

Strange are the ways of the world. For years, the laws relating to business were premised on the distrust of the promoter. The search for solutions led to the institution of Independent Directors, women and men of credibility, character, competence and courage of conviction. With Boardrooms seen as minefields, some stayed away, and some walked away after brief stints. What next?

Editor

The IDentity Crisis



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"Put not your trust in princes, for in them there is no salvation".

Recent developments in the corporate world have led most persons to believe that what was said of princes some centuries ago, is applicable to Independent Directors (IDs).

There was a time, not so long ago, when the institution of ID was seen as the "great white hope" to ensure that companies are run in the right manner and with the right intentions. These knights in shining armour were expected to ride into Boardrooms and mount the offensive on questionable practices and processes. Fast forward to today, and the jury is out on whether this category of Directors continues to be relevant, especially given the fact that many of them have fled Boardrooms just when they are most needed. The exit explanations vary from the time honoured broad-spectrum "personal reasons" and "inability to commit quality time" to the most recent one relating to GST raids. Mercifully, demonetization has not yet surfaced as an excuse.

If the diagnosis is incorrect, the prescription will be worthless, and the treatment disastrous. The perceived failure of IDs to prevent corporate disasters has led to questionable solutions such as training programmes being designed by persons who are academically inclined and have no Boardroom experience. What is lost sight of is that independence is a state of mind that cannot be created by training programmes. Equally important is the fact that many IDs, who do not challenge questionable proposals in Boardrooms, are holding themselves back not for want of knowledge, but for fear of rocking the boat.

What went wrong? Were the expectations too high or unrealistic? Did Boardrooms get overly populated by the "retired and tired" types? Did a recognition of their relative lack of relevance make them look in the direction of the exit door?

The mismatch between expectations and reality is at the root of underperformance by many Directors. Many such Directors continue on Boards without any role clarity. In an atmosphere in which setbacks are treated as flowing from unconscionable decisions, and there is an ab initio presumption of malafide, there would seem to be merit in indecision, or in routinely opposing all management proposals. Such an attitude, if persisted with, could significantly obstruct the carrying on of business by a company. IDs were never intended to be the opposition party in the Boardroom.

There is also the important issue of statutory duties which the IDs have to discharge. The exhortation that Directors should not "unfairly" obstruct the functioning of the Board or its committees is also a red rag to an activist Director pushing for procedural and substantive improvements. How does one draw the line between incisive questions on a continuing basis and the charge of obstruction?

In recent times, investigative agencies have been tasked with identifying, investigating and taking to their logical conclusion, any offence under the Companies Act, 2013 or under SEBI LODR Regulations. Their second-guessing

of commercial decisions, and that too with the benefit of hindsight, often places Directors in a disadvantageous and defensive position, persuading them to believe that safety lies in decision-avoidance. The ever expanding list of duties and responsibilities, coupled with serious penal consequences, if things go wrong, has persuaded, and will continue to persuade, good men and women not to accept Board positions. Some Boardrooms have transformed into places where "angels fear to tread".

What then needs to be done? Firstly, the institution of ID has to be strengthened by giving to such persons more legitimacy and relevance in Boardrooms, and encouraging them to raise the right issues. At the same time, it must be understood that a part-time Non-Executive ID should not be treated like an ordinary criminal when a decision or two has turned out to be incorrect, ill-informed or even capricious. While a rap on the knuckles is certainly warranted in a few cases, the real remedy would lie in removing non-performing Directors from Boardrooms, and bringing in persons that have the ability, the willingness and the courage to contribute to Boardroom discussions.

It is universally acknowledged that the Board ought to be the seat of wisdom. It is not charged with operational responsibilities, and its essential role is one of providing guidance to management. To treat such persons as active decision-makers on transactional matters is to show lack of clarity in understanding the essential character of Boardrooms.

A partial solution for ensuring performing Boards is a robust process of Board evaluation that helps to identify the non-performers, and to get them replaced sooner rather than later. If the mandatory process of Board evaluation degenerates into the creation of mutual admiration societies, as has happened, and continues to happen, a very significant tool for strengthening Boards would be blunted, and the results would be counterproductive.

Should we persist with IDs in Boardrooms, or should we treat them as a non-productive element that can, and should be dispensed with? There are some who believe that the sins of the managements are visited on the Boards. Yet others subscribe to the view "*she doth protest too much*". The latest attack on the credibility of IDs is from the Regulatory body which has mandated that the veracity of assertions of independence by the IDs ought to be ascertained by the Board.

IDs meanwhile grapple with the Hamletian dilemma

"To be, or not to be, that is the question:

Whether 'tis nobler in the mind to suffer

The slings and arrows of outrageous fortune

Or to take arms against a sea of troubles

And by opposing, end them."

READERSPEAK - ASPECTS OF ACCOUNTABILITY

S Rajgopal, Former Cabinet Secretary, Government of India

"I have been seeing from the past few issues you have been highlighting various issues concerning corporate governance, specially the role of Independent Directors. Very useful readings."

Rajeev Kumar Agarwal, Former Whole time Member, SEBI

"I must say it's very insightful and very valuable piece of advice for the Directors."

RK Nair, Former Member, IRDA and Former ED, SEBI

"Boards and Independent Directors must spend more time on strategy, leadership, HR, executive compensation, succession planning, risk management and internal control."

Vinita & Bali, Former MD, Britannia Industries

"I am wondering if Boards spend enough time, even articulating which information they would like to see - at a point in time, over a period of time. One of the issues I find on Indian boards in particular is that we hardly see any trend line analysis. On top of that, if you layer the large numbers of boards some people sit on...and make no notes, it is not surprising that so many things are forgotten or just fall by the wayside."

S Hajara, Former CMD, Shipping Corporation of India

"The concepts like healthy skepticism and constructive tension between Board and Management are really apt."

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

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