

EFFECTIVENESS AND INDEPENDENCE OF INDEPENDENT DIRECTORS IN INDIA: ISSUES AND CHALLENGES

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Abstract

The effectiveness and independence of Independent Directors in raising Corporate Governance standards and establishing public trust has been an issue of considerable debate. This paper has examined the independence issue of independent directors in India. The Independent directors' independence from management is assessed through various parameters like appointment and removal procedure, tenure of appointment and the extent of their liability. The aim of this paper was not only to signal what role is expected from an independent director but also an effort has also been made to gain insights about drawbacks in our system and to propose recommendations accordingly. This paper has also provided interesting insights into real life issues and experiences. It is believed that the study would be useful for not only the Independent Directors and potential Independent Directors, but also policy makers, regulators, practitioners, researchers and the investor community at large.

Keywords:

Independent Directors;
SEBI Revised Clause 49;
Employee Stock Options;
Institutional Investor
Advisory Services (IiAS);
Corporate Governance;

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Introduction

As per provisions under Companies Act, 2013 and Clause 49 of SEBI, Independent directors are required to act as vigilant watchdogs and protect the interests of minority shareholders as well as other stakeholders and also to ensure compliance with regulatory norms. However the position of the independent director is one most counterpoise position against the managerial domination of the corporate boards (Eisenberg, 2005). Very high expectations are from independent directors in respect of corporate governance and to prevent corporate fraud as it is believed that they will bring out, misappropriation, non-compliance with legal provisions, malpractices etc. in front of regulatory bodies. As they are supposed to work in public interest, they should be independent in true sense i.e. guided only by their conscience rather than under the influence of their appointing authorities i.e. controlling shareholders. There are certain issues which affect their effectiveness and independence which have been discussed in this paper.

Objectives of the study

1. To study various provisions in the Indian corporate Governance Laws relating to Independent Directors and to analyze the more controversial role of Independent Directors in the Board.
2. To highlight the possible initiatives that would allow the Independent Directors to play the role expected of them more effectively and independently.

Research Method

This study is based on secondary data. Various reports published by renowned corporate agencies in India have been used to study various provisions and the inherent drawbacks from different angles relating to working of Independent Directors in India. An attempt has been made to cover real life issues and experiences in Indian Corporate Sector and provide valuable suggestions accordingly.

Literature Background**Table 1: Findings of the Studies**

KPMG (2011)	KPMG in its report titled "Role of Independent Directors: Issues and Challenges" explored the issues that independent directors have to contend with and define the broad contours of essential elements that need to be in place if independent directors have to perform their role effectively in safeguarding the company's long term interests and its stakeholders. The study covered the relevance of independent directors to promoters, true independence, widening the talent pool, empowerment, induction and remuneration of Independent Directors so as to impart autonomy to independent directors.
National Stock Exchange NSE(2012)	NSE in its report titled Independent Directors: "Issues and Challenges" found that the effectiveness of the institution of Independent Directors in raising corporate governance standards and establishing public trust has been an issue of considerable debate. The report covered two aspects on how to make independent directors more effective and the other on expectations from and delivery by Independent Directors
James Beck and Jennifer Tunny(July 2014)	The authors concluded that In line with leading practice recommendations, many organisations are now adopting a limit of 10 years for a director to serve on the board. In author's experience, limits set into the constitution are only desirable where the organisation has a culture of long termism by directors. In some cases, it is desirable to use a constitutionally mandated limit to ensure director renewal. In other cases, it might be effective to have a policy which seeks to ensure adequate board renewal together with a culture that promotes a regular introduction of new blood onto the board. Furthermore, it is incumbent on the chair to plan for and promote discussion of board renewal.

