

JBJ& TMNJ:
29.04.2026

ORDER ON OBJECTIONS
IN
COMPA NO.11/2006

KGR/KG

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

COMPA NO.11/2006

BETWEEN:

1. M/S ASHOK IRON WORK PVT LTD.,
HAVING ITS REGISTERED OFFICE AT
689/1, UDYAMBAG,
BELGAUM-590 008,
REP. BY ITS MANAGING DIRECTOR,
MR.ASHOK S HUMBARWADI.
2. NUTAN INVESTMENTS AND TRAINING PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT
238/A, RANADE ROAD, TILAKWADI,
BELGAUM-590 006,
REP. BY ITS DIRECTOR,
MR.ASHOK S HUMBARWADI.
3. ASHOK S HUMBARWADI,
S/O SHIVALINGAPPA,
AGED ABOUT 62 YEARS,
R/AT NO.45, SADASHIVANAGAR,
BELGAUM-590 001.
4. MR.JAYANT A HUMBARWADI,
S/O ASHOK S HUMBARWADI,
AGED ABOUT 30 YEARS,
R/AT NO.45, SADASHIVANAGAR,
BELGAUM-590 001.

...APPELLANTS

(BY SRI.S.S.NAGANAND, SENIOR COUNSEL AND
SRI.DHYAN CHINNAPPA, SENIOR COUNSEL
FOR SRI.AKASH V.T, ADVOCATE)

AND:

1. VASUDEV R. HANJI,
SINCE DEAD BY LRS,

- 1(a). SRI.SACHIN,
S/O LATE SRI.VASUDEV HANJI,
MAJOR,
- 1(b). SRI.SUBHASH,
S/O LATE SRI.VASUDEV HANJI,
MAJOR
- 1(c). SRI.BHARATESH,
S/O LATE SRI.VASUDEV HANJI,
MAJOR

ALL ARE R/AT:
PLOT NO.79,
'PADMA' NEAR III RAILWAYS GATE,
KHANAPUR ROAD,
BELGAUM-590 006.

- 2. MR.DHARMAPPA P. HANJI,
S/O MR.PADAPPA HANJI,
AGED ABOUT 63 YEARS,
R/AT NO. 2163, KOREGALI,
SHAHAPUR, BELGAUM,
REP. BY GPA HOLDER,
MR.VASUDEV V HANJI.
- 3. MR.MAHAVEER P. HANJI,
S/O MR. PADAPPA HANJI,
AGED ABOUT 58 YEARS,
R/O GAURAV APARTMENT,
MANGALWARPET, TILAKAWADI,
BELGAUM-590 006.
SHAHAPUR BELGAUM,
REP BY GPA HOLDER,
MR.VASUDEV P HANJI.
- 4. MR.SUKUMAR P. HANJI,
S/O MR.PADAPPA HANJI,
AGED ABOUT 56 YEARS,
R/O 2163, KOREGALLI,
SHAHAPUR, BELGAUM,
REP. BY GPA HOLDER,
MR.VASUDEV V HANJI.
- 5. MRS.SUDHA D. HANJI,
W/O DHARMAPPA P. HANJI,
AGED ABOUT 60 YEARS,
R/O 2163, KOREGALLI,

SHAHAPUR, BELGAUM,
REP BY GPA HOLDER,
MR.VASUDEV V HANJI.

6. DR.(MRS) SHARAYU M. HANJI,
W/O MR.MAHAVEER P. HANJI,
AGED ABOUT 54 YEARS,
R/O GAURAV APARTMENT,
MANGALWARPET, TILAKWADI,
BELGAUM-590 006.
7. MRS.HEMA V HANJI,
W/O VASUDEV P. HANJI,
AGED ABOUT 58 YEARS,
R/O "PADAM" OPP. GANESH METAL,
KHANAPUR ROAD, TILAKWADI,
BELGAUM-590 006,
REP. BY GPA HOLDER
MR.VASUDEV P. HANJI.

...RESPONDENTS

BY SRI UDAYA HOLLA, SENIOR COUNSEL
FOR SRI VIVEK HOLLA, ADVOCATE FOR C/R1 TO R7 & R1(a-c).
SRI.M. DILIP AND SRI.Y.V.RAVIRAJ,
ADVOCATES FOR IMPEADING APPLICANTS.
APPEAL AGAINST R2 ABATED VIDE ORDER DATED 16.11.2021)

THIS COMPANY APPEAL IS FILED UNDER SECTION 10-F OF THE COMPANIES ACT, 1956, AGAINST THE ORDER DATED 26.10.2006 PASSED BY THE COMPANY LAW BOARD, ADDITIONAL PRINCIPAL BENCH, CHENNAI IN C.P.NO.54/2005. THIS APPEAL WAS PARTLY ALLOWED BY THIS COURT ON 07.09.2007. PURSUANT TO THE SAID ORDER, TWO VALUATION REPORTS HAVE BEEN SUBMITTED. TO THE SAID VALUATION REPORTS, OBJECTIONS ARE FILED BY THE APPELLANTS DATED 21.06.2012 AND THE RESPONDENTS DATED 07.06.2012.

THE OBJECTIONS ON THE VALUATION REPORTS IN THIS COMPANY APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
AND
HON'BLE MR. JUSTICE T.M.NADAF

CAV ORDER ON OBJECTIONS**(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)**

The present controversy arises out of a corporate dispute. The appellants may be referred to as the Humbarwadi family and the respondents the Hanji family. Alleging oppression and mismanagement, the Hanji family initiated proceedings under Ss. 397 and 398 of the Companies Act, 1956¹ before the Company Law Board². The order dated 26.10.2006 passed by the CLB was challenged by the appellants in the aforesaid company appeal before this Court. This Court partly allowed the appeal with directions on 07.09.2007 by which two valuers were appointed by the Court to independently determine the fair market value of the shares of the appellant No.1-company and to submit their respective reports. After the reports were submitted, objections were filed on behalf of both parties.

2. For consideration before us are the objections statements filed by the appellants and the respondents to the valuation reports filed by the two valuers namely M/s. A.G. Ogale & Co.³ dated 05.12.2011 and M/s. RBSA Valuation

¹ Act

² CLB

³ Ogale

Advisors LLP⁴ dated 30.08.2011 and to answer the question that what would be the fair market price of a share of the appellant No.1-company as on the relevant date, that is, 31.03.2005.

3. It is necessary to narrate the background of the case. The stand of the respondents-Hanji family before the CLB was that Mr. Vasudev P. Hanji who is the Respondent No.1 herein and Mr. Ashok S. Humberwadi, who is the 3rd appellant herein, had constituted a partnership firm in the name and style of M/s. Ashok Iron and Steels for carrying on the foundry and engineering business with profit ratio of 25:75 per cent between the two family groups. During the year 1978, the Respondent No.1 and the appellant No.3 commenced three more partnership business under the name and style of: (i) Jaihind Engineering; (ii) Progressive Engineering; and (iii) Standard Engineering, with profit ratio 25:75 per cent between them.

4. It was stated on behalf of the Hanji family that in September 1982, the said partnership firm namely M/s. Ashok Iron and Steels was converted into Private Limited Company

⁴ RBSA

namely M/s. Ashok Iron Works Private Limited⁵ allotting shares in the proportion of 25 per cent to Hanji family and 75 per cent to Humbarwadi family. The conversion was effected by dissolving the partnership firm and allotting the business of the firm to the Company, which was one of the partners in the firm. Consequently, the firm M/s. Ashok Iron and Steels stood dissolved and its whole business came to be taken over by the Company. The total paid-up capital of the Company is 34900 shares of Rs.1,000/- each. The appellant No.3-Ashok Humbarwadi and his family members held 71.28 percent, while the respondent No.1 namely Vasudev R. Hanji and his family members held 23.76 percent of the total paid up share capital of the Company. The balance 4.96 percent of the shares was stated to be held by M/s. Nutan Investments and Trading Private Limited (Appellant No.2), which in turn is controlled by Mr. Vasudev P. Hanji and his family members, as well as Sri Ashok S. Humbarwadi and his family members in the ratio of 25:75 percent of its paid up capital.

5. Despite formation of the Company, there was a clear understanding between the promoters that the Company would be treated and run on the principles of quasi-

⁵ Company

partnership. It is stated that, Sri. Vasudev P. Hanji and Sri. Ashok S. Humbarwadi were whole time Directors of the Company ever since its incorporation. The cordiality continued between the parties till 2001-02. Allegation is that differences of opinion crept in between the two family groups on account of Sri Ashok S. Humbarwadi illegally siphoning off huge funds from the Company to M/s. Fluid Dynamics Pvt. Limited, a Company exclusively belonging to Humbarwadi family. The allegation made was that during the years 2000 and 2002, Ashok S. Humbarwadi had siphoned off over 78.00 Lakhs.

