

In theory, the holding of the positions of Chairperson and MD/CEO by the same person, is the ultimate negation of Corporate Governance. This however does not cut much ice with those who contend that there should be only one centre of power in the boardroom. The strong CEO model is often credited for the growth of companies. When it comes to failure, the benign neglect that Boards often manifest, is seen as a major cause. SEBI has spoken. What does it portend for corporate India?

Editor

DIVIDE AND RULE?



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The question, whether the positions of Chairperson and Managing Director / Chief Executive Officer (CEO) should be held by different persons, has, for long, engaged the minds of observers of the corporate scene in India. With the United Kingdom and a few other jurisdictions having moved significantly to a position of separating the two roles, and with the United States and some other jurisdictions still seeing merit in combining the two roles in the same individual, there are enough protagonists on either side in India.

Until recently, it was safe to state that the jury was still out on whether the two roles should be separated in the Indian context. Playing judge, jury and possibly executioner (in the eyes of a part of corporate India) SEBI has finally settled the argument. It has laid down, through an amendment in the LODR, that companies, which constitute the top 500 listed entities by market cap, shall ensure that with effect from April 1, 2020, the Chairperson of the Board shall be a Non-Executive Director and shall not be related to the Managing Director (MD) or CEO.

Not unexpectedly, there are reports of a pushback by sections of corporate India. Many large listed entities have for years had the roles of the Chairperson and the MD being performed by same individual. It is not easy to conceive a position in which a promoter Chairperson cum Managing Director (CMD) would willingly give up either the Chairperson's role or an Executive role, which would be denied to her/him if he is to continue as Chairperson.

To understand the context, it is necessary to go back in history. The distrust of the businessman has been one of the defining features in conversations related to the corporate world. Starting out with the belief that, if left alone, the promoter CMD would resort to mischief, a number of safeguards have been put in place from time to time. The separation of the two roles is the latest in this series. Theoretically, it is difficult to quarrel with an arrangement in which the management, represented by the MD or the CEO, is held accountable to the Board chaired by a Non-Executive Director, with the Board acting as the representative as well as the custodian of the interest of the large body of stakeholders. In practice, however, things could work out differently. It has already been noticed that in some organisations the promoter assumes the role of Vice-Chairperson and MD and gets a benevolent unquestioning person appointed as Chairperson. The only thing that gets in the way of this arrangement is the fact that many of the persons have already been Chairpersons and any other position is seen as a demotion. Some Boards have an Executive Chairperson and an Executive Vice-Chairperson, leaving one to wonder whether the CEO is non-executive! SEBI has now put paid to all these accommodative arrangements.

SEBI's stipulations travel well beyond the recommendations of the Kotak Committee on Corporate Governance. The Kotak Committee, after deliberation, recommended that, to begin with, the separation of the two roles should take place in companies with at least 40% public shareholding. Carving out a universe based on public shareholding was felt to be the right way of gradually ushering in this element of shareholder democracy. SEBI however has chosen to define the universe in terms of the size of the company by market cap. This approach would ensure that the bigger companies do not escape this forward looking move on the part of the Regulator. With several large companies having public shareholding below 40%, it would also have been possible for those

managements and promoters to keep their companies outside the ambit of the first stage of introduction of the separation of the two roles.

Recent events have demonstrated that the so-called professional-run companies, without an identifiable promoter, are not necessarily well governed. As pointed out in one of our earlier newsletters, three of the major Corporate Governance failures in the last year have been in companies, described as non-promoter companies, within 200 meters of one another in Mumbai's financial district. The proposed separation already exists in those companies, and therefore, to pretend that this is the panacea for all ills is to willingly suspend disbelief. Taking an example from those companies, the promoter-led companies could install a convenient Non-Executive Chairperson and run the company in the manner that the promoter chooses. Compliance in form will be achieved, but the stated objective of empowering the Board vis-a-vis management will not be achieved.

Promoters also argue that they have skin in the game and will not act in a manner inconsistent with the interests of the company. The absence of domain expertise is also cited as a weakness that could prevent a Non-Executive Chairperson from providing effective leadership to the Board.

The requirement that the Chairperson shall not be related to the MD or the CEO seems to be unique to India. It proceeds on the assumption that two persons, if they happen to be related, would necessarily act in concert and would together ignore the interests of other stakeholders. This apprehension would seem to be without basis in the Indian context. Indian corporate history is replete with instances of persons related to each other disagreeing on most matters and prejudicially affecting the performance of the company. Internecine warfare has been the staple diet of corporate historians. Further, given that SEBI has travelled in this direction, it could have revisited the list of relatives, which presently leaves a lot to be desired.

As for the public sector, the separation of roles as well as the timeline could be yet another instance to show the world that compliance is for other entities. Did we not see it when it took them ages to appoint the requisite number of Independent Directors and women Directors?

Post April 1, 2020, (unless corporate India forces a deferment, if not an abrogation) corporate boardrooms could sport a different look. Many of them will need to accommodate a Non-Executive Chairperson. The chairs will need to be rearranged. Rearranging the furniture on the deck of the Titanic? Hopefully, not yet.

READERSPEAK - THE YEAR THAT MIGHT HAVE BEEN

"Siddharth Shriram, former CMD, Mawana Sugars"

"Isn't it strange that mainly the highly placed, well paid and extremely well remunerated in monetary and psychic terms, need to resort to, to put it mildly, illicitly extending their good fortune? It's all over the world."

"Ireena Vittal, Independent Director on several leading Boards"

"What an amazing note... Wordsworth, dreams and ethics, all combined in one."

"S Sandilya, Chairman, Eicher Motors"

"The Public Laundry is getting filled with a lot of linen and the situation is becoming like the Bangalore lakes or the Ganges. We need a Swachh Corporate Mission, perhaps!!"

"Ajai Kumar, Former CMD, Corporation Bank"

"Very interesting summing up of 2018, the year that was."

"VA George, Managing Director, Thejo Engineering"

"Excellent piece! You have nicely summarized the various noteworthy events in the Indian Corporate world during 2018 in one page."

Do let us know of any specific issues you would like to see addressed in subsequent issues.

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