Table 2: Provisions regarding Independent Directors

	Indian Companies Act 2013	SEBI Revised clause 49(effective from 1.10.2014))
Definition	<p>As per sub-section 6 of Section 149 of the Act, ID means a director other than a managing director or wholetime director or a nominee director,</p> <p>a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;</p> <p>b) - 1. Who is or was not a promoter of the company, 2. Who is not related to promoters or directors in the company</p> <p>c) Who has or had no pecuniary relationship with the company</p> <p>d) None of whose relative has or had pecuniary relationship or transaction with the company.</p> <p>e) Who, neither himself nor any of his relative---</p> <p>i. Holds or has held the position of a key managerial personnel</p> <p>ii. Is or has been an employee or proprietor or a partner, in any of the three financial years preceeding.</p> <p>iii. Holds together with his relative two per cent or more of the total voting power of the company; or</p> <p>iv. Is a Chief Executive or director, of any nonprofit organization, or who possesses such other qualifications as may be prescribed.</p> <p>To summarise an independent director of a company as a person who does not have any material or pecuniary relationship with the firm, or its directors and promoters. The independent director cannot be a managing director, a whole-time director or a promoter of the firm or its subsidiaries. It essentially means that companies cannot appoint family</p>	<p>"For the purpose of this clause the expression 'independent directors' means directors who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the board may affect independence of judgment of the directors."</p>

	members or friends of promoters as independent directors	
Mandatory Appointment	Indian Companies Act 2013 has mandated all listed public companies to have at least one-third of the total Directors to be independent. Whereas in the case of unlisted public companies, the following class of companies shall have at least two directors as independent directors: (i) Public Companies having paid up share capital of Ten Crore rupees or more; or (ii) Public Companies having turnover of One Hundred Crore rupees or more; or (iii) Public Companies which have, in aggregate, outstanding loans, debentures and deposits exceeding 50 Crore rupees or more.	1/3rd in case of non-executive chairman; ½ in other cases. [Clause 49(II A)]
Appointment of Independent Directors by minority shareholders	Voluntary appointment of director by small shareholder. Such director is deemed to be independent independent director.[Section 151]	No provision
Formal training of independent director	Required [Schedule IV – (III A)]. It is the duty of Independent Directors to undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.	Required [Clause 49 (II B)(7)]
Performance evaluation	Evaluation by entire directors excluding director being evaluated [Schedule IV – (VIII)]	Required [Clause 49 (II B)(5)]
Liability	An Independent Director shall be held liable for acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. [Section 149(12)]	An Independent Director shall be held liable for acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted

		diligently. [Clause 49(II E)(4)]
Tenure of independent directors	The maximum tenure of an independent director can be five years. However, they can be re-appointed for another term of up to five years through a special resolution by the company. A cooling off period of three years has been provided for	2 consecutive terms of 5 years each;
Remuneration	<ol style="list-style-type: none"> 1. Independent directors are entitled to a sitting fee of not more than Rs 1 lakh per board or committee meeting. 2. They also get profit-related commission if approved by the company's shareholders. 3. Independent directors are not entitled to any employee stock options. 	Stock options shall not be granted.
Qualifications	<ol style="list-style-type: none"> 1. An independent director is required to have appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations 2. He may have other disciplines related to the company's business. Section 149(6) 	3. All Qualification As per section 149 (6) of Companies Act, 2013
Number of directorships	Not specifically for independent directorships.	Under the current norms, a person cannot serve as an independent director in more than seven listed companies. A person who serves as a whole-time director in a listed company cannot serve as an independent director in more than three listed companies.
Committee memberships	Not specified	Committee membership in 10 companies; Committee chairmanship in 5 companies [Clause 49 (II D)(2)]
Removal	Independent directors are removed by passing an ordinary resolution at the general meeting of shareholders.	

