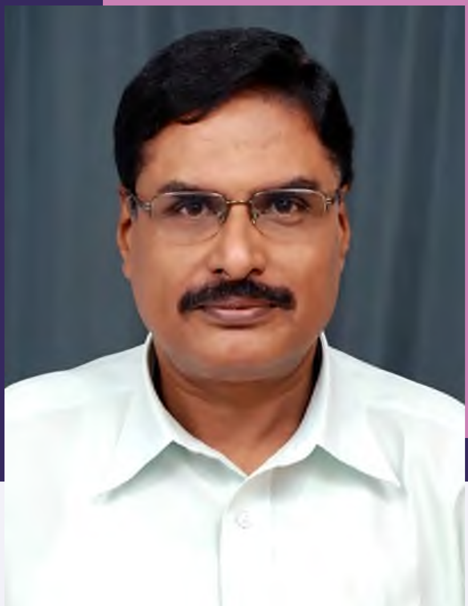
Effective **Independent Directors**

*Prof. B. Venkateswaran



> " Heterogeneous Board of Directors with independent thinking enforce Governance, and Diversity strengthens creativity. " - *Pearl Zhu*

Backdrop

Corporate Governance in the Corporate world is a much talked about topic in various seminars and webinars and very much as hot news in the recent past for all wrong reasons, given the bitter experience of some of them like ILFS, DHFL, Yes Bank, LVB and the mother of all these: late Satyam. All the stakeholders be it, the Government of India - Ministry of Company Affairs (MCA), the Regulators like SEBI, RBI, IRDA etc., the lenders, the Foreign Institutional Investors (FII), domestic Investors like MFs, Banks, NBFCs, Insurance companies, Retail individual Investors -both long-term and short-term and a host of others are very much concerned about the stability of the Companies which certainly is driven and propelled by the Board of Directors (BoD) of the corporate Companies.

As the credibility of the corporate companies and their management efficacy largely contributes to the growth and development of the economy per se, both directly and indirectly through Capital markets, it is rather inevitable that these companies emerge as the 'Model Corporate Inc.', This has become even more imminent and essential when the large scale reforms are evolving in many sectors like the recently announced Private Capital into the Insurance sector being raised from 49 % to 74 % and many more in offing, opening the flood-gates of Public Sector Enterprises to private sector controls and unless the systems and processes are set in the right place zipped tightly with a view to arresting the misdemeanours of the greedy and unholy promoters, Corporate India will have to remain suspect despite the relentless initiatives of the Government and the Regulators.

IDs are Pillars of Superior Governance

The roles and responsibilities of the IDs could never be over-emphasised as they are looked upon as saviours of the 'last resort' by a majority of the stakeholders including banks, Government, Investors particularly the small retail investors who have no say whatsoever in running of the companies. When IDs are in reality, a small minority in the total strength of the Board in numbers and quite often dominated by the other Directors aligned to the promoters being in majority, unless and until the minority IDs internalise the concept of standing upright, with utmost courage, conviction, and

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confidence and act independently and appropriately, the ID-model of effectively contributing for Corporate Governance will only be on paper sans spirit. The recent happenings in the corporate world, amply demonstrate that the IDs and Auditors' functions, have come rightly or otherwise for strong criticism and in fact, have given room to suspect if their efficacy has been belittled and given a go-by and to say the least, were more compromised than fulfilled.

The poor and hapless investors have been mercilessly left in peril - high and dry. The hazards of mismanagement in companies like Yes Bank, LVB, ILFS, ICICI bank, PNB scam and the late Satyam- the mother of all corporate transgressions have left many questions unanswered. IDs are essentially proponents of high standards of ethics and values and should willingly take up the assignment without fear or favour and ruthlessly resist and desist any attempt on them to bend backwards. They are perceived as advocates of protecting the best interests of the stakeholders and also seen as messiahs of corporate risk mitigation guards. The vulnerable small investors of the company are literally at the mercy of the mighty corporate board giants and the lack of effective governance has come to the fore in a host of insalubrious situations warranting to have a serious re-look into the governance mechanisms with the sole objective of sharpening the tools with a view to axing the intent of the greedy and unhygienic moves and motives of the unscrupulous and vested interests, nipping them in bud. Given the complexity of the range and extent of the unabated risks and the penchant propensity of menace in the present business environment, the imperative need to tighten the regulatory initiatives on priority and preferential basis is the need of the hour and it can no longer be set aside and brushed under the carpet under any circumstances.

SEBI's relentless war against Unethical Practices is remarkable

SEBI has been seamlessly waging a war against the deceitful corporate bodies with a view to curbing their questionable intent through a series of bold steps, clearly strengthening the status of IDs. Enhancing the role of the effectiveness of the IDs, by giving them more status and recompense, and proposing their compulsory membership in Audit, Nomination and Remuneration committees is a step in the right direction. SEBI has also invited the views of the investing public through a consultative paper as to how Corporate Governance could possibly be improved further. While issuing an updated set of guidelines, as on 01 March 2021, essentially stressing the norms for appointment, remuneration, and dismissals of IDs, a new model of dual approvals, the first being from shareholders and the majority of minor shareholders and second by the promoter and its groups, was introduced. If not approved by both, it will reject the candidature of a proposed ID, and a cooling period of 90 days is prescribed and similarly for dismissal norms. We have also seen another ominous trend surfacing amongst the IDs - is that the IDs and Auditors smelling dead rats coolly and silently resign with a view to shunning the onslaughts of the impending trouble and legal entanglements if any that may emerge subsequently on account of the wrong-doings. Herein, the regulator is well within its view to insist on the reasons for the exit, to be explicitly stated and the mandatory cooling period of one year be adhered to before taking any new ID assignment.

