Excellence Enablers Private Limited

February | 2017

A series of interfaces with the entire range of stakeholders of Corporate Governance, has given rise to a number of questions, issues, concerns and, happily, some suggestions and solutions. In this issue, the eleventh in this series, departing from our usual practice of getting two experts to state their views on a particular aspect of Corporate Governance, we take a close and hard look at some issues that have occupied considerable mind space in recent times. Some of these reflect the thoughts of a wide variety of persons with considerable Boardroom experience and exposure. Needless to add, we welcome your feedback.

Editor

CONTEMPORARY ISSUES IN CORPORATE GOVERNANCE

M. Damodaran
Chairperson, Excellence Enablers
Former Chairman, SEBI, UTI and IDBI

In recent times, there has been grudging acceptance of the fact that good Corporate Governance is a necessary, though not a sufficient, condition for sustainable corporate performance. The surfacing of alleged corporate governance transgressions in the less suspected places has led to increased discussion and debate on contemporary issues in Corporate Governance.

At the outset, it is necessary to understand what Corporate Governance connotes. It is clearly not a box-ticking exercise that gives a false sense of comfort that all is well. It is not a set of practices put in place by regulators, often, as kneejerk responses to isolated instances of misfeasance. Shorn of unnecessary detail, it is no more than doing the right thing at the right time in the right manner for the right reasons.

The elaborately prescriptive regime, that most jurisdictions have, is premised on distrust of those doing business. Notwithstanding the fact that there are a number of businessmen who conduct their affairs honestly, law and regulations must necessarily address, and seek to correct, the errant behaviour of those that abandon rectitude and seek expediency.

There is often a case made for self-regulation. Experience has however shown that being a judge in one's own cause, is the mother of all conflicts of interest, and normally legitimises bad conduct. On the other hand, regulatory adventurism that often masquerades as activism, has sometimes led to solutions much worse than the problems it sets out to solve.

Into this universe has come the institution of the Independent Director. With a long laundry list of duties and responsibilities, mandated by law and regulation, and ill- equipped by her part-time status, besides being inadequately incentivised, is she the great white hope for ushering in stakeholder democracy?

It is admitted that Boards are the arbiters of a company's destiny. Inside (and outside?) the boardroom, the Independent Director is the conscience keeper of the Board. The irony is that she is chosen by a committee, in which the Chairperson (promoter) has a disproportionate influence. With stock options having been discontinued, allegedly to deal with short-termism, there is no alignment of interest, or skin in the game, for the Independent Directors.

Regrettably, recent writings on the Corporate Governance scene in India have tended to focus on personalities and protagonists, giving short shrift to principles and practices. While standoffs and confrontations are essentially negative, there are learnings that emerge therefrom. One major takeaway from a recent case is that, in a disclosure based regime, communication must be complete, correct, concise, clear and contemporaneous. Yet another is that majority ownership is not a satisfactory explanation for causing asymmetry of information. Further, the desire for information must pass the "need to know" test. Groupthink among Independent Directors negates the positive of board diversity, and undermines shareholder confidence in these statutory custodians of their interests. Finally, the collective wisdom that resides in the Board must find expression in a manner suggestive of its being in control of any challenging situation, without being remotely controlled.

Do the following constitute the way forward?

- While inducting Board members, recognise the benefit that diversity brings.
- Evaluate their performance meaningfully and give honest feedback.
- Restore stock options that can be availed only a year or two after a person has stepped off the board.
- Write simpler laws and regulations and enforce them quickly and effectively.
- Since stressed companies need good directors, find a way to compensate directors for their services.
- Don't tar all businessmen with the same brush of distrust.
- And most importantly, Government as the majority shareholder of very many companies, must practise corporate governance, recognising that leading by example is a crying need.

READERSPEAK – Insider Trading – The Homeground Disadvantage?

"Ulhas Yargop, Group President-IT Sector, Group CTO and Member, Group Executive Board, Mahindra & Mahindra"
"Transparency between colleagues can encourage goal congruence, foster collaboration and help companies to move away from the old system of individuals hoarding information to consolidate power. In an attempt to eliminate information asymmetry from securities trading, the new regulations seem to be promoting information asymmetry, and its consequent deleterious effects, in daily business life."

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