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Beyond Compensation: How the NGT Built a Corporate Sustainability Framework After the LG Polymers Vizag Gas Leak

DEVIKA SINGHAL* AND VAIBHAV BANSAL**

ABSTRACT

The Vizag styrene gas leak of 7 May 2020 at LG Polymers India Private Limited is most often characterised as an environmental disaster requiring tribunal-level remediation. That characterisation is accurate but analytically incomplete. This paper advances the position that the Companies Act, 2013 already contains the governance obligations that, had they been operationalised with statutory seriousness, could have materially reduced the probability of the disaster. Sections 166(3), 134(5)(f), 447, 245(1) and 92(3) collectively constitute a preventive accountability framework imposing fiduciary engagement with process safety, verifiable compliance certification, transparent disclosure, and shareholder enforcement mechanisms against prejudicial governance failures. The paper reads each provision with precision and situates it within the judicial principles established in M.C. Mehta v. Union of India (Oleum Gas Leak), Vellore Citizens' Welfare Forum v. Union of India, Indian Council for Enviro-Legal Action v. Union of India, and A.P. Pollution Control Board v. Prof. M.V. Nayudu. It concludes that corporate sustainability in hazardous industries is enforceable law, present in the existing corporate governance framework and awaiting operationalisation.

Keywords: *Corporate governance, Companies Act 2013, directors' duties, compliance systems, corporate sustainability, LG Polymers, Vizag gas leak, class action, Section 447 fraud, BRSR disclosure*

I. INTRODUCTION

The period after a chemical disaster brings a particular institutional silence. During the emergency response, public attention concentrates on assessing the damage and on establishing ways to provide financial compensation; legal proceedings are initiated, committees are formed and official investigations begin. What remains largely unaddressed is the question of what the board of directors knew, when it knew it, and what its legal obligations required it to do before the harm occurred. This paper addresses that silence, and the corporate law that ought to have filled it.

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The leak of styrene monomer from storage tank M6 at the LG Polymers India Private Limited plant at R.R. Venkatapuram, Visakhapatnam, in the early hours of 7 May 2020 resulted in twelve deaths and the hospitalisation of hundreds of people. The plant had remained shut during the national COVID-19 lockdown and was preparing to resume operations. The National Green Tribunal took suo motu cognizance the next day and directed LG Polymers to deposit an initial amount of ₹50 crore with the District Magistrate, Visakhapatnam; on 1 June 2020 it held the company strictly and absolutely liable and directed that the deposit be appropriated towards part liability and interim compensation, to be spent on restoring the environment and compensating victims.¹ These were appropriate but reactive responses: instruments activated after irreversible harm had occurred. The question animating this paper is whether Indian law had already furnished instruments intended to operate before the harm, and whether the failure to activate those instruments is itself a form of legal failure.

The central argument is direct. The Companies Act, 2013, when applied to an enterprise whose core operations involve hazardous substances, amounts in practical effect to sustainability legislation. Construed purposively, its provisions impose obligations that apply directly to such enterprises. Its provisions on directors' duties, compliance certification, fraud liability, shareholder enforcement and disclosure together form a governance system that makes process safety a legal obligation of the board. The Vizag disaster, read against the findings recorded by the National Green Tribunal, illustrates what can follow when that system is not operationalised.

II. HISTORICAL CONTEXT

The history of corporate liability for industrial disasters in India is substantially a history of frameworks that arrived too late. The legal system had no adequate mechanism for mass industrial harm when methyl isocyanate escaped from the Union Carbide plant in Bhopal in December 1984. The eventual 1989 settlement of USD 470 million was widely criticised as insufficient, litigation extended across decades, and the board's governance conduct was never brought within the scope of legal accountability. The implicit assumption was that directors were responsible for the company's financial management, while safety was a matter for engineers and operators. The tragedy was treated as an engineering failure, not a governance one.

¹ *In re Gas Leak at LG Polymers Chem. Plant in R.R. Venkatapuram Vill., Visakhapatnam, Andhra Pradesh*, Original Application No. 73/2020 (Nat'l Green Trib. May 8, 2020); *In re Gas Leak at LG Polymers Chem. Plant*, Original Application No. 73/2020, ¶¶ 28, 40 (Nat'l Green Trib. June 1, 2020).