6. It was stated by the Hanji family that all possible efforts to bring an amicable solution to mutually resolving the issues did not yield any desired results. Further attempt for resolving differences was made through the arbitration process by entering into an Arbitration Agreement and the Legal Advisors and the Chartered Accountants of the Company were appointed as Arbitrators. The Arbitrators proceeded with the arbitration process and the award was passed, allegedly without any Arbitration Agreement.

7. It was alleged that the Company had been making substantially huge profits, but no dividend was declared by the Company since inception and no benefit or returns on

investments was given to the shareholders. The allegation was that the declaration of the dividend was intentionally avoided to deprive the minority shareholders of the returns on the investments made by the Company, which constituted an act of oppression in the affairs of the Company. Further allegations of oppression were made stating total lack of *bona fides* on part of the Humbarwadi family. Sri Vasudev Hanji had proposed at a board meeting to increase his remuneration in the form of increased salary and commission in proportion to the shareholding of Hanji family and Humbarwadi family, but Ashok Humbarwadi, on the strength of his majority in the Board of Directors and in the shareholding of the Company, rejected the proposal made by Vasudev Hanji on the ground that managerial remuneration is based on professional qualification and competence and it has nothing to do with the shareholding pattern. However, in the meeting of Board of Directors held on 14.03.2005, the remuneration of Ashok Humbarwadi was increased from ₹ 3.6 lakhs to ₹ 60 lakhs per annum apart from commission of 5% and other perquisites aggregating to ₹ 1.5 crores per annum. Similarly, the remuneration of the Jayant Humbarwadi who became a director only in December 2004, was fixed at ₹ 24 lakhs per

annum apart from commission of 4 percent and other perquisites aggregating rupees one crore per annum. The remuneration was made effective with effect from 21.12.2004. Ashok and Jayant Humbarwadi withdrew the commission amount as early as on 01.06.2005, which is much before the determination of profits of the company for the year ending 31.03.2005 and even before the annual accounts were approved by the general body. Whereas the total salary of Vasudev Hanji, one of the founder directors of the company for the last 30 years, remained at ₹ 3 lakhs per annum including all benefits.

8. Sri. Ashok Humbarwadi unilaterally proposed, at the Extraordinary General Meeting held on 26.09.2005, certain amendments to the Articles of Association of the Company which would eliminate the protection provided to the minority shareholders in the Articles of Association. Therefore, invoking the provisions of Section 397/398 of the Companies Act, 1956, the alleged acts of oppression and mismanagement in the affairs of the Company, the Company Petition No. 54/2005 was filed before the CLB by the Hanji family. By the order dated 26.10.2006 passed by the CLB, it was directed that the Hanji family, being minority shareholders would sell their shares in

favour of the Humbarwadi Group at a value to be determined by an independent valuer. One M/s. Deloitte Touche was directed to determine the fair market value of the shares of the Company as on 31.03.2005, being proximate to the date of Company Petition. It was stated that the valuation which may be made by the valuer would be binding on the parties.

9. The aforesaid order of the CLB dated 26.10.2006 was challenged by the Humbarwadi Group in the aforesaid Company Appeal No.11/2006. The aforesaid appeal was admitted on 04.12.2006 and a stay order was granted. By means of a judgment and order dated 07.09.2007, the aforesaid appeal filed under Section 10-F of the Companies Act was partly allowed with directions of setting aside the appointment of M/s. Deloitte Touche as valuer and of appointing in its stead Ogale and M/s A.F. Ferguson & Co. as valuers to determine the fair market value of the shares independently of each other. Though the aforesaid order of the Division Bench of this Court was challenged before the Supreme Court in Petition for Special Leave to Appeal (Civil) No.19910/2007, however, it was dismissed on 20.07.2010, with some observations.

10. Since one of the suggested valuers namely M/s. A.F. Fergusons & Co, Bengaluru, had intimated to the respondents that they no longer rendered valuation services, a miscellaneous petition was filed, wherein the Hanji family sought for appointment of RBSA to value the shares of the Company. Since there was no objection by the appellant, RBSA was appointed as one of the valuers in place of M/s. A.F. Fergusons and Co., Bengaluru, by means of the order dated 15.12.2010. Thereafter, the valuers submitted their valuation reports.

11. As per report of Ogale, the fair market value of the equity shares of the Company was stated to be Rs.9743/- per equity share of Rs.1,000/- each as on 31.03.2005. However, as per the valuation report of RBSA, the fair value of minority equity shares of 25 percent held by Hanji family in the Company, as on 31.03.2005 was opined to be Rs.22,666.29 per share (rounded off to Rs.22,700/- per share).

WRITTEN OBJECTIONS TO THE VALUATION REPORTS:

12. On record are two statements of objections. One filed by the appellants to the valuation report dated 30.08.2011 submitted by RBSA. Another objection statement

has been filed by the respondents to the valuation reports submitted by both Ogale and RBSA.

13. In the statement of objection filed by the appellant, the valuation of RBSA is stated to be completely untenable, being based on assumptions and presumptions which are unsubstantiated, speculative and exaggerated. It is stated that RBSA is not a Firm of Chartered Accountants; the valuation report contains superfluous material on the credentials and background of the said firm and lack of the qualification and experience to undertake the exercise. It is stated that none of the parameters for proper valuation have been considered; that the valuer had only selected nine companies without selecting a single company which is not listed on the stock exchange. For adopting a method of share valuation based on 'discounted cash flow method' several factors are to be borne in mind; that instead of looking at the profit and loss account and audited balance sheets and arriving at cash flows, the valuer commenced with adjusted earnings before interest and tax (EBIT) which is completely erroneous. Various other technical objections have been made.

14. It is stated that the next valuation method applied by the valuer was the market approach which is completely

inapposite; that the valuation adopted by the valuer has not resulted in proper determination of benefit; that on the basis of discounted cash flow basis, the value per share comes to Rs.6,000/- and therefore, the value arrived at by Ogale being higher than that, is reasonable and merits acceptance.

15. The respondents in their objections have stated that the Company is a private limited company which is an ongoing concern. Its shares are not listed in any stock exchange. It has been in existence for the last over three decades. It is one of the largest Companies situated in Belgaum carrying on the business of manufacture and sale of castings. It is stated that the profit earning method is the proper method to be adopted in case of ongoing concern and it is stated that the average of the gross profits, that is, profits before taxation, of the preceding two years and that of the subsequent year of the valuation date should be capitalized using a proper multiple which should vary from 8 to 13 depending on the nature of business carried on by the Company and the prevailing rate of interest.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES:

16. At the outset, the learned Senior counsel for the appellants, Sri. S.S. Naganand, has stated that as per his

instructions, the appellants are open to purchase the shares of the respondents who are existing shareholders of the Company at the rate valued by RBSA i.e., at the rate of Rs.22,700/- per share. Additionally they are open to pay interest on the amount of shares from March 2005.

17. The learned counsel has referred to at length the salient features of the valuation made by RBSA, it having reviewed and analysed the historical financial statements and other data provided by the management of the Company. It is stated that RBSA noticed the share holding structure of the Company as on 31.05.2005, as well as the major customers of the Company. Three approaches available to the valuation professional were noticed namely, the asset approach, the income approach and the market approach.

18. It is contended that the valuer has noticed that, while valuing a private Company, there will be significant difference between selling majority of stake of a business when compared to minority stake of the same business.

19. Under the income approach, RBSA valued the equity of the Company using discounted cash flow method. The discount rates used to arrive at the fair value of cash flows are

commensurate with the business and financial risks associated with the Company. RBSA added back the excess adjusted managerial remuneration during the period from 31.03.2006 to 31.03.2010 to get the adjusted EBIT. Nine comparable companies were used for the purpose of calculation. Adopting the market approach as well, RBSA concluded that, under the Market Multiple Approach, the price per share would be Rs.26,271.39, whereas under the Income Approach, it would be Rs.34,172.06. Given the purpose of the valuation exercise being to sell minority stake in the Company held by Hanji family which is 25 percent stake, the valuers further discounted the average value of equity share i.e., Rs.30,221.72 per share, by 25 percent to get fair value of minority equity. After deducting 25 percent as aforesaid, the fair value of minority equity shares of 25 percent held by Hanji family in the Company as on 31.03.2005 was stated to be Rs.22,666.29 per share (Rounded off to Rs.22,700/- per share).

