Part I: The Jindal Poly Films Class Action – Can the Class Be Dissolved Without the Class?



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Summary

Section 245 of the Companies Act, 2013 gives members and depositors a statutory class action, allowing them to approach the Tribunal collectively where a company's affairs are being conducted in a manner prejudicial to the interests of the company, its members or its depositors. In February 2026, the NCLT admitted India's first such class action, holding that the statutory requirements were satisfied and directing issuance of the public notice contemplated under the Act. The proceeding concerned a class comprising nearly 45,000 public shareholders whose collective interests the litigation was intended to protect. Four months later, the Supreme Court referred the dispute to private arbitration on the consent of two parties: the company and a shareholder who had replaced the original applicant shortly before. Nothing on record shows that the remaining shareholders were informed or heard.

For a shareholder, the lesson is plain. Being drawn into a class action is no assurance of being heard when it ends, or of receiving anything from it. The gap is structural: the law says a great deal about how a class action begins and nothing about how it must end, so a case brought for thousands can be closed by a deal with one of them. Arbitration compounds this, being a private process that cannot notify absent shareholders, hear them, or pay them. This article sets out what that gap means for anyone whose interests a Section 245 proceeding is meant to protect, and asks whether an admitted class action should be capable of being settled, withdrawn or referred to arbitration without notice to the class and an opportunity to object.

Introduction

In January 2009, India's corporate landscape witnessed one of its gravest crises of confidence when the chairman of Satyam Computer Services admitted to years of large-scale accounting fraud, causing significant losses to shareholders and investors. While Satyam's American shareholders were able to recover substantial sums through class action litigation in the United States, culminating in a settlement of approximately USD 125 million, Indian shareholders had no comparable collective mechanism to seek compensation.

Section 245 of the Companies Act, 2013 was enacted to close that gap. It gives members and depositors a statutory class action against conduct prejudicial to the company, its members or its depositors. It provides a mechanism through which dispersed stakeholders, individually lacking the resources or thresholds to litigate, can act collectively.

The *Jindal Poly Films* litigation, however, demonstrates how easily that promise can be diluted.

The proceeding was widely described as the first corporate class action under Section 245 to clear the maintainability stage. The NCLT admitted the petition on 5 February 2026 and directed public notice to the company's public shareholders; the NCLAT affirmed on 26 February 2026. Yet the case ended neither in a decision on the merits nor in a Tribunal-supervised class settlement. By a consent order dated 8 June 2026, the Supreme Court referred "*the disputes between the parties*" to arbitration, disposed of the company petition, and set aside the NCLT and NCLAT orders on maintainability.

The consenting parties were Jindal Poly Films and Monet Securities Private Limited, a petitioner that had only recently been substituted in place of the original applicants. The parties presented signed draft minutes; the Court appointed a sole arbitrator seated in Delhi. Nowhere does the order record notice to, consultation with the wider body of public shareholders whose interests the Section 245 proceeding had formally embraced.

That raises a serious structural concern. If an admitted class action can be neutralised by settling with or securing the consent of the representative applicant alone, the remedy becomes vulnerable to the very control problems it was meant to address. In a promoter-dominated company, the playbook is obvious: once a class action is admitted, resolve it privately with the lead applicant, redirect it to a private forum, and structure an exit that leaves absent shareholders out of the room.

The objection is not to settlement as such. Settlement is often desirable and efficient. The objection is that representative litigation demands representative safeguards. A proceeding cannot be a class action when it is instituted and admitted, but a private bilateral dispute when it is settled, withdrawn or redirected.

Against this backdrop, this article examines the post-admission gap within the framework of the Companies Act, 2013 and the NCLT Rules. Section 245 of the Companies Act and Rules 84 to 87 of the NCLT Rules tell us how a class action begins. *Jindal Poly Films* raises the harder question: how should an admitted class action properly end? That inquiry, however, takes us one step further back. The statute requires public notice upon admission, and this article argues that comparable notice is necessary before an admitted class action may be withdrawn or otherwise brought to an end. Yet who must receive that notice depends upon who the class members are. This, in turn, raises a prior question: what constitutes the class for the purposes of Section 245?

The Statutory Framework: The "Member", the Representative and the Class

Section 245 of the Companies Act, 2013 begins by identifying who may invoke the statutory class action remedy. Section 245(1) provides that a "member or members", a "depositor or depositors", or "any class of them" may apply to the Tribunal if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors. The use of both the singular and the plural is significant. It indicates that a class action application need not invariably be instituted by several persons acting jointly. A single "member" may be the applicant before the Tribunal.

