

The guns of the commissars and the commentariat are firmly trained on them. Their fall from lofty pedestals is greeted with the same applause as the fall of Ravana. As IDs leave boardrooms, battered and bruised, all the good work they did is forgotten. Mark Antony had it right when he said,

*"The evil that men do lives after them,
The good is oft interred with their bones."*

Editor

BOARDROOMS OF THE FUTURE



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In the days gone by, trapeze artists and conservancy workers had a higher premium attached to their insurance policies because of the perception of higher risks in their chosen occupations. Unconfirmed reports are now emerging that insurance companies are likely to significantly increase the premium on the policies of Independent Directors (IDs), the reason being that such Directors are often required to do the tightrope walk as well as to clean the mess in the boardrooms.

In any business decision, the risk-reward trade-off is one of the material determinants. An application of this approach to the boardrooms of the future will provide interesting insights.

In an inversion of the natural order, let us look at the rewards first. Till the Companies Act, 2013 (the Act) was given effect to, IDs could receive stock options, based on the philosophy and the business outlook of the company, on whose Board they were members. Proceeding on the assumption that stock options would lead to short-termism in the approach of IDs, this time-honoured method of compensation was discontinued.

The next element of compensation is the profit-linked commission, subject to statutory limits, payable to IDs. Companies that made significant profits saw no problem in suitably compensating IDs with handsome commissions, subject of course to statutory limits. Overwhelmed by the seemingly high numbers being bandied about, and with no thought for the contribution that such Directors might have made, and continue to make, in boardrooms and outside, proposals are now being mooted for significantly reducing commission payments. What compounds the error is that the limits proposed are a function of the total income of such Directors from all sources. This would lead, for example, to a person with deep pockets becoming eligible for higher compensation than, say, a retired university professor.

The third element of compensation is the sitting fee. Paid at a uniform rate to all Directors, whether performing or non-performing, this by itself is unlikely to incentivise active involvement and contribution in boardrooms.

There is of course, the view expressed by one of the governance gurus that the media swears by, that IDs do not have any contribution to make in boardrooms, and exist only to "open doors" for Chairpersons and Managing Directors.

It merits comment that all these measures have been conceived at a time when the cap on the salary payable, without government permission, to the Chief Executive has been removed. Contextually, with an increasingly important role being envisaged for IDs, it is their compensation alone which is targeted to move southwards.

It is now time to look at the risks. To begin with, there was, and still remains, the long laundry list in Schedule IV of the Act. Significant risk resides in many of those functions and responsibilities, with interpretation by external agencies likely to be the critical factor. Statutory responsibilities have assumed ominous proportions, with the fig leaf of protection under Section 149(12) of the Act being treated with disdain. What is worse, the assets and bank

accounts of family members are being frozen with no determination of how much of it might be self-acquired. In addition, there is now the reported proposal for the Government to step in and identify the non-performing members of the Board. Thereafter, applications would be moved to the National Company Law Tribunal (NCLT) to remove those Directors, and consequent thereon, bar them from any Board position for 5 years. Among the determinants that the Government will use will be efficiency and credibility. It is not clear how a Government, sitting outside the boardroom, will arrive at conclusions regarding the efficiency of Board members. Further, it would seem odd for the NCLT, which is a quasi-judicial body, to pronounce on efficiency, without an objective evaluation. The only evaluation now available, and with statutory backing, is the evaluation contemplated in Schedule IV of the Act and the SEBI (LODR) Regulations, 2015, as well as the guidelines issued by SEBI. As annual reports of listed entities reveal, the prescribed evaluation has been undertaken, and in no case has a Director been found wanting. With that evaluation report in place, it is difficult to foresee how the NCLT or any other similar body can come to a conclusion that some Directors are, or have been, inefficient in the discharge of their duties.

It is difficult to resist the conclusion that IDs are being collectively looked upon as the opposition party in the boardroom. Should that perception prevail among the Directors, it would be reasonable to presume that every management proposal would be opposed or would face significant resistance in the boardroom. Whether this will contribute to the ease of doing business is something that deserves serious attention.

Boardrooms of the future will have younger persons, with diversity factored in, and trained in the letter of law and regulation. With the bold and the beautiful replacing the bald and the not-so-beautiful, will dissent crowd out decisions in Board minutes? Will Boards miss the wisdom of those who have seen the movie before?



GATEKEEPERS OF GOVERNANCE
A Corporate Governance Summit

Date: 29th – 30th November, 2018

Venue: Hotel Trident, Bandra Kurla Complex, Mumbai

Thursday, 29th November, 2018 at 10am

INAUGURAL SESSION

Corporate Governance - Has Form Overtaken Substance?

In conversation

Mr. Anand Mahindra
Chairman, Mahindra
Group

Mr. Uday Kotak
Executive Vice
Chairman and Managing
Director, Kotak
Mahindra Bank

Moderator – Mr. M. Damodaran

Friday, 30th November, 2018 at 10am

PLENARY SESSION

Governance and Performance –
Two Peas in a Pod?

Mr. Deepak Parekh
Chairman, HDFC

in conversation with

Mr. M. Damodaran

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

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