20. It is submitted that the respondents are seeking to agitate the matter on the ground that the due dividend has not been paid. However, the CLB in its order that was impugned in the appeal had held that under the facts and circumstances, there was no aspect of mismanagement or oppression by the

appellant-Company in this regard. This observation of the CLB having attained finality, it is no longer open for the respondents to claim dividend. Dividend was not given in view of the need for retaining the profits within the Company by way of reserves to meet margin money required for the expansion and growing needs of working capital, which is stated in the order of the CLB. In the valuation report submitted by RBSA, the excess adjusted managerial remuneration during the period from 31.03.2006 to 31.03.2010 has been added back to get the adjusted EBIT. The contention is that there is no such error in the valuation of RBSA that would vitiate its report. Further, it is stated that the Company is willing to offer reasonable rate of interest to the respondents. It is stated that several of the respondents have already sold their shares to the Humbarwadi group, and it is only the remaining members of the Hanji group, who are intent on creating a road block in the growth of the Company. It is stated that certain important resolutions are to be passed in the General Body Meeting of the Company, but, the respondents have sent a letter indicating that the matter being *sub-judice*, no meeting be held.

21. It is stated that, between December 2019 to July 2024, a total of 3858 shares have been purchased from

members of the Hanji Group at price ranging from Rs.15,699/- to 16,399/- per share. At present, the remaining number of shares in the instant litigation is 4564. To put an end to litigation, the Humbarwadi group is agreeable to purchase the remaining shares of the respondents at price of Rs.22,700/- per share in terms of the valuation of RBSA. Further, the interest at the rate of 6% per annum for the past 21 years can be considered to be paid for those shares. The submission is that in the objections to the valuation report of both the valuers, the respondent has admitted that RBSA has valued the shares on the basis of profit earning method and discounted cash flow method. The respondent has further stated in the objections that the valuation of Ogale be rejected and the valuation of RBSA be accepted without applying the discounting factor and hold that the value of each share be taken at Rs.30,222/=, for purchase of the equity shares held by the respondent in the appellant Company.

22. In support of his submissions, the learned counsel has relied upon the judgments of the Supreme Court pertaining to valuation in the case of ***G.L. Sultania and Another Vs. Securities and Exchange board of India and others***⁶ and

⁶ (2007) 5 SCC 133

another judgment of the Supreme Court in the case of **Renuka Datla Vs. Solvay Pharmaceutical B.V.**⁷ Another judgment in the case of **Ramachandra Rao Vs. S. Nagabhushana Rao and Others**⁸ is cited to contend that a decision between the parties even if erroneous, remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. Such a judgment cannot be re-agitated in collateral proceedings.

23. As regard the rate of interest that may be awarded, the learned counsel has referred to the judgment of the Supreme Court in **I.K. Merchants Pvt. Ltd. and Others Vs. State of Rajasthan and Others**⁹.

24. Sri Arvind Varma, Senior Advocate who also appeared for the appellants, has stated that in the objections to the valuation report, the respondents have not objected to the methodology applied by RBSA for the valuation of fair value of the shares. In the objections to the valuation report by the respondent it is admitted that RBSA has valued the shares on the basis of profit earning method and discounted cash flow method. The respondents have no role in the profits of the

⁷ (2004) 1 SCC 149

⁸ (2024) 17 SCC 361

⁹ 2025 SCC OnLine SC 692

Company and therefore the discount applied by the valuer for the minority holding of the respondents is correct in view of the facts and circumstances. The judgment of this Court in Rakhra Sports was on different set of facts and therefore, reliance placed on that judgment by the respondents is inappropriate. The respondent has further stated in the objections that the valuation of RBSA be accepted without applying the discounting factor and hold that the value of each share be taken at Rs.30,222/=, for purchase of the equity shares held by the respondent in the appellant Company. Therefore the valuation done by RBSA may be accepted only to put an end to litigation between the parties. Attention has been drawn to the 'admission' made by the counsel for the respondents which is recorded by this Court in its order dated 03.10.2023. The date of determination of the fair value of the shares being 31.03.2005, reliance cannot be placed by the respondents on the current balance sheets of the Company. The number of shares of the Hanji family remaining to be purchased by the Humbarwadi family, having being drastically reduced due to earlier purchase of shares from other members of the Humbarwadi family, the respondents cannot claim on the capital of the Company.

25. Sri. Udaya Holla, learned Senior Counsel for the respondents, has referred to the valuation reports and has stated that the valuation report of RBSA does not adopt the correct methodology of assessing the valuation of the share as the value is to be determined by reference to dividends if any, reflecting the profit earning capacity on a reasonable commercial basis i.e., the profits which the Company has been making or will be added back to the profits in computing the yield. In this regard, he has referred to the judgments of the Supreme Court in ***Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.***¹⁰ and in the matter of ***Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia***¹¹.

26. The learned counsel has also referred to a judgment of the Co-ordinate Bench of this Court in ***Rakhra Sports Private Ltd. Vs. Khraitilal Rakhra***¹². He has contended that for assessing valuation, average gross profits for a specified number of years will have to be multiplied by a suitable multiplier. The estimated profit is to be pre-tax profit, to which an appropriate multiplier is to be applied. Essence of justice and principles of equity demand that everyone concerned

¹⁰ (1973) 3 SCC 157

¹¹ (1980) 2 SCC 238

¹² ILR 1993 KAR 920

should be placed on par. There should be no discounting on the ground that the share belongs to a minority holder. It is contended that, in ***Rakhra Sports***, interest at the rate of 10 percent from the date of petition till payment was ordered to be paid on the share value. It is stated that the aforesaid judgment in ***Rakhra Sports*** was followed by yet another co-ordinate Bench of this Court in its judgment ***dated 17.04.2001 passed in OSA No.4/1996*** between ***M/s. Synchron Machine Tools Pvt. Ltd., and others Vs. U.M. Suresh Rao.***

27. It is stated that from the year 31.03.2003, the Company has been consistently making profits. The profit before tax for the period 31.03.2003 to 31.03.2025 is Rs.1466.47 Crores. The profit after tax for the said period is Rs.1052.52 Crores. 12.70 percent of the profit after tax, which the Hanji group are entitled to, works out to Rs.133.67 Crores.

28. It is contended that the appellants are agreeable to accept the valuation of RBSA and pay the respondents Rs.22,700/- per share along with interest at the rate of 6% per annum, which indicates that, they accept that the valuation has to be based on profitability method or yield method.

29. Based on this methodology, RBSA has arrived at a valuation of Rs.30,221.72/- per share and therefore, even

according to the appellant, this is the amount they are liable to pay. The deduction of 25 percent made by RBSA on the valuation of shares on the ground that Hanji group, is the minority share holders, is contrary to the orders of the Division Bench of this Court in ***Rakhra Sports***. If the excess managerial remuneration is added back to the profit before tax for the purpose of computation of valuation, the valuation of per share would be Rs.35,000/=. He stated that the Hanji group is entitled to interest at the rate of 24 percent per annum. He submits that just because some of the members of the Hanji group agreed to sell their shares by way of distress sale since they were in urgent need of money at a lower rate per share, the same cannot be a yardstick for determining the fair market value of shares.

30. It is stated that just prior to 2005, both Sri. Vasudev P. Hanji, head of the Hanji family, and Sri Ashok S. Humbarwadi, head of the Humbarwadi family, were working Partners/ Directors and therefore, both of them received remuneration of Rs.3.5 lakhs per annum. In the year 2005, Sri Vasudev Hanji was removed from the Directorship of the Company. The remuneration of Sri Ashok S Humbarwadi was increased to Rs.1.5 Crores per annum and his son who was just

out of engineering college was inducted and his remuneration was made Rs.1.00 Crore. It is stated that the discount on account of minority shareholding is wholly illegal and contrary to the judgments of this Court, which binds the valuers as well as the parties to the proceedings.

31. It is stated that the judgment of the Supreme Court in ***I.K. Merchants*** would have no application to the facts of the present case. In ***I.K. Merchants*** the burden of interest along with the principal value fell upon the Government and therefore the award of reasonable interest of 6 percent per annum was directed by the Supreme Court. However, in the instant case the appellants have made huge profits of nearly Rs.1,500 Crores from 2005 till date making use of 25 percent of share capital of Hanji family. Therefore, the principles of equity demand that Hanji family is paid interest at least at the rate of 24 percent per annum.

32. As regards the statement made by the counsel for the respondents before this Court on 03.10.2023 that they shall consider transferring the shares at such price which this court may fix, which may range between Rs.15,599/- and Rs.22,700/- subject to payment of dividend along with interest,

it is stated that the respondents are even now willing to abide by that statement. However, in the light of the fact that the Company made huge profits with dividend and interest, the value of the shares would be Rs.6,00,000/- per share.