Selection of IDs: Need for Strengthening Professionalism sans Bias: 3 C's

IDs are governed by the Provisions of the Companies Act 2013, Sec 149(6)

If one were to delve deep into the issue of corporate mis-governance, it is not difficult to identify the lapses and lacunae. IDs are taken in by the promoters based on their connections, camaraderie and compatibility. They are mostly expected to be identified based on their special skills, knowledge, talents, and experience in the domain field but what is more important and inevitable is their attitude and aptitude towards discharging their responsibilities with utmost conviction, commitment, and concern for the stakeholders in general and particularly the small, hapless and gullible investors. They should internalise the embedded fervour and belief that they are inside the Boardroom in a fiduciary capacity and nothing more and nothing less. So all decisions ipso facto should revolve around this holy ideology and anything that impacts negatively should be shunned away candidly.

The selection may involve written tests and things like this. But the most important attribute or virtue is their credulity and assertiveness in the midst of adverse decisions impacting the interests of voiceless minority stakeholders. They should consciously assume the role of 'His Master Voice' and speak on their behalf. Further, the appointments of IDs should be done only after the statutory assent of the Shareholders. The IDs will have to record their dissent if any with an explanatory note for future retrieval and records. It is also a good idea to record the proceedings of the Boardroom discussion through a video system as is being done in Parliament for more transparency and for preserving it for posterity and of course with limited access.

Role of Sub-Committees to be Fixed & Monitored

The Audit committee has a significant and cut-out role in approving related party transactions, accounts, etc. Currently, it is required that two-thirds should be Independent Directors and the rest can be any director including promoter directors. Now, this balance one-third can only be non-executive directors not related to the promoters. The influence of both the promoters and the management is sought to be removed. IDs should extend their wholehearted involvement in all the discussions taking place in the Board meetings seriously and should desist from being a mute spectator. They should insist that all the related agenda items are sent to them in advance, say one week ahead and come well prepared with notes, explanations, and reasoning with proof if any, thus voluntarily offering their best counsel at all times.

While appointing the IDs, a careful evaluation of their past performance, credibility, and integrity, and more importantly, their financial status, should be consciously undertaken. A person solely dependent on the remuneration to a larger extent may have a tendency to be flexible with the majority decision and be malleable and pliable. The Board should also induct people with modern tech-tools and related technology like digitally savvy processes to apprise them and update them. Wherever there is a serious lapse on the functioning of the Company or its Board, adversely impinging on the interests of the stakeholders, the same may be communicated through a confidential report to the Ministry of Corporate Affairs on priority basis.

Role of Women Directors is Crucial

The role of women Directors on the Board can never be underestimated. Based on our personal domestic experiences, one is tempted to assume that their vociferous and aggressive rhetoric stance quite often, would only check-mate the decisions taken on a myopic mind-set often leading to the undesirable impact on some of the stakeholders and hence their contribution would only enhance the effectiveness and efficacy of the Board functions over a period of time, thus facilitating the organisation reach the pinnacle of glory towards building a robust brand image. Women IDs have to understand the business transactions of the company by constant and critical questioning and put their feet down against any decision taken in violation of laid down norms, mandatory provisions, interest of the stakeholders and so on without fear or favour.

Role of Auditors, Company Secretaries, and Cost Accountants

The role of CAs, CS, and CMAs can never be overemphasised. The Board should always drive home the point that these professionals have to be regulatory-compliance specialists at all times and any deviations with penal provisions be brought to the knowledge of the Board members well in advance and ensure that no penalty is payable by the company to the Regulators. So it is absolutely essential to identify Auditors or audit firms with an unblemished track record rather than accommodating just known firms who would compromise on the quality of their performance.

Recently, the Government of India has brought in a new mandatory clause that Chartered Accountants, Company Secretaries, and Cost Accountants making certain financial transactions on behalf of their clients will be covered by the Prevention of Money Laundering Act and they need to periodically monitor and conduct the clients' KYC procedures of all their clients and they are named as "Reporting entity".

Conclusion

The Board should constantly and consistently enhance their effectiveness in their functions by being vigilant and responsive to the evolving challenges like cyber frauds and other frauds on them and by them, by swift decisions. Transparency should be the hallmark of their operations and Stakeholders' delight should be the mission. The Boardroom should have experts from diverse fields and multifarious expertise and heterogeneous in nature but the discussion and decisions should emerge homogenous eventually.

The Chairman of the Board being the 'First amongst the equals' should consciously steer the proceedings with ease and objectivity and carry along with all members towards achieving excellence and in building a robust Brand image. His/her innate talents will surface based on the cohesiveness with which the organisation marches ahead and in encountering rough weather, in times of unforeseen crisis. Professionalism, transparency high degree of ethics in Governance, and concern for the Stakeholders should be the driving points and motto of the Corporate Company and the Board has these points of responsibility at all times. This would eventually lead to building a 'Brand image' of the Company.

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****Prof. B. Venkateswaran** serves as a Professor of Finance at Pondicherry University at Loyola College, Chennai where he teaches Banking & Finance to final-year MBA students. Previously, he served at the Bank of Baroda and Lakshmi Vilas Bank and sought voluntary retirement during his time as the Asst. General Manager. He has previously worked as Chief Faculty at BobRTC, as well as the Dean (Academics) of Rai Business School, Chennai. Prof. Venkateswaran regularly writes for the Business Standard, Businessline, Economic Times, and Financial Express commenting on themes of Banking, Finance, Investment, Foreign Exchange, etc.*

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