

**CORPORATE GOVERNANCE AND RETAIL INVESTORS
TAMIL NADU INVESTORS' ASSOCIATION (TIA), CHENNAI
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RATIONALE

In the recent past, discussions on Corporate Governance have rightly sought to encompass the interests of all stakeholders in the company. This is, among other things, a reaction to undue attention reportedly being paid by the company Board and management to shareholders, while ignoring the interests of other stakeholders.

While this approach cannot be faulted, it is necessary to look at the relative disadvantages at which retail shareholders are placed as compared to institutional shareholders. The interests of the small retail shareholders deserve to be brought centrestage not only in their own interest but also to promote the culture of investing, leading to capital formation and contributing to the economic development of the nation.

The Companies Act, 2013 has some provisions which tend to positively impact the interests of small shareholders. It is necessary to create a culture of awareness whereby each small shareholder recognises her/his rights and is enabled and emboldened to seek the enforcement and protection of those rights.

For Excellence Enablers Private Limited, this is a part of the continuing attempt aimed at eliciting views and concerns of small retail shareholders regarding governance practices in the companies they have invested in. It is our belief that conversations of this nature will create a climate in which rights will be recognised and remedies enforced in the event of governance failures. Our role will be to facilitate a conversation on what retail investors can legitimately expect to achieve through the instrumentality of corporate governance.

KEY TAKEAWAYS:

- TIA periodically circulates newsletters and conducts awareness sessions and classes by experts to educate retail investors about their rights and responsibilities since investor education is at the root of investor protection.
- Retail investors are, and must continue to be, assertive of their rights and TIA must play a leadership role as an association for the cause of investor protection.
- Even though the Companies Act, 2013 has provided for minority shareholders' representation on the Board, there is resistance from companies on the appointment.
- Minority shareholders must actively prevent Related Party Transactions (RPTs) that are neither at arms length nor are in the ordinary course of business since companies are hiring consultants to interpret the especially such transactions in their favour and are also putting in efforts to prevent the implementation of clauses that are seemingly against the interests of promoters.
- Even though TIA had sent its suggestions to the Ministry of Corporate Affairs (MCA) at the time of finalisation of the Companies Act, 2013 and the Rules thereunder, many of the suggestions were not implemented and no valid explanation was given therefore. MCA should be requested to bring out a paper enumerating the suggestions received and whether or not they were accepted along with reasons for the same.
- Public participation in Annual General Meetings (AGMs) is poor since either more than one company hold their AGMs on the same date or the AGM happens on a weekday or at an inconvenient time and place.
- In AGMs, most shareholders do not raise questions about the business of the company, auditors, audit report or financial statements.
- In many AGMs, Chairpersons address only a few questions, those that are easy and to which they have ready answers, and state that other questions will be answered in writing later.
- E-voting has been introduced with the intention of promoting more voting at AGMs. However, some companies interpreted this clause as voting only by electronic mode till Bombay High Court passed a

judgement that the spirit of law has to be considered and not the exact wording, and hence now both physical and e-voting are recognised.