33. As regards the judgments relied by the counsel for the appellant in **G. L. Sultania** and **Dr. Renuka Datla**, it is urged by the learned counsel for the respondents that as far as RBSA is concerned, there is no doubt that they have resorted to evaluate the shares on the basis of profitability method. However, two errors have been made by RBSA namely, (i) Discounting of share price by 25 percent on the ground that Hanji family belong to minority group; (ii) It took into account the excess managerial remuneration at Rs.20,00,000/- per year for the year ending 31.03.2005 and Rs.62,00,000/- for the year ending 31.03.2006, whereas, in fact, the excess remuneration was Rs.2,46,50,000/-. It is stated that the principles laid down in the aforesaid judgments of the Supreme Court reflect that if the valuation report discloses non-consideration of relevant parameters, the report shall stand vitiated for that reason and therefore, expert's opinion cannot be said to be final. Finally, it is stated that since the Hanji family holds 25 percent of the shares, they are morally and

legally entitled to 25 percent of the profits. Keeping in view the profits made by the Company over the last 21 years, which is nearly Rs.1,500 Crores, the Hanji family is entitled to 25 percent of the same, which aggregates to Rs.375.00 Crores.

34. It is stated that the appellants are now trying to sell the Company at nearly Rs.997.00 Crores as apparent from the notice dated 03.11.2025 and 25 percent of this amount would aggregate to Rs.249.25 Crores. Based on this, the share value would not be less than Rs.2,86,532/- per share.

ANALYSIS:

35. Before looking into the valuations done by Ogale and RBSA, it would be appropriate to refer to the observations made by the CLB in its order that was impugned in the aforesaid appeal.

36. It was noted by the CLB that the intention of the Hanji family and Humbarwadi family is to share the profits of the business in the ratio of 25:75 percent, it was observed that against this background, the grievances of the Hanji family in regard to non-payment of increased salary or/and commission and non- declaration of dividends must be considered. Profits of the Company before interest and depreciation for the year

31.03.2004 and accounted for Rs.16.7 Crores. The profits for the year ending 31.03.2005 stood at Rs.29.21 Crores. It was observed that the declaration of dividend or increase in the remuneration in the form of increased salary or commission is left to the collective wisdom of the Board of Directors of the Company. Sri. Vasudev P. Hanji by his letter dated 15.12.2004 requested the Board of Directors for: (a) Payment of commission to the working Directors and net profits of the Company in proportion to the share holding of the Company, that is 75 percent to the Humbarwadi group and 25 percent to the Hanji group; and (b) for declaration of an interim dividend of at least 50 percent of the profits. In its meeting held on 20.12.2004, the Board of Directors deliberated the proposal put for by Sri. Vasudev P. Hanji, but collectively did not favour the proposal regarding managerial remuneration on the ground that it is based on professional qualification and confidence, which has nothing to do with the share holding pattern, the Board of Directors dropped the item relating to declaration of dividend in view of the need for retaining the profits within the Company by way of reserves to meet margin money required for the expansion and growing needs of working capital. It was

noted by the CLB that Sri. Vasudev P. Hanji was party to these decisions of the Board of Directors.

37. In the Board Meeting held on 14.03.2005, Sri. Vasudev P. Hanji had no objection for paying increased remuneration to the appellants i.e., Sri. Ashok S. Humbarwadi and Sri. Jayant A. Humbarwadi. He was demanding for himself $1/3^{\text{rd}}$ of the Managing Director's salary in view of his holding of 25 percent of the shares in the Company. It was observed by the CLB that Sri. Vasudev P. Hanji while suggesting certain changes to be carried out in the minutes of the meeting dated 20.12.2004 never objected to the decisions of the Board of Directors' payment of managerial remuneration and non-declaration of dividend to the share holders. It was held that the sequence of events showed that there is no illegality in rejecting the proposal of Sri Vasudev P. Hanji regarding payment of managerial remuneration and declaration of dividend.

38. It was noted that, though the increase in remuneration to the working Directors (for payment of commission on the net profits of the Company in proportion to the share holding of the Company) and declaration of dividend

were declined by the Board of Directors at the meeting held on 20.09.2004, yet remuneration of Sri Ashok S. Humbarwadi and Sri Jayant A. Humbarwadi, being father and son, together with commission came to be enhanced to Rs.1.5 Crores and Rs.1.00 Crore per annum respectively with effect from 21.12.2004 as approved in the Board meeting held on 14.03.2005.

39. It was observed by the CLB that the remuneration of Sri. Vasudev P. Hanji, who was one of the Founder Directors of the Company remained without any enhancement for the previous three decades. There was no link between share holding and remuneration, but in commercial parlance, the profit sharing is on the basis of either in the nature of remuneration or commission or dividend. While Sri Ashok S. Humbarwadi and Sri Jayant A. Humbarwadi got enhanced remuneration including commission with effect from 21.12.2004, Sri Vasudev P. Hanji was denied any benefits of the business of the Company. The CLB observed that, it is one of the basic rights of the share holder to receive the dividend declared by the Company and failure to declare an adequate dividend would constitute unfair prejudice to the share holders. It was held that the peculiar facts of the case before the CLB would indicate that non-declaration of dividend,

but selective and exorbitant increase of remuneration and commission to Sri. Ashok S. Humbarwadi and Jayant A. Humbarwadi without extending similar benefits to Sri. Vasudev P. Hanji would be nothing but an act of oppression against the Hanji group. The plea that Ashok S. Humbarwadi did not draw any remuneration, while Vasudev P. Hanji was managing the affairs of the Company was observed to be no way justifiable in the light of the meagre remuneration drawn by Vasudev P. Hanji at the relevant point of time. It was held that, when petitioners are deprived of their rights and privileges as recognised by Courts to enjoy the profits of the Company in the shape of dividends since its inception in the year 1981, such aggrieved shareholders can apply before the CLB even in respect of a single act, as held by the Supreme Court in ***Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co. & others***¹³, irrespective of the fact whether the quasi-partnership principles can be extended to the Company or not.

40. It was held that the grievance of the Hanji family that Ashok S. Humbarwadi and Sri. Jayant A. Humbarwadi were paid commission prior to approval of annual accounts on

¹³ (2003) Vol.117 CC 506

04.06.2005, does not survive in view of the ratification by the Board of Directors regarding payment of commission in favour of Sri. Ashok S. Humbarwadi and Sri. Jayant A. Humbarwadi at the subsequent Board meeting, thereby it would relate back to the date of the act ratified.

41. Regarding the charge that Sri. Ashok S. Humbarwadi was, since the year 2001-02, illegally siphoning off funds under the guise of sub-contracting charges to the tune of Rs.78.00 Lakhs from the Company to M/s. Fluid Dynamics (P) Ltd., which exclusively belongs to the Humbarwadi family, the CLB observed that, admittedly the Company had been entrusting job work to M/s. Fluid Dynamics (P) Ltd., for the past several years including the period when the Company had been under the management of Sri. Vasudev P. Hanji. The Hanji family never made any grievance at any point of time about siphoning off funds by Ashok S. Humbarwadi, but raised it for the first time before the CLB. The grievances with regard to alleged siphoning off the funds on account of M/s. Fluid Dynamics (P) Ltd., was never placed at any of the Board meetings. More over, the allegation of siphoning off Rs.78.00 Lakhs during the year 2000 and 2002 remained unsubstantiated. It was held that the Hanji family is barred by laches or acquiescence from

complaining of the alleged illegal siphoning off funds by Sri. Ashok S. Humbarwadi from the Company to M/s. Fluid Dynamics (P) Ltd., more so since accounts for the year 2000-01 and 2001-02, had been duly audited and adopted without any objection raised by the Hanji family. Similarly it was held that the allegation regarding misappropriation of Rs.1.07 crores was baseless.

42. There was another complaint that Ashok Humbarwadi was seeking to add one more foundry unit without financial and technical viability for 36,000 tons at a cost of Rs.62 Crores. Similarly, the new machine shop with an investment of Rs.26 Crores had not become functional on account of addition of outdated machines. The complaint was that the company cannot service the huge outstanding debts with those enormous investments as the plant and machinery will not be viable, which will ultimately result in financial crunch. The CLB opined that as far as plant-III was concerned, Vasudev Hanji was a party to the unanimous decision taken by the Board of Directors on the basis of financial and technical reports. The decision to increase the capacity of plant -III, was a business decision, which is left to the absolute wisdom of the Board of Directors. Recognizing the corporate democracy of a

company in managing its affairs, it was held that it is not for the CLB to restrict the powers of the Board of Directors or to interfere with day to day functions, management and administration of a company unless established that the decisions taken by the Board of Directors are ultra vires the Companies Act or the Articles of Association of the Company. It was observed that Vasudev Hanji, without making any grievance at any of the subsequent board meetings, had belatedly challenged the increase in capacity of Plant - III from 18,000 metric tons to 36,000 metric tons. It was accordingly held that the conduct of the Humberwadi family in increasing the capacity of plant – III cannot be said to be burdensome, harsh and wrongful.