Parliament's first substantive response was the Public Liability Insurance Act, 1991, which imposed no-fault relief obligations on owners of hazardous facilities.² Its structural design revealed its limits: an insurance scheme absorbs the consequences of operational failure without requiring companies to maintain the governance structures that determine their risk of failing in the first place. The Environment (Protection) Act, 1986 had already created regulatory obligations in respect of hazardous substances,³ but these ran to plant operators and the regulatory apparatus, not to corporate boards. In *M.C. Mehta v. Union of India* (Oleum Gas Leak), the Supreme Court developed the doctrine of absolute liability for hazardous enterprises,⁴ which was conceptually significant but remained reactive, attaching consequences to harm without prescribing governance structures to prevent it. The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (MSIHC Rules)⁵ and the National Green Tribunal Act, 2010 (NGT Act)⁶ added regulatory and adjudicatory infrastructure, but the boardroom remained insulated from the safety framework. The Companies Act, 2013 altered this architecture: through its provisions on directors' duties, compliance certification, fraud liability and shareholder enforcement, it requires the boards of hazardous-industry companies to treat safety governance as a fiduciary matter.

III. LEGISLATIVE PROVISIONS

A. The Companies Act, 2013

None of the Companies Act provisions examined here is an environmental provision, and yet, when applied to an enterprise whose operations involve hazardous substances, their governance content necessarily engages process safety. Section 166(3) requires every director to exercise his duties with due and reasonable care, skill and diligence, and to exercise independent judgment.⁷ Under Section 166(2), a director must act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.⁸ These sub-sections demand active engagement rather than mere attendance. The common law standard in *In re City Equitable Fire Insurance Co.* allowed directors, in the absence of grounds for

² The Public Liability Insurance Act, No. 6 of 1991, INDIA CODE (1991), §§ 3–4, 7–8.

³ The Environment (Protection) Act, No. 29 of 1986, INDIA CODE (1986), §§ 3(2)(vi)–(vii), 5, 7–8.

⁴ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, 421.

⁵ The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, GAZETTE OF INDIA, pt. II, sec. 3(ii), S.O. 966(E) (Nov. 27, 1989), rr. 13–15.

⁶ The National Green Tribunal Act, No. 19 of 2010, INDIA CODE (2010), §§ 14, 15, 17, 20.

⁷ The Companies Act, No. 18 of 2013, INDIA CODE (2013), § 166(3).

⁸ *Id.* § 166(2).

suspicion, to leave duties to officials whom they trusted without separate verification;⁹ the statutory requirement of ‘independent’ judgment explicitly departs from that posture.

Section 134(5)(f) establishes a public accountability mechanism: the directors’ responsibility statement in the Board’s report must state that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws, and that such systems were adequate and operating effectively.¹⁰ For a hazardous chemical company, the applicable laws include the Environment (Protection) Act and the rules made under it, the MSIHC Rules and the conditions of its pollution control consents. Section 134(5)(e) requires the directors of a listed company to state that they had laid down internal financial controls and that these were adequate and operating effectively, a two-limbed certification;¹¹ the Explanation to that clause defines internal financial controls to include the policies and procedures adopted for the safeguarding of the company’s assets, a definition into which process safety infrastructure fits. Section 447 defines fraud to include any act, omission or concealment of any fact committed with intent to deceive, to gain undue advantage from, or to injure the interests of, the company, its shareholders, its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.¹² Section 448 extends liability under Section 447 to a statement in any return, report or other document required under the Act that is knowingly false in a material particular or knowingly omits a material fact,¹³ which brings the directors’ responsibility statement and the Board’s report within its scope. Section 245(1) empowers members or depositors who consider that the company’s affairs are being conducted in a manner prejudicial to the interests of the company or its members to apply to the National Company Law Tribunal (NCLT) for relief, including orders restraining acts contrary to law and damages or compensation from the company or its directors for wrongful acts or omissions.¹⁴ When the leak occurred, Section 92(3) required an extract of the annual return to form part of the Board’s report; since 28 August 2020 it has required every company to place its annual return on its website, if any, and to disclose the web-link in the Board’s report.¹⁵ In either form it creates a verifiable governance record that carries evidentiary weight in subsequent disaster litigation.

