

CONTEMPORARY ISSUES IN CORPORATE GOVERNANCE **21st JANUARY, 2017 | MUMBAI**

SUMMARY OF DISCUSSIONS

In recent times, there has been grudging acceptance of the fact that good Corporate Governance is a necessary, though not a sufficient, condition for sustainable corporate performance. The surfacing of alleged corporate governance transgressions in the less suspected places has led to increased discussion and debate on contemporary issues in Corporate Governance.

At the outset it is necessary to understand what Corporate Governance connotes. It is clearly not a box-ticking exercise that gives a false sense of comfort that all is well. It is not a set of practices put in place by regulators, often, as kneejerk responses to isolated instances of misfeasance. Shorn of unnecessary detail, it is no more than doing the right thing at the right time in the right manner for the right reasons.

The elaborately prescriptive regime, that most jurisdictions have, is premised on distrust of those doing business. Notwithstanding the fact that there are a number of businessmen who conduct their affairs honestly, law and regulations must necessarily address, and seek to correct, the errant behaviour of those that abandon rectitude and seek expediency.

There is often a case made for self-regulation. Experience has however shown that being a judge in one's own cause, is the mother of all conflicts of interest, and normally legitimises bad conduct. On the other hand, regulatory adventurism that often masquerades as activism, has sometimes led to solutions much worse than the problems it set out to solve.

Into this universe has come the institution of the Independent Director. With a long laundry list of duties and responsibilities, mandated by law and regulation, and ill-equipped by her part-time status, besides being inadequately incentivised, is she the great white hope for ushering in stakeholder democracy?

It is admitted that Boards are the arbiters of a company's destiny. Inside (and outside?) the boardroom, the Independent Director is the conscience keeper of the Board. The irony is that she is chosen by a committee, in which the Chairperson (promoter) has a disproportionate influence. With stock options having been discontinued allegedly to deal with short-termism, there is no alignment of interest or skin in the game, for the Independent Directors.

Do the following constitute the way forward?

- While inducting Board members, recognise the benefit that diversity brings.
- Evaluate their performance meaningfully and give honest feedback.
- Restore stock options that can be availed only a year or two after a person has stepped off the board.
- Write simpler laws and regulations and enforce them quickly and effectively.
- Since stressed companies need good directors, find a way to compensate directors for their services.
- Don't tar all businessmen with the same brush of distrust.
- And most importantly, Government as the majority shareholder of very many companies, must practise corporate governance, recognising that leading by example is a crying need.

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Excellence Enablers Private Limited (EEPL) is an initiative that focuses on implementation of better corporate governance practices, improvement of Board performance, including audit and evaluation, training of directors and engagement with stakeholders of governance. It is founded on the firm belief that the gap between performance and potential can, and must, be bridged. Consistent with that belief, all our offerings are tailor-made to the specific needs of the organisation or the individuals concerned.

Given that our founder, Mr. M. Damodaran, introduced Clause 49 of the Listing Agreement, dealing with corporate governance in India, and has been a part of both public sector and private sector Boards, as well as performing and underperforming Boards, we offer experience based consultancy and courses on the journey from compliance through governance to performance. Further, given his success in turning around organisations that had been written off, we are uniquely positioned to offer courses on leadership, organisational transformation, and building winning teams.

EEPL has a number of highly experienced and renowned consultants and faculty members who have helped, and continue to help, us deliver programmes that have been well received.

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