43. The Company represented by its Chairman, namely, Ashok S. Humbarwadi, entered into an agreement in September 2004 on behalf of the Board of Directors, with Vasudev P. Hanji for himself and other family members, to determine the value of 25 percent shares of the Hanji family in the Company in order to take away their 25 percent share from the company and quit. An advocate and a chartered accountant were appointed as arbitrators. Arbitration proceedings commenced and an award was made on 24.01.2005 despite

objections raised by Vasudev P. Hanji regarding validity of the agreement. In terms of the award, Vasudev Hanji and his family members were required to exit the company and indicate the selling price of the shares. Thereafter, the Company was to accept the offer made by Vasudev Hanji and his family members or quote its purchase price of the shares. If there was no consensus regarding the price between the Hanji family and the Company, the statutory auditor would fix the market value of the shares which would be binding on the Hanji family as well as the Company. The award dated 24.01.2005 was stated to be under challenge in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 with a statutory stay on the operation of the award.

44. In the course of hearing before the CLB, while the Hanji family were willing to purchase the shares of the Humbarwadi family @ Rs.15,000/- per share the Humbarwadi family expressed willingness to abide by Article 10 of the Articles of Association of the company, in terms of which fair selling value of shares would be determined by the statutory auditor of the company. The Humbarwadi family offered to purchase the shares of the Hanji family for a sum of Rs.5,000/- per share which, the CLB observed, cannot reflect the current

market value in the light of the principles enunciated in the case of **Rakhra sports**, according to which the valuation of the shares must be carried out on gross profits earned by the company.

45. The CLB exercised its powers under Sections 397 and 398 read with Section 402 of the Companies Act to direct purchase of the shares of the Hanji family by the Humbarwadi family. Therefore, considering the facts of the case and noting that the relationship between one of the arbitrators, who was a statutory auditor, with Vasudev P. Hanji could not be expected to be cordial, the valuation of the shares was directed to be carried out by an independent valuer. It was held that thereby, the Hanji family can exit the company at a fair selling value, satisfying the spirit of Article 10 of the Articles of Association and bringing to an end the matters complained of by the Hanji family. It was observed by the CLB that in view of the relief proposed, it did not find any need to go into the grievances of the Hanji family regarding the alleged arbitrary amendments to the articles of association which was left to the collective wisdom of the Board of Directors of the Company. It was held that the purported removal of a member of the Hanji family from the office of director was quite immaterial, especially

when Hanji family was ready and willing to quit the company on receipt of the fair selling value of the shares held by them.

46. It was observed by the CLB that it is not disputed that the Hanji family had invested their money in the company on the understanding that 25% of the profits of the company would be available to them, which was not found to have been followed and therefore, the Hanji family was deprived of their privileges enjoyed since inception of the company, resulting in a situation that it was just and equitable to wind up the company. However, any order to wind up the company would definitely prejudice the interest of the company and its shareholders since the company was a profit making concern with a huge workforce. It was noted that the Hanji family did not have the privilege of reaping the benefits of their investments in the company and were not willing to make any additional investment. If the Humbarwadi family were permitted to pump in additional funds, it would result in change of the share holding pattern which had been maintained for three decades. It was held that in view of the irreconcilable differences between Hanji family and Humbarwadi family on future expansion plans, the company could not function with the co-existence of those two families.

47. The intention of the Hanji family in the company petition was noted by the CLB, which was to seek appropriate remedial measures with a view to bringing to an end the matters complained of by them. It was therefore directed that the Hanji Group, being minority shareholders, would sell their shares in favour of the Humbarwadi family at a value to be determined by an independent valuer, namely M/s. Deloitte Touche, which who would determine the fair market value of the shares of the company as at 31.03.2005, being proximate to the date of the company petition, after taking into account the submissions which may be made by both the parties. It was held that the valuation which may be made by the valuers shall be binding on the parties.

48. The aforesaid order of the CLB dated 26.10.2006 was subjected to challenge in the aforesaid Company Appeal No.11/2006. By means of a judgment and order dated 07.09.2007, the appeal filed by Humbarwadi family was partly allowed. The division bench of this Court framed the following questions of law for its consideration:

"1. Whether the CLB had no powers under Section 402 of the Companies Act to issue directions to the minority shareholders to sell their shares to the

majority shareholders at the value to be determined by an independent valuer despite it declined to grant any of the reliefs sought for by the petitioners therein under Sections 397 and 398 on the grounds of oppression and mismanagement?

2. Whether pendency of Arbitration proceedings before the learned District Judge in respect of sale of the shares was a bar for the CLB to pass an order under Section 402 in the Company Petition filed under Sections 397 and 398 by the respondents”

49. It was held, that the submission of the Senior counsel for the Humbarwadi group that the CLB, after having held that the respondents failed to prove the acts of oppression or mismanagement, ought to have simply dismissed the petition and it had no power under Section 402 of the Companies Act to issue directions that the minority shareholders would sell their shares to the majority shareholders and the market price would be determined by the independent valuer, could not be accepted.

50. It was noted that it was not disputed that though the arbitrators were appointed under the agreement aforesaid, the Hanji family did not take part in the arbitration proceedings and though the arbitrators passed the award, they did not determine the market price of the shares. This Court noted that

though the matter was pending before the competent Court regarding the challenge made to the award of the arbitrators, it would not in any manner affect the powers and jurisdiction of the CLB under Section 397, 398 read with Section 402 of the Companies Act in passing the order issuing directions for determination of fair market value of the shares by an independent valuer. It was held that the contention that CLB ought not to have passed the impugned order issuing the directions when the arbitration award was challenged before the learned District Judge, does not deserve acceptance and hence it was not accepted.

51. The Hanji family submitted before the division bench of this Court that they were prepared to buy the shares of the Humbarwadi family at a price of Rs.15,000/- per share as against the price of Rs.5,000/- per share offered by the Humbarwadi Family. It was noted that the Humbarwadi family were not prepared to sell their shares to the Hanji family at a price of Rs.15,000/- per share. Both the counsel for the parties submitted a memo each mentioning the names of chartered accountants for being appointed as independent valuer.

52. This Court did not accept the prayer on behalf of the Humbarwadi family that if any one of the three chartered accountants named in their memo is appointed by the Court then he may be permitted to be appointed by the Company as its statutory auditor in terms of Section 224 of the Act. It was held that the ends of justice would be met if two chartered accountants, one selected from the names suggested by each party to the appeal in the respective memos were appointed as valuers with specific direction to them that they shall determine the fair market price of the shares of the company as on the relevant date, that is 31.03.2005, independently of each other and submit to the High Court their respective valuation reports in sealed covers, and appropriate order, based on the reports determining the valuation of the shares, is passed by the Court. It was therefore held and directed as follows:

"22. In view of the above discussions and observations made by us the questions of law that have arisen for our consideration and decision are answered as, (i) the CLB had powers under Section 402 of the Companies Act to issue directions to the minority shareholders to sell their shares to the majority shareholders at the value to be determined by the independent valuer despite declining to grant any of the reliefs sought for in the petition under Sections 397 and 398 of the Act on the grounds of oppression and

mismanagement and (ii) 'the pendency of Arbitration proceedings in respect of sale of shares was not a bar for the CLB to pass the impugned order under Section 402 of the Companies Act.' Therefore, the impugned order does not call for interpretation in this Appeal. However, this appeal deserves to be allowed in part and it is allowed accordingly only with regard to the appointment of the valuer by the CLB, named therein, by suitably modifying that portion of the order. Therefore, the impugned order, so far as it relates to the appointment of M/s.Deloitte Touche, Millers Road, Bangalore, as independent valuer deserves to be set aside and the same is set aside to that extent.

23. Further, M/s.C.A.G.Ogale & Co., 502, Building No.34, Lokamanya Nagar, Sadashiv Peth, Pune-411030, named in the memo of the appellants and M/s.A.F.Ferguson & Co., Chartered Accountants, U.B. Anchorage, Annexe II, Richmond Road, Bangalore-560 025, named in the memo of the respondents are hereby appointed as the valuers and they shall determine the fair market value of the shares of M/s.Ashok Iron Works Pvt. Ltd., having its registered office at Udhyambagh, Belgaum, Karnataka), independently of each other and submit to this Court their respective reports in sealed covers within one month from the date of receipt of letter of appointment. The Chairman, Managing Director and all other officers of the Company shall co-operate with the said valuers and shall also assist them by placing before them such information, in respect of the affairs of the Company, as would be required in the matter of determination of fair market value of the shares. The

costs in this regard, including the fees of the said valuers, shall be borne by the Company itself."

