THE FIDUCIARY DUTIES OF NOMINEE DIRECTORS: BALANCING NOMINATOR INTERESTS AND CORPORATE AUTONOMY IN THE POST-TATA VS. MISTRY ERA

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ABSTRACT

This paper provides a comprehensive doctrinal analysis of the evolving corporate governance landscape in India, marked by the paradigm shift from the Companies Act, 1956, to the Companies Act, 2013. Operating under a dual regulatory model administered by the Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI), the current legal framework transitions corporate accountability from a shareholder primacy model towards a broader "stakeholder model". The study critically examines key statutory innovations, including mandatory board independence, gender diversity mandates, codified fiduciary duties, and the shift of Corporate Social Responsibility (CSR) from a voluntary mechanism to a mandatory compliance regime with strict penal provisions. While acknowledging institutional strengths such as the formalization of governance structures and the MCA's digital e-adjudication platforms, the paper highlights persistent practical challenges, notably "tokenism" in director appointments and critical enforcement gaps, particularly within Small and Medium Enterprises (SMEs). Furthermore, it explores the complex jurisdictional interplay between regulators (MCA, SEBI, and RBI), alongside landmark judicial interpretations such as Tata Consultancy Services v. Cyrus Investments that define the boundaries of corporate power and minority shareholder rights. Ultimately, the research concludes that while India's statutory architecture is robust, market forces and the rise of institutional shareholder activism are increasingly becoming the primary enforcers of corporate discipline.

Keywords: Corporate Governance, Companies Act 2013, SEBI Regulations, Corporate Social Responsibility (CSR), Shareholder Activism

1.1 Introduction: The Doctrinal Shift in Corporate Governance

The legal architecture governing corporate entities in India has witnessed a paradigm shift over the last decade, transitioning from a regime of rigorous control under the Companies Act, 1956, to a modern framework of regulation, self-governance, and disclosure under the Companies Act, 2013 (hereinafter "the 2013 Act" or "the Act"). This transition was not merely a legislative update but a fundamental restructuring of the doctrinal underpinnings of Indian company law, necessitated by the globalisation of Indian capital markets, the integration of global best practices, and lessons learned from corporate failures, such as the Satyam Computer Services scandal.[1]

The current legal framework operates under a dual regulatory model. The Ministry of Corporate Affairs (MCA) administers the substantive company law applicable to all corporate entities. At the same time, the Securities and Exchange Board of India (SEBI) imposes an additional, more stringent layer of governance on listed entities through regulations such as the Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015. This chapter provides a detailed doctrinal analysis of these core laws, examining the statutory provisions, regulatory enforcement mechanisms, and judicial interpretations that collectively define the modern corporate governance landscape in India.

1.2 Companies Act 2013: Statutory Architecture and Key Provisions

The 2013 Act introduced the "stakeholder model" of governance, expanding the board's accountability beyond shareholders to include employees, the community, and the environment. It also codified directors' duties, mandated board independence, and institutionalised Corporate Social Responsibility (CSR).

1.2.1 Board Composition and Director Independence (Sections 149-166)

The board of directors serves as the primary instrument of corporate governance. Section 149 of the 2013 Act marks a significant departure from the previous regime by mandating that the board must consist of individuals, thereby barring corporate bodies from directorship.

[1] P.M. Vasudev, "Corporate Governance in India: New Company Law", 42 *Journal of Law and Society* 130 (2015).

