II. SIMPLIFYING THE QUANDARY OF CORPORATE GOVERNANCE IN LIGHT OF THE TATA-MISTRY SAGA

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ABSTRACT

The Hon'ble Supreme Court in the recent case of Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd., explored various issues of corporate governance such as the duties of the nominee directors, the role of independent directors in Indian companies and whether they are actually required, the applicability of invoking the remedy of oppression and mismanagement, and the legality of affirmative voting rights. Even though the case largely revolved around the claims of oppression and mismanagement and did not substantially delve into other issues, the Supreme Court's opinion on issues pertaining to corporate governance has still raised many concerns. This paper seeks to analyse this decision and evaluate the stance of the apex court on the aforementioned issues relating to corporate governance. The authors have revisited the basics of corporate governance, extensively analysed the fiduciary duties of the directors, both in India and the UK, and explored some scenarios in which the fiduciary duties might be subject to change. Further, in light of the judgment, the authors argue for the need of independent directors in the Indian corporate governance regime. Lastly, the authors discuss the remedies available with the shareholders and explain the cases in which these remedies can be invoked.

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I. INTRODUCTION

A. Contextual Background

Recently, the Hon'ble Supreme Court (**"SC"**) in the case of *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd.*,[1] (**"judgment"**) primarily dealt with the claims of oppression and mismanagement initiated by the Cyrus Investments Pvt. Ltd. (minority shareholder) under Section 241 and 242 of the Companies Act, 2013 (**"CA 2013"**),[2] against the majority shareholders for carrying out the affairs of the company in a manner that was detrimental to the interests of the minority shareholders and contravening the company's Articles of Association (**"AoA"**). However, the SC also delved into many questions with respect to the corporate governance mechanisms in India such as *inter alia,* the role and relevance of Independent Directors **("IDs")**, the legality of Affirmative Voting Rights (**"AVRs"**), and the fiduciary duties of the directors.[3] The *prima facie* dictum of the SC pertaining to certain issues of corporate governance has resulted in some eminent scholars[4] questioning the veracity of the SC's opinion on these issues, especially in light of the existing laws and precedents.[5] In furtherance, this has

[1] Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd., 2021 SCC OnLine SC 272 [hereinafter *Tata Consultancy*].
[2] *Id.*, ¶ 1.4.
[3] *Id.*, ¶¶ 19.23, 19.30.
[4] *See* Umakanth Varottil, *Supreme Court on Directors' Duties in the Tata/Mistry Case: A Critique*, IND. CORP. L. BLOG (Mar. 29, 2021), https://indiacorplaw.in/2021/03/supreme-court-on-directors-duties-in-the-tata-mistry-case-a-critique.html.
[5] *Id.*

also induced us to re-visit the basics of the concept of corporate governance, the existing law, and take assistance from the foreign laws in order to find conclusive answers to the questions raised pursuant to the judgment.

B. Corporate Governance: The *Tabula Rasa* Analysis

The OECD Principles of Corporate Governance[6] define corporate governance as the principles governing the relationship, and regulating the accountability between the management and all the stakeholders of a corporation. Thus, the principles of corporate governance suggest that the affairs of the corporation should be carried out in consonance with the best interests of the corporation and all of its stakeholders.[7] In this regard, the concept of fiduciary duties[8] is important to understand. The fiduciary duties of the directors are a means to secure the interests of the company, and consequently, the interests of its beneficiaries.[9] In a catena of judgments, most prominently in the English judgment of *Regal (Hastings) Ltd. v. Gulliver & Ors.*,[10] it was held that a director holds the position of a trustee of a company and equity prohibits the trustee from making profits at the cost of the company and its stakeholders. Further, in the case of *M/S Paliwal Hotels Pvt. Ltd & Ors. v. Sanjay Paliwal*,[11] the Delhi High Court upheld that the directors are entrusted with a responsibility to carry out their duties with utmost good faith,