53. The Humbarwadi family challenged the aforesaid judgment dated 07.09.2007 passed by this Court before the Supreme Court in petition for Special Leave to appeal (Civil) No.19910/2007 which came to be dismissed on 20.07.2010 by means of the following order:

"Learned counsel for the petitioners submitted that the petitioners have decided to accept the impugned judgment of the High Court and, therefore, seeks leave to withdraw this petition making it clear that such acceptance will not come in the way of the petitioners agitating their rights and contentions in any other pending proceedings. Special leave petition is dismissed, accordingly.

The time granted by the High Court for determining the fair market value of the shares as per paragraph 23 of its judgment is extended by eight weeks. Parties to inform the valuers accordingly"

54. Thereafter, pursuant to the order of this Court dated 15.12.2010, RBSA came to be appointed as valuer, as sought for by the Hanji family. The other valuer, Ogale, named in the memo of the Humbarwadi family, remained as per the order of this Court dated 07.09.2007.

55. The order of the CLB reflects that the remuneration of Sri. Vasudev P. Hanji, remained without any enhancement for three decades; that profits are shared either by way of remuneration or commission or dividend; that while Sri Ashok S. Humbarwadi and Sri Jayant A. Humbarwadi got enhanced remuneration including commission, Vasudev P. Hanji was denied any benefits of the business of the Company. One of the basic rights of the share holder to receive the dividend declared by the Company and failure to declare an adequate dividend would constitute unfair prejudice to the share holders. Non-declaration of dividend and exorbitant increase of remuneration and commission to Sri. Ashok S. Humbarwadi and Jayant A. Humbarwadi without extending similar benefits to Sri. Vasudev P. Hanji has been correctly held to be an act of oppression against the Hanji group. Such aggrieved shareholders can apply before the CLB even in respect of a single act irrespective of the fact whether the quasi-partnership principles can be extended to the Company or not. However, the other issues sought to be raised by the respondents before the CLB did not find favour.

56. Undisputedly, the Hanji family had invested their money in the Company expecting that 25 percent of the profits

of the company would be available to them, but they were deprived of their privileges. The CLB observed that it resulted in a situation that it was just and equitable to wind up the Company. However, any order to wind up the company would prejudice the interest of the company and its shareholders since the company was a profit making concern with a huge workforce. It was noted that the Hanji family were not willing to make any additional investment. Therefore, an order was made by the CLB for sale of the shares of the Hanji family which were to be purchased by the Humbarwadi family. The order of the CLB has become final.

57. The RBSA was nominated by the Court as one of the valuers as its name was also suggested by the respondents. Yet the respondents have filed objections also against its report. In any view of the matter the fact remains that the method of valuation adopted by the RBSA is acknowledged and accepted by the respondents. The respondents have also sought acceptance of the valuation given by RBSA without applying the discounting factor and to hold that the value of each share be taken as Rs.30,222/=.

58. In the case of ***Mahadeo Jalan***, the question to be determined was: what was the basis of valuation of shares in Private Limited Companies for the purpose of Section 7 of the Wealth Tax Act, 1957. The Supreme Court discussed the various modes of valuation of shares given the facts and circumstances of that case. It was held after an examination of the various aspects of valuation of shares in a private limited company, where the expenses are incurred out of all proportion to the commercial venture, that such expenses will be added back to the profits of the company in computing the yield. In such companies, the restriction on share transfers was held to be also a consideration in arriving at a valuation. The Supreme Court did not lay down any hard and fast rule, since, ultimately, the facts and circumstances of each case, the nature of the business, the prospects of profitability and such other considerations would have to be taken into account. It was held that the yield method is the generally applicable method, while the break-up method is the one resorted to in exceptional circumstances or where the company is ripe for liquidation. In the case of ***Kusumben D. Mahadevia***, the judgment in ***Mahadev Jalan*** was followed.

59. In the case of **Rakhra Sports**, a Division Bench of this Court while considering the issue of valuation of shares in a company which was in the nature of quasi-partnership, considered, inter alia, the judgment in **Re: Bird Precision Bellows Ltd¹⁴**. In that judgment the various aspects and technicalities of valuation were discussed. The aforesaid decision in **Bird Precision** was affirmed by the Court of Appeals¹⁵. It was said therein that, since it was a quasi-partnership case, it would be appropriate that the shares of the company should be valued as a whole and that the petitioners should then simply be paid the proportionate part of that value which was represented by their share holding, without there being made a discount for the fact that it was a minority share holding. It was emphasized in that judgment that the Court cannot ignore the realities while evaluating the worth of a quasi-partnership. Sense of justice and principles of equity demanded that everyone concerned should be placed on par (proportionate to their interest in the business concern). It was held by this Court in **Rakhra Sports** as follows:

"39. The Company in the instant case is a sound Company with a good-will of its own, earned in the course of its business which was established as

¹⁴ (1984) 3 All E.R. 444

¹⁵ (1985) 3 All E.R. 523

early as the year 1932. It is a family concern. Dividends are not declared; the shareholders have been enjoying the fruits of the business by way of remuneration, allowances, and perquisites. The business is located in Commercial Street, which is a prominent commercial centre in Bangalore. The lease-hold of the premises itself, is quite valuable. The balance sheet figures of gross-profit, in the circumstances, would not disclose the real profit of the company and sufficient care has to be taken while estimating the maintainable level of profit of the company, without being unduly influenced by those figures stated in the balance sheet."

60. Various other aspects like non-payment of dividends, excess remuneration being extracted by the Directors, application of an appropriate multiplier etc., were considered in fixing the valuation. It is noted that the aforesaid judgment in **Rakhra Sports** was followed by another Division Bench in the case of **M/s.Syncron Machine Tools Pvt. Ltd. and others Vs. Mr. U.M. Suresh Rao**¹⁶.

61. In the case of **G.L. Sultania**¹⁷, the Supreme Court was considering a batch of appeals preferred under Section 15-Z of the Securities and Exchange Board of India Act, 1992. The

¹⁶ O.S.A No. 4/1996 (judgment dated 17.04.2001)

¹⁷ (2007) 5 SCC 133

dispute was with regard to the valuation of shares of the target company in accordance with the parameters laid down under Regulation 20(5) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. While considering the object of the said Regulations, the Supreme Court observed that when a public offer made under the Regulations is challenged on the ground that the shares had not been properly valued and the price offered in the public offer document does not represent the fair price of the share in question, the court must examine whether the provisions of the Regulations have been scrupulously observed, and whether the SEBI as the regulatory authority had exercised its authority and discretion in a proper manner so as to ensure fairness to the shareholders. At the same time one cannot lose sight of the fact that a public offer made by a person intending to acquire substantial shares in a company is a commercial venture of acquisition of shares, but the law steps in obliging him to offer a fair price for the shares which the shareholders may part with in response to the statutory public offer. The observations of the Supreme Court made after considering various judgments, are extracted as follows:-

"32. These decisions clearly lay down the principle that valuation of shares is not only a question of fact, but also raises technical and complex issues which may be appropriately left to the wisdom of the experts, having regard to the many imponderables which enter into the process of valuation of shares. If the valuer adopts the method of valuation prescribed, or in the absence of any prescribed method, adopts any recognised method of valuation, his valuation cannot be assailed unless it is shown that the valuation was made on a fundamentally erroneous basis, or that a patent mistake had been committed, or the valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter. Where a method of valuation is prescribed the valuation must be made by adopting scrupulously the method prescribed, taking into account all relevant factors which may be enumerated as relevant for arriving at the valuation.

.....

36. At this stage we may make a few observations about Regulation 20(5). This Regulation applies to infrequently traded shares of a company. It lays down the parameters that must be taken note of and considered in arriving at the valuation. But it must be understood that the parameters laid down are by no means exhaustive. There are many other considerations which may be factored into any valuation process. What the aforesaid Regulation, however, mandates is that the parameters expressly laid down therein must in all cases be considered by the valuer since they are basic and essential to the valuation of infrequently traded shares of

a company. If the valuation report discloses non-consideration of any of the enumerated parameters, the report shall stand vitiated for that reason. This however does not prevent the valuer from considering other relevant factors according to accepted principles of valuation of shares.

