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HOW MANY IS TOO MANY?



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2024 is the year of the Olympics. Corporate boardrooms too could see a game being played out, namely, musical chairs. Will Directors, on completion of their tenures, move to other Boards? Or will change prevail?

It was unexpected, to say the least. At the dry run of an Annual General Meeting (AGM), which was expected to be a routine affair, one surprise question popped up from one of the employees, who was playing the role of a shareholder who would ask questions at the AGM. The question referred to an Independent Director (ID) by name, and sought information on whether that person was on too many Boards, implying thereby that justice might not be done by him to the role of an ID on the Board of this company. Management and the Chairperson responded by saying that the number of directorships were not more than what had been prescribed by the Companies Act, 2013 (the Act) and the SEBI LODR Regulations, 2015 (the LODR). The Chairperson added that the Director concerned had not only attended all meetings, but had contributed significantly to the deliberations of the Board. It later transpired that the question was prompted by an observation in the report of one of the proxy advisory firms, and was asked at the dry run in order to prepare the management for responding to the question, if it got asked at the AGM.

Moving away from the specific case involved, it is necessary to ask ourselves the question “how many is too many” when looking at Board positions. There was a time when a person could be on the Boards of as many as 20 listed entities, and not break sweat in the process. Those were leisurely days, in which an ID had to only turn up for the meeting, and after some time, post the obligatory tea or coffee, and the marking of attendance, leave post haste to attend the next Board meeting. Expectations from the IDs were very low, and the IDs generally performed up to expectations.

The maximum number of directorships got reduced from 20 to 10, and thereafter to 7, when the LODR was amended. By this time, the specific responsibilities of the Directors had significantly increased, and alongside the responsibilities, the liabilities also came into focus. This clearly meant that Directors had to invest far more time and effort in preparing for Board meetings, as well as for attending Board meetings.

Simultaneously, the committees of the Board also assumed a much larger role. To begin with, the 4 mandatory committees provided for by the Act, with the large number of duties and functions attached to each such committee, increased the workload of the IDs. It was no longer possible to breeze into the boardroom, exchange pleasantries, make a few comments, often tangential, and wait for the meeting to end.

It is useful to look at some changes which have happened along the way. Earlier, most companies had 4 mandatory Board meetings, in which the major agenda item was the consideration and approval of quarterly results. Over time, most companies have gone in for 6 Board meetings a year, with the non-accounts meetings providing the Boards the opportunity to discuss strategy, and other important matters, in detail. Alongside the increase in the number of Board meetings per year is also the increase of the number of meetings of the Audit Committees (ACs), which in a year, would be not less than 6, if important matters are to be discussed.

The workload in some of the other committees has also increased. To begin with, there were no minimum number of meetings prescribed for Nomination and Remuneration Committee (NRC). Now there is a prescribed minimum of 1 meeting a year. With the importance and urgency attached to some of the responsibilities of the NRC, many companies are requiring 2 or more meetings to address all the issues falling within the remit of that committee. The Corporate Social Responsibility Committee (CSRC) and the Stakeholders Relationship Committee (SRC) are also found to have more than 1 meeting in a year.

There is one other important committee that should not be lost sight of, and that is the Risk Management Committee (RMC). One of the major failures of the Act was the non-inclusion of the RMC in the list of mandatory committees. Now that risks have increased in diversity, impact and number, many companies are requiring their RMCs to meet at reasonably frequent intervals.

Given the increased time commitment and responsibilities of IDs, the question has been asked for some time whether directorship on the Boards of 7 listed companies, and membership of a few Board committees, is not excessive. With a major churn expected in boardrooms in 2024, as a result of the terms of many Directors coming to an end, corporates will seek to find appropriate replacements, in order to rightly compose the Board. Many corporates have already embarked on this exercise, without waiting for the term of office of the outgoing IDs to come to an end. Interestingly, the possibility exists that those completing their second term on any Board could be picked up by other companies, and in turn, their outgoing Directors could find a place in the companies from where two term Directors had already exited, or were in the process of exiting. This expectation of musical chairs gains ground from the behaviour noticed in the past, which led to corporates looking at a limited universe of potential Board members, without expanding the area of search. What this will not do, is to address the question whether 7 directorships constitute an overload, and whether such Directors are being overboarded.

Looking for new Directors who have not been on Boards so far does not come easily to the corporates, who are unwilling to move out of their comfort zones. This was evidenced when the LODR provided for a woman ID, in place of a woman Director. Women IDs, who were on multiple Boards, and had become marquee Directors, were approached by many companies seeking to fill the newly mandated position of woman ID. It was as if there was not a single woman outside that small universe who could be considered for Board positions. Given this mindset, it is not unlikely that while looking for new Directors, corporates will look at those who are exiting other Boards, and ignoring potentially good Directors, who are presently outside the system. While it is likely that the corporates might not have the bandwidth to conduct a meaningful search for new Directors, nothing should prevent them from seeking outside professional help to identify the right candidates.

This brings us back to the mother question - how many Boards should an ID be on? 2024 is the appropriate time for SEBI to lower the maximum number of independent directorships per person to 4-5. This will ensure that Directors have the mental bandwidth to contribute significantly to the deliberations of the Board and the committees, as also to interact with senior management between Board meetings.

Prior to the coming into force of the Act and the LODR, Boards were packed with persons who made general comments, without getting into adequate detail, on agenda items. While it is readily conceded that a Board should not comprise only persons with the specific domain expertise, domain knowledge and domain familiarity are non-negotiable requirements. If an ID is on the Boards of too many companies from different domains, it would be well nigh possible for that person to acquire adequate domain knowledge of all the companies whose Boards he/she is on, and this could lead to suboptimal contributions in the boardroom.

On account of Covid, almost every company had to go in for virtual meetings of the Board and the committees. This gave a false sense of comfort to the overboarded IDs, since they did not have to travel for attending physical meetings. There have been instances where on account of virtual meetings being scheduled very conveniently, a Director has been able to attend 2 Board meetings and 1 committee meeting on the same day in 3 different cities, by sitting in front of his/her computer screen. Those good times have disappeared. Nowadays, there are more in-person meetings, which involve travel, with additional time having to be committed for moving from one city to another. This too should point in the direction of reducing the maximum number of Boards that an ID can be a part of.

The message to the corporates is very clear. They must expand the area of search. They must look for younger Directors, with skillsets and expertise, that have contemporary relevance. This is also an opportunity to look for all manner of diversity, not limited to gender diversity. The search must enable corporates to identify, and induct on Boards, persons who can add great value, but remain hitherto hidden.

Well might Thomas Gray have said:

*"Full many an ID of purest ray serene,
The dark unfathom'd caves of ocean bear,
Full many an ID is born to blush unseen,
And waste his (her) sweetness on the desert air."*

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