VOLUME 7 | ISSUE 1

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

COMBATING CORPORATE IMPROPRIETY THROUGH SHAREHOLDER CLASS ACTION SUITS: INDIA AND BEYOND

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ABSTRACT

Shareholders dispersed among the small investors who are typically short-changed by corporate scams, mismanagement, and related-party siphoning has a classic collective action problem: each individual loss is too trivial to sustain a suit, but the total damage can amount to thousands of crores. The class action remedy addresses this collective action dilemma: it enables shareholders to file suit en bloc. This article briefly compares the evolution of shareholder class actions in the United States, the United Kingdom, and India against corporate misconduct and corporate abuses in the United States, via the sophisticated Rule 23 of the Federal Rules of Civil Procedure, updated by the Private Securities Litigation Reform Act 1995 which created a rich class action plaintiffs'-bar, and led to the first Indian shareholder settlement of $125 million in In re Satyam Computer Services Securities Litigation; in the United Kingdom, through a bare representative action (CPR 19.8)challenged by the Supreme Court in Lloyd v Google (2021) and supplemented by statutory securities-based claims under ss.90 and 90A of the Financial Services and Markets Act 2000, tested in the RBS Rights Issue Litigation and the Tesco Litigation; and in India, through S. 245 of the Companies Act 2013, drafted given the Satyam fraud that initially left its Indian investors uncompensated, but practically came to the fore only after a long dormancy of nearly 8years, following its 2016 notification, culminating in two petitions challenging the delisting of ICICI Securities, and most prominently, in Ankit Jain v Jindal Poly Films Ltd, against its entry rendering a jurisprudence on the provision. This article concludes that until India remedies the unresolved class/derivative distinction treats the absence of a litigation-funding forum, the potential of these class/derivative proceedings remains limited.

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Keywords: *shareholder class actions; corporate impropriety; Section 245; Companies Act 2013; Rule 23; Private Securities Litigation Reform Act; representative actions; Financial Services and Markets Act 2000; National Company Law Tribunal; litigation funding.*

1. INTRODUCTION

Corporate wrong-doings fraudulent accounts, diverting value to related parties, managers hiding misdoings rarely tip off one investor sufficiently to justify a solo lawsuit. A small farmer who loses a few thousand rupees to an overly-rosy balance sheet won't find any cost-effective reason to sue; a company that diverts crores via undervalued transactions to a promoter-controlled company has little reason to be deterred. Class actions were created to address this problem: they allow investors who individually cannot justify litigation to pool their evidence, their pursuit of justice, and their litigation costs into a single, scalable process with the scope to reach the resources of the wrongdoer. Very different solutions to this problem were sought throughout the common law world. The United States' institution has been the most durable and proven; it has operated under Rule 23 of the Federal Rules of Civil Procedure from 1938, and been adapted by the Private Securities Litigation Reform Act of 1995 into one with a well-entrenched, specialized pool of plaintiffs' lawyers. England has moved forward more deliberately; since the turn of the millennium, it has relied on a narrowly-drawn representative-action rule under the Civil Procedure Rules, and for securities, claims under the Financial Services and Markets Act 2000 that have so far kept settled, rather than reach trial. India's Section 245 of the Companies Act, 2013 was born out of the response to the 2009 Satyam scam, where neither Satyam's shareholders nor those of the Indian promoter-controlled companies could recover damages in India at the time and the regulations it laid out only came into force in 2016. The comparison matters for three reasons. First, India's Section 245 is a deliberate transplant flawed but conscious transplant of a common-law remedial mechanism into a tribunal-based one, and the decade of stagnation followed by the sudden 2024 & 2026 resuscitation presents a rare natural experiment on the viability of such a transplant. Second, India's repeated corporate fraud eruptions most Particularly Satyam 2018 Punjab National Bank, IL&FS, and DHFL among them bring to bear the question open practical stakes rather than only doctrinal ones. Third, two 2024 and 2026 rulings by positions in ICICI Securities and Jindal Poly Films Limited respectively now furnish India's now-entire body of Section 245 case law, allowing an assessment that was without it previously. In this article, I chart the history of shareholder class action remedies in the United States, the United Kingdom, and India; compare their structural choices; assess the content of their 20242026 resuscitation; and suggest structural reforms to complete the transplant.