37. It may also be observed that not any one of the parameters is in itself decisive. All the factors have to be considered and the valuation arrived at. The Regulation itself does not prescribe the weightage to be assigned to different enumerated parameters. As noticed earlier, many imponderables enter into the exercise of share valuation. It must therefore follow that the weightage to be given to the different factors that go into the process of valuation, must be left to the wisdom, experience and knowledge of the experts in the field of share valuation. Such being the method of share valuation which involves subjective and objective considerations, there is considerable scope for difference of opinion even amongst experts. Even if the correct principles are applied, different valuers may arrive at different valuations. Each one of them may be right, yet the valuations may differ. Mathematical precision and exactitude are not the attributes of share valuation, for at best the valuation arrived at by an expert is only his opinion as to what the value of the share should be. No doubt the variation may not be very wide between two valuations prepared honestly by two valuers applying the correct approach and the correct principles, but some variation is unavoidable.

.....

66. *The question then arises as to whether having noticed the relevant factors the valuer adopted the accepted principles and practice of valuation.*

67. *We heard the parties at length on this question only to find out whether there was any such error committed by the valuer which vitiated its report. We have found none. In fact the argument before the Court was that in following a particular practice or giving a particular weightage or selecting a date for assuming a particular value, the valuer committed mistakes.*

68. *On the other hand the respondents have supported the reasons given by the valuer in its report. The valuer has really estimated the value of the shares adopting all the three well-known methods of valuation, namely, the net assets value method, the market value method and the profit-earning capacity method. Thereafter after giving appropriate weightage it has worked out the value of the shares of the target company.*

.....

84. *We have only referred to some of the objections raised by the appellants and we must observe that several other similar objections were raised by them. We have also noticed the reply of the respondents and in most cases the observations of the valuer. It appears to us that the appellant expects this Court to act as an expert itself. This, we are forbidden from doing. Unless it is shown that some well-accepted principle of valuation has been departed from without any reason, or that the approach adopted is patently erroneous or that relevant factors have not been considered by the valuer or that the*

valuation was made on a fundamentally erroneous basis or that the valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter, this Court would not interfere with the valuation of an expert. As noticed in Miheer H. Mafatlal [(1997) 1 SCC 579] , valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. So many imponderables enter into the exercise of valuation of shares.

85. Having considered all aspects of the matter, we are satisfied that the valuer, Patni & Company have not committed any such error which may justify our interference. They have considered all the factors relevant under Regulation 20(5)(c) of the Takeover Code and have adopted a reasonable approach which does not call for interference by us. It may be that views may differ and it is no gainsaying that even experts may differ in their conclusions or even reasoning. The court must take notice of this fact and must not interfere unless there are compelling reasons to upset the finding of the expert valuer on grounds such as those enumerated in the earlier part of the judgment or other similar grounds.”

62. In **G.L. Sultania**, the Supreme Court was considering the matter in the light of the specific provisions of Regulations regarding valuation, which may not strictly apply in the facts and circumstances of the case. It has been observed therein that valuation of shares is a technical and complex

problem which can be appropriately left to the consideration of experts in the field of accountancy as so many imponderables enter into the exercise of valuation of shares. It is to be seen whether the valuer having noticed the relevant factors, has adopted the accepted principles and practice of valuation. The Court cannot act as an expert itself. Unless it is shown that some well-accepted principle of valuation has been departed from without any reason, or that the approach adopted is patently erroneous or that relevant factors have not been considered by the valuer or that the valuation was made on a fundamentally erroneous basis or that the valuer adopted a demonstrably wrong approach or a fundamental error going to the root of the matter, this Court would not interfere with the valuation of an expert.

63. It is pertinent to mention here that the parties have not laid much emphasis on the valuation report submitted by Ogale. However, they have advanced their submissions in the light of the valuation report of RBSA.

64. In the valuation report of RBSA, it is noted that it has reviewed and analysed the historical financial statements and other data provided by the management of the Company, and also considered market analysis as in the year 2004-05.

They have considered the historical financial statements from the year 2005-06 to 2009-10 of the Company, in analysis, valuation, methodologies and financial model to arrive at the fair value of the equity as on the valuation date with regard to estimation of the fair value of the minority stake of 25 per cent held by Hanji family as on 31.03.2005. RBSA has based its valuation report on the basis of the "Going Concern Concept" (GCC), which gives the best estimation of the value of the business.

65. The RBSA noticed the share holding structure of the Company as on 31.05.2005, as well as the major customers of the Company. The investors' primary concern being not with the individual values of the enterprise assets, but with their ability to generate the returns they expect in the future. Three approaches of valuation were noticed namely, the asset approach, the income approach and the market approach. The choice of which approach to use in a particular situation depends on the specific facts and circumstances associated with the company, as well as for the purpose for which the valuation analysis is conducted.

66. The RBSA has noticed that, while valuing a private Company, there will be significant difference between selling

majority of stake of a business when compared to minority stake of the same business. In case of sale of minority stake, the minority stake holder does not have any control over the business and hence, value of the equity will be arrived after a minority discount. However, while selling majority stake, the purchaser shall have control over the business operations. Accordingly, the control premium is claimed on the overall value of the equity. The extent of control premium or minority discount is often based on the judgment of the valuer based on the facts and circumstances of the case.

67. Under the income approach, RBSA valued the equity of the Company using discounted cash flow method, using Free Cash Flow to Firm ("FCFF") approach. The discount rates used to arrive at the fair value of cash flows are stated to be commensurate with the business and financial risks associated with the Company. The actual annual depreciation charged to the fixed assets was added back to derive EBIT, after deducting tax to estimate the value of the firm. In the analysis undertaken by RBSA, they added back the excess adjusted managerial remuneration during the period from 31.03.2006 to 31.03.2010 to get the adjusted EBIT. The

formula for determination of discounted rate was also discussed.

68. For estimating the Weighted Average Cost of Capital (WACC), cost of Equity has been estimated to be 17.5 percent. Cost of Debt was assumed to be at 11 percent which was the Prime Lending Rate in March 2005. Based on these two parameters the WACC worked out to be 11.2 percent. Nine comparable companies were used for the purpose of calculation. Therefore, adopting the market approach as well, RBSA concluded that, under the Market Multiple Approach, the price per share would be Rs.26,271.39, whereas under the Income Approach, it would be Rs.34,172.06.

69. Given the purpose of the valuation exercise being to sell minority stake in the Company held by Hanji family which is 25 percent stake, the valuers further discounted the average value of equity share i.e., Rs.30,221.72 per share, by 25 percent to get fair value of minority equity. After deducting 25 percent as aforesaid, the fair value of minority equity shares of 25 percent held by Hanji family in the Company as on 31.03.2005 is stated to be Rs.22,666.29 per share (Rounded off to Rs.22,700/- per share).

70. It is noted from Annexure B to the valuation report of RBSA, that total managerial remuneration as per annual report, excess managerial remuneration paid, and excess managerial remuneration to be added back to the profit and loss account, have been provided. The contention of the learned counsel for the respondent is that excess managerial remuneration of Rs.1.5 crores and 1 crore have not been added back.

71. As pointed out by learned counsel for the appellants, in the objection to the valuation report of RBSA, the respondents have admitted that RBSA has valued the shares on the basis of profit earning method and discounted cash flow method. The respondents have sought rejection of the valuation given by Ogale and acceptance of the valuation given by RBSA without applying the discounting factor and hold that the value of each share be taken at 30,222/= for purchase of the equity shares held by the respondents in the Company.

72. Once the respondents categorically state that they are accepting the valuation given by RBSA but without applying the discounting factor, possibly with a view to end the long drawn litigation, then they cannot say that other factors have not been correctly considered by RBSA in its valuation report.

Be that as it may, what needs iteration is that the CLB found oppression of the minority shareholders. The CLB observed that one of the basic rights of the shareholder is to receive the dividend declared by the Company and failure to declare adequate dividend would constitute prejudice to the shareholders. It was held that the peculiar facts of the case would indicate that non-declaration of dividend, but selective and exorbitant increase of remuneration and commission to Sri. Ashok S. Humbarwadi and Jayant A. Humbarwadi without extending similar benefits to Sri. Vasudev P. Hanji would be nothing but an act of oppression against the Hanji group. The plea that Ashok S. Humbarwadi did not draw any remuneration, while Vasudev P. Hanji was managing the affairs of the Company was observed to be no way justifiable in the light of the meagre remuneration drawn by Vasudev P. Hanji at the relevant point of time.

73. It is reiterated that the RBSA under the Market Multiple Approach, taking into account the average equity value found the price per share to be Rs. 26,271.39. Under the Income Approach, using the Discounted Cash Flow – FCFF method, the price per share was found to be Rs. 34,172.06. The average value of the shares came to be Rs. 30,221.72

which was discounted by 25 percent to get fair value of minority equity. Accordingly, the fair value of minority equity shares of 25 percent held by Hanji family in the Company as on 31 March 2005 was stated to be Rs.22,666.29 per share (rounded off to Rs.22,700 per share).