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[6] OECD, *G20/OECD Principles of Corporate Governance* (2015), https://www.oecd-ilibrary.org/docserver/9789264236882en.pdf?expires=1622406635&id=id&accname=guest&checksum=540119BDA124EF42ACCD1B5DD38FEBD4.
[7] *See* Charles Handy, *What is a Company For?*, 1 CORPORATE GOVERNANCE 14, 14 (1993).
[8] Companies Act, 2013, §166, No. 18, Acts of Parliament, 2013, [hereinafter "CA 2013"].
[9] Gautam Sundaresh, *In Whose Interests Should a Company be Run? Fiduciary Duties of Directors During Corporate Failure in India: Looking to the West for Answers*, 8 MICH. BUS. & ENTREPRENEURIAL L. REV. 291, 294 (2019).
[10] Regal (Hastings) Ltd. v Gulliver & Ors., (1942) l All ER 379.
[11] M/S Paliwal Hotels Pvt. Ltd & Ors. v Sanjay Paliwal, 2012 SCC OnLine Del 258.

care and diligence for the benefit of the company. Thus, in furtherance, the fiduciary duties of directors is a great tool to uphold and promote the principles of corporate governance.[12]

The judgment extensively deliberated on the fiduciary duties of directors, especially the conflict of duties arising in the case of nominee directors,[13] who are nominated by the shareholders or other stakeholders such as the creditors.[14] The nominee directors face a precarious situation as they have to act in the best interests of the company, in accordance with the provisions laid down in the CA 2013, and at the same time, they are also "contractually bound" to advance the interests of their nominators.[15] This brings to the fore the issue of affirming the ambit of the directors' duties and determining in whose interests should they carry out their duties. The next section of the paper shall delve into the same.

II. IN WHOSE INTERESTS DO THE DIRECTORS CARRY OUT THEIR DUTIES?

There has been a persistent conundrum on the issue of fiduciary duties of directors and to whom exactly do they owe this duty.[16]

Further, the Courts have also provided varied opinions on this issue in the past. In this section, the authors shall firstly, analyse the diverse opinions

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[12] Vijay P Singh, *Directors' Fiduciary Duties to the Company: A Comparative Study of the UK and Indian Companies Act*, 6 TRUSTS & TRUSTEES 1,1 (2021).
[13] *Tata Consultancy*, ¶ 19.30.
[14] Varottil, *supra* note 4.
[15] *Id.*
[16] Mihir Naniwadekar & Umakanth Varottil, *The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis*, NUS LAW WORKING PAPER NO. 2016/006 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2822109.

on the fiduciary duties of the directors. Secondly, the authors shall also endeavour to explore various scenarios in which the directors may face a conflict while carrying out their fiduciary duties.

A. Fiduciary Duties of Directors: To whom do they owe these duties?

As mentioned above, there have been conflicting opinions regarding this question. The English precedents, in this regard, have established a very clear approach. In the case of *Percival v. Wright*,[17] it was explicitly upheld that the directors only owe their fiduciary duties to the company itself and not to any individual shareholders. Further, in the case of *Peskin v. Anderson*,[18] it was settled that the directors do not owe a general duty to shareholders, and any duty that may arise between them, would only be in exceptional circumstances, and/or if a special relationship is established between them.

Per contra, the picture seems to be hazy under Indian law. The Hon'ble SC, initially in the case of *M/S. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala & Ors.*,[19] held that the directors owe their fiduciary duties not only towards the company but also towards every shareholder of that company. In the case of *Globe Motors Ltd. v. Mehta Teja Singh*,[20] it was explicitly held that the directors occupy the position of a trustee towards "the company", and consequently they should exercise this duty in the best interests of the company. In furtherance, in some cases, such as *Sangram Singh P.*

[17] Percival v. Wright, [1902] (2) (Ch.) 421.
[18] Peskin & Anr. v. Anderson & Ors., [2001] 1 BCLC 372.
[19] M/S. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala & Ors., AIR 1961 SC 1669.
[20] Globe Motors Ltd. v. Mehta Teja Singh, (1984) 55 Comp. Cas 445.