Source: 1. Indian Companies Act 2013**2. SEBI Clause 49****3. ICSI****Role of independent directors**

Worldwide, Independent Directors play two types of roles:

1. Advising by using their field expertise to make board decisions more balanced and robust and
2. Monitoring or supervising in order to bring objectivity to the board decisions, protect the interests of minority shareholders who are generally oppressed by majority shareholders, and improve risk management. Monitoring role comprises following duties:
 - a) To protect the interest of minority shareholders and improve corporate governance at the firm.
 - b) To analyze the performance of the management and mediate in situations of a conflict between the management and the shareholders' interest.
 - c) To evaluate the performance of the chairperson of the company and its non-independent directors.
 - d) According to the IiAS note, independent directors by ensuring that all important decisions are reviewed in an unbiased and objective manner can strengthen the internal control mechanism of a firm. for this there is need to reign in the powers of dominant shareholders.

The question here is: Should Directors give advice? With the collapse of the capitalist system after Enron and other scandals, it will be better if Independent Directors do not play any advisory roles, as that would impair their objectivity. And also there are enough people in a company to give advice. So, there should not be any advisory role for Independent Directors. They should have only monitoring responsibilities. So more specifically, the independent directors should protect the overall interests of the company, especially that of the minority shareholders. And for this they should not be under the influence of the controlling shareholders or company's management. It is generally argued that independent directors' autonomy can only function effectively provided they are truly independent.

In India, Independent Directors typically focus on advising role and do not give due importance to the monitoring role, although the latter role is of greater significance. The recent corporate governance scandals which have shaken the interest of investor in Indian Capital Market especially Satyam Scandal have highlighted the need for a strong board with vigilant non-executive directors. Other incidences of fraud and failures at companies such as Kingfisher Airlines, Ranbaxy Laboratories and S. Kumars Nationwide have raised concerns about the monitoring role of independent directors.

Instances of Ineffective Monitoring Role of Independent Directors in India

1. Kingfisher had five independent directors, including former SEBI chief G.N. Bajpai, who quit between September 2011 and March 2012. Bajpai was appointed to the board of group company United Spirits a few days after he left the Kingfisher board. The airline was grounded in October because of massive debts and failing to pay salaries and taxes for many months.
2. HMX Acquisition Corp, the US unit of textile company S. Kumars Nationwide, filed for bankruptcy. Its board included former SEBI chief M. Damodaran as an independent director. Damodaran and two other non-executive directors, Suresh N. Talwar and D.D. Avari, resigned soon after the bankruptcy filing.
3. Ranbaxy agreed to pay a record \$500 million fine to settle allegations that drugs from two of its factories did not meet regulatory standards and that it had submitted false data to US authorities between 2003 and 2010. The independent directors on Ranbaxy's board when the alleged malpractices took place were noted investment banker Nimesh N. Kampani, former Procter & Gamble India CEO Gurcharan Das and industrialist Vivek Bharat Ram. (Kaushik, 2013)

If we look at these cases, it is very much evident that the independent directors have not played their monitoring role effectively. Independent directors had the right to disapprove the transaction. Therefore, it is advised that for independent directors to perform effectively, strong autonomy must be given. Simultaneously, for supervisory board to carry on its monitoring function of the board of directors, the basic criterion of 'independence' has to be satisfied.

Challenges and Issues:

Independent directors have proved ineffective in improving governance and preventing corporate fraud. The reasons vary. Some of the reasons are discussed here:

A. Flaws in appointment, reappointment and removal**1. Dominance of controlling shareholders**

The main purposes of the independent directors is to protect the interest of the minority shareholders from the actions of the controlling shareholders, but given the current provisions under Indian Companies Act and Clause 49, such a purpose can hardly be achieved. As it can be seen from above provisions the appointment of each director is made at a shareholders' meeting by way of a separate resolution whereby each director's appointment is to be approved by a majority of shareholders present and voting on such special resolution. Hence, controlling shareholders are able to control the appointment of every single director and thereby are in a position to determine the constitution of the entire board. Similarly, even renewal of directors is subject to the influence of controlling shareholders.

If we see the provisions relating to the removal of an independent director, just an ordinary resolution is required to remove them i.e. the approval of only 50 per cent shareholders of a particular company or we can say simple majority of shareholders present and voting at a shareholders' meeting. So controlling shareholders again possess significant powers to effect the removal of a director. Another drawback is that the removal can be for any reason, and even the cause need not be established. So here again controlling shareholders have upper hand in the removal of those Independent Directors whom they see as errant to their own perceptions regarding the business and management of the company.