However, this must be read with the eligibility thresholds in Section 245(3) and Rule 84(3). For companies with share capital, an application may be filed by: (i) at least 5% of the company's total number of members or 100 members, whichever is less; or (ii) any "member or members" holding at least 5% of the issued share capital of an unlisted company or at least 2% of the issued share capital of a listed company.

Accordingly, because Jindal Poly Films Limited is a listed company, a single "member" could institute an application if that member independently held at least 2% of the company's issued share capital. Therefore, one shareholder may constitute the "applicant" where that shareholder satisfies the prescribed 2% shareholding threshold. This answers one question: who is entitled to institute the application? It does not answer the separate question: who constitutes the class represented in the proceeding?

The two questions perform different functions. Section 245(3) is concerned with the standing of the applicant. It identifies the minimum number of members or the minimum shareholding required to invoke the Tribunal's jurisdiction. It does not establish that the qualifying "member" is necessarily an appropriate representative of every shareholder whose interests may be affected by the proceeding. For instance, the applicants may satisfy the threshold but possess claims or economic interests that are not sufficiently representative of every shareholder whom they seek to include.

That separate inquiry arises under Section 245(4) and Rule 85 of the NCLT Rules.

What Constitutes a "Class"?

Rule 85 supplies the criteria that transform a group of aggrieved shareholders into a class. It permits the Tribunal to consider, in addition to the matters under Section 245:

- whether the class is so numerous that joinder of all members is impracticable;
- whether there are questions of law or fact common to the class;
- whether the claims or defences of the representative parties are typical of those of the class; and
- whether the representative parties will fairly and adequately protect the class's interests.

Indian law does not expressly require the admission order to define the class in the manner of Rule 23(c) of the US Federal Rules of Civil Procedure. But the Rule 85 inquiries cannot be conducted without at least a functional delineation. A Tribunal cannot assess commonality, typicality or adequacy without knowing whose claims it is comparing and whose interests are being represented. The class must therefore be clearly defined by reference to the alleged wrongdoing, the persons affected by it and the relief sought.

It is equally important to assess whether the representative parties will fairly and adequately protect the interests of the class. That assessment presupposes knowing who the class is, what its interests are, and whether those interests align with the interests of the lead applicant. This becomes all the more crucial where the lead applicant is substituted. The Tribunal must consider whether the substituted applicant's claim is typical of the claims of the class, whether its interests are aligned with those of the class, and whether it can fairly and adequately protect absent members.

In *Jindal Poly Films* case, these questions became more acute when the original petitioners exited after selling their stake and Monet Securities Private Limited was substituted in their place, a fact expressly recorded in the Supreme Court's order. At that stage, the relevant inquiry was not confined to whether Monet had acquired sufficient shares to satisfy the statutory threshold. That issue concerned Monet's standing as a qualifying "member". The separate question under Rule 85 was whether Monet's claim was typical of the claims of the wider class, whether its interests were aligned with those of absent public shareholders, and whether it could fairly and adequately represent them when consenting to bring the statutory proceeding to an end and refer the dispute to arbitration.

Publicly available disclosures illustrate why that inquiry mattered. Monet is a registered non-banking financial company closely held by the Bubna family: its shareholding is concentrated in Rajendra Prasad Bubna, Anita Bubna, Unistock Commodities LLP (whose designated partners are Rajendra and Anita Bubna) and Daytona Realty Private Limited, and its financial statements suggest that it functions substantially as a holding vehicle for the family's listed-company positions. No direct link between Monet and the promoter group of Jindal Poly Films is disclosed. But shareholding data across the wider BC Jindal group reveals a pattern of holdings by Monet and the Bubnas in group entities.

Rajendra and Anita Bubna hold shares in Jindal Poly Investment and Finance Limited, whose disclosed promoter group overlaps with that of Jindal Poly Films. The Bubnas, and reportedly Monet, also hold shares in Consolidated Finvest & Holdings Limited. Consolidated Finvest is itself disclosed as a promoter of Jindal Poly Films, holding approximately 3.57%, and has invested in preference instruments issued by other promoter-linked entities. Monet separately holds approximately 4.91% in Jindal Photo Limited, another listed company associated with the B.C. Jindal group.

These are minority positions when measured against the total issued capital of the relevant companies. Their significance, however, is greater when viewed against the available public float. In companies where promoter and promoter-group holdings are close to 75%, even a holding of approximately 1.5% represents a materially larger proportion of the non-promoter shareholding. The recurring nature of these positions therefore warranted scrutiny, even though it did not, by itself, establish a disqualifying relationship or conflict.