Gaekwad & Ors. v. Shantadevi P. Gaekwad (Dead) thr. Lrs. & Ors.,[21] and *Kamal Kumar Dutta v. Ruby General Hospital Ltd.*,[22] the SC upheld the view adopted in the English precedent of *Peskin*,[23] and opined that ideally the directors only owe their fiduciary duties towards the company itself, and cases in which the directors owe any duties towards the individual members is an anomaly rather than the norm.

However, this stance was modified by the SC in the case of *Dale & Carrington Invt. Pvt. Ltd. v P.K. Prathapan*,[24] in which the SC observed that the directors acting as the trustees of a company are duty-bound to carry out their activities with due care and for the benefit of the company. Furthermore, the directors while carrying out the functions of the company need to disclose all important details regarding the pertinent matters of the company to the shareholders. The SC further held that "in a limited sense," the directors "are also trustees for the shareholders of the company."[25]

Therefore, keeping Section 166 of the CA 2013 in mind, it can be safely concluded that the directors of a company primarily owe their fiduciary duties only towards the company; however, at the same time, they need to be considerate of the interests of the shareholders of that company.[26] Nonetheless, this settled position of law regarding the fiduciary duties of directors might come in conflict in some instances. The prime example of such a situation is

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[21] Sangram Singh P. Gaekwad & Ors. v. Shantadevi P. Gaekwad (Dead) & Ors., (2005) 11 SCC 314 [hereinafter *"Gaikwad"*].
[22] Kumar Dutta v. Ruby General Hospital Ltd., (2006) 7 SCC 613 [hereinafter *Kumar Dutta*].
[23] Peskin & Anr. v. Anderson & Ors., [2001] 1 BCLC 372.
[24] Dale & Carrington Invt. Pvt. Ltd. v P.K. Prathapan, (2005) 12 SCC 212 [hereinafter *Dale & Carrington*].
[25] *Id.*
[26] Naniwadekar & Varottil, *supra* note 16.

the company being insolvent or when the company is likely to face insolvency. In such a situation, the directors need to re-evaluate the prioritization of the interests of various stakeholders, like the creditors of the company.[27] Further, as evinced by the judgment, the position of nominated directors can also lead to a conflict. The next segment shall deal with these two situations and identify whether the directors' fiduciary duties shift towards other parties.

B. Fiduciary Duties during Insolvency and the "Twilight Zone"

Under Indian law, it has not been explicitly mentioned whether in insolvency the directors owe their duties towards the creditors. In this context, the authors rely on the landmark English case of *West Mercia Safetywear v. Dodd*.[28] In this case, it was clarified that the directors owe their duties towards the company; however, in insolvency or its vicinity, undoubtedly the duties of the directors are altered in such a manner that the directors are required to "at minimum"[29] "have proper regard for the interests of the creditors."[30] The legal position in the USA is also similar to this stance. In the case of *North American Catholic Educational Programming Foundation Inc. v. Gheewalla*,[31] it was held that at all times the directors owe their fiduciary duties only towards the corporation. Thereby, in insolvency or its vicinity, the duties of the directors become more creditor-oriented.[32] The rationale behind such a model of fiduciary duties is to preserve the assets of an insolvent company or a company

[27] *Id.*
[28] West Mercia Safetywear v. Dodd, (1988) 4 BCC 30.
[29] Kristin van Zwieten, *Director liability in insolvency and its vicinity*, 38 OX J. OF L. STUD. 382, 383 (2018).
[30] Bilta (UK) Ltd (in liquidation) & Ors. v. Nazir & Ors. (No 2), [2016] AC 1, ¶ 123.
[31] North American Catholic Educational Programming Foundation Inc. v. Gheewalla, 930 A.2d 92, 101 (Del. 2007) (U.S.)
[32] Zwieten, *supra* note 29.