2. CONCEPTUAL FRAMEWORK

Shareholder collective redress takes three overlapping institutional forms. The first concerns so-called representative or class action proper cases asserting loss directly based on shareholders as buyers or holders of securities, often the inflation of share prices resulting from a publicly-as-Actually-absurdly misleading disclosure, a situation construed perhaps as an action popularization to negligent disclosure.1 Prominent examples include the American securities class action and the United Kingdom's provisions under SECTION 90 and 90A of the FSMA. The second concerns the derivative action, which concerns loss the company has suffered but which is recovered for the company, and so not as a correction for individual shareholders, given the common-law reflective-loss principle (8):that the redressed reflection of a company's loss here a reduction in the market value of the corresponding shares is irreconcilable with a separate redress for individual shareholders: (10)that there be some conceptual or doctrinal separation here in the first place. The third, India’s Section 245, does not so neatly fit into either category: while the language of the Indian Companies Act indicates a context of oppression and mismanagement, where the clear aim is to protect the company as distinct from any individual shareholder, in application the provision originated as a conceptually hybrid form of claim one, for example, in Jindal Poly where the section was invoked to garner compensation for individual shareholders that taking shape the central doctrinal battle ground urgently recalled representative class actions, with the respondent company invoking the Delaware Tooley test to deflective at allay recognition of the claim as an action for redistribution of the company's lost value among shareholders, an alignment with the narrower categories of section 241-2instead. In regard to its default participation rule, all three regimes are aligned: the US securities class actions and England's representative actions under CPR 19.8 operate substantively in an opt-out fashion. Once a class or represented group is defined, the members are bound absent a conscious opting out. Section 245's default participation design is identical: upon deposit of a petition, one or more depositors must give notice to "all depositors" or "all members of the public who might become depositors “and on the posting of this notice any person is automatically a class member unless they file an opt-out under NCLT Rule 87. That

India's inability to operationalise Section 245 in the manner intended can be attributed to the design of the threshold and not broader issues of participation rule, institutional capacity, or the funding ecosystem, is, or should be, a determining concern that the institutional infrastructure is there; the thresholds are not.

3. THE UNITED STATES FRAMEWORK

A federal securities class action is maintained by Rule 23 of the Federal Rules of Civil Procedure for all shareholders who bought or sold securities of a company over a defined "class period" (Investor.gov,) Rule 23(a) mandates numerosity commonality typicality and representative adequacy; Rule 23(b) (3) and calls for factually common questions to predominate over individual questions and that a class action be the superior mechanism of adjudication (Cornell LII, n.d.).The 1995 Private Securities Litigation Reform Act (PSLRA) imposed additional controls upon this structure for securities claims: it required specific particularized pleading of scanter (the defendant's fraudulent intent), imposed an automatic stay of discovery pending a motion to dismiss, created a safe harbor for forward-looking statements and introduced a formal lead-plaintiff procedure where the named plaintiff must publish notice of the claim in a widely circulated business publication within twenty days of filing, whereupon the court appoints the member with the largest financial stake as lead plaintiff (Practical Law, n.d.; Lexology, 2019). Thirty years of live case law on top of this system have produced a specialized plaintiffs' securities bar, a proven contingency-fee funding model, and a settlement-driven equilibrium in where most securities class actions settle before trial. The PSLRA screens were a direct response to an earlier critique that the pre 1995 regime tolerated low-merit "strike suits" launched opportunistically after sudden stock-price falls; the enhanced pleading requirement and stay of discovery sought to eliminate such claims as early as possible while maintaining the regime's deterrent effect for good claims. The best example of the US system's sophistication relative to India's once there was, at the time, no such system, is the American litigation in respect of the very same 2009 Satyam scandal outlined in Section 6 below. While Indian investors in Satyam Computer Services Limited had no domestic class action option, American investors sued in re Satyam Computer Services Securities Litigation in federal court and gained a settlement of US$125 million payable by Mahindra Satyam (blog.ipleaders.in, 2021). The contrast - identical fraud, identical firm, materially different investor results dependent exclusively on which jurisdictional procedure was used - was a direct driver for the Companies Bill, 2009 and ultimately, the Section 245 of the Companies Act, 2013.