The legal point is not that Monet was necessarily incapable of representing the class. Nor do these shareholdings, without more, establish collusion, control or a direct promoter connection. Their relevance lies in the questions they raised for the adequacy inquiry. If the "class" consisted of minority public shareholders challenging transactions involving promoter-group or promoter-linked entities, it was necessary to examine whether Monet's broader economic exposure across companies associated with the same corporate group gave it interests materially different from those of an ordinary public shareholder in Jindal Poly Films.

Acquiring sufficient shares may establish standing as a qualifying "member". It does not, without a separate inquiry into typicality, alignment and adequacy, confer authority to compromise, discontinue or redirect the claims of an already notified class.

From Admission to Consent Order

Following this analysis, we will now examine our second question: how should a class action end?

Once the NCLT admitted the petition and directed issuance of public notice under Rule 87 of the NCLT Rules, the proceeding ceased to be an ordinary dispute between the named petitioners and the company. Section 245(5) requires public notice to be issued on admission of a class action application and contemplates consolidation of similar applications, selection or appointment of a lead applicant, and prevention of multiple class action applications for the same cause of action. Section 245(6) then provides that any order passed by the Tribunal shall bind the company, all its members and depositors, and the company's auditor, audit firm, expert, consultant, advisor or other associated person.

That architecture matters. From the point of admission and public notice, the lead applicant is no longer litigating only for itself. The notice brought the wider body of public shareholders, approximately 45,000 in JPFL's case, within the procedural ambit of the class action. The petitioners were acting, at least procedurally, as representatives of an absent class that does not control litigation strategy, does not instruct counsel, and may never appear before the Tribunal. A class action cannot be representative when it is filed and admitted, but private when it is settled, withdrawn, discontinued or redirected.

The Supreme Court's consent order did precisely that. The order recorded that both parties consented to referring the matter to arbitration and presented draft minutes signed by counsel. The Court appointed a sole arbitrator, fixed Delhi as the seat of arbitration, and set aside the NCLT order dated 5 February 2026 and the NCLAT order dated 26 February 2026, which were confined to maintainability. Functionally, it ended the public Section 245 route and moved the dispute into a private arbitral forum between the appearing parties.

The wider shareholder class received no apparent notice. There was no inquiry into whether the proposed exit served, or at least did not prejudice, the interests of absent shareholders. Nor was there any mechanism to test whether the substituted petitioner (Monet Securities), which had only recently replaced the original Jain family petitioners could properly compromise, redirect or dissolve a proceeding that had already been admitted as a class action.

The issue here is twofold. *First*, the exit problem: whether a statutory class action, once admitted and notified, can be brought to an end by consent of the named parties without consulting the class. *Second*, the relief problem: whether, after such an exit, there exists any mechanism to secure or distribute relief to the absent class members.

Exit Problem: No Notice, No Class Approval

Comparative law is instructive on this point. In the United States, Rule 23(e) of the Federal Rules of Civil Procedure provides that the claims, issues or defences of a certified class or a class proposed to be certified for settlement may be settled, voluntarily dismissed or compromised only with court approval. If the proposal would bind class members, the court may approve it only after notice, a hearing, and a finding

that the proposal is fair, reasonable and adequate. The rule also requires scrutiny of whether the class representatives and class counsel adequately represented the class, whether the proposal was negotiated at arm's length, whether the relief is adequate and whether class members are treated equitably relative to each other.

Rule 23(e) reflects a basic principle of representative litigation: once absent persons may be bound, the named parties cannot privately terminate or compromise the proceeding without judicial control. The American rule is especially useful because it distinguishes between two stages of class action control. Rule 23(a) and Rule 23(c) deal with certification, notice, class definition and adequacy of representation. Rule 23(e), by contrast, deals with the point of exit, i.e., settlement, voluntary dismissal or compromise. Section 245 of the Companies Act and Rules 84 to 87 of the NCLT Rules contain Indian equivalents, at least in broad form, for the first stage. They contain no equivalent for the second.

However, Indian law is not unfamiliar with this principle. The point need not rest on a direct application of the CPC to Section 245 proceedings. Section 424 of the Companies Act, 2013 provides that the NCLT and NCLAT are not bound by the procedure laid down in the CPC, but must be guided by principles of natural justice and, subject to the Companies Act and the rules made thereunder, may regulate their own procedure.