that is likely to face insolvency, for the interests of the creditors and to preclude the directors from undertaking investments in risky ventures/projects, which might be favoured by the shareholders.[33] Although it is not explicitly clear as to the time period for the directors to make their approach more creditor-oriented, the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) suggests that the directors need to start weighing in the interests of the creditors as soon as it is reasonably foreseeable by the directors that a Corporate Insolvency Resolution Process **("CIRP")** is inevitable.[34] Therefore, the directors are required to maintain their creditor-oriented approach when the company enters into the "Twilight Zone", which connotes a time period from the point where CIRP becomes inevitable and its actual initiation.[35] Thus, in a nutshell, during or in the vicinity of insolvency, the directors owe their duty only to the company, but instead of prioritizing the interests of the shareholders, their priority shifts towards preserving and advancing the interests of the creditors.[36]

C. The Mysterious Case of Nominee Directors

As mentioned above, the judgment discussed the nominee directors and their fiduciary duties. The appointment of nominee directors is not an anomaly, especially where one company has invested in another and wants to

[33] *Id.*; *See also* William B. Bratton, *Bond Covenants and Creditor Protection: Economics and Law, Theory and Practice, Substance and Process*, 7 EBOR 39, 7 (2006).
[34] Insolvency and Bankruptcy Code, 2016, § 66(2), No. 31, Acts of Parliament, 2016.
[35] Vaneeta Patnaik, *Directors in the Twilight Zone V*, INSOL INTERNATIONAL (2013), https://www.insolindia.com/uploads_insol/resources/files/directors-in-the-twilight-zone-v-1034.pdf.
[36] Zwieten, *supra* note 28.

maintain a system of checks and balances by nominating a director.[37] However, the nominee directors might face a conflict in cases where the interests of their nominators are not aligned with the interests of the company.[38] In such a scenario, both English[39] and Indian[40] cases staunchly propound that the directors should have their "undivided loyalty" towards the company while owing their duties specifically to the shareholders only in exceptional circumstances.[41] In the judgment, the SC acquiesced to the legality of the AVRs exercised by the nominee directors,[42] and held that it would largely be determined by the nature of the nominating company. In this case, the nominating company was a public trust company, which was a driving factor for the SC to legalize the AVRs.[43] However, the exercise of AVRs by the nominee directors is impliedly indicative of the fact that the SC prioritized the interests of the nominating shareholders rather than the company on whose board the directors were nominated, which contravenes past precedents and is likely to add confusion with regards to the directors' fiduciary duties in the future.[44]

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[37] Arjun Anand & Arushi Gupta, *Nominee Director- the Tug of War between Duty to Company and Nominator*, SINGHANIA & PARTNERS (Jul. 2, 2020), https://singhania.in/blog/nominee-director--the-tug-of-war-between-duty-to-company-and-nominator.
[38] Varottil, *supra* note 4.
[39] Boulting v. Association of Cinematograph Television and Allied Technicians, 1963 (2) Q.B. 606.
[40] *Gaikwad*, ¶ 42.
[41] *Dale & Carrington*, at 230.
[42] *Tata Consultancy*, ¶ 19.30.
[43] *Id.*
[44] Varottil, *supra* note 4.

III. THE REQUIREMENT AND RELEVANCE OF INDEPENDENT DIRECTORS: A BONE OF CONTENTION?

The judgment also evaluated the importance and the requirement of IDs in a company.[45] The SC opined that "if all Directors are required under Section 166(3) to exercise independent judgment, we do not know why there is a separate provision in Section 149(4) for every listed Public Company to have at least 1/3rd of the total number of Directors as independent Directors."[46] The stance taken by the SC pertaining to the IDs diverges from the popular opinion that expresses the necessity of IDs in order to maintain robust corporate governance mechanisms. Furthermore, this becomes interesting in light of the recent consultation paper issued by the Securities and Exchange Board of India (**"SEBI"**) which tightened the scrutiny on the IDs for a listed company.[47] This section shall provide a brief analysis on the concept of IDs, their role, requirement and relevance in the Indian corporate governance regime.