4. THE UNITED KINGDOM FRAMEWORK

In England, the main vehicle for a collective redress lawsuit is the representative action as laid out in rule 19.8 of the Civil Procedure Rules (formerly rule 19.6). This rule enables a claim to be made on a representative basis or against a representative with others who have the same "interest" as the representative, and the verdict that comes from it will be binding on all persons whom the representative stands for (39 Essex Chambers, n.d.). The application of this provision was very restrictive, mostly to the leasehold and trust matters. The Supreme Court overturned in its decision in Lloyd v Google LLC [2021] UKSC 50 a lower Court of Appeal ruling that would have enabled a representative action for "loss of control" largely of personal data affecting 4.6 million people if one claimant brought the action representing others. The Court explained its rationale by stating that the "same interest" criterion was too restrictive for cases where assessing a claimant's damages would require a thorough review of the situation of the individual claimant (Morgan Lewis, 2022; Arthur Cox, 2022). The effect of the ruling was to make it harder for claims aimed at monetary compensation where the damage is to each claimant different to satisfy the "representative" criteria, but Lord Leggatt Though proposed an alternative "bifurcated" route in which the issue of liability would be decided by the representative for everyone whilst losses and other consequences would be worked out by individuals (39 Essex Chambers, n.d.; Latham.London, 2025). The shareholder cases have usually involved English claimants not the general representative-action rule but instead statutory claims to be exact tailored to such scenarios. The 2000 Companies Act brings in section 90 that false or misleading statements in a prospectus would make a defendant liable on an ordinary negligence standard (Collyer Bristow, n.d.; Clifford Chance, 2019). Section 90A yet needs that the person who committed an untrue or misleading publicity (e.g. annual report) should be shown to have been dishonest or reckless at the very least to give rise to liability. The RBS Rights Issue Litigation, initiated under section 90 following RBS' 12 billion 2008 rights offering, resolved in 2017 shortly before trial after concluding that high-value, complex shareholder suits could be tied to the final judgment under the English system (Grant Thornton, 2022; The In-House Lawyer, 2020). The Tesco Litigation, initiated under 90A following Tesco's September 2014 disclosures of overstated expected profit by around 250263 million, Like that concluded in 2019 just before what would have been the first trial of a section 90A suit, leaving the provision's damages way judicially untested (DAC Beach croft, n.d.; HSF Kramer, 2024). A related but different proceeding, Sharp v Blank [2019] EWHC 3078 (Ch), initiated by Lloyds shareholders over its purchase of HBOS on the grounds of director's-duty breach rather than FSMA liability, did go to judgment: claimants failed to prove that the breaches caused their loss, the court utilized the reflective-loss principle, and the claimants were directed to pay the bank's entire costs Collectively, these three litigations demonstrate that England's statutory system for securities claims can accommodate mega-cases by institutionally well-backed shareholders, but that its critical legal issues most of all the calculation of damages under sections 90 and 90Ahave yet to be judicially determined because all three major suits have settled rather than gone to final judgment (Cornerstone Research, n.d.). The result in Lloyds/HBOS, where claimants who failed on causation were ordered to pay the defendant's full costs, is widely believed to have led the subsequent Tesco claimants toward settlement rather than risk a similar costs hit

5. THE INDIAN FRAMEWORK

In January 2009, Satyam Computer Services Limited's chairman, B. Ramalinga Raju, admitted to overstating the national company's cash and bank balances by more than 50 billion rupees (Textbook, n.d.; Plutus Education, 2025). Still numbering about three lakhs shareholders, India's (then) Companies Act 1956 provided no class action mechanism all that could be pursued was the more limited oppression-and-mismanagement remedy, limited to the company and its statutory appointees, and cannot touch the auditors, experts, or advisers involved in a fraud of this magnitude (Mondaq, 2019; India Filings, n.d.). Indian shareholders gained nothing from standing in court, while American investors received a $125 million settlement (blog.ipleaders.in, 2021). Parliament, responding to investor demands, enacted the Companies Bill 2009 which was replaced by the promulgated Companies Act 2013, which introduced a new remedy, Section 245, which was notified on 1 June 2016 together with the National Company Law Tribunal Rules 2016 Rule 84 setting out the filing process (Lexology, 2019; Mondaq, 2019). Under Section 245, members or depositors of a company (not a banking company, which is in particular excluded) may make an application to the NCLT alleging that the company's affairs are being conducted 'in a manner prejudicial to the interest of company, its members or depositors' (The Companies Act 2013 s 245(1); Lakshmikumaran & Sridharan n.d.) (Lakshmikumaran & Sridharan, n.d.). Sub-section