The Institution of Independent Directors (Section 149)

A critical innovation of the 2013 Act is the statutory recognition of Independent Directors (IDs) as a mechanism to counter the "agency problem" inherent in widely held companies and the "promoter dominance" prevalent in Indian family-owned conglomerates. Section 149(4) mandates that every listed public company must have at least one-third of its total number of directors as independent directors.[2] For unlisted public companies, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, prescribes that companies with a paid-up share capital of ₹10 crore or more, a turnover of ₹100 crore or more, or outstanding loans exceeding ₹50 crore must appoint at least two independent directors.[3]

The legislative intent is to create a buffer of objectivity on the board. Section 149(6) sets out a rigorous definition of independence, excluding individuals who are managing directors, wholetime directors, or nominee directors. It imposes strict pecuniary limits, stating that an ID must not have had any pecuniary relationship with the company, its holding, subsidiary, or associate company, or their promoters or directors, during the two immediately preceding financial years or during the current financial year.[4]

However, the practical enforcement of independence remains a challenge. The concept of "independence of mind" is difficult to legislate. Critics argue that, while the law ensures "independence of form" through strict eligibility criteria, the appointment process, often controlled by majority shareholders or promoters, can compromise the director's ability to function as an effective gatekeeper.[5] To address this, the MCA introduced the proficiency test and the databank of independent directors maintained by the Indian Institute of Corporate Affairs (IICA), with the aim of professionalising the institution of directorship.

Recent adjudication orders demonstrate a shift towards strict enforcement of these provisions. In the matter of *Dhariwal Buildtech Limited* (August 2025), the Registrar of Companies (ROC), Delhi, imposed a penalty of ₹3,00,000 on the company for failing to appoint the required number of independent directors after its turnover exceeded the ₹100 crore threshold.[6]

[2] *The Companies Act, 2013*, Section 149(4).
[3] *The Companies (Appointment and Qualification of Directors) Rules, 2014*, Rule 4.
[4] *The Companies Act, 2013*, Section 149(6).
[5] Umakanth Varottil, "The Independent Director in Indian Corporate Governance", 12 *India Law Journal* 4 (2019).
[6] Adjudication Order in the matter of Dhariwal Buildtech Limited, ROC Delhi, Order No. ROC/D/Adj/2025/Section 149/4821 (Aug. 1, 2025).

Similarly, the ROC Mumbai penalised a company for assigning an ID for more than two consecutive terms without observing the mandatory three-year cooling-off period prescribed under Section 149(11).[7] These orders clarify that compliance with board composition norms is not discretionary but a strict statutory obligation.

The Gender Diversity Mandate

The second proviso to Section 149(1) introduced a mandatory requirement for certain classes of companies to appoint at least one woman director. This applies to every listed company and every other public company with a paid-up share capital of ₹100 crore or more or a turnover of ₹300 crore or more.[8] This provision was a direct legislative response to the historical underrepresentation of women in Indian boardrooms.

Statistically, this mandate has driven a significant increase in female representation. Data indicate that women hold approximately 21.35% of directorships in NSE-listed companies as of late 2024, a substantial increase from pre-2013 levels.[9] However, a qualitative analysis reveals the persistence of "tokenism." A significant portion of these appointments comprises family members of promoters, who are appointed to satisfy the letter of the law while retaining centralised control within the family.[10] Reports suggest that nearly 50% of women directors appointed post-2014 were related to promoters.[11]

Furthermore, women remain significantly underrepresented in executive roles, holding less than 5% of MD/CEO positions in Nifty-500 companies.[12] To address this, SEBI amended the LODR Regulations to require the top 1,000 listed entities to have at least one independent woman director, aiming to decouple gender diversity from promoter affiliation and to ensure that women directors bring independent judgment to the board.[13]

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[7] Adjudication Order in the matter of violation of Section 149(11), ROC Mumbai, Order No. PO/ADJ/122025/MB/01044 (Dec. 31, 2025).
[8] *The Companies Act, 2013*, Section 149(1), 2nd Proviso.
[9] Prime Database, *Analysis of Women Directors in NSE Listed Companies* (Oct. 2024), *available at* http://www.primedatabasegroup.com.
[10] IiAS, *Corporate India: Women on Boards* (Nov. 2022).
[11] "Token Seats, Missing Voices: What a New Report Reveals About India's Corporate Gender Gap", *The Economic Times*, Jan. 12, 2025.
[12] *Id.*
[13] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 17(1)(a).