A. Does the Indian corporate governance regime really require IDs?

Pursuant to the CA 2013, IDs can essentially be defined as non-executive directors that do not possess any material or pecuniary relationship with the company.[48] Thus, the provisions of the CA 2013 ascribe immense importance to the appointment of the IDs for ensuring transparency in the

[45] *Tata Consultancy*, ¶ 19.23.
[46] *Id.*
[47] SEBI, *Consultation Paper on Review of Regulatory Provisions Related to Independent Directors*, (Mar. 1, 2021), https://www.sebi.gov.in/reports-and-statistics/reports/mar-2021/consultation-paper-on-review-of-regulatory-provisions-related-to-independent-directors_49336.html [hereinafter "Consultation Paper"].
[48] CA 2013, § 149(6).

affairs of the company.[49] In furtherance, SEBI in its consultation paper highlighted the importance of IDs for the corporate governance framework as they act as a bridge between the interests of the promoters and the minority shareholders of the company.[50] Further, SEBI emphasised the importance of overseeing the appointment, removal and resignation of the IDs so that the independence of the IDs remain intact, and there is no external influence by the promoters of the company.[51]

The appointment of IDs safeguards a more balanced composition of the board of directors and has been considered one of the most effective instruments of ensuring compliance of principles of corporate governance by the directors.[52] The requirement of IDs for the corporate governance framework and protecting the rights of the minority shareholders is also highlighted by the fact that in India, the proportion of companies where the promoters own more than 50% of the shareholding increased to 66% in 2018.[53] Thus, the requirement of IDs for the maintenance of a robust corporate governance framework cannot be underestimated and is heavily emphasized upon by SEBI's consultation paper. Consequently, the authors believe that the SC's opinion on the role and requirement of IDs contravenes the legislative intent behind the inclusion of provisions relating to the installation of the IDs in various corporations,[54] and ignores their relevance for preserving the

[49] *Id.*, § 149(4). *See also* Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, § 16(1)(b).
[50] Consultation Paper, ¶ 2.1.
[51] *Id.*
[52] Pranav Mittal, *The Role of Independent Directors in Corporate Governance*, 4 NUJS L. REV. 285, 287 (2011).
[53] OECD, *Ownership structure of listed companies in India*, (2020), https://www.oecd.org/corporate/ownership-structure-listed-companies-india.pdf.
[54] Varottil, *supra* note 4.

interests of the minority shareholders in an environment where the interests are skewed towards the promoters.

IV. ANALYSING THE REMEDIES FOR SHAREHOLDERS

The central dispute of the judgment was the claims of oppression and mismanagement initiated by the minority shareholders of the corporation against the exercise of AVRs by the nominee directors.[55] In light of this, it becomes pertinent to understand the available remedies for the shareholders in the Indian corporate governance regime. This section shall deal with the two most commonly adopted remedies by the shareholders against the abuse of power by the management i.e., oppression and mismanagement and the shareholder's derivative action.

A. Statutory Remedy of Oppression and Mismanagement

The CA 2013 provides a remedy to the shareholders to initiate an action against the controlling shareholders/management if the affairs of the company are being conducted in a manner that is prejudicial to the interests of the company, its members or the public at large.[56] Section 241 of the CA 2013 provides the right to any member to file an application before the National Company Law Tribunal (**"NCLT"**). This remedy is not exclusive to Indian jurisprudence and is largely but not entirely similar[57] to the "oppression" remedy provided in the statutes of other common law jurisdictions such as the

[55] *Tata Consultancy*, ¶ 19.23.
[56] CA 2013, § 241(1).
[57] Vikarmaditya Khanna & Umakanth Varottil, *The Rarity of DAs in India: Causes and Consequences*, THE DERIVATIVE ACTION IN ASIA: A COMPARATIVE AND FUNCTIONAL APPROACH (Cambridge University Press, Dan W. Puchniak et al. (eds.), 2012).

