

Independent Directors in PSUs-Growing Challenges



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In today's world where information has become power, transparency and ethics have propelled the issue of corporate governance. Greater awareness amongst stakeholders and their direct and indirect involvement in an organization's activities has seen a tremendous rise. In order to raise the standards of corporate governance, world over, notable reforms

have been taken relating to enhanced transparency and disclosures norms, appointment and role of Independent Directors, formation of audit and remuneration committees, transparent appointment process and rigorous performance evaluation system. As a result, board efficiency and competitiveness has taken centre stage to ensure sound governance and achieve outstanding performance.

The Board of Directors, who play a fundamental role to promote good corporate governance, has become more answerable and accountable to stakeholders. Their role has become more proactive and is not just confined pursuing agenda items and attending board meetings, but has been at the fore front to drive performance and create long term value for their respective organization. Governance structure in PSEs is composed of three distinct layers - Owner i.e. Government, Board and Executive Management. Public Sector Board plays a central role. It carries the ultimate responsibility for PSE performance. The Board consists of three wings namely Functional Directors; Government Nominee Directors and Independent Directors.

The role of Independent Directors is crucial role in the matrix of corporate governance. They are like watchdogs, with an eagle's view of an outsider, which provides them flexibility as well as objectivity of an organization's functioning. Induction of competent Independent Directors is of utmost importance as they help in enshrining highest principles of public accountability and transparency. These directors are the perfect mechanism to implement good corporate governance and bring about positive shift in the image of the institution of Independent Directors as repositories of responsible governance principles.

The role of Independent Directors in the functioning of an organization though is important, but is not clearly defined in a structured way apart from fulfilling few regulatory rules to sustain their position. The Worldwide Economic Recession that started with the collapse of Lehman Brothers and engulfed the whole economy largely saw the murkier side of Independent Directors who had their own vested interest by being on the Board of the companies. In India too, corporate scams like Satyam led growing concern about the role of Independent Directors. Public Sector Enterprises (PSEs) can therefore, be considered class apart when it comes to such scams and corruption, as the regulatory mechanism followed here is not only stringent but multiple and layered.

In fact, PSEs have cemented themselves as the role model to emulate when it comes to corporate governance. Their corporate governance practices are robust which rests on the four pillars of **Fairness, Transparency, Accountability and Responsibility**. PSEs are complying with all the rules and regulations applicable to them and are subjected to heterogeneous checks and balances like the Comptroller and Auditor General of India, Central Vigilance Commission, three layers of audit control (Statutory Audit, Internal Audit and CAG), RTI and many more. In addition, PSEs also comply with the regulations of SEBI and Companies Act. The composition and structure of Board in PSEs coincides with the objectives of good corporate governance principles and Independent Directors play crucial role in making the organization reach its objective. They bring fresh approach to the Board with their impartial and unbiased judgement. Theoretically, Independent Directors' role is derived from the fundamental of 'impartiality' as their presence in the board room can ensure right balance between individual, economic and social interests of an organization. However, there are some issues which are proving as impediment in PSEs.

Appointment of Independent Directors

It has been a challenge for PSEs to appoint requisite number of Independent Directors. PSEs come under a lot of criticism, for the vacant position of Independent Directors for no fault of theirs. According to DPE Guidelines, in case of listed PSEs with Executive Chairman, the number of non official directors shall be atleast 50% of Board Members. In case of unlisted and listed PSEs, with non-executive Chairman, at least one-third of the Board Members shall be non official directors. The process of selecting Independent Directors is long and tedious and the power does not lie within the purview of PSEs. The fact that many posts of Independent Directors are vacant in spite of best follow ups by the enterprises and that even Securities and Exchange

Board of India (SEBI) has asked for early appointments speaks volumes about the problem. The Companies Act identifies a very critical mammoth task for the Independent Directors thereby giving them a rightful place in various Board Level Committees viz., Audit Committee, Remuneration and Nomination Committee etc. requires mandatory inclusion of Independent Directors. In case of non availability of such directors, PSEs are termed as non compliant to the provision of the Companies Act and SEBI for listed companies. In such condition, the time is apt to adopt a more professional, independent and transparent approach in appointing Independent Directors.

