Parliament, 2013 (India).

shareholders to acquire the shares of the minority and the shares are fully delisted, and one year specified in SEBI regulations has elapsed.

5. Oppression and Mismanagement

Section 241[25] allows any member of the company to apply to the tribunal if he complaints that affairs of the company are conducted against the interests of the members or the public, or the company itself or there has been a vital change made in the management of the company, through change in Board of Directors, manager or ownership structure of the company by the creditors or any class of shareholders or any change in the affairs of the company which may be harmful to interests of members or any class of it. The Central Government may also apply to the tribunal if it thinks that the company is functioning in any manner that is detrimental to public interest. If the central government believes that any person who is engaged in the management of the company has committed fraud or negligence, or any default in fulfilling the obligations under the law, or there is a breach of trust; company's business is not managed in accordance with sound business and commercial practices; business of company is carried out in the manner which may cause any harm to the industry it operates in; or the business is operated to defraud creditors or members or fraudulent purpose which is prejudicial to public interest, the central government may initiate a case against such company and refer it to the tribunal for further inquiry.

Section 242[26] states that if the tribunal is of opinion that the affairs of the company are conducted in a manner which is prejudicial to the interests of the members, public interests or the company, and that the winding up of the company may be prejudicial to the interests of members, it may make any orders as it thinks fit for bringing an end to the matter which was being complained of, it may pass such order as it may think fit. Sub-section (2) enumerates the list of orders that may be passed by the tribunal for providing relief to the aggrieved person against oppression from the company. The tribunal may make an interim order related to regulating the company's affairs on such conditions as are just and equitable. If the tribunal makes any changes to the company's memorandum or articles, the company does not have the power to make any changes contrary to the tribunal's order, without its permission, unless permitted by the order.

Section 244[27] requires a minimum of one hundred members or one-tenth of the total members of the company, whichever is less, or members holding at least one-tenth of the issued share

[25] Companies Act, 2013, § 241, No. 18, Acts of Parliament, 2013 (India).
[26] Companies Act, 2013, § 242, No. 18, Acts of Parliament, 2013 (India).
[27] Companies Act, 2013, § 244, No. 18, Acts of Parliament, 2013 (India).

capital of the company, are entitled to apply to the tribunal under Section 241, subject to the condition that applicants do not have any pending calls or dues against shares held by them. Where the company is not limited by the share capital, the application may be filed by at least one-fifth of the total members of the company. Any one or more members may apply to the tribunal on behalf of other members, subject to the condition that such members have obtained the written consent of the members on whose behalf the application is made.

Section 245[28] provides for the initiation of class action suits. This provision allows an application, from a minimum of one hundred members, if the company has share capital and one-fifth of the members of a company not having share capital, who believe that the affairs of the company are conducted in a manner which is contrary to the interests of the members, or the company files an application before the tribunal.

B. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011:

SEBI (SAST) Regulations apply to listed companies that acquire a majority shareholding in another company. These regulations set out provisions related to disclosures, share valuation and the manner of acquisition of additional shares when thresholds are met. Relevant provisions of this regulation are set out as follows:

Regulation 3[29] prohibits a person from acquiring shares or voting rights in a target company that entitles him to hold twenty five percent or more voting rights of the target company, unless such person makes an open offer to the public for acquiring the shares of the target company. Additionally, the regulations prohibit a person who already holds twenty-five per cent or more of the target company's shares or voting rights, provided that this shareholding is below the maximum permissible non-public shareholding, from acquiring more than five per cent of the target company's shares or voting rights, unless they make an open offer to the public. However, the regulations prohibit the acquirer from acquiring shares or voting rights exceeding the maximum permissible non-public shareholding.

Regulation 4[30] states that the acquirer shall not be able to exercise its control over the target company after acquiring shares or voting rights unless it makes an open offer to the public for acquiring the shares of such target company.

Regulation 5[31] provides that where any acquirer acquires shares or voting rights in a company, enabling him to exercise control over the target company, such an acquisition shall be

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[28] Companies Act, 2013, § 245, No. 18, Acts of Parliament, 2013 (India).
[29] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 3 (India).
[30] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 4 (India).
[31] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 5 (India).

considered an indirect acquisition, and the acquirer shall be liable to make an open offer to acquire shares from the public in accordance with Regulation 3.

Regulation 6[32] permits an acquirer holding twenty-five percent of voting rights or shares in the target company to voluntarily make an open offer for acquiring additional shares, subject to the condition that such acquisition shall not breach the maximum non-public shareholding.