The NCLAT's decision in *R. Narayanasamy v. Registrar of Companies, Tamil Nadu*, Company Appeal (AT) No.171 of 2020 is useful in this respect. There, the Appellate Tribunal recognised that it was not "bound" by the CPC in the strict sense, but could still follow CPC procedure "with or without modifications". It reasoned that where the Companies Act and the NCLAT Rules were silent on a procedural situation, the Tribunal could fall back on Section 424 and adopt a procedure which otherwise has the force of law, because procedural rules are generally founded on principles of natural justice and fair adjudication. That reasoning supplies the bridge for Section 245.

Order I Rule 8 of the Code of Civil Procedure, 1908 (**"CPC"**) allows one or more persons to sue or defend on behalf of numerous persons having the same interest. But once the proceeding assumes representative character, the plaintiff's control over the litigation is curtailed. No part of the claim in a representative suit may be abandoned, no such suit may be withdrawn, and no agreement, compromise or satisfaction may be recorded unless notice has been given to all interested persons.

Order XXIII Rule 3B of the CPC supplies the corresponding compromise safeguard. It provides that no agreement or compromise in a representative suit shall be entered into without leave of the court expressly recorded in the proceedings, and that any compromise entered into without such leave shall be void. Before granting leave, the court shall give notice to persons who appear to be interested in the suit. The explanation to Rule 3B is particularly important because it extends the expression "representative suit" beyond Order I Rule 8 suits to include "*any other suit*" in which the decree passed may, by virtue of the CPC or "*any other law*" for the time being in force, bind a person who is not named as a party.

This reasoning directly resonates with Section 245. Once a Section 245 application is admitted, public notice is issued, opt-out rights arise, similar applications are consolidated, and Tribunal orders bind the company and all its members or depositors. The proceeding therefore assumes a representative character even though it is not technically a civil suit. Following *R. Narayanasamy*, the absence of a specific Section 245 exit rule should not mean that the representative applicant is free to end the proceeding privately. It should mean that the Tribunal, guided by Section 424 and principles of natural justice, may adopt an analogous safeguard: notice to the class and opportunity to object or seek substitution.

Accordingly, the relevance of Order I Rule 8 and Order XXIII Rule 3B is not formal but principled. They show that Indian procedural law already recognises the same representative-litigation bargain: if absent persons may be bound by a proceeding, the named representative cannot privately compromise or terminate it without court supervision. Section 245 adopts the representative effect of such proceedings, but does not expressly adopt the corresponding post-admission compromise safeguard. That is the structural gap exposed by *Jindal Poly Films*.

That silence may have seemed harmless while Section 245 lay dormant. *Jindal Poly Films* shows that it is not. A class can be admitted, public notice can be issued, thousands of shareholders can be drawn into the proceeding, and the class action can then be neutralised through a bilateral arrangement between the company and the substituted petitioner. This is not merely a procedural inconvenience. It is a structural defect.

The Relief Problem: Arbitration Did Not Provide a Class-Relief Mechanism

The defect was not only that the class was not heard before the proceeding was redirected. It was also that the redirection did not create any mechanism for delivering relief to the class. Rule 23(e)(2)(C)(ii) of the Federal Rules of Civil Procedure may again be used as a reference point here. In assessing whether a proposed settlement is fair, reasonable and adequate, the court must consider the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.

That requirement exposes a further difficulty with the Supreme Court's consent order in *Jindal Poly Films*. A reference to arbitration did not itself provide class-wide relief, nor did it create any mechanism for distributing relief to the approximately 45,000 public shareholders who had been brought within the proceeding after Rule 87 notice. Arbitration is ordinarily a private dispute-resolution mechanism between the parties before the tribunal. It does not, by itself, notify absent class members, process their claims, determine their entitlement, distribute recovery, or ensure equal treatment among shareholders.

Therefore, even if arbitration was considered more efficacious as between the appearing parties, it did not answer the representative-action question: what happens to the class, and how, if at all, will the class receive relief?

The referral to arbitration also raises a further, though distinct, issue of arbitrability. The proposition that core company-law disputes lie outside the reach of private arbitration is not a novel one. In *Rakesh Malhotra v. Rajinder Kumar Malhotra* (2014 SCC OnLine Bom 1146), the Bombay High Court held that a petition alleging oppression and mismanagement under Sections 397, 398 and 402 of the Companies Act, 1956 (now Sections 241 and 242 of the Companies Act, 2013) could not be referred to arbitration. The Court gave two reasons, and both apply here as well in context of Section 245. First, the reliefs sought invoke statutory powers of exceptional breadth, those then conferred on the Company Law Board (now NCLT) under Section 402, which no civil court, and still less an arbitral tribunal, is competent to exercise. Second, the Court observed that such a petition carries "some flavour of an action *in rem*": upon notice to the Central Government, orders may be passed affecting persons who were never before the forum. The critical distinction the Court drew was therefore between a private grievance the parties may contract to arbitrate and a statutory proceeding whose source of power, and whose binding effect, extend beyond the parties before it.

