About The Author –

Inmacs Valuers Pvt Ltd. – Registered under Plant & Machinery and Securities & financial assets – IBBI/RV-E/02/2021/141

Cadbury India Ltd - Capital Reduction	
Facts	Held
• Cadbury obtained 2 valuation reports - Bansi Mehta & Co and SSPA which returned a value of INR 1,1,340 per sharefor CR • Certain minority shareholders took exception to the originalvaluation price and the Court directed a fresh valuation to be undertaken by an independent firm (EY) as Cadbury sought Court's guidance to settle the dispute • The independent firm in the first instance returned a valueof INR 1,743 using the CCM method • This report was then requested to be updated by using DCF method. The revised value was INR 2,014.5 per share was arrived based on unaudited Sep 2009 numbersafter giving equal weightage to CCM and DCF which was upheld by court.	• Terminal growth rate of 6% while sales and profit were growing at 20% and 40% respectively was justified since aconservative terminal growth is more probable indication ofprojection. • Flat tax rate of 33.99% was considered realistic and fairer even though Company was presently availing various taxbreaks • Valuer will be justified in falling back on last available PAT in case non-availability of PAT for a given date • On the Nestlé's growth rate of 11% - Court opined that product mix, division, process, market etc., differentiate two companies and nestle operates in much broader spectrum of markets and products than Cadbury and therefore the growth rate cannot be considered an equal. **"Before a Court can decline sanction to a scheme on account of a valuation, an objector to the scheme mustfirst show that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted."**

Valuation undertaken as per Internationally accepted principles cannot be challenged

Hindustan Lever Employees' Union v. Hindustan Lever Ltd - Business Combination	
Facts	Held

- The valuer had adopted the combination of three well known methods of valuation to arrive at the exchange ratio of the two companies - Hindustan Lever Limited andTata Oil Mills Company Ltd. (In brief 'TOMCO').
- The ratio of 2:2:1was concluded for value arrived at underthe Income, Market and Asset approach.
- According to the contention of appellants (from thevaluation perspective) –
  - A. Valuation of share exchange ratio is grossly loadedin favor of HLL.
  - B. Interest of employees of both the Companies wasnot adequately taken care of.
  - C. Preferential allotment of shares to Unilever (to maintain majority shareholding) was less than market price, which is not in public interest.

- The jurisdiction of the court sanctioning a claim of mergeris **not to ascertain mathematical accuracy of the determination of shore exchange ratio has satisfied the arithmetic test**. It exercises a jurisdiction found on fairness.
- What is imperative is that such **determination should not have been contrary to law and that it was not unfair for the shareholders** of the company which wasbeing merged.
- The Hon'ble Supreme Court also held *"We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, it's incompetent andimproper and therefore, out of bounds."*

Court is governed by fairness & lawfulness rather than ascertaining mathematical accuracy

German Remedies limited - Business Combination

Facts

- Petitioner along with other 3 companies was going to bemerged into Cadila Healthcare Ltd. Scheme was approved by shareholders with 99% majority.
- The Valuation as made considering 3 methods, namely,the NAV, PE Value and the Market Value of the quotedshares.
- Petitioners raised objections on the Valuation Report stating that it was not legal, proper and accurate and thatthe swap ratio was unfair and improper.
- Further, the swap ratio of 8:4 was demanded against thecurrent 7:4.

Held

- The Court has neither the expertise nor the jurisdiction todelve deep into the commercial wisdom exercised by the creditors and members of the company who have ratifiedthe scheme by requisite majority.
- The Court had no jurisdiction to interfere in the valuation and swap ratios unless it finds the scheme unjust, unfairand unreasonable.

