The Indian Securities Fraud Class Action: Is Class Arbitration The Answer? Brian Fitzpatrick and Randall Thomas

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Proposition

1. The Companies Act, 2013 introduced the concept of class action suits by shareholders and depositors against the company.
2. The class action suit remedy relies on the Indian judicial system.
3. An alternative forum for enforcement of similar rights is a class arbitration proceeding against the company.

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2. Private enforcement mechanism.
3. Achieve largely the same outcomes as a class action suit without having to rely on courts.

Points to include in the analysis

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3. Confidentiality of arbitration v. transparency to all stakeholders
4. Reconciling class arbitration with Indian jurisprudence:
   - If the relief sought is non-monetary, jurisdiction of the tribunal cannot be ousted merely because there is an arbitration agreement.
   - If there is an arbitration clause, "dressed-up" oppression and mismanagement proceedings to pre-empt arbitration, have been frowned upon.

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5. Long line of contrary judgements on arbitrability of fraud.
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   - *Swiss Timing Ltd vs Organizing Committee (2014)*: Abovementioned judgement is bad in law.

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   - *Radhakrishnan v. Maestro Engineers (2010)*: Issues of fraud not arbitrable.
   - *Swiss Timing Ltd vs Organizing Committee (2014)*: Abovementioned judgement is bad in law.
   - *A. Ayyasami v. A. Paramasivam (2016)*: Distinguishes between issues of "mere allegations of fraud" and "issues of serious fraud":

     > *"very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence"*

Thank you