Regulation 7[33] makes an acquirer liable to make an open offer under Regulations 3 and 4 must make an open offer to acquire not less than twenty-six per cent of the company's shares. If an open offer is made under Regulation 6, it shall be for the acquisition of not less than 10% of the target company's total shareholding or voting rights.

Regulation 8[34] mandates that the shares shall be acquired from the public at a price which shall not be lower than the price determined by following the prescribed parameters.

Regulation 26[35] obligates the target company to ensure that, during the acquisition process, it continues to conduct its business and affairs in the ordinary course. The target company is prohibited from executing such transactions as prescribed without prior approval of shareholders through a special resolution. The regulation also prohibits the target company from setting a record date for the completion of a corporate action between the third day of the tender offer and the completion of the corporate action. The target company must comply with any other conditions set out in this regulation.

Regulation 28[36] requires the aggregate shareholding of the promoter or acquirer, along with persons acting in concert with him in the target company, to be disclosed and submitted to the stock exchange.

Regulation 29[37] requires any acquirer who holds five percent or more shares and voting rights of the target company to disclose such holding in the specified form. Additionally, if such an acquirer holding five percent or more of voting rights or shares makes any transaction that changes its shareholding by two percent, it shall disclose such a change even if its total shares and voting rights fall below five percent. Such disclosures are to be made within a period of two working days from the date of intimation of allotment of shares or disposal of shares in the target company to the stock exchange in which the shares of the target company are listed, and

[32] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 6 (India).
[33] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 7 (India).
[34] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 8 (India).
[35] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 26 (India).
[36] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 28 (India).
[37] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 29 (India).

at the registered office of the target company.

Lastly, **Regulation 31**[38] mandates the promoter of the target company to disclose details of shares encumbered by him or release or invocation of such encumbrance, within a period of seven days of such creation, release or invocation of such encumbrance to the stock exchange where the shares of the company are listed and to the registered office of the target company. The promoter is required to file a declaration with the stock exchange and the target company within seven days from the end of the financial year, stating that he has not created any additional encumbrance over the shares held by him other than the encumbrance already created.

C. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

SEBI (LODR) Regulations apply to listed companies and obligate them to disclose certain information for transparency and accountability. Relevant provisions are discussed hereinafter.

Regulation 11[39] requires the company to ensure that any scheme of arrangement, amalgamation or merger, which is to be presented to the Court for approval, does not violate or override the securities law or requirements of stock exchanges.

Regulation 30[40] requires all the listed companies to disclose any information that is material according to the board of directors. However, certain prescribed events are deemed to be material events, and their disclosure by the listed company is mandatory. These events include disclosures related to corporate arrangements and mergers. Certain disclosures are to be made if the event passes the materiality test determined in accordance with prescribed criteria. The board of directors are empowered to authorise one or more KMPs for the determination of the materiality of an event for disclosing the same to the stock exchange. Contact details of such KMP are also required to be disclosed to the stock exchange and on the company's website. Material events are required to be disclosed to the stock exchange within twenty-four hours from the occurrence of that event. The listed company is required to disclose all the events disclosed to the stock exchange on its website as well, and such disclosure shall be hosted on the website for a period of five years. The listed entity is also required to disclose all the events of its subsidiaries that are material to the listed company.

Regulation 31[41] requires the listed company to disclose with the stock exchange a statement showing shareholding pattern for each class of securities within one day before listing of

[38] SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, Reg. 31 (India).
[39] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 11 (India).
[40] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 30 (India).
[41] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 31 (India).

securities on the stock exchange or within twenty-one days from the end of each quarter, and within ten days of capital restructuring of a listed company which results in a change exceeding two percent in the total paid-up capital of the company. Additionally, the entire share capital held by the promoter or promoter group must be in dematerialised form at all times.

Regulation 37[42] requires the listed company that is involved in or proposes to enter into any corporate arrangement to first submit a draft scheme of such corporate arrangement to the stock exchange before any Court or tribunal. The company shall obtain a No Objection Certificate from the stock exchange to proceed with the scheme. Unless the company obtains a No Objection Letter from the stock exchange, it cannot submit the scheme to the Court or tribunal for approval. The company is required to place the certificate obtained from the stock exchange before the Court within six months of the issuance of the certificate for approval of the scheme of arrangement, and, on approval of such scheme, to submit all the documents prescribed by SEBI or the stock exchange to the stock exchange.

D. Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021[43]:

These regulations lay down the voluntary and compulsory delisting procedures for listed companies. Along with the procedure, they set out provisions related to the discovery of price, approvals from shareholders and treatment of shareholders who have not obtained an exit offer from the acquirer or the company.