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High Court to only examine that the scheme is just, fair and reasonable and not contrary to the law

Miheer H M a/at/al vs.Ma/at/al Industries Limited -Business Combination	
Facts	Held
• Petitioner, a director of the transferor company, raised objections on the Scheme in Gujarat HC which was dulyapproved by requisite majority of Shareholders of both companies. • Earlier, when the same Scheme was being sanctioned bythe Bombay HC, being the court of jurisdiction of the transferor company, no such objections were filed by thepetitioner. • Petitioner raised a point in front of the Courts that theshare-exchange ratio was unreasonable to the shareholders of the transferee company.	• Where a reputed firm of CAs, having considered all relevant aspects and keeping in view accounting principles underlying valuation of shares, suggested an exchange ratio which was found acceptable by Directorsof both companies as well as majority of shareholders, it could not be held that exchange ratio was unfair. • Jurisdiction of Courts on the matters of Valuation extendsto taking cognizance of the fact that the Scheme as a whole is found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the Scheme is meant.

Valuation provided by a reputed CA firm after considering all the relevant aspects and which isacceptable to a prudent men cannot be held to be unfair

Dinesh Vrajlal Lakhani V/s Parke Davis (India) Ltd – Business Combination	
Facts	**Held**
• Parke Davis was proposed to be merged into Pfizer pursuant to Scheme of Amalgamation. • Court directed a meeting of SHs of Parke Davis be held forapproval of Scheme. • In the meeting, the petitioner raised a motion to amend theScheme for changing the swap ratio from 4:9 to 4:6. • This motion was held not in order by the Chairman. Thepetitioner contended that such action by the Chairman invalidated the proceedings of the meetings and consequently the shareholders' approval thereto.	• Court held that the act of the Chairman was valid since it was not for the petitioner as a shareholder to amend the Scheme. Shareholders of a party to a Scheme could merely approve or reject the scheme and not amend it since the Scheme is devised by mutual agreement to the parties thereto and cannot can not be modified unilaterallyby one of them. • Court is neither a valuer nor an appellate forum to reappreciate the merits of the valuation.

Court to ensure that the determination should not be contrary to law or unfair

Jindal Steel and Power Limited – The Power Hiving Transaction
• In April, JSPL said that it will sell 96.43 percent in Jindal Power Limited, which has an installed capacity of3,400 MW, to Worldone Private Ltd, wholly owned by JSPL promoter, for a cash consideration of INR 3,015 crore. • In a report to subscribers, proxy advisory firm Stakeholders Empowerment Services (SES) has questionedthe valuation of the deal, particularly in absence of a valuation report, the lack of transparency in the sale process, and financial restructuring in JPL • According to the proxy advisor, the valuation of JPL would be more than INR 20,000 crore. • It also raised concerns about the lack of a valuation report. • The deal was rejected by the shareholders • JSPL, revisited the drawing board, obtained valuation reports from two reputed independent valuers and fairness opinion upon the reports obtained for valuations of JPL. • “The enterprise value of INR 9,730 crore for the 3,400 MW assets of JPL is in line with market valuations on a per megawatt basis at INR 2.86 crore per megawatt,” said a report by InGovern Research Services,a corporate governance advisory firm. • In June, the company announced a revision in the offer to INR 7,401 crore and decided to launch anadditional transparent competitive bidding process for the proposed stake sale of JPL to win the confidence of the investors. • Retail and institutional investor advisory firms have given their nod for JSPL to divest its power businessJindal Power Ltd (JPL) to World one Private Limited.

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Siemens India – Related Party Transaction

Facts

- In August 2014 the Board of Siemens India proposed to sell its metals technology (MT) business at a valuation of INR 8530 mn to its German parent, Siemens AG.
- MT business was to be transferred to a JV of Siemens and Mitsubishi post the above purchase.

Issues

- Valuation at which the MT business is being transferred to Siemens AG was lower than the value at which Siemens AG had earlier sold the business to Siemens India via scheme of amalgamation.
- RPT required the resolution to be passed by 75% of minority shareholders present and voting.
- Minority shareholders rejected the resolution

Outcomes

- Revised offer of INR 10,230 mn (a 20% increase) was considered and approved by the Committee of the Siemens India Board
- In Nov 2014, a revised resolution w ith far greater disclosures, including the financials of the MT business, reasons for poor performance of the business and an additional Fairness Opinion by ICICI Securities was placed before the minority shareholders. The shareholders approved this resolution.