UK[58] and Singapore[59] in cases where there has been "unfair prejudice" to the minority shareholders.[60]

The SC, in the case of *Shanti Prasad Jain v. Kalinga Tubes Ltd.*,[61] upheld that where the conduct of the majority shareholders has been continuously abusive and detrimental to the interests of the company and/or the minority shareholders, the minority shareholders, in those instances, are justified to invoke the remedy of oppression and mismanagement.[62] The question of what constitutes oppression and mismanagement shall depend on the facts of each case.[63] The concept of oppression and mismanagement was also discussed in the case of *Needle Industries (India) v. Needle Industries Newey (India)*,[64] whereby it was held that where the directors act without probity and transparency, the shareholders have the right to exercise this remedy. However, oppression and mismanagement is not the only remedy that the shareholders possess. Another mechanism of corporate governance in India is the common law remedy of a shareholder's derivative action. The next section shall provide a brief analysis of the shareholder's derivative action, the cases in which it can be exercised, its possible applicability to the judgment, and the differences between the two remedies.

[58] Companies Act, 2006, § 994 (United Kingdom).
[59] Companies Act, 1967, § 216 (Singapore).
[60] Khanna & Varottil, *supra* note 57.
[61] Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535 [hereinafter *"Shanti Prasad"*].
[62] *Id.*, ¶ 20.
[63] Mcdonald's India Private Limited v. Vikram Bakshi & Ors., 2016 SCC OnLine Del. 3949.
[64] Needle Industries (India) v. Needle Industries Newey (India), AIR 1981 SC 1298.

B. Shareholder's Derivative Action

The remedy of derivative action was laid down for the first time in the landmark English case of *Foss v. Harbottle*,[65] and was also adopted and recognized as a valid remedy in Indian jurisprudence by the case of *Dr. Satya Charan Law v. Rameshwar Prasad Bajoria*.[66] Derivative actions can be initiated by the shareholders in cases where the directors/wrongdoers are in control of the company[67] and have committed either a fraud on minority,[68] or violated the requirement of a special resolution,[69] or where the wrongdoers have carried out an *ultra vires* transaction.[70]

Even though the two remedies of oppression and mismanagement under Section 241, and a shareholder's derivative action have been equated,[71] they are not the same. Apart from the fact that oppression and mismanagement is a codified, statutory remedy and derivative action is a common law remedy, the biggest and the most fundamental difference between the two remedies is that in oppression and mismanagement, the shareholders initiate a direct action against the wrongdoers for claiming relief in their personal capacity.[72] Whereas, in a shareholder's derivative action, the shareholders can only initiate an action on behalf of the company for the benefit of the company.[73] This essentially implies that in a shareholder's derivative action, the relief will not be provided to the shareholder in the individual capacity, but to the

[65] Foss v. Harbottle, [1873] 2 Hare 461.
[66] Dr. Satya Charan Law v. Rameshwar Prasad Bajoria, AIR 1950 FC 133.
[67] BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai, 1993 SCC OnLine (Bom.) 17, ¶ 18.
[68] Onyx Musicabsolute.com Pvt. Ltd. v. Yash Raj Films Pvt. Ltd, 2008 (6) Bom. CR 418.
[69] Darius Rutton Kavasmaneck v. Gharda Chemicals Ltd., 2014 SCC OnLine (Bom.) 1851.
[70] N.V.R. Nagappa Chettiar & Anr. v. The Madras Race Club, (1949) 1 MLJ 662.
[71] ICP Investments (Mauritius) Ltd. v. Uppal, 2019 SCC OnLine (Del.) 10604.
[72] Khanna & Varottil, *supra* note 57.
[73] *Id.*

company as a whole, which would have the effect of remedying the injuries suffered by the company, and consequently, the shareholders.[74]

