

Enhancing Effectiveness of Indian Boards: Issues and Challenges



Dr. Ashok Haldia
*Former Secretary ICAI, and
Chairman, governing board of
IIPA*

The board of directors of a company has the responsibility to provide strategic direction and exercise overall superintendence and control over the affairs of the company. Its role extends to exercising strategic oversight, ensuring robust risk management system and monitoring management performance. As a gatekeeper for stakeholders interest

it has to as well ensure transparency and fairness in governance, and compliance with the legal framework, integrity of financial reporting control, and credibility of disclosures made to stakeholders.

The Companies Act 2013 and SEBI regulations have constantly endeavoured to provide a legal framework for enabling the company boards in discharging their responsibilities effectively and efficiently. The law stipulate for optimum size of board, its composition and diversity, quality of board members, dominance of independent directors with onerous responsibilities, committees of the board and their role, self evaluation of board performance and the like, in sufficient details. In case board and its members fail to perform, they are subjected, collectively and individually, to criminal and civil liability.

The law on the board and its governance has constantly evolved over last two decades. In fact it is reviewed and further strengthened every time a major corporate scam surface. Recent instance is amendments in SEBI regulations in regard to appointment of independent directors for ensuring their independent at the time of appointment and through out. It may not be in exaggeration to state that the law on the board governance is comprehensive and well laid out.

The role of the board and its effectiveness has however been under severe criticism in ensuring quality of corporate governance in general and in preventing corporate frauds in particular. The boards of corporates which failed in recent time like Satyam, ILFS, DHFL, PMC, Yes Bank have been star studded and yet failed to sense brewing frauds by the promoters. The issues and questions that emerged in the context of board effectiveness are what was the role the board and individual directors?, did they understand their role and were they well positioned to play that?, what was the composition of these boards? what was nature and level

of engagement of the directors?, what was the extent of diversity of the board –demographic, age, gender, skills and experience?, what was quality of board processes and board papers?, was the board room culture and quality of board leadership conducive?.

The cases of corporate failure in India and internationally suggest that the law by in itself is not a sufficient condition for ensuring board effectiveness. What has failed the boards is not the legal framework but the spirit with which it has been adhered to and implemented. Ironically the processes and governance in and around the board room generally focusses on literal compliance and box ticking starting with selection and appointment of directors and including quality in board room governance.

The focus of the board of most of the companies is on compliance oversight with directors who often look and act distant and detached-unable to play a proactive and strategic role or act firmly in protecting and balancing stakeholders interest. Board composition lacks wisdom, vision and skills to contribute to enterprise value or command respect or for that matter counter dominating promoters and management. Inefficient process management in and around the board adversely affects the quality of board papers, discussions in the board room and outcome therefrom.

Contours of the board effectiveness have shifted dramatically in recent years. Corporates are becoming large and global, highly complex with ever rising stakeholders expectation and regulatory oversight. Today's board need to be adequately diversified to provide strategic input across the enterprise value chain. Effective boards prioritize and focus more on strategic, longer-term and forward-looking issues. The directors devote considerable time in developing a hollistic perspective and actively engage with in and outside the board. The chairman of the board foster and facilitate directors participation and high quality debates in the boardroom.

In qualitative terms effectiveness of the board depend upon-

- director's passion for company,
- their ability to add value to the board and to understand complexities of the business, demonstrate technical know-how, deliver effective governance, and generate sustainable long-term performance,
- diversity in terms of abilities, personalities, competencies,
- clarity about the role of board and role of each committee and interface with different stakeholders,
- focus of agenda towards the future,
- independence of mind and action

The directors drive the board by being professional, and remaining independent and objective. They engage themselves in all aspects of board responsibilities and spend up to 200 -300 hours a year on board activities. These directors-

- have the confidence, ability and willingness to ask right questions and challenge the management ,
- have courage to do what they feel appropriate for enhancing stakeholders value,
- have demonstrated ability to develop a balanced perspective and take sound business decisions
- have independent perspective and contribute in developing healthy board culture.?? Information flow to and from the board and directors is another key determinant of an effective board. The board and directors should be knowing and tracking closely business and its value drivers, and well informed of competitive trends, regulatory environment and, technological advancement. It is important that directors also ascertain and assess information independent of the management .

Responsibility for effective governance within the board room lies on the chairman . He should enable the board members to work effectively as a group and encourage them in order to keep the board motivated. Onus for ensuring high quality board papers, attention of the directors to relevant issues, their independence and freedom in expression of different point of view, which are hall mark of high quality board lies on the chairman. Diversity of the board is meaningless unless the chairman facilitates the directors to use their talents in the board and its processes.

The board function through its committees which are required to be set up under the law or otherwise considered necessary for example on strategy and implementation .It is the responsibility of the board to ensure that the committees effectively discharge their role and responsibilities. For instance the board can not abdicate itself from the requirement of independence of audit and auditor in case audit committee fails to ensure that, or in case nomination and remuneration committee does not prioritise succession planning. Effective boards use self -evaluation mechanism as a tool for enhancing efficacy of the board ,its committees, and directors.

Unlike in the past ,the board of directors today are faced with increasingly complex set of pressures ,demands and heightened expectations from various stakeholders and at the top of that is uncertainty about the future. Post covid -era they need to assess their readiness to meet the newer challenges .The old assumptions are being questioned and legal framework, howsoever robust it might be, may not be sufficient unless the directors have a collegium approach to board's and their own role and responsibilities .They will inevitably be required to devote more time to their role, bring in talent and diversity in the board room ,and work closely with the management on strategy and performance measurement for responding to rapidly changing environment and heightened stakeholders expectations.