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Shareholder rights. Minority shareholders Vs small shareholders

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The Tata Vs Mistry case has brought the rights of small shareholders under the spotlight

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A small shareholder means a shareholder holding shares of nominal value of not more than ₹20,000 | Photo Credit: metamorworks

The Supreme Court while rendering its judgment on the larger question of oppression and mismanagement, in *Tata Consultancy Services Limited Vs Cyrus Investments Pvt. Ltd. & Ors* has dealt with the relatively unexplored and topical issue of the rights of small shareholders, in the context of Section 151 of the Companies Act, 2013.

There has been a change in the law after the advent of the 2013 Act and a paradigm shift has taken place from the emphasis on majority control and corporate democracy, to a regime focussed on corporate governance. The concept of small shareholders found its place in Companies Act, 1956 in the limited context of Section 252, that dealt with the appointment of directors, and provided that public companies may have a director to represent small shareholders.

In contrast, the 2013 Act has introduced Section 151 and relevant rules, which contemplates the election or appointment of a Director to the Board of a Company by small shareholders, represented by a minimum of either 1/10th of the total number of shareholders or 1,000 shareholders.

Small shareholders' value

For the purpose of this provision, a small shareholder means a shareholder holding shares of nominal value of not more than ₹20,000. The rationale behind the inclusion of this concept into the 2013 Act was to protect the interest of the small shareholders, as reflected in the Statement of Objects and Reasons.

The fundamental difference between Section 252 and Section 151 is that the former permitted the appointment of a director by small shareholders, only if the public company had a paid-up capital of at least ₹5 crore, or at least 1,000 small shareholders. However, Section 151 of the 2013 Act is applicable to all listed companies without any qualifying threshold.



It is also crucial to note that the right to claim proportional representation on the Board is not available to minority shareholders who hold at least 10 per cent or more of shareholding in a Company, both under Section 252 and under Section 151, and is available only to a small shareholder.

This has been highlighted by the Supreme Court in the Tata-Mistry judgement, where the Court has observed that the spotlight under the Section 151 of the 2013 Act is only on small shareholders and not on minority shareholders per se.

Court's observation

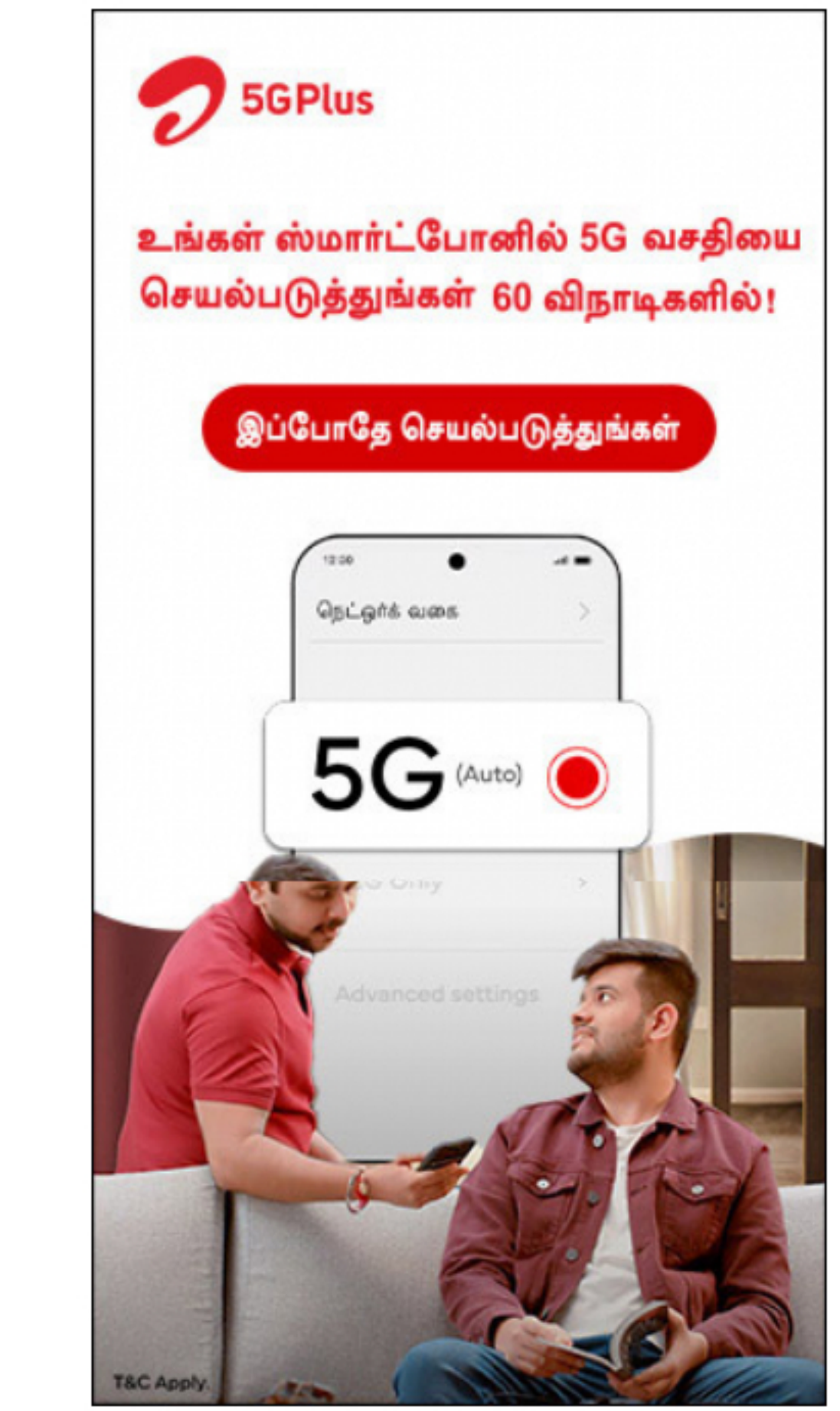
The Court rejected the argument of the Shapoorji Pallonji Group they were a small shareholder, and entitled to appoint a Director. The Court observed that the group held 18.37 per cent of the shareholding and would not fall within the meaning of a 'small shareholder' under the 2013 Act.

With this, the Court has also emphasized the difference between minority shareholders as a class, and small shareholders. There could potentially be blocks of minority shareholding, whose nominal value however is not small enough to merit the applicability of Section 151.

The purpose of Section 151 is clearly to ensure that the decisions of the Board meet the requirements of fairness and that small shareholders through a Board presence would have their interests effectively represented. It is also significant in that the Act has implicitly recognised that small shareholders have a substantial stake in the management of listed companies. There is also a clearer shift to corporate governance with emphasis on holding the management accountable to every shareholder irrespective of the size of shareholding.

“The judgement, while making it clear that Section 151 is applicable only to listed companies, has however clearly recognised this as one of the provisions which emphasizes the move towards protection of small shareholders. It has also significantly recognised the fact that there could be minority shareholders whose holding is nevertheless not of the nominal value prescribed and who cannot therefore, insist on board representation as a matter of right.”

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