- At the time of appointment or reappointment of a director, shareholders should ask whether the person has the time and energy to truly represent their interests, especially if their past attendance record is bad. Marquee names alone do not help the cause of minority shareholders since such persons may not have the time for Boards.
- The agenda and discussions of the exclusive meeting of Independent Directors (IDs) should be disclosed for greater transparency.
- In spite of clarifications, there continues to be some confusion regarding the tenure of presently serving IDs, especially with MCA and Securities and Exchange Board of India (SEBI) prescribing differently. *(This has been addressed.)*
- A good ID is expected to have time and patience to read documents, ask questions and continue to seek answers till he gets them. However, promoters and management do not see value in getting such people on the Board.
- The provision of one woman director on Board does not specify whether the woman director has to be an ID or not. There is increasingly a tendency to get family members on the Board to comply with this clause.
- Every ID who resigns from a Board is now required to give the reasons for his resignation to the Registrar of Companies (ROC). The ROC is expected to drill deeper to ascertain whether the real reason is governance-related.
- In addition to the attendance of IDs, duration of the meetings attended by them is equally important.
- Division of commission between the promoter and IDs should be gone into with a view to ensuring that IDs are adequately compensated.
- Auditors, whose actual clients are the shareholders and not the management of the company, do not clearly express their opinion on the effectiveness or adequacy of internal controls followed by the company.
- In annual reports, quarterly disposal of complaints received from shareholders has to be reported. Companies often combine letters received for administration purpose (such as change of address) with complaints and the former are disposed of very quickly to make the number of complaints resolved look higher.
- Post dematerialisation of shares, companies send emails to shareholders for notices and annual reports. Letters from shareholders requesting for hard copies are often not acknowledged or acted upon. Choice of hard versus soft copy should be given to the shareholder. The solution suggested by SEBI to this problem is that a shareholder can give a letter to their Depository Participant (DP) stating that her/his email id should not be given to companies. In such a situation, the company may be forced to send the hard copy.
- If a complaint is sent to SEBI by a shareholder, it is forwarded to the concerned company, which is supposed to write to the shareholder directly. If the shareholder does not follow up, it is assumed that the complaint has been disposed/ resolved satisfactorily.
- Stakeholders Relationship Committee (SRC), a mandatory committee as per the Companies Act, 2013, is a recast of the Investors Grievance Committee and Shareholders Grievance Committee. However, the role of this committee is only limited to resolution of grievances of holders of securities. The other stakeholders have been ignored.
- The Nomination and Remuneration Committee (NRC), which consists of IDs, has to select IDs for the Board objectively. However, complete objectivity in decision making is often not possible in case they have served on the Board for a long period of time.
- Committee meetings should not be mere tick the box items. Their time and duration are important. Ideally, they should not be held on the same day as the Board meeting. Companies often state that the Directors' busy schedule is the reason behind scheduling these meetings on the same day.
- The same set of agenda papers are circulated to the committee and Board members leaving no time to incorporate the suggestions given by the committee in the agenda papers for the Board.

- Management makes presentations to IDs without suggesting any alternatives to choose from.
- Proxy advisory companies are advising investors to look at the retention ratio instead of the payout ratio for dividends and check the uses to which the retained amount is put.
- For a rating mechanism or awards in corporate governance for companies to be meaningful, there have to be enough companies who practice corporate governance, not only in letter but also in spirit.
- Even though there is a provision for class action suits in the Companies Act, 2013, finding one lead plaintiff may be difficult since in addition to the long time involved in resolving such suits, there will be a fall in share prices of the company after the suit is filed and so the plaintiff, also a shareholder of the company, will suffer a loss.
- Once a class action suit is filed in India, a number of IDs are likely to leave Boards. This will adversely impact the interests of the non-promoter shareholders.

About Tamil Nadu Investors' Association (TIA)

TIA, the first investors' association registered and recognised by Securities and Exchange Board of India (SEBI), was formed in 1989 by Late Mr. K. Kannan, for the purpose of educating and protecting the interests of small investors, thus making them smart investors. It is registered under The Societies Registration Act of Tamil Nadu and is governed by an elected Committee of Members. The mission of TIA is to educate investors to improve their awareness, act as an aid in public awareness on investment decisions and help in investor protection.

EXCELLENCE ENABLERS
CORPORATE GOVERNANCE SPECIALISTS

ADDING VALUE, NOT TICKING BOXES

EXCELLENCE ENABLERS PRIVATE LIMITED

Excellence Enablers Private Limited (EEPL) is an initiative that focuses on implementation of better corporate governance practices, improvement of Board performance, including audit and evaluation, training of directors and engagement with stakeholders of governance. It is founded on the firm belief that the gap between performance and potential can, and must, be bridged. Consistent with that belief, all our offerings are tailor-made to the specific needs of the organisation or the individuals concerned.

Given that our founder, Mr. M. Damodaran, introduced Clause 49 of the Listing Agreement, dealing with corporate governance in India, and has been a part of both public sector and private sector Boards, as well as performing and underperforming Boards, we offer experience based consultancy and courses on the journey from compliance through governance to performance. Further, given his success in turning around organisations that had been written off, we are uniquely positioned to offer courses on leadership, organisational transformation, and building winning teams.

EEPL has a number of highly experienced and renowned consultants and faculty members who have helped, and continue to help, us deliver programmes that have been well received.

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