IV. Analysing the Judicial Approach:

The Companies Act, 2013 and SEBI Regulations have prescribed various provisions for redressal of concerns of minority shareholders. However, it is important to analyse important cases decided by the Court to understand the practical compliance of these provisions. We shall analyse important cases to understand the real-life status of minority interest protection.

A. Alteration of Capital:

1. Pannalal Bhansali v. Bharti Telecom Ltd.[44]:

In this case, the defendant proposed a scheme for the reduction of its share capital by cancelling the shares held by minority shareholders and paying them at a pre-determined price against the acquired shares. The scheme received the assent of the majority in the general meeting held for this purpose. The minority shareholders applied to the tribunal for relief against this scheme,

[42] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 37 (India).
[43] SEBI (Delisting of Equity Shares) Regulations, 2021.
[44] Pannalal Bhansali v. Bharti Telecom Limited 2026 INSC 213.

contending that the company had unfairly targeted them and that the price offered for acquiring shares was unfair. They also contended that the valuation report was not disclosed to them along with the notice, and also challenged the valuation methodology. The matter reached the Supreme Court.

The legal issue in this case was whether the company could resort to selective capital reduction.

The Court analysed the provisions dealing with the reduction of capital and observed that Section 66 of the Act does not require a valuation report. So, the company was under no legal obligation to present a valuation report. Further, Section 66 does not require disclosure of such a report in the notice of the general meeting of the company. Therefore, failure to attach a valuation report to the notice of the company's general meeting did not invalidate the notice or the proceedings of the meeting. Regarding the method of valuation, the Court held that the valuation methodology used for determining the price of the shares was not unfair and did not render the value of the shares unreliable. Finally, the Court upheld the majority rule by observing that, as the scheme was approved by an overwhelming majority of shareholders, including many minority shareholders, there was no question of unfairness and the requirement of judicial intervention. Additionally, the Court refrained from conducting an independent valuation, citing that the responsibility of the tribunal was limited to ensuring whether the scheme was fair and reasonable and proper procedural compliance was made. Therefore, based on observations, the Court held that the valuation of shares was not unfair and there was no oppression against minority shareholders.

From this case, it is clear that the Court has relied on procedural compliance and favoured majority rule, thereby ignoring the substantive fairness of the aggrieved shareholders.

B. Corporate Arrangements and Mergers:

1. Miheer H. Mafatlal v. Mafatlal Industries Pvt. Ltd.[45]:

In this case, the defendant had proposed a scheme of amalgamation wherein an associate company was to be amalgamated with that of the defendant. This scheme was approved by the majority shareholders of both amalgamating entities. It was also approved by the respective judicial authorities. However, the appellant applied to the High Court against the scheme, contending that the primary beneficiaries of this scheme were the majority shareholders and was disadvantageous to the minority interests. The appellant also contended that the valuation expert had made an improper assessment and, therefore, the valuation of shares was unfair. The

[45] Miheer H. Mafatlal v. Mafatlal Indus. Ltd., (1997) 1 S.C.C. 579 (India).

appellant requested the Court to monitor the implementation of the scheme to ensure fairness.

An important legal issue raised in this case was whether Courts have jurisdiction to scrutinise and monitor the scheme of amalgamation and to decide whether the scheme should be implemented, even after the majority of members or creditors have approved the scheme by special resolution.

The Court observed that the primary duty of the Court was to ensure whether proper procedural compliance had been followed by the amalgamating companies and was properly approved by the board of directors and members. The Court was satisfied that the amalgamating companies had complied with all the procedures, and approvals were properly obtained by conducting meetings. The valuation of shares was a technical issue and a matter of expertise. The Court held that whether to approve the scheme of amalgamation was the commercial wisdom of members and therefore, the Court would not sit and supervise or monitor the scheme. However, it is the duty of the Court to ensure that the scheme is not unfair or contrary to public policy.

Therefore, through this judgment, the Court held that whether to approve a scheme of arrangement is a case of commercial wisdom, and it cannot act as a supervisory authority. This case dealt a blow to minority shareholders' rights as the Court denied involvement in the scheme and upheld majority rule.

2. **Hindustan Lever Employees Union v. Hindustan Lever Ltd.[46]:**

Two companies, the defendant and Tata Oil Mills Company Ltd. (TOMCO), were proposed to be amalgamated. For the same purpose, a valuer was appointed, and the share exchange ratio was decided. Subsequently, the scheme was approved by members and creditors of both companies. However, the appellant, citing unfairness in the valuation of shares, filed a case in the Court, which reached the Supreme Court.