⁹ *In re City Equitable Fire Ins. Co.*, [1925] Ch. 407, 428 (Eng.) (Romer, J.).

¹⁰ Companies Act, § 134(5)(f).

¹¹ *Id.* § 134(5)(e).

¹² *Id.* § 447 expl. (i).

¹³ *Id.* § 448.

¹⁴ *Id.* § 245(1)(e), (g)(i).

¹⁵ *Id.* § 92(3) (as substituted with effect from Aug. 28, 2020).

B. The environmental statutory framework

The NGT Act furnishes the Tribunal's remediation jurisdiction through Sections 14, 15, 17 and 20.¹⁶ The Environment (Protection) Act, 1986 imposes plant-level safety obligations through Sections 3(2)(vi), 3(2)(vii), 5, 7 and 8.¹⁷ The MSIHC Rules require the occupier to prepare an on-site emergency plan, to furnish the information needed for the off-site emergency plan prepared by the authorities, and to inform persons liable to be affected by a major accident of the hazard and the safety measures to be taken.¹⁸ The Companies Act connects directly to these requirements, because board members must certify the adequacy and effectiveness of the systems that secure compliance with them. The obligations that boards must certify under Section 134(5)(f) as adequately and effectively provided for are in substantial part identical to those imposed by the environmental statutory framework. Environmental law creates the public duty; corporate law creates the boardroom accountability mechanism for ensuring that it is discharged. For hazardous industries, these are not two distinct regulatory regimes but the same obligations viewed from different angles.

IV. LEGAL ANALYSIS

A. The content of independent judgment under Section 166(3)

The phrase 'independent judgment' in Section 166(3) carries normative weight that is rarely examined with adequate precision. The common law tradition from *City Equitable* permitted directors to rely on management and to delegate operational functions without independent scrutiny.¹⁹ The Companies Act, 2013 makes independent judgment a core requirement, and in doing so breaks with that tradition. Umakanth Varottil's cautionary account of how the independent-director model was transplanted into Indian corporate governance from outsider systems, in which boards are expected to monitor management, supplies the background to this departure.²⁰ For the board of a hazardous-industry enterprise, a director's statutory obligation is to ensure that safety-critical questions are asked, answered and documented at board level, instead of accepting management assurances without verification.

LG Polymers India Private Limited was a wholly owned subsidiary of LG Chem, a structure that creates a governance risk common to transnational groups: Indian directors may defer to parent-company management instead of discharging their safety duties through independent

¹⁶ National Green Tribunal Act, §§ 14, 15, 17, 20.

¹⁷ Environment (Protection) Act, §§ 3(2)(vi)–(vii), 5, 7–8.

¹⁸ Manufacture, Storage and Import of Hazardous Chemical Rules, rr. 13–15.

¹⁹ *City Equitable*, [1925] Ch. at 428.

²⁰ Umakanth Varottil, *A Cautionary Tale of the Transplant Effect on Indian Corporate Governance*, 21 NAT'L L. SCH. INDIA REV. 1 (2009), <https://repository.nls.ac.in/nlsir/vol21/iss1/1/>.

verification of group safety standards. Section 166(3) creates a statutory barrier to this deference. The duty of independent judgment is owed by each director to the Indian company and cannot be discharged by reference to parent-company systems unverified in the Indian operating environment. A facility preparing to resume operations after an extended period of inactivity, and storing a substance liable to polymerise uncontrollably if storage temperatures were not managed, required board-level verification of restart readiness. Section 166(2) expressly names the community and the protection of the environment among the interests that directors must serve, and its stakeholder orientation has been examined by Arjya B. Majumdar and by Mihir Naniwadekar and Umakanth Varottil.^{21,22} Read with Section 166(3), it supports treating harm to the surrounding community as a risk that directors are bound to manage, which makes process safety a core governance responsibility rather than a peripheral concern.