No doubt law provides protection available to these in the form of opportunity of being heard on the principles of natural justice, whereby they can explain their own case to the shareholders before the meeting decides the removal of such directors. So independent directors are appointed, reappointed at the mercy of promoters or controlling shareholders and even removed without any cause by them. All this makes very challenging for Independent Directors to exercise their independent judgement.

“There are too many lacunae with respect to the concept of independent directors with many having no commitment to any cause. Some independent directors are appointed at the mercy of promoters“(with) no prescribed qualifications or procedures, favouritism, (many are from) closed clubs (such as) only those people being in all boards, no commitment to any cause,” (Tyagi, 2017)

Developed markets such as the United States and the United Kingdom, shares are widely held. Therefore independent directors are relatively protected as shareholdings are not concentrated in few hands. But in India, 15 out of the top 20 business groups are family owned (Kant, 2016) . The majority of businesses in India are family dominated. In these family owned Indian companies, the promoters' interests often over-shadow those of the shareholders.and in case the companies are listed; these are generally dominated by a major shareholder, making it easier for the latter to stamp out dissenting independent voices. As per Prime Database, of the 1,594 listed and actively traded firms on India’s main bourse, some 88 percent have dominant shareholders with 30-80 percent stakes.

2. Ineffective Nomination And Remuneration Committee

No doubt , many significant corporate governance reforms have been introduced in India through Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2013 (“LODR Regulations”) and appointment and removal of Independent Directors through Nomination And Remuneration Committee has now become mandatory under section 178 of the Companies Act, 2013. The process has been formalized as this committee will determine qualifications, positive attributes and independence of a director. With this there will be transparency in their appointment the influence of management and promoters in the nomination of independent directors would be minimised.

But again flaws in the appointment of Independent Directors through these committees have been noticed as even if an independent nomination committee has some say in nomination of Independent Directors, these nominated candidates would ultimately have to be voted at a shareholders’ meeting, where again the controlling shareholders would be having significant

influence in their final selection. Hence, nomination committees would be indirectly functioning under controlling shareholder influence.

Stringent regulations through Indian Companies Act 2013 and Clause 49 of SEBI have pushed some companies to restructure their boards. But in most of the companies ‘tick-box’ approach has been followed to complete the formalities, rather than abiding by the intended spirit of the regulations. This needs to change. Instead of appointing agreeable directors or family members, boards must strive to foster a culture of dissent and healthy debate, which will promote greater transparency,” said the IiAS note. But generally it is seen that if an Independent Director is not able to please the controlling shareholders, either his term is not renewed or the most disastrous consequence is of being removed from the board.

So there is need to having stricter norms for appointment, reappointment and removal of independent directors.

Case study on undue removal of independent directors

Tata Steel, Tata Motors, Tata Chemicals oust Nusli Wadia as independent director

The removal by three Tata group companies of Mr. Nusli Wadia as an independent director from each of them has raised an issue regarding board independence from a conceptual standpoint. Nusli Wadia, one of the most vocal independent directors of the Tata Group, was removed from Tata firms after he publicly backed Mistry, who complained of mismanagement and corporate governance failures within the group’s companies. The boardroom battle between Ratan Tata, Chairman Emeritus of Tata Sons, and Cyrus Mistry, former chairman of Tata Sons, exposed the vulnerability of independent directors who stand up to or take on a dominant shareholder. This the first time an independent director has been removed by shareholders on account of a disagreement, in this case with the promoters. Hence, the occasion is somewhat momentous and may require some regulatory soul-searching.

Issues raised in Tata Case:

1. Independent directors carry onerous duties and

responsibilities without any protection whatsoever.