The main issue in this case was whether the expert's valuation was fair and if the Court needed to intervene.

Herein, the Court observed that the matter concerned the valuation of shares and required adequate skill and experience and must be done in accordance with recognised accounting methods. The duty of the Court is to ensure that the scheme of amalgamation is carried out in accordance with the regulations and in compliance with the public policy. The Court shall interfere only if the scheme is violative of the public policy, and the onus is on the person who contends that the scheme is not in accordance with the public policy.

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[46] Hindustan Lever Emps.' Union v. Hindustan Lever Ltd., (1995) Supp. (1) S.C.C. 499

Accordingly, in light of the above observations, the Court held that the valuation of shares is a technical matter to be determined by an expert. Therefore, the Court upheld the valuation determined by the expert valuer and refused to independently assess the value of shares of amalgamating companies, citing the requirement of technical expertise.

Therefore, the Court refused to independently value the scheme, citing the requirement of expertise. This is unfair to the minority shareholders who approach the Court to claim relief against unfair valuations that affect them.

3. **Wiki Kids & Anr. v. Regional Director and Anr.[47]:**

Amalgamation of two companies, Wiki Kids Ltd. and Avantel Ltd., was proposed, and an application for approving the same was filed with the Hyderabad High Court, which convened a meeting of members and creditors of both entities who approved the scheme. However, pursuant to Notification by the Ministry of Corporate Affairs dated 07th December 2016, the case was transferred to NCLT, and a second motion was filed for approval of the scheme in accordance with Section 232 of the Act. An application for no objection was also filed with the Bombay Stock Exchange, SEBI, RoC and the Regional Director, who granted no objection to the scheme. However, during the proceedings before NCLT, it found discrepancies in the valuation report, particularly with respect to the share exchange ratio and found that both amalgamating companies had common promoters. Based on these findings, the NCLT rejected the scheme, citing that it was purely in the interest of common promoters and not in the public interest. The appellants appealed with NCLAT against the order of NCLT, citing that it had wrongfully rejected the scheme and that all the procedures mandated by the Act and relevant regulations were complied with, and regulatory bodies had also given no objection to the scheme. They also took support of decisions in cases of *Miheer H. Mafatlal v. Mafatlal Industries Pvt. Ltd.* and *Hindustan Lever Employees Union v. Hindustan Lever Ltd.,* arguing that NCLT cannot act as a court of appeal and sit in judgment on decisions made by parties to the scheme.

This raised a legal question, whether a judicial body may reject a scheme if it is approved by the majority.

The NCLAT, while deciding the case, referred to the valuation report and noted that the independent valuer himself had raised questions over the accuracy and reliability of the information, and therefore, the shareholders shall not be deemed to have been provided with proper information merely by relying on this report. It also observed that NCLT comprises

[47] Wiki Kids Ltd. v. Regional Dir., Company Appeal (AT) No. 343 of 2017 (NCLAT Dec. 21, 2017)

judicial and technical members who assist the tribunal in examining the technicalities of the scheme and ensuring that it is fair and equitable for all stakeholders. Therefore, if a scheme appears unfair to a section of stakeholders, then the tribunal is bound to exercise its expertise and look into the technicalities of the scheme for their protection, if it is in the public interest. Additionally, NCLAT stated that a simple look into the mathematical details of the valuation report shows that common promoters of both companies are benefiting. Therefore, the NCLAT upheld the decision of the NCLT and rejected the scheme, citing that it was beneficial to the common promoters of the appellants and not in the public interest.

This is a crucial case when it comes to the protection of minority shareholders by judicial authorities. This clarifies that the tribunals and the Courts are bound to protect the public interest when the benefit of a scheme is distributed only to certain individuals. Additionally, in this case, the Courts have departed from merely examining procedural compliance, such as approval by the majority and disclosures, and have also analysed the impact of such a scheme on other stakeholders. This requires the parties involved in the scheme to ensure that the scheme is in the interest of the public and beneficial to all the stakeholders, including minority shareholders.

C. Oppression and Mismanagement:

1. Foss v. Harbottle[48]:

In this case, the minority shareholders approached the Court, contending that the majority shareholders and management of the company had wrongfully misappropriated the assets of the company in violation of its articles and sought relief against the same.

The legal question raised in this case was whether the shareholders were entitled to file a suit against the management of the company for a wrongful act committed by it.

