CORPORATE GOVERNANCE

The Economic Times Edit Page
JAN 14, 2020

Bored of Board Reforms?


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The last few weeks have seen several developments that put question marks on the progress and intent of board reforms in India. Corporate governance and board leadership have hogged the headlines, and not for good reasons.

The Tatas-Cyrus Mistry rumpus reignited when the National Company Law Appellate Tribunal (NCLAT) ruled to reinstate Mistry as the chairman of Tata Sons on December 18, 2019. Last week, the Supreme Court stayed the NCLAT order, after the Tatas had appealed the decision as 'wrong, erroneous and contrary to the record of the case'.

Reinstating an ousted company chairman would require the Tata Group to 'unscramble the eggs' of a top-level change, with bizarre consequences. The bigger question: who decides for the shareholders when majority shareholders voted the chairman out? Wouldn't this open Pandora's box, considering that most Indian business houses have no interest in minority shareholder voices?

How could a chairman be effective when the company he heads is suing him? How can he be privy to top-level company data to do his work well when the company is also trying to keep that information legally privileged? What will happen to the existing chairman? The verdict is sending confusing messages to all, within and outside the Tata Group.

Executives holding leadership positions will be stressed under the Damocles' sword of losing their jobs any moment, depending on which side prevails (and will devote much of their efforts to internal survival politics). Tata stakeholders — including customers, suppliers, shareholders and employees — will have to 'wait and watch'. It appears that even Mistry realises how untenable his return to chairmanship would be, announcing that he would not seek to return to the role even if his case ultimately succeeds (even though he now gains a stronger hand in negotiation).

There has been further corporate leadership news for India Inc, which may have greater long-term consequences. The Securities and Exchange Board of India (Sebi), on recommendations made by the Kotak Committee, had set a March 31, 2020, deadline for top corporations to separate the roles of chairman and managing director. The goal was to professionalise governance of Indian corporations by mandating that the roles of board leadership and company leadership be divided, as is the pattern in most developed economies.

However, compliance has lagged terribly, and top business lobbied against the move. Of India's top 500 companies, almost half of them have made no moves to split the roles. Facing such resistance, Sebi has blinked, and announced it will probably extend the deadline. Though Sebi made an assurance that the division of board and corporate leadership roles would be still happening, government edicts could delay it indefinitely.

Separating roles? Hold that thought

Here is where the spirit of legal policies must come to play, instead of reinstating an erstwhile chairman.

A common thread unites these two stories, and it is troubling for long-term corporate governance advancement in India.

The term 'board chairman' is universal of the boardroom model worldwide. But there is variation in practice. In most advanced economies, the board chair is a hands-off, independent position, occupied by someone who leads the board, assures its governance role, and serves as spokesman and intermediary for the rest of the directors in working with the chief executive. The rule 'nose in, fingers out' of company operations is considered crucial.

In younger, developing economies such as India — especially those with strong family business traditions — board chairmanship is a far different matter. Often the founder, promoter or a member of the founding family, this chair position is strongly involved in operations, strategy, the advancement (and ouster) of management, and looking out for family interests — even writing off wedding expenses as company expenses. He (almost always a he) is lord of the castle, and no one is allowed to forget it.

Given the strong, hands-on power of this role, it is no wonder that board chairmanship in India is so prized and hotly defended by the patriarchs. Founders and promoters will fight to the last to preserve their privileges.

Unfortunately, this all-powerful chairman role stifles the very elements needed for good corporate governance to advance in a modern economy. Minority shareholders are pushed to the margins. Independent judgement of what is good for the corporation and its stakeholders is neglected. Succession planning looks less like a business school model, and more like the Game of Thrones. And it is impossible to distinguish between what benefits the company, and what benefits the chairman/promoter.

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