2. Promoters of the respective Tata group companies ought to have abstained from the extraordinary general meetings called for his removal, and that the majority for his removal should have been a higher threshold of 75% rather than a simple majority. (Varottil, 2016)

3. Adequate domain knowledge

An additional problem that is faced at the time of appointment is the paucity of competent Independent Directors for the vast number of listed companies in India. It is creating a hindrance in some necessary reforms. For their monitoring role to be well played and appreciated, Independent Directors should have adequate domain knowledge about the concerned businesses. They should be qualified enough to have sound judgement and approve right transactions and disapprove the transactions which are not in public interest. They should have ability to stand up for minority shareholders, who are not represented on company boards. Clause 49 of the Listing Agreement of the stock exchanges and the Companies Act 2013 does not prescribe clearly the minimum qualification or experience that an Independent Director should possess. The government and SEBI must review the qualification for independent directors.

In India, most of the independent directors are either academics or government civil servants. One in every five independent directors at a Nifty company is a former public servant: a retired crat or head of a public sector bank or company , shows an analysis of the board composition at the country's top 50 listed companies by ET Intelligence Group (Somvanshi, 2016). “A lot of government policies and initiatives do impact the business. And at the board level, the best way to understand its impact is to appoint former bureaucrats as independent directors,” said Mahendra S w a r u p, ch a i r m a n o f t h e Association for Independent Directors of India (Somvanshi K. , 2016).

Promoters sometimes appoint those as independent directors who are known to them. Either their friends or families. And sometimes people from their community who will not ask uncomfortable questions about how the company is run.

Given their background they have no experience and sufficient knowledge for running a listed company. Also they lack commitment to firm's financial performance. They are not able to provide sensible judgement on firm's critical decisions, such as related party transactions or mergers and acquisitions.

Hence, qualification is essential in the independent director system.

Case Study on Unqualified Independent Directors

In 2014, when United Bank of India was stressed by the increase in non-performing assets, none of its independent directors — a politician, a media manager and a businessman — had any qualifications to help the ailing bank. (Naraynan, 2017)

Suggestions

1. Independent Directors should be removed by special resolution. It will reduce the arbitrariness of promoters in deciding upon the ouster of such directors.

There should be enhancement of minority shareholder involvement in independent director appointment and removal. In this way independent directors would become accountable to the shareholder body as a whole (including the minority shareholders) and they need not sacrifice their independence to win the trust of controlling shareholders. Even an OECD document titled “Improving Corporate Governance in India” highlights the undue influence of controlling shareholders in the appointment and removal of independent directors, finding that “jurisdictions, like Italy and Israel, have provisions for the appointment of independent directors by minority shareholders, which ensures more independence”, thereby suggesting that “controlling shareholders not be allowed to vote in the election of independent directors so as to ensure the later's independence”.

2. There should be stringent disclosure requirements for independent directors both at the time of appointment and removal.

3. Independent directors should be removed by shareholders only for “cause”.
4. Nomination And Remuneration Committee should be empowered to have upper hand in appointment and removal of Independent directors.
5. Corporate Governance laws should prescribe minimum qualifications and experience for independent directors.

All this would ensure that capable independent directors are appointed and also they can be removed only in extreme circumstances, and not simply because they cease to please their appointing authorities.

B. Issues regarding tenure

Another area of concern for boards is whether director tenure has any impact on independence. Many governance authorities recommend a limitation on the length of service of a Independent Directors in India.

In a 2015 note, the Institutional Investor Advisory Services (IiAS), a proxy advisory firm, had pointed out that a large number of companies have had the same independent directors for over 10 years, “which impedes their ability to be neutral and unbiased”.

The tenure of independent directors has now been capped at 10 years. Directors can be reappointed after a three-year gap. The revision in Clause 49 of the listing agreement with the stock exchanges and the amended Company’s Act of 2013 has brought in the restrictions on the tenure of directors. Incumbents will continue for the time being as the tenures before March 31, 2015 will not be counted for the purpose of the cap — but for others the practice of serving for decades on a board as an independent director will come to an end. Why the need was felt to put a capping on the tenure of Independent Directors?