The Court observed that a company is a separate legal entity and capable of acting on its own. It has the power to file a suit in its own name. Shareholders are considered distinct from the company. In the given case, the company has suffered harm; it is authorised to file a case against the wrongdoers. As shareholders are distinct from the company, they are not authorised to file a suit on behalf of the company. Therefore, through this judgement, it was established that only a company can sue other persons for any wrongful act which affects such a company and also established a majority rule, whereby it was held that if the majority has ratified a decision, the Courts cannot intervene.

This was the first case that dealt with oppression and mismanagement. There, the Court

[48] Foss v. Harbottle (1843) 2 Hare 461

introduced the majority rule, which established that decisions approved by the majority shall be binding on all. It also held that shareholders were incompetent to claim relief against any wrongful act committed against the company, and the company shall be the right person to claim relief. This was a huge setback for minority shareholders as it completely sidelined them and upheld majority rule in the corporate decision-making.

2. **Shanti Prasad Jain v. Kalinga Tubes Ltd.[49]:**

This case started with internal disputes between the shareholder groups, stemming from a shareholder agreement executed between them, which resulted in the appellant alleging that the affairs of the company were being conducted in a manner oppressive to the minority shareholders due to management changes, appointment of directors and decisions which disturbed the balance of power in the company. The defendants contended that the changes were made in accordance with the procedure established by the law and by the approval of the majority.

The main legal question raised was whether making changes in the management and internal structure of the company amounted to an act of oppression.

The SC observed that to constitute oppression, the actions complained of shall be burdensome, harsh, and wrongful, involving an act of unfair dealing in the affairs of the company that prejudicially affects a class of members, including the petitioner. The Court emphasised that it shall focus on the ongoing oppression rather than an isolated incident and held that, contrary to the appellant's contentions, no oppression or mismanagement was being perpetrated against the minority shareholders.

This case was a let-down to minority shareholders as the Court defined oppression and mismanagement as a continuous process rather than a one-off event. This increased the chances of aggrieved shareholders who felt oppressed by single or one-time actions of the company or majority shareholders, but could not claim relief from the Court as the action was a one-off event and not of a continuous nature.

3. **Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.[50]:**

In this case, Mr. Cyrus Mistry, from the side of the defendant, was removed from the position of chairman of Tata Sons. The defendant was a minority shareholder in Tata Sons, the holding company of the appellant. As a result of such removal, the defendant filed a suit in NCLT against Tata Sons and sought relief against oppression, contending a violation of norms of

[49] Shanti Prasad Jain v. Kalinga Tubes Ltd., A.I.R. 1965 S.C. 1535
[50] Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd., (2021) 9 S.C.C. 449

corporate governance and discrepancies in the articles of association. However, this was dismissed by NCLT. Defendants further appealed with NCLAT, wherein it accepted the contentions of the defendant and directed that the position of Mr. Cyrus Mistry as the chairman of Tata Sons. The appellants then appealed to the Supreme Court.

This raised an important legal question: whether the removal of a person from the position of chairman results in oppression under Section 241.

The SC observed that the removal of Mr Cyrus was in accordance with the relevant rules and regulations. The loss of confidence amongst board members over the performance of the chairman is purely subjective, and the Courts were not equipped to evaluate such a situation. Additionally, the evidence of oppression against the defendant was insufficient to prove that the defendant was placed in a prejudicial position by the Tata group, rejecting the contention of the defendant. The Court, therefore, concluded that the removal of a chairman from its position does not amount to an act of oppression and held that Section 241 of the Act protects shareholders and does not provide a remedy to directors.

This case is significant because it touched almost every topic related to oppression under CA, 2013. It also limited the application of Section 241 only to shareholders of the company and excluded concerns of directors or other managerial persons regarding their position in the company from its ambit. After this case, it became evident that if any issue arises within a company, related to the position of director or any key managerial position, and allegations of oppression are raised, the provisions of the Act may not be available if such allegation is not related to the position of shareholders.

V. COMPARATIVE ANALYSIS OF INTERNATIONAL LAWS:

We shall analyse legal frameworks of the U.S.A. (Delaware General Corporation Law), and the EU for exploring and analysing best practices protecting minority shareholders during corporate arrangements and merger processes.

A. United States of America:

1. Delaware General Corporation Law (DGCL):

Section 262[51] of the DGCL is a comprehensive provision that provides appraisal rights to stockholders participating in a scheme of corporate restructuring or merger. It provides that the company is required to inform stockholders about the availability of appraisal rights twenty days before the meeting for approval of the scheme, and stockholders who are interested in

[51] Del. Code Ann. tit. 8, § 262.

getting their stocks appraised shall send a written demand to the company by the prescribed method before the voting process for approval of the scheme is initiated. Thereafter, the surviving corporation is required to notify stockholders who applied for appraisal of their stock by following the timelines set out by this section.