Duties of Directors (Section 166)

Section 166 codifies the fiduciary duties of directors, shifting from common-law principles to statutory mandates. A director must act in good faith to promote the company's objects for the benefit of its members as a whole and in the best interests of the company, its employees, its shareholders, the community, and the environment.[14] This provision explicitly adopts a "pluralistic" or "stakeholder" approach, broadening the director's accountability beyond the shareholder primacy model.

The Supreme Court, in *Tata Consultancy Services v. Cyrus Investments* (2021), provided a crucial interpretation regarding the duties of nominee directors. The Court clarified that, although nominee directors are appointed by specific shareholders (in that case, the Tata Trusts), they owe a fiduciary duty to the company as a whole. However, the Court also recognised the validity of affirmative voting rights (veto rights) vested in nominee directors under the Articles of Association, ruling that such rights do not inherently conflict with their fiduciary duties, provided they are exercised within the framework of the Articles and the law.[15] **1.2.2 The Audit Committee: The Guardian of Financial Integrity (Section 177)**

The Audit Committee is the fulcrum of financial oversight and corporate governance. Section 177 mandates the constitution of an Audit Committee for every listed company and prescribed classes of public companies.[16] The committee must consist of at least three directors, with independent directors constituting a majority. The Chairperson and a majority of members must be able to read and understand financial statements.

The committee's terms of reference are extensive, covering the recommendation for the appointment of auditors, the examination of financial statements, the scrutiny of inter-corporate loans and investments, and the valuation of undertakings. Crucially, the Audit Committee is the primary vetting authority for Related Party Transactions (RPTs). Under the proviso to Section 177(4)(iv), the Audit Committee may grant omnibus approval for RPTs, subject to specified conditions, to ensure that such transactions are conducted at arm's length and in the ordinary course of business.[17]

[14] *The Companies Act, 2013*, Section 166(2).
[15] *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, (2021) 9 SCC 449 (SC).
[16] *The Companies Act, 2013*, Section 177.
[17] *The Companies Act, 2013*, Section 177(4)(iv), Proviso.

The gap between legislative requirements and practical enforcement is often highlighted in adjudication orders. For instance, the ROC Hyderabad imposed a penalty of ₹5,00,000 on *Virupaksha Organics Limited* for failing to constitute a Nomination and Remuneration Committee (NRC) and Audit Committee for nearly a decade.[18] Similarly, the ROC Pune penalised *Khed Developers Limited* ₹12 lakh for failing to constitute a valid NRC and having insufficient independent directors.[19] These penalties underscore that the MCA is shifting from a reactive to a proactive approach to enforcing board committee composition.

Furthermore, Section 177(9) mandates the establishment of a **Vigil Mechanism** (Whistleblower Policy) for listed companies and those accepting public deposits. This mechanism allows directors and employees to report genuine concerns or grievances. The law protects whistleblowers from victimisation and provides direct access to the Chairperson of the Audit Committee in exceptional cases.[20] However, empirical studies indicate that, although the policy exists on paper, awareness and utilisation in public-sector enterprises and smaller listed firms remain relatively low, often functioning as a compliance checkbox rather than a robust tool for fraud detection.[21]

1.2.3 Corporate Social Responsibility (Section 135): From Voluntary to Mandatory

India is unique globally in mandating Corporate Social Responsibility (CSR) for qualifying companies. Section 135 applies to every company having a net worth of ₹500 crore, turnover of ₹1,000 crore, or net profit of ₹5 crore. Such companies must constitute a CSR Committee and spend at least 2% of their average net profits of the three immediately preceding financial years on activities listed in Schedule VII of the Act.[22]

The trajectory of Section 135 has shifted from a "comply or explain" regime to a mandatory compliance framework. The Companies (Amendment) Act, 2019, and subsequent amendments in 2020 introduced penal provisions for non-compliance. If a company fails to spend the required amount, it must transfer the unspent amount to a fund specified in Schedule VII (if no project is ongoing) within six months of the end of the financial year, or to a special "Unspent

[18] Adjudication Order in the matter of Virupaksha Organics Limited, ROC Hyderabad, Order dated Sept. 18,2025
[19] Adjudication Order in the matter of Khed Developers Limited, ROC Pune, Order dated July 8, 2024.
[20] *The Companies Act, 2013*, Section 177(9).
[21] Saloni Agarwal, "Legislative Framework Providing for Whistleblowing Mechanism in India", 3 Pen Acclaims 1 (2024).
[22] The Companies Act, 2013, Section 135(5).

