

## What are the rights of shareholders in India?

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The limitations, if any, on the rights of shareholders, are in focus because of a couple of high-profile standoffs between large institutional shareholders, on the one side, and the promoters, the Boards and managements of the companies concerned, on the other.

When one thinks of shareholders' rights, the concern is always about the small retail shareholder, and much less, about large institutional shareholders. However, at some points in time, the dissatisfaction, real or imaginary, of the institutional shareholders finds expression in the form of lack of confidence in the promoter and the Boards. This is sought to be remedied by seeking the holding of General Meetings, to throw out some Board members, or in some cases, the entirety of the Board of Directors.

In all such disputes, the first question to be examined is when the dissatisfaction or discontent arose, and whether it was prompted by any particular event relating to the company. It is not inconceivable that a good relationship between the institutional shareholder, and the promoter/ company could turn sour, without any advance notice.

Institutional shareholders must recognise that the interests of the company are paramount. Therefore, any move, however well intentioned, should not be disruptive, and should not stand in the way of business being carried on by the company. Carrying on of business by a listed entity requires a properly constituted Board of Directors, and therefore destabilising the Board, without alternatives being conceived, and put in place, is hardly the answer to any developing situation of dissatisfaction.

At the same time, promoters and Boards need to take into account the legitimate concerns of shareholders, large or small, in regard to Corporate Governance, and also the manner in which business is being conducted. A constructive

conversation between the two sets of stakeholders can minimise the conflict, even if it is not completely addressed. Neither the media nor the Courts should be the first port of call for dealing with differences among stakeholders.

While intentions are honourable, they cannot be achieved by giving shortshrif to the provisions of law and regulations. Similarly, a wishlist that a major shareholder might have in regard to the composition of the Board, cannot materialise into reality overnight, in disregard to the provisions of law and regulations.

The question also arises what relief, if any, a large shareholder has when the promoter and the Board seem to be paying no attention to the issues being raised. If the dissatisfaction reaches an incurable level, one possible course of action is to requisition a General Meeting, with the objective of replacing the whole Board. In the likely event of the requisition not meeting with the approval of the Board, the shareholder can, on its own, seek to have a General Meeting conducted. The related question is what would happen if the resolution for replacing all the Directors succeeds. The company cannot live with a vacuum in the boardroom. Therefore, the resolution should also include a request being made to the National Company Law Tribunal (NCLT) to appoint a provisional Board till replacements are in place, through the prescribed processes.

Corporate disputes do not happen overnight. It could be that some moves being made by the institutional shareholders did not fructify, and hence gave rise to dissatisfaction with the promoters and the Board. This is not a matter which could not be addressed by seeking to interact with the Chair of the Board, and through her/him, with the Board, to convey legitimate concerns. Every such case proves the point that when effective communication is absent, doubts, discords and disputes will develop, and will destroy the corporate entity. Good Corporate Governance involves the strengthening of corporate entities, and ensuring that their business practices are built on the pillars of transparency, disclosure and stakeholder interest.

***(By M Damodaran, Chairperson, Excellence Enablers, and Former Chairman, SEBI, UTI and IDBI)***

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