Thereafter, the surviving entity or person entitled to appraisal rights may apply to the Court for appraisal of the value of stock within 120 days from the effective date of the merger or consolidation and any person entitled to appraisal rights may withdraw from the process within 60 days from initiation of the petition.

Thereafter, the Court shall determine the entitled persons and cannot dismiss the proceedings if it crosses specified thresholds. After the entitled persons are determined by the Court, the appraisal proceedings are to be conducted in accordance with the rules of the Court. The Court is to determine the fair value of the shares, and not consider elemental value arising from the accomplishment or expectation of the merger. The fair amount is to be paid along with the interest, and all the relevant factors are to be taken into account by the Court for determining the value of shares. Interest shall be accrued from the effective date of the merger until the pronouncement of judgment at the rate of 5% over the Federal Reserve Discount Rate. The surviving entity may pay entitled persons the amount of the difference between the amount paid and the fair value determined by the court, along with the accrued interest, before the entry of judgment is made into the proceedings. The person who was entitled to appraisal rights but did not exercise such rights or who withdrew himself from the proceedings of the Court is not entitled to receive any payment of dividend or other distributions on such shares.

2. Fiduciary Duty Class Action Suits:

The FDCA suits were introduced as a remedy to be used against controllers during squeeze-outs, wherein the plaintiff could claim relief by showing fraud or overreach by the controller. This mechanism for initiating a suit has enabled and resulted in many remedial suits, along with many advantages during appraisal. These suits are available regardless of the nature of the transaction or the consideration involved. Through these suits, by allowing cost sharing and claim aggregation against plaintiffs, key obstacles during appraisals have been resolved. Additionally, the controller is burdened with the liability to prove whether the transaction was fair. The remedies for the breach of fiduciary duty are flexible[52].

B. European Union

[52] Vikramaditya Khanna & Umakanth Varottil, Regulating Squeeze-Outs in India: A Comparative Perspective, 63 Am. J. Comp. L. 1009 (2015).

1. Directive (EU) 2019/2121 (Cross Border Conversions):

This directive, which regulates the shifting of the registered office of companies within member nations, makes provisions related to transparency and disclosures during the process of conversion so that the shareholders are properly informed.

This directive requires the company's management to make a report justifying legal and economic details of the conversion, implications of conversion on the business and for the members, total compensation provided, and the method used for determining compensation and rights available to the members[53]. A report of an independent expert is also required to be procured, which contains an expert opinion on the adequacy of cash compensation, discloses the method used for determining cash compensation and opines whether the methods used are adequate for assessing the cash compensation and whether any special valuation duties have arisen[54]. Further draft terms of conversion, along with notice to members, creditors and employees informing them to submit their comments, are required to be made available during the prescribed period[55].

The conversion is required to be approved in the general meeting of the company. A majority vote of at least two-thirds but not more than 90% of the members entitled to vote is required for approval of the scheme[56].

Further, it is to be ensured that members who have dissented from voting in favour of the draft terms of cross-border conversions have the right to dispose of their shares in exchange for adequate cash compensation in accordance with the relevant provisions. Additionally, the member states may require proper recording of opposition to the draft terms of cross-border conversion and their intention to dispose of the shares in the general meeting. Recording of such opposition at a general meeting is deemed to be proper documentation of a dissenting vote. The member states are required to establish a period not exceeding one month from the date of the general meeting, within which the dissenting members of the company have a right to dispose of their shares. Thereafter, not later than two months after the cross-border conversion comes into effect, the cash compensation shall be paid to the dissenting shareholders. If any member who has dissented from voting in favour of draft terms of cross-border conversion believes that the cash compensation provided by the company is inadequate, he shall apply to the competent authority to claim additional compensation, within such time as may be prescribed, and if the

[53] Directive 2019/2121, of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, art. 86e, 2019 O.J. (L 321) 1.
[54] Directive 2019/2121, art. 86f.
[55] Directive 2019/2121, art. 86g.
[56] Directive 2019/2121, art. 86h

final decision of the member state is to provide additional compensation, such decision shall apply to all members[57].

2. Directive (EU) 2017/1132 (Mergers and Cross-Border Mergers):

This directive requires management bodies of merging companies to draw up draft terms of merger, specifying such details as may be prescribed[58] and publish the same at least one month before the date of the general meeting[59]. The scheme of cross-border merger is approved if it is voted in favour by a majority of not less than two-thirds of the votes attached to the shares or subscribed capital. However, member states may require a simple majority to approve the draft of a cross-border merger[60].