245(3) prescribes what comes next minimum number of members or depositors respectively for the application to be maintained: 100 or 5 percent of all members, or members holding a mandated percentage of their holdings (2 percent in a listed company and 5 percent otherwise), or 100 depositors or 5 percent of all depositors or depositors holding a mandated percentage of their holdings; or one-fifth of all members if the company has no share capital (Indian Kanoon, n.d.; SCC Online, 2024; CBFL NLU Delhi, 2022). Section 245(1) is broader than the oppression-and-mismanagement remedy previously available in that it operates not only on the company and its directors, but the auditors, audit firms experts consultants, advisers involved in the relevant conduct (India Filings, n.d.). The range of remedies under Section 245(1) is wide, including injunctions, damages, or compensation from the company, its directors, or its auditors, the NCLT having a residuary power to award any other equity it considers appropriate (ibid.) (SCC Online, 2024). But, before proceedings could be commenced under the section, the NCLT is to, inter alia, specify via a direction the members/ depositors to whom the public notice is to be issued (NCLT Rule 87); are to consolidate applications filed in different jurisdictions dealing with the same matter under a single lead applicant; and anyone who receives a notice under the section is deemed to be a class member unless he/she exits on Form NCLT-1 (TaxGuru, 2022). Costs are normally charged to the respondents (or companies/ individuals who have caused the impugned act/ omission) and under Section 125(3) (d), such costs may be paid out of the Investor Education and Protection Fund and the defaulting officer may be sentenced to imprisonment for 3 years and/or fined between (5 lakhs and 25 lakhs) . But despite this lenient structure, for nearly eight years from its notification in 2016, there were no petitions entered under this section. Commentators have cited the lack of a large enough dispersed members/ depositors' base required to gather the minimum numbers for such aggregate actions as one explanation for this absence, in particular in the absence of a developed ecosystem for shareholder activism or litigation-funding and in reality the terms of Section 245 are drafted unclearly, attempting to combine elements of a derivative action (where the remedy flows to the company) with those of a class action (where workers seek damages for themselves) (IBC Laws, 2026a; CBFL NLU Delhi, 2022). The 2024 year saw two petitions filed under the provision, in Manu Rishi Guptha v ICICI Securities Ltd where, in mid-2024, over 100 minority shareholders of ICICI Bank challenged the bank's scheme of delisting and merging its securities broking arm, ICICI Securities, on the ground that the algorithm used to calculate the swap ratio, based on listed company price-to-earnings multiples, was set too high at

32x, against the proposed delisted P/E multiple of around 15x, and in addition, workers had coerced voting by bank employees and breach of shareholder-privacy norms(M&A Critique, 2024; Business Standard, 2024a). But, the Mumbai and Ahmadabad benches of the NCLT approved the delisting unappeased till the appellate NCLAT affirmed this approval in March 2025, for the six appeals, and in the final appeal, the Supreme Court upheld the venture valuation process as being bona-fide in 2025 (Business Standard, 2024b, 2025a, 2025b). More significant was the test case of Ankit Jain v Jindal Poly Films Ltd, of which the NCLT Principal Bench admitted on 5 February 2026 and has been described as being the first significant class action filed in India under Section 245 (Law.asia, 2026). 300 shareholders owning a minimum of 2 percent of the listed entity had alleged that promoter-favored related party transactions resulted in diversion of close to 2,500 crore (some US$300 million), at a deep discount (by inflating the value of funds being invested from the sum that some borrowers had earlier paid to borrow that same money), leading to the transfer of assets to promoter-connected firms, coupled with SEBI investigations into misuse of company funds and misstatements in disclosure records, which found that these transfers had taken place over a period, through multiple related entities to hide their actual extent (Law.asia, 2026; India Corp Law, 2026). Jindal Poly Films Limited (JPFL) challenged the acceptance of the petition on the grounds that in reality, the petition was merely a derivative claim disguised by a class action label: through the Delaware-originated "Tooley test", JPFL submitted that the loss was actually by the company and by the shareholders only reflectively and that means, if at all, could the loss be claimed by the oppression-and-mismanagement provisions under sections 241, 242 only. (Law.asia, 2026; IBC Laws, 2026a). The NCLT disagreed with this line of reasoning, pointing out that foreign law's derivative/class differentiation is not decisive under Indian law because Section 245 is differently worded. It was further remarked by the Tribunal that a earlier Madras High Court judgment cited by the respondents in no manner dealt with the class action as contemplated under the section (IBC Laws, 2026a). Having found that the statutory requirements of threshold and good-faith were fulfilled, the NCLT allowed the writ and gave instructions for publication of public notice by Rule 87 (IBC Laws, 2026a). An alternative but connected argument from JPFL's side for the appeal was that the provisions of Section 245 are aimed at the prevention of continuing or future wrongful actions and that’s why they cannot cover transactions done already. The NCLAT Principal Bench dismissed this contention in 2026 when it was found that the wording of the statute for "wrongful act or conduct" and "any likely act", covers both completed and future activities respectively. Also, a claim for damages based on Section 245(1) (g) necessarily refers to a past action (IBC Laws, 2026b). The appeal being a challenge against the order of admission of a petition, the dismissal of the appeal was only the way by which the admission could be reaffirmed.