74. Despite Ogale (the valuer suggested by the appellants) having assessed the fair market value on the equity shares of the Company at Rs.9,743/- per equity share of Rs.1,000/- each, in the year 2019 several shareholders of the Hanji family sold their shares to the Humbarwadi family at Rs.15,699/- per share. In the year 2022 also, several shares were purchased by the Humbarwadi family from the Hanji family at the rate of Rs.15,699/- per share. Thereafter in July 2024, certain shareholders of the Hanji family sold their shares to the Humbarwadi family at the rate of Rs.16,999/- per share.

75. When the instant matter was listed on 03.10.2023, a statement was made by the learned counsel for the respondents that if the appellants are prepared to pay dividend along with interest as on that date from 31.03.2005, the respondents shall consider transferring the shares at such price, which this Court may fix, which may range between Rs.15,599/- and Rs.22,700/- per share. The counsel for the

appellant had sought time to complete his instructions. Thereafter, when the matter came up for hearing before this court that suggestion was made for purchase of shares by the appellant from the respondent at the price of Rs.22,700/- per share in terms of the valuation of the RBSA was agreed upon. Further, it was stated that the appellants are open to pay interest to the respondents.

76. It is pertinent to mention here that in **Quinlan v. Essex Hinge Co. Ltd.**¹⁸ the court relied upon the judgment in the matter of **Re: Bird Precision Bellows Ltd.**, which was affirmed in the Court of Appeal, to hold that given that the conduct of the petitioner did not justify dismissal or his exclusion from management of the Essex Hinge Co., his shares should be purchased on a pro rata basis, without any discount for the fact that his holding is a minority one. As discussed above, the judgment **In Re: Bird Precision Bellows Ltd.** was relied upon by this Court in the case of **Rakhra Sports**.

77. **In Re: Bird Precision Bellows Ltd.**, the petitioners between them held 26 percent of the issued share capital of the company and the respondents the remaining 74 percent. The petition alleged that the affairs of the Company had and

¹⁸ (1996) 2 BCLC 417

were being conducted in a manner unfairly prejudicial to the petitioners as members. The basic ground of complaint was that the petitioners had been wrongly excluded from participation in the Company's affairs. The petition sought an order that the respondents should purchase the shares of the petitioners at the fair value thereof. It was observed by the Court as follows:-

"I would expect that in a majority of cases where purchase orders are made under s 75 in relation to quasi partnerships the vendor is unwilling in the sense that the sale has been forced on him. Usually he will be a minority shareholder whose interests have been unfairly prejudiced by the manner in which the affairs of the company have been conducted by the majority. On the assumption that the unfair prejudice has made it no longer tolerable for him to retain his interest in the company, a sale of his shares will invariably be his only practical way out short of a winding up. In that kind of case it seems to me that it would not merely not be fair, but most unfair, that he should be bought out on the fictional basis applicable to a free election to sell his shares in accordance with the company's articles of association, or indeed on any other basis which involved a discounted price. In my judgment the correct course would be to fix the price pro rata according to the value of the shares as a whole and without any discount, as being the only fair method of compensating an unwilling

vendor of the equivalent of a partnership share. Equally, if the order provided for the purchase of the shares of the delinquent majority, it would not merely not be fair, but most unfair, that they should receive a price which involved an element of premium."

77.1. The Court went on to observe that where the minority shareholder whose interest had been unfairly prejudiced by the conduct of the majority, but who had nevertheless so acted as to deserve his exclusion from the Company. The Court considered the conduct of the petitioners and observed that they had not so acted as to deserve their exclusion from the Company, either in that or in the other respects of which the complaint was made against them. Therefore, the submission of the counsel for the respondents was held to fail on the facts and also that the price must be fixed pro rata according to the value of the shares as a whole and without any discount.

78. Coming to the facts of the present case, given the observations of CLB noted above, the statements made on record by the parties, and the oral submissions made, the discount of 25 percent made to the average value of the shares to get fair value of minority equity cannot be countenanced. The average share value of Rs. 30,221.72 determined by the

RBSA ought not to have been discounted. **It is therefore held that the fair market value of the shares of the Company as on 31.03.2005 is Rs. 30,221.72 per share.**

79. Now to consider the aspect of interest payable to the respondents on the share value. As is evident, the respondents chose to contest the valuation made both by Ogale and RBSA whereas the appellants contested the valuation of RBSA. Therefore, it resulted in delaying the implementation of the order of the CLB for purchase of shares of the Hanji family by the Humbarwadi family. However, as is evident from the order of the CLB, the dispute raised by the respondents regarding non-payment of dividend coupled by exorbitant increase of remuneration and commission of the two Directors of the Company was bonafide. Had the amount based on the admitted share value been paid by the Humbarwadi family to the Hanji family promptly without prejudice to their rights, the respondents could have profitably utilized the same. **Under the facts and circumstances, we hold that the contesting respondents shall be entitled to interest at the rate of 9 percent per annum on the share value from 31.03.2005 till the date of payment.**

80. On the aforesaid finding recorded by us regarding payment and rate of interest, we find strength from the judgment of the Supreme Court in the case of **Vinod Krishan Khanna and Others v. Amritsar Swadeshi Woollen Mills Private Limited**¹⁹, in which it is observed as follows:-

"8. Having heard all the learned counsel appearing for the parties, the limited point before us is whether the interest at the rate of 9% could have been granted by the NCLT. The NCLT awarded interest at the rate of 9% per annum on the following basis:

*"..... However, it is to be seen that both parties have agreed to a valuer to be appointed and have also consciously agreed to a valuation date in order to enable the Petitioners to walk out of the Company. Thus, Company has effectively utilized the funds of the Petitioners in relation to its business fully knowing that the funds are required to be refunded back. In the circumstances, being a Court of Equity in relation to matters touching upon oppression and mismanagement Petition and exercising equitable jurisdiction, this is unable to accept the stand of the Respondents that they are not inclined to pay any interest. In this connection, this Tribunal would once again wish to refer to the decision of Hon'ble Supreme Court passed in the matter of **Dr. Renuka Datla v. Solvay Pharmaceuticals B.V.** cited earlier and be guided by it particularly paragraph 19 which is extracted hereunder:*

19. In the result, IA Nos. 2 to 4 of 2002 are liable to be rejected. However, there is one direction concerning interest which we consider appropriate to give in the given facts and circumstances of the case. Though the grant of interest, as prayed for by the petitioners, from 31.5.2002 - the stipulated date of submission of valuation report - is not called for, we feel that that the ends of justice would be adequately met if the respondents concerned are directed to pay the interest at the rate of 9 per cent an Rs. 8.24 crores, which is the value of shares fixed by the valuer, for a period of twelve months. True, the petitioners contested the

¹⁹ 2021 SCC OnLine SC 3429

valuation and thereby delayed the implementation of settlement. However, having regard to the bona fide nature of the dispute and the fact that the respondents have retained the money otherwise payable to the petitioners during this period of twelve months and could have profitably utilized the same, we have given this direction taking an overall view.

19. Going by the above decision of Hon'ble Supreme Court since the monies which were otherwise payable to the Petitioners having been retained all along by the Respondents and having utilized the same, we feel that the ends of justice could be adequately met if the Respondents in the main C.P. are directed to pay interest @ 9% per annum on simple Interest basis."

9. The NCLAT, however, reduced this figure to 6% per annum, without giving any reasons.

10. At this stage, it is important to point out yet another argument of Sh. Jayant Mehta, that if at all something should have been awarded to the Appellants above the consideration for the shares, what should be awarded is a pro-rata percentage of the share-holding of the Appellants in the company's share of profits from 2007 till 2018, which according to him would amount to a figure of approximately INR 48.98 lakhs. This argument has no legs on which to stand. What if the company ended up making losses instead of profits, would it then be equitable to award nothing to the appellants? Secondly, the company's earnings have no direct relation with the valuation of shares which fluctuate in the share market depending on several factors. Thus, we set aside the order of the NCLAT on reducing the award of interest from 9% to 6%."

81. The objections filed by the parties to the valuation reports of Ogale and RBSA, are accordingly, disposed of. All remaining I.A.s, if any, stand disposed of. The appellants (Humbarwadi family) shall purchase the shares at the rate fixed, that is, Rs. 30,221.72 per share, with interest of 9 percent per annum from 31.03.2005 till the date of payment.

The shares shall be so purchased no later than three months from today.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

KGR/KG