That holding has direct bearing here, because Sections 241 and 245 are neighbours in the same statutory scheme: both sit in Chapter XVI, titled "Prevention of Oppression and Mismanagement," and their operative triggers substantially overlap. Section 241 permits an application where the affairs of the company are being conducted in a manner prejudicial to public interest, prejudicial or oppressive to him or any other member or members, or prejudicial to the interests of the company. Section 245 is triggered where the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.

The difference lies in what Section 245 omits. Section 241 expressly extends to conduct "*oppressive to him or any other member or members*," and so accommodates a grievance personal to the applicant; a member may invoke it in his own right and for his own loss. Section 245 carries no such language. It permits qualifying members or depositors to move the Tribunal only in respect of prejudice to the company or to the class of members or depositors as a whole. Thus, if a proceeding under Section 241, which does allow for a personal claim, was still held non-arbitrable, a proceeding under Section 245, which allows for none, cannot be easier to arbitrate.

These strands were later drawn together at the level of general principle. In *Vidya Drolia & Ors. v. Durga Trading Corporation*, (2021) 2 SCC 1, the Supreme Court laid down a fourfold test for determining when a dispute is non-arbitrable. A dispute may be non-arbitrable where it relates to actions *in rem* rather than subordinate rights *in personam*; where it has *erga omnes* effect and affects persons who are not parties to the arbitration; where it concerns sovereign or public interest functions of the State; or where it is expressly or by necessary implication rendered non-arbitrable by statute.

The second limb, i.e., *erga omnes* effect, is particularly relevant in the Section 245 context. Once a class action is admitted and public notice is issued under Rule 87, the proceeding affects persons beyond the named parties. This creates an arbitrability concern. On the *Vidya Drolia* framework, that raises the question whether such a dispute can even be referred to private arbitration once the class has been constituted. That said, arbitrability is not the central inquiry in this article and will be separately discussed in the next article in the series.

The narrower and more immediate point is that, even assuming a reference to arbitration was possible, the consent order did not explain how the interests of the absent class would be protected after the statutory class action route was terminated. The exit problem would remain even if the arbitrability objection were put to one side.

Points for Reflection: The Class, the Exit and the Arbitral Forum

The silence in Section 245 may have seemed harmless while the provision lay dormant. *Jindal Poly Films* shows that it is not. A class can be admitted, public notice can be issued, thousands of shareholders can be drawn into the proceeding, and the class action can then be neutralised through a bilateral arrangement between the company and the substituted petitioner. This is not merely a procedural inconvenience. It is a structural defect.

The point has already ceased to be theoretical. After the Supreme Court's consent order, minority shareholders reportedly approached the Supreme Court seeking recall of the arbitration order, arguing that India's first corporate class action could not be settled without proper representation and that shareholders whose interests were co-extensive with the class action should have been heard before the representative proceeding was effectively ended.

Future Section 245 proceedings therefore need a post-admission exit rule. Indian courts need not mechanically follow American class action jurisprudence, but Rule 23(e) is instructive because it identifies the safeguards representative litigation requires at the point of exit, as illustrated above. At a minimum, any settlement, withdrawal, abandonment, compromise, dismissal by consent or referral to arbitration after admission should require approval of the NCLT or the appellate court. That approval should follow notice to the class, disclosure of the terms of exit, an opportunity for class members to object or seek substitution, and a finding that the proposed disposal is fair to, or at least not prejudicial to, absent class members. Without such a safeguard, Section 245 risks becoming a class action remedy in form, but a private bargaining tool in substance.

The arbitrability question adds a final layer. Indian law has thus far treated disputes with erga omnes consequences, including claims of oppression and mismanagement, as incapable of reference to arbitration and the same logic extends naturally to an admitted statutory class action. It would be premature to read the consent order as departing from that position: the order articulates no test distinguishing arbitrable inter partes disputes from non-arbitrable statutory or representative claims. Yet the possibility cannot be ignored. If the order comes to be understood as permitting an admitted company-law proceeding to be displaced by arbitration whenever the named parties consent, it would mark a significant expansion of arbitration into a field traditionally governed by statutory remedies and centralised adjudication.

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