6. COMPARATIVE ANALYSIS

Table 1. Shareholder Class Action Frameworks Compared

Feature	United States	United Kingdom	India
Legal basis	FRCP Rule 23; PSLRA 1995	CPR r.19.8 (general); FSMA 2000 ss.90/90A (securities)	Companies Act 2013, s.245; NCLT Rules 2016
Participation default	Opt-out (class period defined; members bound unless excluded)	Opt-out in substance ("same interest" group bound)	Opt-out (public notice; Form NCLT-1 to exclude)
Threshold	Numerosity, commonality, typicality, adequacy (Rule 23(a)); predominance (23(b)(3))	"Same interest" (CPR 19.8); reliance/causation under s.90A	100 members or 5% (2% for listed cos.), whichever less; s.245(3)
Institutional maturity	Mature; specialised plaintiffs' bar since 1938/1995	Developing; three major cases since 2017, all but one settled	Nascent; dormant 2016–2024, two petitions since
Landmark case	In re Satyam Computer Services Securities Litigation (2011) — US$125m settlement	RBS Rights Issue Litigation (2017); Tesco Litigation (2019), both settled	Ankit Jain v Jindal Poly Films Ltd (NCLT 2026) — ₹2,500 crore claim admitted

7. STRUCTURAL AND REGULATORY CONSTRAINTS: FUNDING, SEBI, AND THE BANKING EXCLUSION

In India, third-party litigation funding is permitted but not in a very formal way. The Privy Council back when it comes to Ram Coomar Coondoo v Chunder Canto Mookerjee (1876) had already decided that English doctrines of maintenance and champers are not applicable in the Indian context unless a funding agreement is an act of extortion or against the public policy (Law.asia, 2025; LexForti, 2021) and this was confirmed by the Supreme Court of India in 5 Bar Council of India v A.K. Balaji (2018) SCC 379 that non-lawyers are not barred from funding litigation and recovering the amount spent from the proceeds of the case while it is a breach if advocates themselves engage in such activities (Lexology, 2019; IBA, n.d.). The main problem for India compared to a plaintiff's bar in the United States based on contingency fees or a litigation financing market in England that eventually became institutionalized through which the claims about RBS and Tesco were financed, is lack of existence any dedicated statute or specific laws, the legal regulator of the legal or the legal industry and a fund that supports claims brought by a group of claimants like the class actions (Global Law Experts, 2026). Without having a regulatory and an institutional infrastructure for a legal dispute that is allowed under a statute the main problem namely coordination is still largely not yet solved by having the shareholders that are dispersed to join the proceedings through the application representing them and then verifying the details of their shareholdings and financing years of the proceeding which was highlighted by the commentators on the Jindal Poly Films case, is such a huge undertaking that applicant groups with limited resources could hardly accomplish the same task (IBC Laws, 2026a) The case against Jindal Poly Films investigated at the same time by the Securities and Exchange Board of India (SEBI) led to the allegations of diversion of value being confirmed at a Section 245 petition (Law.asia, 2026; Business Standard, 2024c). In fact, SEBI settled its 2024 merchant banking case against ICICI Securities, mainly for their due diligence shortcomings during a merger, for 69.82 lakhs, and the biggest reason for that was the same delisting transaction that was debated at the NCLT. Still, the NCLT Section 245 petition and SEBI's enforcement proceeding track formally operate independently: SEBI's decisions have no bearing on the market overall; the latter is a matter of disciplinary action only. The lack in the law of any means for the results of SEBI's investigation being communicated to or cited by a Section 245 tribunal leads to repetition of investigation on facts in the same matter and individual shareholders may have to prove independently what a regulator has already confirmed that it is the case. Banking companies are to be exact excluded from the ambit of Section 245. This omission turned out to be a bitter lesson when the 2018 Punjab National Bank fraud was uncovered - letters of undertaking issued fraudulently to entities connected to diamond dealer Nirav Modi resulted in losses of more than 14,000crore; adversely affected stakeholders had no Section 245 remedy against the bank's directors or auditors just because banks are outside of the provision (India Corp Law, 2026). The omission was written when banking regulations were still in a fairly stable state, without anyone foreseeing a fraud of such massive proportions in the banking industry. It has been a while since the incident with PNB and the issue still remains unaddressed. So it is very clear that the exclusion of banks was a decision that was based on wrong premises, a fact that has been shown by the events taking place at the Punjab National Bank.