B. Section 134(5)(f) and the scope of compliance system certification

Section 134(5)(f) transforms the governance duty into an annual public representation whose legal significance exceeds its procedural appearance. The statutory certification is unqualified: it extends to ‘all applicable laws’ and does not permit directors to confine it to company law or securities regulation. An adequate compliance system for LG Polymers would have required, at minimum, systems to monitor compliance with Rule 13 of the MSIHC Rules (the on-site emergency plan) and Rule 15 (information to persons liable to be affected by a major accident), adherence to pollution control consent conditions, and a governance mechanism to escalate safety preconditions to the board before restart. The styrene leak occurred on the eve of a planned restart, precisely the moment when safety verification was most acute. The governance question Section 134(5)(f) raises is whether any mechanism in the board’s compliance system would have triggered a safety governance review before that decision was taken. The available record does not suggest that it did.

When Section 134(5)(e), which in terms applies to listed companies, is read alongside it, the analysis deepens. The Explanation to that clause defines internal financial controls to include the policies and procedures adopted for the safeguarding of the company’s assets, and process safety infrastructure, such as temperature monitoring systems, emergency shutdown mechanisms and safety instrumented systems, is asset-safeguarding infrastructure in that

²¹ Arjya B. Majumdar, *Directors’ Duties Towards Stakeholders in India*, Presentation at the Asian Corporate Law Forum 2025, Chulalongkorn University Faculty of Law, Bangkok (Mar. 26, 2025).

²² Mihir C. Naniwadekar & Umakanth Varottil, *The Stakeholder Approach Towards Directors’ Duties Under Indian Company Law: A Comparative Analysis*, in THE INDIAN YEARBOOK OF COMPARATIVE LAW 2016 95 (Mahendra Pal Singh ed., 2017), <https://doi.org/10.1093/oso/9780199482139.003.0005>.

sense.²³ Where a company subjects its financial controls to rigorous annual assessment but manages process safety controls as routine operations outside board oversight, its internal control system is incomplete, and its Section 134(5)(e) certification is correspondingly partial.

C. Section 447 and the governance of safety information

The application of Section 447 to safety governance failures requires precision, and this paper makes no allegation of fraud against any person or company in connection with the events at Vizag. The analytical point is structural. Section 447 defines fraud broadly enough to include omissions and concealment, and intent to injure the interests of ‘any other person’, without any need to establish wrongful gain or loss. Governance conduct in the domain of safety information can therefore fall within the fraud provisions.²⁴ In hazardous industries, safety-relevant information flows through an internal chain: plant operators generate observations, safety officers compile reports, management decides which issues to escalate, and the board authorises certifications. Each stage presents an opportunity for omission in the organisationally normalised sense: audit findings chronically left open, compliance gaps known to management but not communicated upward, insurance representations reflecting an earlier audit cycle. Together, these omissions can lead a board to approve compliance certifications that do not accurately represent the safety condition of the organisation. Where an investigation establishes that material information was known within the organisation but withheld from the board, the Section 447 framework becomes applicable to those who concealed that information, subject to proof of the intent the section requires.

D. Sections 245 and 92 as instruments of accountability

Section 245 has been used only rarely in India, and its restriction to members and depositors leaves an acknowledged gap in disaster situations, when the affected groups belong to neither category. The provision nonetheless holds corporate governance significance: where a board’s failure to maintain essential safety procedures ends in an environmental disaster, that failure shows that the board’s annual certification did not reflect an adequate compliance system. *ClientEarth v. Shell plc* shows that shareholders will now frame the mismanagement of environmental risk as a breach of directors’ duties, although the English High Court refused permission to continue that derivative claim, holding that no prima facie case had been shown and stressing the deference owed to the directors’ own judgment of how best to promote the

²³ Companies Act, § 134(5)(e) expl.

²⁴ Ruth Vaiphei, *Corporate Manslaughter in India: Bridging Legal Gaps with Governance Mechanisms*, 10 NAT’L L. SCH. BUS. L. REV. 151 (2024), <https://repository.nls.ac.in/nlsblr/vol10/iss1/11/>.

success of the company.²⁵ Section 245 provides the Indian vehicle for a comparable argument. The annual return disclosure under Section 92(3), combined with SEBI's Business Responsibility and Sustainability Reporting (BRSR) obligations for listed entities,²⁶ creates a governance record that enables courts and regulators to assess any divergence between board compliance certifications and the factual compliance record, a divergence that is probative of the quality of the board's governance engagement.