Further, the management of both companies is required to draw a detailed report explaining the draft terms of the merger and legal and economic grounds, specifically the share exchange ratio. If there is any material change in assets and liabilities of the companies between the dates of preparation of the draft terms of merger and the date of the general meetings, they are to be disclosed at the meeting[61]. Additionally, draft terms of merger are required to be examined by one or more experts who act on behalf of the companies but are independent of them and are appointed by the judicial or administrative authorities at the request of the companies. The experts in their report are required to disclose the method used to arrive at the share exchange ratio and state whether the methods are adequate in deciding the share exchange ratio[62]. The shareholders can inspect the draft terms of merger, annual accounts of merging companies, and such other prescribed documents before the date of the general meeting[63]. The draft terms of conversion, along with notice to members, creditors and employees informing them to submit their comments, are required to be made available during the prescribed period, and an independent expert's report is also required to be disclosed[64].

The management of each merging company is required to draw a report for members explaining to them the legal and economic aspects of the merger and implications on the members, and particularly explain the implications of such a transaction on the business of the company. The report of members is required to disclose the cash compensation, along with the method used

[57] Directive 2019/2121, art. 86i.
[58] Directive 2017/1132, of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, art 91, 2017 O.J. (L 169) 46.
[59] Directive 2017/1132, art. 92.
[60] Directive 2017/1132, art. 93
[61] Directive 2017/1132, art. 95.
[62] Directive 2017/1132, art. 96.
[63] Directive 2017/1132, art. 97.
[64] Directive 2017/1132, art. 123.

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for determining the same; share exchange ratio and method used in determining the same; implications of such merger for members and rights and remedies available to them[65].

Such a report is required to be made available at least six weeks before the date of the general meeting, along with the draft terms of merger.

C. Final Analysis:

Based on the analysis of DCGL and directives by the EU, it is clear that these jurisdictions have emphasised appraisal rights and disclosures. While Delaware regulations set out comprehensive provisions related to the appraisal of the value of shares during the process of mergers and restructuring, EU directives mandate proper disclosures along with informing shareholders of the implications of the corporate arrangement or merger. These directives ensure that transparency and flow of information are maintained among all the stakeholders involved in the process. The provisions related to appraisal rights are missing in the Indian regulations, whereas provisions related to disclosures are required to be amended to ensure better transparency. The provisions enacted in regulations in the U.S. and the EU need to be transplanted in India to strengthen Indian corporate governance and enhance protections to minority shareholders.

VI. Systematic gaps and recommendations for reform:

A. Systematic Gaps

1. Absence of provisions related to appraisal rights:

Indian corporate law does not have a dedicated provision for appraisal or revaluation of shares similar to Delaware regulations. Delaware regulations allow shareholders involved in a corporate arrangement or merger to apply to the Court, individually or collectively, for appraisal of the value of their shares if they are not satisfied with the valuation provided by the acquirer. Although provisions in the CA, 2013 allow applying to the Court or tribunal if the dissenting shareholder is not satisfied with the scheme or acquisition of his shares by a majority shareholder, specific provisions for appraisal of share value are not available for shareholders.

2. High threshold barriers:

The thresholds mentioned in Sections 232, 235 and 236 are high. It is because, for applying to the Court against the scheme or acquisition of shares, a minimum percentage of voting power is required from the shareholders, individually or collectively. If the shareholding of aggrieved shareholders falls below the specified threshold, they are automatically barred from claiming

[65] Directive 2017/1132, art. 124.

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relief from the Courts. Although the Courts have decided various cases where voting rights were below the prescribed thresholds, on a discretionary basis based on the complexity of the case, this stance of the Courts has created an inconsistency in compliance with the provisions.

3. Excessive preference to procedural compliance:

The Courts have excessively emphasised procedural compliance over substantive justice. In many cases, the Courts have preferably analysed whether the company properly complied with regulatory procedures, and if the Court is satisfied with its findings, it dismissed the concerns of the aggrieved shareholder. The Courts need to analyse cases in such a manner that substantive justice is provided to the shareholders instead of merely checking procedural compliance.

4. Information Asymmetry:

Concerns related to the availability of information may arise during the introduction of a scheme of corporate arrangements and mergers. This is because, during the scheme of corporate arrangement and takeovers, information available to controlling or negotiating shareholders may not be disclosed properly to minority shareholders. This may create an imbalance of power wherein controlling shareholders may be at an advantageous position to make informed decisions, while minority shareholders may have no idea about the technicalities of the scheme. Although SEBI (LODR) Regulations and SEBI Takeover regulations mandate certain disclosures to be made by the company, these regulations are available only to listed companies. Unlisted and private companies are kept aside from complying with such requirements, which results in a lack of uniformity among companies regarding disclosures of their schemes.