8. RECOMMENDATIONS

(1) Revise Section 245 such that the banking-company exclusion is either removed or A lot reduced, or alternatively, launch a class action system in particular for the banking industry which would directly target the lacunae accountability that the 2018 Punjab National Bank fraud revealed. (2) Review Section 245 or via the Supreme Court make the distinction between class actions and derivative claims in sections 241, 242 clearer, allowing Tooley-test and reflective loss arguments raised in Jindal Poly Films not to be reiterated endlessly in petition after petition. (3) Establish a formal protocol for information exchange between SEBI and NCLT so that a Section 245 tribunal may rely on findings from investigations done by SEBI without unnecessary fact-finding which would speed up the transition from regulator's findings to shareholders payment compensation. (4) Set up a separate setup for funding of litigation to be used by classes of affected parties, likely a part of, or receiving support from, the Investor Education and Protection Fund, to mitigate the barrier created by coordination costs which caused eight years of inaction and was somewhat based on the institutional funding systems that financed RBS and Tesco court battles in the UK. (5) Extend the entitlement for Section 245 relief to creditors and debenture holders as a matter of course with the academic suggestions made since the time the regulation came in force, so that besides members and depositors, other stakeholders will also be in a position to invoke the remedy. (6) Compel Ministry of Corporate Affairs or NCLT to disclose in a structured manner details of all Section 245 filings, confirmations, and results on a par with disclosure mechanisms of the PSLRA.

9. CONCLUSION

The United States, the United Kingdom, and India face the same fundamental problem institutionally rational individual shareholder silence in the face of corporate wrongdoing leads to institutionally irrational under enforcement albeit with very different institutional maturity responses. The American institution, acquired over eighty years, polished by the PSLRA, acts as a settlement-driven regular deterrence routine; the narrower doctrine of the English institution, evolving since Lloyd v Google, proved capable of accommodating significant volumetric securities class actions, even without any of them ever securing a fully reasoned trial judgment on damages; and India's Section 245 has charted the most extreme course of the therewith a post-mortem of its utter absence in 2009, a decade of notification without use in 20162024, and then, in 20242026, the ICICI Securities and, more quite a bit, the Jindal Poly Films proceedings, test the efficacy of adversarial process in generating legal remedy content. What the JPFL admission shows is that the 245 mechanism will work as designed once a large and well-supported claimant group brings it; what the mandate of the last decade shows is that its mere statutory presence on the books was never enough. India's challenge will not be importing the American or English model wholesale: it will be completing its own reform by settling the unresolved class/derivative divide exploited in JPFL's defense, by establishing the cross-party co-ordination and third-party litigation funding structures that 8 years of total nonuse indicates are almost Definitely absent, and by closing the banking-company exemption that saw Punjab National Bank stakeholders robbed of precisely the remedy for which Satyam's shareholders had clamored. Whether the 2026 revival presages a sustainable Indian shareholder class action practice, or stays a solitary handful of exceedingly well-funded petitions, the answer will only be discernible over the next few years of NCLT succession.

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