The main challenges relates to shortening the appointment process and establishing robust and transparent method. However, the situation cannot change overnight. We need to work towards creating a more effective structure.

For achieving high degree of professionalism, there is need to establish a robust and transparent mechanism through an apex body to identify potential candidates from a talent pool of professionals, academicians, researchers, financial and management experts. It should take the view of Boards into consideration and should give prominence to their suggestions in addition of understanding the requirements of the PSE concerned and accordingly name the Independent Director. This will be in line with the Prime Minister's vision of Minimum Government Maximum Governance.

Skill and Competency Matrix

A skilled board directly affects the functioning of an organization. Paucity of Independent Directors with requisite knowledge, skills and domain experience is widening the gap between what is expected and what is actually delivered. While looking for the Independent Directors, their professional as well as relevant industrial experiences should be taken into account. Thus, it is important that Independent Directors, apart from ticking the entire compliance box have tertiary approach towards their role viz., long term strategy, maximizing profit and understanding the clientele and employees of an organization. Hence, while appointing Independent Directors, focus should be on domain industry expertise, skills and knowledge and not merely compliance of regulation.

Capacity Building

Another area where we need to put our attention is toward providing skill enhancement training to the boards and that includes Independent Directors as well. There is no question about the competence of the board as they are highly qualified and experienced people but in today's ever changing global socio economic scenario, it is pertinent that one must keep updating and upscaling their knowledge.

Public Sector Boards have a unique but complex structure. They have three different classes of Directors – Functional Directors, Government nominee Directors

and Independent Directors. They come with different qualifications, experience, working environment or background/areas. Functional Directors have domain expertise but lack interconnectivity to meet transition from working level to Functional Director level. Government Nominee Directors come from privilege position and pursue the political and social agenda. They have a gap with the executive level people. Similarly, Independent Directors need not necessarily possess the company's domain expertise. Therefore, all the three classes need induction training. Hence, there should be mandatory provision so as to ensure that the persons occupying board positions undergo mandatory training and skill enhancement sessions. It would be an added advantage if one week mandatory training programme is fixed and made a key parameter in performance evaluation, thereby making it mandatory for every board member to fulfill their training hours.

Performance Evaluation

The issue of performance evaluation of Board has acquired centre stage in view of its inevitability in ensuring its effectiveness and professionalization. The process should be objective and have a global appeal. It should focus more on performance than conformance. An objective performance evaluation mechanism would help in identifying the gap in pursuing the good corporate governance practices and also pave way for further reforms.

Size of the Board

In PSE Boards, Government Nominee Directors and Independent Directors out number Financial Directors and Chairman of the Board is always in minority. Large board makes it very difficult for the company to bring all the Directors together and develop consensus which leads to delay in decision making.

Conclusion

Apart from all the talks about ethics, transparency and integrity, the biggest question that remains formidable is – whether all these factors if enshrined in the working of Independent Directors ensures that the organization is ready for the next big leap? There is no doubt that corporate governance strengthens the structure of an organization and Independent Directors are important pillar to that structure but at the end, business acumen combined with self awareness about ethics, transparency and integrity is always above the prescribed formula.

The business trend across the globe has seen a drastic change post recession particularly in countries like Sweden, Norway, Vietnam, China and even Malaysia where the thinking is that the Administrative Ministry must relinquish their right of ownership and this should instead of vested in a sovereign committee. In similar vein, there is sovereign body to select Independent Directors. This independent (impartial) committee has three broad functions: i) Nominate and Select Independent

Directors; ii) Monitor the Vision and Strategy of the Company; and, iii) Look at governance related issues. Similarly, India too can bring such change in line with the world trend.

PSEs have remained the backbone of the country's economy and its role in making of this nation is valuable. With total turnover/gross revenue from operation of all CPSEs during 2015-16 at Rs 18.54 lakh crore and overall net profit of all 244 CPSEs during 2015-16 stood at

Rs 1.15 lakh crore. It is apparent that they are the force to reckon with and they always will remain so. Therefore, it is very important that we facilitate PSEs with all the support we can possibly give and bring them at the level playing field with respect to their counterparts. Appointment and strengthening of institution of Independent Directors, is one such pivotal part towards making a stronger public sector and thus, a stronger India.