V. JUDICIAL ANALYSIS

A. *M.C. Mehta v. Union of India*, (1987) 1 SCC 395

The Oleum Gas Leak decision established that an enterprise engaged in a hazardous or inherently dangerous activity owes the community an absolute and non-delegable duty to ensure that no harm results.²⁷ The concept of non-delegability carries a governance implication that is rarely articulated: a duty that cannot be delegated externally, as between the enterprise and the community, cannot be discharged internally by delegation to plant management without independent board-level oversight. The board of a hazardous enterprise cannot point to management as the repository of the safety obligation and thereby insulate itself from accountability for management's performance of it. Section 166(3)'s duty of independent judgment, construed in light of this non-delegable enterprise responsibility, requires boards to treat safety governance as a matter of direct fiduciary concern. The Court's approach to the quantum of compensation, calibrated to the capacity of the enterprise, further implies a financial governance obligation: boards must price the risk of catastrophic absolute liability into capital allocation decisions, making safety investment financially rational rather than discretionary.

B. *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

The constitutional embedding of the precautionary principle and the polluter pays principle in *Vellore Citizens*²⁸ generates an interpretive consequence for Section 166(3) that has not been adequately theorised. The Court held that these principles form part of the environmental law of the country, drawing on Articles 21, 47, 48A and 51A(g) of the Constitution, and that lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation where there are threats of serious and irreversible damage. If the

²⁵ *ClientEarth v. Shell plc*, [2023] EWHC 1137 (Ch) (Eng.).

²⁶ SEC. & EXCH. BD. OF INDIA, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, *Business Responsibility and Sustainability Reporting by Listed Entities* (May 10, 2021), https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html.

²⁷ *M.C. Mehta*, (1987) 1 SCC at 421.

²⁸ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, 658, 660.

precautionary principle is a component of the right to life under Article 21, then the standard of due care that Section 166(3) imposes on directors of hazardous enterprises must be calibrated not merely by financial and commercial governance norms but by the life-protective precautionary obligations that the enterprise itself constitutionally bears. A board that authorises the resumption of hazardous operations without independently verifying safety readiness operates in a manner inconsistent with both the statutory duty of care and the constitutionally grounded precautionary obligation. *Vellore Citizens* supplies the normative content; the Companies Act supplies the governance mechanism.

C. *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212

The *Indian Council* decision applied the polluter pays principle in its strongest formulation: remediation and restoration costs are borne by the polluting enterprise as a non-negotiable legal obligation, unqualified by considerations of financial capacity.²⁹ This position has a governance consequence for a board certifying internal financial controls under Section 134(5)(e): it must look beyond the statutory minimum insurance requirements. A company that carries only the statutory minimum insurance, makes no environmental liability reserve, and has never modelled the financial consequence of a catastrophic failure has not designed adequate internal financial controls for an enterprise whose operations create that risk. Indian environmental law imposes substantial financial obligations on polluters irrespective of their ability to pay, and a governance system that does not take that exposure seriously is fundamentally deficient.

D. *A.P. Pollution Control Bd. v. Prof. M.V. Nayudu*, (1999) 2 SCC 718

The *Nayudu* decision examined how institutions should handle scientific uncertainty and concluded that the appropriate response is not deference to the most confident expert opinion but the construction of institutional mechanisms capable of engaging with scientific complexity in a structured and independent manner.³⁰ The governance inference is direct: boards of hazardous-industry enterprises face the same science-dependence problem. Section 166(3)'s independent judgment requirement, applied to this condition, demands that the enterprise construct governance infrastructure adequate to allow non-expert oversight to function: independent safety directors, process safety auditors reporting directly to the board, risk committees with access to unfiltered technical assessments, and pre-restart safety verification protocols subject to board-level review. The NGT's expert committee in the Vizag proceedings

²⁹ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, 246.

³⁰ *A.P. Pollution Control Bd. v. M.V. Nayudu*, (1999) 2 SCC 718, 732–35.

was a post hoc institutional response to failures, recorded in the Tribunal's order of 1 June 2020, of the kind that such infrastructure is designed to prevent.