5. Concentration of voting power and dispersed minority:

In private companies or companies where promoters or controlling stakeholders hold a super-majority, the minority shareholders may not be able to control the decisions of the management. It is because minorities may find it hard to challenge a scheme that is approved by the controlling shareholders holding more than 75% of voting power. In cases where the controlling shareholder holds more than 90% of voting power, the minorities may find it hard to comply with thresholds specified under Sections 232 and 241, as their shareholding may be lower than what is prescribed by the relevant provisions.

B. Recommendations for change:

1. Lowering regulatory thresholds:

Sections 232, 235 and 236 allow dissenting shareholders to apply to the Court if they are not satisfied with the offer or if they believe that the valuation of shares is not fair. However, these

sections have mandated high thresholds for allowing an application to the Court. The application may be accepted by the Court only if shareholders fulfilling the threshold file an application. As minority shareholders are dispersed or may not have adequate shareholding, such thresholds should be lowered so that the maximum number of minority shareholders are benefited.

2. **Introduction of appraisal rights:**

Appraisal rights similar to Delaware regulations should be introduced so that procedures related to appraisal and fair valuation of shares, which are absent from Indian corporate law, may be standardised. This will allow dissenting shareholders or shareholders dissatisfied with the compensation to effortlessly follow a standard uniform procedure, which will be codified and enforceable in the Court of Law. It will also reduce ambiguity within the Courts regarding the determination of the value of shares.

3. **Disclosure of adequate information:**

Information asymmetry causes an imbalance between the classes of shareholders. Therefore, it is required to extend disclosures specified in SEBI LODR and Takeover regulations to private and unlisted companies. This will enable minority shareholders to make an informed decision related to the scheme and share valuations. Provisions similar to the EU should be enacted so as to ensure maximum disclosure of information, and shareholders are also informed of the impact of a merger or corporate arrangement on them and on the business of the company.

4. **Encouraging shareholder agreements:**

Shareholder agreements should be encouraged in unlisted or closely held corporations as they define the rights and obligations of shareholders towards each other and towards the company. They may also contain a dedicated resolution mechanism in case of disagreements between signatories. Such agreements may help avoid oppression and the possibility of dispute between shareholders.

VII. Conclusion

Minority shareholders are important in corporate democracy from the point of view of corporate governance. However, they are in a vulnerable position during corporate transactions such as corporate arrangements, capital alterations and mergers. Although adequate safeguards have been provided by the Companies Act, 2013 and SEBI regulations, such as provisions related to voting rights, remedies against oppression and mismanagement, and disclosures during takeovers, there are practical deficiencies in their application. A major concern related to the

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protection of minority interests is the approach of judicial authorities. It is because they have preferred majority rule and procedural compliance over substantive justice. In the *Miheer H. Mafatlal* case, the Court emphasised the commercial wisdom of the majority; in the *Hindustan Lever* and *Pannalal Bhansali* case, the Court refused to scrutinise share valuations; in the *Shanti Prasad Durga* case, the Court limited an act of oppression as a continuous process, ignoring a one-off event affecting minority shareholders. Only in the case of *Wiki Kids*, the NCLAT departed from the usual approach and substantively decided valuation concerns. This highlights how exceptionally the judicial system focuses on the substantive angle of a case.

Analysis of the Delaware regulations and EU Directives reveals that minority protections depend on two foundational pillars, appraisal rights and regulatory disclosures. While Delaware regulations provide court-enforced appraisal rights, which are missing in Indian regulations, EU Directives require a higher degree of disclosures, requiring detailed reports related to corporate restructuring and mergers, independent expert reports and disclosures related to the impact of the transaction on shareholders, which exceed the standards of disclosures mandated by Indian regulations, which are unevenly implemented between listed and unlisted entities.

For enhancing protections to minority shareholders, certain reforms shall be implemented, such as lowering thresholds mentioned in Sections 232, 235 and 236 of the Act; incorporating provisions related to appraisal rights, extending disclosure obligations to all companies; and encouraging shareholder agreements, among others. Rethinking the approach towards minority shareholder protection and implementing the reforms, as well as international best practices, may help enhance shareholder democracy, curb the exploitation of minorities and align the Indian corporate governance framework with international standards.

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