CSR Account" (for ongoing projects) within 30 days.[23]

Decriminalisation and Penalties

While the government has moved to decriminalise technical offences under the Companies Act, the financial penalties for CSR non-compliance remain stringent to ensure deterrence. Under Section 135(7), a company is punishable with a fine of twice the unspent amount or ₹1 crore, whichever is less. Every officer in default is liable to a penalty of one-tenth of the unspent amount or ₹2 lakh, whichever is less.[24]

In a significant precedent, the ROC Chennai passed an adjudication order penalising a company for failing to transfer unspent CSR funds to a Schedule VII fund within the statutory timeline. The company argued that it had subsequently voluntarily transferred the amount to the Prime Minister's National Relief Fund. However, the adjudicating officer rejected this defence, holding that subsequent compliance does not erase the original default, and imposed penalties on both the company and its officers.[25] This reinforces the doctrinal position that CSR obligations are statutory debts owed to society rather than voluntary charity.

Impact Assessment

To ensure the quality and efficacy of CSR spending, the Companies (CSR Policy) Amendment Rules, 2021, introduced mandatory **Impact Assessment**. Companies with an average CSR obligation of ₹10 crore or more in the three preceding financial years must undertake an impact assessment for projects with outlays of ₹1 crore or more. An independent agency must conduct this assessment, and the reports must be annexed to the annual CSR report.[26] The cost of such an assessment may be booked as CSR expenditure, capped at 5% of the total CSR expenditure or ₹50 lakh, whichever is lower.[27] This move aims to curb the practice of "cheque-writing" philanthropy and ensure tangible social outcomes.

1.3 SEBI Regulations: Enhanced Governance for Listed Entities

While the Companies Act sets the baseline governance standards for all companies, the SEBI

[23] *The Companies Act, 2013*, Section 135(6).
[24] *The Companies Act, 2013*, Section 135(7) (as amended by The Companies (Amendment) Act, 2020).
[25] Adjudication Order for Violation of Section 135, ROC Chennai, Order No. PO/ADJ/12-2025/CN/01242 (Jan. 7, 2026).
[26] Companies (CSR Policy) Rules, 2014, Rule 8(3).
[27] *Id.,* Rule 8(3)(c).

(Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), impose a higher tier of governance for listed entities, driven by the need to protect public investors and ensure market integrity.

1.3.1 LODR vs. Companies Act: The Governance Premium

The LODR Regulations are often more stringent than the Companies Act, creating a "governance premium" for listed entities. For instance, while the Companies Act requires one-third of the board to be independent for listed public companies, Regulation 17(1)(b) of LODR introduces a nuance based on the chairperson's status. If the chairperson is a non-executive director, at least one-third of the board must be independent; however, if the chairperson is an executive director or is related to the promoter, at least half of the board must be independent.[28] This provision explicitly targets the "promoter-driven" nature of Indian companies, preventing promoters from dominating the board through a compliant chairperson.

Recent amendments to LODR in 2024 and 2025 have further tightened these norms. SEBI now requires the top 1,000 listed entities to have at least one *independent* woman director, exceeding the Companies Act's requirement of only "a woman director".[29] Additionally, the definition of "Related Party" in LODR is broader than in the Companies Act, covering any person or entity that belongs to the promoter group and holds 20% or more of the shareholding, irrespective of their relationship with directors.[30]

4.3.2 Prohibition of Insider Trading (PIT) Regulations, 2015

The SEBI (Prohibition of Insider Trading) Regulations, 2015, are designed to protect market integrity by prohibiting trading based on Unpublished Price Sensitive Information (UPSI). The regulations define "connected persons" broadly, including anyone associated with the company within the six months preceding the trade.[31]

A significant development in 2024 was the amendment to the definition of "connected person" to include "a person sharing household or residence with a connected person".[32] This was a direct legislative response to the Supreme Court's judgment in *Balram Garg v. SEBI* (2022).