E. *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Bd.*, Civil Appeal No. 2816 of 2020

The Supreme Court's handling of LG Polymers' appeal against the Tribunal's suo motu proceedings is instructive for what the Court declined to do. On 19 May 2020, with the ₹50 crore already deposited and the company expressly not seeking relief in respect of that sum, the Court did not grant the stay sought and gave the company liberty to raise its jurisdictional objections before the Tribunal itself.³¹ The deposit was therefore made, and held, before any determination of fault or liability. The Court's later interventions were interim. On 15 June 2020 it stayed, ad interim and for ten days, all the directions in paragraph 40 of the Tribunal's order of 1 June 2020, and the stay against appropriation of the deposit was continued on 26 June 2020; on 29 October 2020 it directed the Tribunal to defer its hearing until further orders while the appeal was before it. The episode shows that Indian courts and tribunals in chemical disaster cases will require early and substantial financial security before questions of liability are resolved, and that appellate courts will not readily relieve an enterprise of that obligation, even when they go on to regulate how the money is spent.

Boards of hazardous companies must accordingly treat safety expenditure as essential, which transforms safety investment from a compliance cost into a financial governance priority. This is not merely a regulatory observation; it is a direct implication of the internal financial controls obligation under Section 134(5)(e).

F. *Bittu Sehgal v. Union of India*, (2001) 9 SCC 181

The Supreme Court's direction in *Bittu Sehgal*³² to constitute a statutory authority under Section 3(3) of the Environment (Protection) Act for the long-term protection of an ecologically fragile area confirms a principle of institutional design as environmental remedy: where environmental risk is structural and persistent, episodic judicial intervention is insufficient, and the appropriate response is a standing governance institution capable of continuous monitoring and response. The corporate environment likewise requires permanent and operational governance systems. Section 134(5)(f)'s requirement of proper compliance systems demands substantive and

³¹ *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Bd.*, Civil Appeal Diary No. 11327 of 2020 (India Sup. Ct. May 19, 2020, and June 15, 2020) (orders); *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Bd.*, Civil Appeal No. 2665 of 2020 (India Sup. Ct. June 26, 2020) (order); *LG Polymers India Pvt. Ltd. v. Andhra Pradesh Pollution Control Bd.*, Civil Appeal No. 2816 of 2020 (India Sup. Ct. Oct. 29, 2020) (order).

³² *Bittu Sehgal v. Union of India*, (2001) 9 SCC 181.

continuous governance infrastructure, not periodic documentary compliance. A company whose safety officer files the required MSIHC documentation is not in the same governance position as one whose board-level risk system would detect and escalate a safety deviation before it becomes a crisis. The institutional logic of *Bittu Sehgal* supports reading Section 134(5)(f) as demanding the latter, and Section 245's mismanagement jurisdiction as available to shareholders who can demonstrate that the board represented the one as the other.

VI. CURRENT TRENDS AND SUGGESTIONS

Indian corporate sustainability governance is currently experiencing genuine regulatory progress. The Companies Act's governance architecture and the environmental statutory framework were, at the time of the Vizag disaster, legally adequate in their design. Developments since 2020 have strengthened the framework further, while the findings recorded in the Vizag litigation, including the Directorate of Factories' conclusion, noted by the National Green Tribunal, that the management had failed to understand and manage the impact of the lockdown on the storage of styrene monomer, illustrate the operational dimension of governance failure in hazardous industry.

The most important regulatory change has been SEBI's BRSR framework, mandatory for the top 1,000 listed companies by market capitalisation from financial year 2022–23.³³ The BRSR requires disclosure of, among other things, non-compliance with environmental laws, fines and penalties, and safety-related incidents. Its significance in the context of Section 134(5)(f) is that it creates a publicly accessible record against which a board's certification of compliance-system adequacy can be tested: a company that certifies its compliance systems as adequate while disclosing environmental penalties and safety incidents reveals how its board actually engages with governance. The LG Polymers incident illustrates the accountability gap the BRSR framework was designed to narrow, although the BRSR was not yet mandatory in 2020 and, since it applies only to listed entities, would not in any event have reached an unlisted private company such as LG Polymers India. SEBI's Listing Obligations and Disclosure Requirements (LODR) Regulations further reinforce listed-company governance standards, amplifying the disclosure obligations that sit alongside the Companies Act's certification.³⁴

The international development of shareholder-based environmental governance claims provides comparative context for the corporate law argument advanced here. In *ClientEarth v. Shell*

³³ SEC. & EXCH. BD. OF INDIA, *supra* note 26.