In the judgment, the minority shareholders preferred to adopt the statutory remedy of oppression and mismanagement, raising the question of whether the minority shareholders could have chosen to initiate a claim of a derivative action in this case. Pertinently, the usage of AVRs is not illegal or oppressive in itself to either the company or to the minority shareholders *per se*.[75] Further, considering that a shareholder's derivative action can be initiated only in the aforementioned specific cases, and since none of them seems to be *prima facie* fulfilled in the judgment, it was not a viable remedy. In comparison, the statutory remedy of oppression and mismanagement has been invoked more often than the shareholder's derivative actions due to several procedural impediments, high thresholds to fulfil the requirements and the lack of awareness pertaining to the latter.[76]

V. CONCLUSION

The judgment addressed some pertinent issues relating to corporate governance in India, the most prominent of them being the issue of deciding whether the exercise of AVRs amounts to oppression and mismanagement. However, while arriving at the conclusion, the SC also delved into the discussion regarding the fiduciary duties of the directors, and the need and relevance of IDs. It is still unclear whether these observations were a part of

[74] *Id. See also* Umakanth Varottil, *The Continued Influence of Foss v. Harbottle in India*, IND. CORP. L. BLOG, (Mar. 9, 2021), https://indiacorplaw.in/2021/03/the-continued-influence-of-foss-v-harbottle-in-india.html.
[75] Varottil, *supra* note 4.
[76] Khanna & Varottil, *supra* note 57.

the *ratio decidendi* of the judgment, and consequently, have over-reaching implications on the future jurisprudence on these issues, or whether these were merely the *obiter dicta* of the judgment. Since the central issue before the SC was to determine the nexus between the exercise of AVRs and oppression of the minority shareholders, there is an immense likelihood that all the other observations made by the SC are the *obiter dicta*.[77] Nevertheless, the judgment and the observations made by the SC, stimulated the inquisitiveness of the authors to observe and re-visit the certain basic precepts of corporate governance.

The authors have endeavoured to resolve the confusion relating to the fiduciary duties of the directors and explained the situations in which the directors may face a conflict in deciding the entity to whom they actually owe their duties. These situations include the company's insolvency/the verge of insolvency, popularly known as the "twilight zone", and the case of nominee directors, which was also discussed by the judgment. The nominated directors face the conflict between fulfilling their duties of promoting the interests of their nominators on one hand, and on the other hand, fulfilling their duties towards the company. Contrary to the judgment's analysis, the precedents and the CA 2013 suggests that the directors always owe their fiduciary duties towards the company; nonetheless, they need to weigh the interests of the stakeholders of the company as well.

Further, since the judgment questioned the requirement of IDs for corporate governance in a corporation, the authors have also addressed the importance of IDs to preserve and promote the framework of corporate

[77] Varottil, *supra* note 4.

governance in India, especially where the affairs companies are mostly controlled by the promoters.[78] The authors have also highlighted that the requirement of IDs for corporate governance is also manifested by the recent SEBI consultation paper which sought to regulate the appointment, removal and resignation of the IDs to ensure that they can carry out their roles in an independent manner.

Lastly, since the dispute revolved around the claims of oppression by minority shareholders, the authors have highlighted the two most commonly adopted remedies available to the shareholders in the corporate governance regime of India. Moreover, the authors have also provided an explanation regarding the non-usage of the remedy of derivative action in the judgment in particular and the lack of usage of this remedy in general. However, at the same time, it has been contended by the authors that there is a lack of awareness regarding this remedy, and this certainly needs to change for increasing transparency in the conduct of the directors/management and ensuring constant evolution in corporate governance in India.

Since the judgment has decided on such a high-profile, long-drawn dispute, with each intricate issue raised and addressed by the judgment, there is bound to be extensive deliberation and discourse around it. Further, since the judgment has certainly reinvigorated some questions and concerns regarding the corporate governance regime in India, which were seemingly settled, it is bound to be recognized as a landmark judgment. Whether it has any sweeping effects on the jurisprudence relating to corporate governance in the future is yet to be seen.

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[78] OECD, *supra* note 53.