[28] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 17(1)(b).
[29] *Id.*, Reg. 17(1)(a), Proviso.
[30] *Id.*, Reg. 2(1)(zb).
[31] SEBI (Prohibition of Insider Trading) Regulations, 2015, Reg. 2(1)(d).
[32] SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2024 (Notified Dec. 4, 2024).

In that case, the Supreme Court held that mere ordinary residence or a family relationship was insufficient to establish the communication of UPSI in the absence of material evidence (e.g., call records or emails).[33] By codifying the "deemed connected" status for household members, SEBI has effectively shifted the burden of proof back to the accused, thereby facilitating prosecutions of insider trading in family-run businesses where information flows are informal and difficult to document.

1.3.3 Takeover Code (SAST Regulations, 2011)

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, regulate the acquisition of control in listed companies. The code requires an open offer if an acquirer holds 25% or more of the voting rights and intends to acquire more than 5% in a financial year (a creeping acquisition).[34]

During the COVID-19-caused economic downturn, SEBI temporarily relaxed the creeping acquisition limit, allowing promoters to acquire up to 10% (instead of 5%) without triggering an open offer, provided the acquisition was through a preferential issue.[35] This demonstrated SEBI's flexibility in balancing rigorous governance with the practical need for promoter capital infusion when external funding markets were frozen.

1.3.4 SME Listing and Governance Exemptions

To encourage the listing of Small and Medium Enterprises (SMEs), SEBI provides significant compliance relief. Under Regulation 15(2) of the LODR, the corporate governance provisions (Regulations 17 to 27) do not apply to listed entities having a paid-up equity share capital not exceeding ₹10 crore and net worth not exceeding ₹25 crore, or to those listed on the SME exchange.[36]

This exemption creates a dual governance regime. While it reduces compliance costs for SMEs, it also exposes investors to greater governance risks. Recognising the rising volume of questionable Related Party Transactions (RPTs) in the SME segment, SEBI, in a move approved in December 2024, extended the applicability of Regulation 23 (related to RPTs) to

[33] *Balram Garg v. SEBI*, (2022) 9 SCC 425 (SC).
[34] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 3(2).
[35] SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020 (June 16, 2020).
[36] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 15(2).

SME listed entities.[37] This amendment marks a shift toward "uniform governance standards," acknowledging that a company's size should not be a justification for opaque related-party dealings that prejudice minority shareholders.

1.3.5 High Value Debt Listed Entities (HVDLEs)

Recognising the systemic importance of debt markets, SEBI has introduced a new category of "High Value Debt Listed Entities" (HVDLEs). Entities with listed non-convertible debt securities of ₹500 crore or more are now subject to the corporate governance provisions of Regulations 17 to 27 on a "comply or explain" basis initially, transitioning to a mandatory basis.[38] This brings large unlisted borrowers into the scope of rigorous governance, aligning their disclosure standards with those of equity-listed peers.

1.4 Role of Regulators: Architecture of Enforcement

The enforcement of company law in India is a shared responsibility among the MCA, SEBI, and the Reserve Bank of India (RBI), which often leads to complex jurisdictional interplay.