³⁴ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Notification No. SEBI/LAD-NRO/GN/2015-16/013 (Sept. 2, 2015), reg. 34.

plc,³⁵ the English High Court refused permission to continue a derivative claim alleging that Shell's directors had mismanaged climate risk, holding that no prima facie case had been made out and that it is for the directors themselves to decide how best to promote the success of the company. The case nonetheless shows that environmental governance risk is now litigated in the language of directors' duties, even where a court declines to second-guess the board's handling of it. The academic arguments of Virginia Harper Ho for locating ESG governance within existing fiduciary duty frameworks,³⁶ grounded in the 'best interests' language of statutory directors' duty provisions, find direct support in the explicit community-stakeholder formulation of Section 166(2). Judicial recognition of this argument in an Indian context, in an appropriate factual setting, would provide the doctrinal foundation for a corporate law response to hazardous-industry governance failures that operates preventively rather than remedially.

Several targeted reforms call for legislative and regulatory action. Section 245 should be amended to give the NCLT jurisdiction over mismanagement claims brought by communities affected by a disaster, beyond the members and depositors to whom standing is now confined. The present limitation has no principled basis: the communities that suffer most from governance failures in dangerous industries face the greatest difficulty in reaching the accountability mechanisms established for those failures. A broader standing framework, analogous to the statutory derivative action under Section 237 of Australia's Corporations Act 2001, would render the accountability architecture more complete.³⁷ The Ministry of Corporate Affairs should also issue guidance stating that knowingly false safety compliance certifications in annual reports and BRSR disclosures will attract penalties under Section 447 as fraud. The current interpretive uncertainty reduces the provision's deterrent function and is inconsistent with its statutory text. The Ministry should, in addition, require companies handling hazardous chemicals listed in Schedule 1 to the MSIHC Rules to include process safety systems within their internal control audit procedures. Until the annual board certification is treated as an internal control function, subject to the documentation and independent audit that apply to financial reporting controls, it will represent aspiration rather than verified fact.

VII. CONCLUSION

Industrial disasters tend to be analysed as failures of the physical site. Examined with greater rigour, they more characteristically reveal failures of institutional governance: failures of the

³⁵ *ClientEarth v. Shell plc*, [2023] EWHC 1897 (Ch) (Eng.).

³⁶ Virginia E. Harper Ho, *Board Duties: Monitoring, Risk Management, and Compliance*, in *COMPARATIVE CORPORATE GOVERNANCE* 242 (Afra Afsharipour & Martin Gelter eds., 2021), <https://doi.org/10.4337/9781788975339.00021>.

³⁷ Corporations Act 2001 (Cth) s 237 (Austl.).

structures responsible for ensuring that equipment was maintained, procedures followed and compliance obligations observed. At the level of the LG Polymers plant, the Vizag styrene gas leak was, on the findings of the Directorate of Factories recorded by the National Green Tribunal, an account of a hazardous material left inadequately monitored in storage while the facility stood idle. At the level of the boardroom, the argument of this paper is that statutory governance responsibilities existed whose full activation could have reduced the risk of the events that led to irreversible harm; no court or tribunal has yet made a finding on the conduct of the company's board.

The Companies Act, 2013 is not conventionally received as sustainability legislation. The argument of this paper is that this characterisation is analytically inadequate for hazardous industries. Sections 166(3), 134(5)(f), 447, 245(1) and 92(3), applied purposively to the governance of hazardous chemical enterprises, establish a preventive accountability system. The judicial principles from *Oleum Gas* to *Nayudu* provide the normative content that gives these provisions their full significance: absolute and non-delegable enterprise responsibility, constitutionally grounded precautionary obligation, accountability for the full cost of environmental restoration, and institutional design as an element of remedy. In an enterprise whose operations create the potential for irreversible harm to communities with no say in the location of those operations, process safety is the primary governance responsibility of the board. Corporate sustainability acquires legal force in this domain not through new statutory obligations but through the serious application of the corporate law already in force. The legal framework exists. The Vizag case demonstrates, with considerable force, that it needs to be used.