1.4.1 Ministry of Corporate Affairs (MCA) and the Shift to Adjudication

The MCA administers the Companies Act through Regional Directors (RDs) and Registrars of Companies (ROCs). A significant trend in recent years has been the decriminalisation of technical and procedural offences. The Companies (Amendment) Acts of 2019 and 2020 reclassified dozens of offences, such as non-filing of annual returns or technical defects in board composition, from criminal offences to civil defaults liable for monetary penalties adjudicated by ROCs.[39]

This shift has streamlined enforcement and reduced the burden on Special Courts. For example, Section 454 allows ROCs to impose penalties for non-compliance with board composition (Sec 149), committee constitution (Sec 178), and annual filings (Sec 92). The introduction of the **EAdjudication Platform** in 2024 further digitises this process, mandating that all proceedings, from notice issuance to hearings, be conducted electronically.[40] This aims to increase

[37] SEBI Board Meeting Minutes, Dec. 18, 2024 (approving extension of Reg. 23 to SMEs).
[38] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 15(1A).
[39] *See* Companies (Amendment) Act, 2019; Companies (Amendment) Act, 2020.
[40] Companies (Adjudication of Penalties) Amendment Rules, 2024 (Aug. 5, 2024).

transparency and reduce the discretion of field officers.

1.4.2 SEBI vs. MCA: Jurisdictional Conflicts

The overlap between MCA and SEBI jurisdiction has been a source of significant legal battles. The landmark case of *Sahara India Real Estate Corp. Ltd. v. SEBI* (2012) resolved the jurisdictional conflict over unlisted companies that issue securities. The Supreme Court held that although the companies were unlisted, their issuance of Optionally Fully Convertible Debentures (OFCDs) to over 50 persons constituted a "public offer" under Section 67 of the Companies Act, 1956.[41] Consequently, SEBI had jurisdiction to regulate the issue and protect investor interests, even if the company was not technically listed.

This doctrine of "substance over form" established SEBI's primacy in protecting investors in securities markets, regardless of the company's listing status. More recently, in *Jyoti Limited v. BSE Limited* (2024), the Supreme Court reinforced that listing approvals require adherence to shareholder approval norms under the Companies Act. The Court denied the argument that actions taken under the SARFAESI Act by Asset Reconstruction Companies could override the corporate governance requirement of shareholder approval for the issuance of shares.[42]

1.4.3 Reserve Bank of India (RBI) and NBFC Governance

For Non-Banking Financial Companies (NBFCs), the RBI acts as the primary regulator, superimposing its own governance norms on the Companies Act. The **Scale-Based Regulation (SBR) framework, implemented in practice since October 2022, categorises** NBFCs into Base, Middle, Upper, and Top layers based on their size and systemic importance.[43]

NBFCs in the Upper Layer (NBFC-UL) are subject to governance standards comparable to those of public sector banks. This includes mandatory "fit and proper" criteria for directors, restrictions on the number of directorships, and the requirement for a Risk Management Committee.[44] Crucially, RBI norms often precede or exceed Companies Act norms; for instance, the RBI's master directions on "fit and proper" criteria require directors to sign a Deed of Covenant, thereby ensuring a higher level of personal accountability than the standard

[41] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2013) 1 SCC 1 (SC).
[42] *Jyoti Limited v. BSE Limited*, (2024) SCC OnLine SC 185.
[43] RBI, *Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions, 2023* (Oct. 19, 2023).
[44] *Id.*, Para 2A.3.

consent forms filed with the MCA.[45]

1.5 Judicial Interpretations: Defining the Boundaries of Corporate Power

Judicial decisions have played a pivotal role in interpreting statutory provisions and defining the delicate balance of power within corporations.

1.5.1 Tata Consultancy Services v. Cyrus Investments (2021)

This judgment is the defining case for modern Indian corporate law regarding minority shareholder rights and the powers of the board. The Supreme Court set aside the NCLAT order that had reinstated Cyrus Mistry as Executive Chairman of Tata Sons.

Key Doctrinal Outcomes:

1. **Oppression and Mismanagement (Sec 241/242):** The Court held that the mere removal of a director or executive chairman does not amount to "oppression" or "mismanagement" unless it is accompanied by a gross abuse of power that threatens the company's existence or is prejudicial to public interest.[46] A "loss of confidence" by the board is a valid ground for removal, reinforcing the principle of board supremacy.

2. **Articles of Association (AoA) Supremacy:** The Court upheld Article 75 of Tata Sons' AoA, which gave the Tata Trusts (majority shareholders) the power to nominate directors and mandated affirmative voting rights (veto power) on key decisions. The Court ruled that private companies (Tata Sons is a private company by definition, though systemically important) have the autonomy to structure their AoA to protect majority interests.

3. **Nominee Director Duties:** The judgment clarified that nominee directors can represent the interests of their nominators (Tata Trusts) without breaching their fiduciary duty to the company, provided they act within the framework of the AoA and the law.

This judgment effectively narrowed the scope of relief under Section 241, reinforcing the

[45] RBI, *Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016*, Annex III.
[46] *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*, (2021) 9 SCC 449, 142.

"majority rule" principle unless statutory protections are explicitly violated.

1.5.2 Class Action Suits (Section 245): A Dormant Giant?

Section 245 of the 2013 Act was introduced to permit members and depositors to bring class actions against the company, its directors, and its auditors for fraudulent or unlawful acts. Modelled on US class actions, it was intended to empower minority shareholders to seek collective damages.

However, the provision has mainly remained dormant due to the high threshold for filing (the lesser of 100 members or 5% of total members) and the absence of a specialised legal ecosystem for class actions. It was only in 2024 that the NCLT Principal Bench recognised what is arguably the first significant class action suit in Ankit Jain & Ors v. Jindal Poly Films Limited, in which minority shareholders alleged prejudice and mismanagement. The outcome of this case will be critical in determining whether Section 245 becomes a potent tool for shareholder activism or remains a "paper tiger."

1.5.3 Jaykishor Chaturvedi v. SEBI (2025)

In a seminal ruling reinforcing SEBI's enforcement power, the Supreme Court in *Jaykishor Chaturvedi v. SEBI* (2025) upheld the regulator's power to recover interest on penalties from the date the penalty becomes due (i.e., upon default), even if the original adjudication order was silent on interest. The Court clarified that adjudication orders themselves constitute enforceable demand notices, and interest liability flows automatically upon default. This decision closes a loophole that would allow violators to delay payment to benefit from the time value of money.

1.6 Critical Analysis: Strengths, Weaknesses, and Future Trends

1.6.1 Strengths: Formalisation and Digital Governance

The 2013 Act has successfully formalised governance structures. The mandatory constitution of Audit, Nomination, and CSR committees has created institutional memory and processdriven decision-making, reducing reliance on individual promoter whims. The MCA21 system and the new e-adjudication platform represent a global benchmark in digital corporate compliance, enabling real-time monitoring and transparency. The move towards "Straight

Through Processing" (STP) for many filings has significantly improved the ease of doing business.

1.6.2 Weaknesses: Tokenism and Enforcement Gaps

Despite the robust regulatory framework, "tokenism" remains a significant challenge. The appointment of family members as "women directors" and friends as "independent directors" adheres to the letter of the law while violating its spirit. Furthermore, the enforcement gap in the SME sector is glaring. While exemptions are necessary for growth, SEBI's recent decision to apply RPT norms to SMEs indicates recognition that the "light-touch" regulation may have been abused to siphon funds.

1.6.3 Trend: The Rise of Shareholder Activism

A notable shift in the Indian corporate landscape is the rise of shareholder activism, facilitated by Proxy Advisory Firms (PAFs) such as IiAS, SES, and InGovern. Institutional investors are no longer passive.

- **Dish TV (2024):** Shareholders rejected the appointment of four independent directors, leading to a standoff between the promoter group and institutional investors.[53]

- **IndusInd Bank (2025):** Shareholders rejected a promoter resolution to appoint nominee directors to the board, signalling that investors are willing to scrutinise promoter influence even in well-run banks.

- **Finolex Cables:** Shareholders voted against the reappointment of the executive chairman, demonstrating that performance and governance track records now directly influence voting outcomes.

This trend indicates that, while the "black letter" law remains robust, market forces driven by institutional investors and proxy advisors are becoming the primary enforcers of corporate discipline.

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