1. There is a concern that independent directors if serve for a longer period, may lose their autonomy and independence as it will impair their ability to challenge the decisions of the management. So they will fail to bring the external viewpoint that they were intended to bring to the board. This can be as a result of becoming ‘too trusting’ of particular executives (or director for two reasons: to a lesser extent by alignment to a faction of a board) (Beck & Tunny, 2014).

2. Some commentators voice a concern that a director who has served for a long period, his contribution and usefulness may become less relevant for the organisation as he would be running out of new ideas. (Beck & Tunny, 2014).

But there is another opinion whereby it is believed that directors should enjoy longer tenure as it is felt that:

1. As per Rajendra Ambalal Shah who has been on board of P&G Hygiene & Healthcare as independent director for around 53 years, each independent director is expected to have intimate knowledge of the industry. “It takes time for one to acquire such specialisation and expertise. Ten years is too short a time. The longer the tenure of a director, the greater the expertise he derives, which should not be wasted by cutting short or truncating his tenure.”

2. It is argued that tenure does not interfere with a director's freedom to challenge management and that the new law by introducing a cap of 10 years will create a shortage of non-executive directors. There is already dearth of competent independent directors. So capping will curb demand for independent directors without creating supply.

In India some non-executive directors stay on a board for decades. If we look at 10 independent director seats in the table, these have been occupied for more than 4 decades.

Table 3: Tenure of Independent Directors in India (Layak, 2017)

Name of the independent director	Tenure(year)	Company
Pradip Kumar Daga	54s	Century textiles and Industries
Rajendra Ambalal Shah	53	P&G Hygiene & Healthcare
Rajendra Ambalal Shah	52	Pfizer India
Pradip Kumar Khaltan	49	OCL India
Surender Reddy Ramasahayam	49	Lakshmi Finance&Industrial Corp
Rajendra Ambalal Shah	49	BASF
Madhav Laxman Apte	47	Bajaj Hindustan Sugar
Brij Mohan Khaltan	47	Jay Shree Tea&Industries
Surinder Singh Bagal	46	Vardhman Holdings
Hemraj Chaturbhuj Ashar	45	Ingersoll Rand(India)

Suggestions:

ASXCGC has also included the following guidance in the commentary to the current ASX Principles: The Council recognizes that the interests of a listed entity and its security holders are likely to be well served by having a mix of directors, some with a longer tenure with a deep understanding of the entity and its business and some with a shorter tenure with fresh ideas and perspective. It also recognises that the chair of the board will frequently fall into the former category rather than the latter. The mere fact that a director has served on a board for a substantial period does not mean that he or she has become too close to management to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years. (Beck & Tunny, 2014)

CalPERS, for example, updated its proxy voting policy for 2016 to assert that “director independence can be compromised at twelve years of service,” and that after such time, companies should conduct “rigorous evaluations to either classify the director as non-independent or provide a detailed annual explanation of why the director can continue to be classified as independent.”

C. Liability

There is lack of clarity around the extent to which independent directors can be held liable. Indian companies Act 2013 is really a positive move in terms of limiting the liability of Independent directors, because otherwise, it was an absolutely open, very dangerous situation.

Mr. C. S. Lodha. Many of you might know that in 2002, he resigned in one stroke from all the Boards he was on, because a company that he was on the Board of warned him that there was a raid on their premises, and some of the members of the raiding party might visit his premises. The minute he heard this news, he got off all the Boards that he was on. (NSE, 2012)

On the issue of liability, finally Companies Act 2013 has recognised that a person can not be held liable for something on which he does not have influence. Section 149(12) of the Act

explicitly provides that the independent directors can be held liable for offences committed with their knowledge, connivance or negligence. This section will definitely safeguard independent directors from the liabilities that arise out of the non-independent directors' negligent activities. With limited liability and, hopefully lesser fear, such independent directors will confidently take honest and unfettered decisions, thereby will do justice to their role of monitoring company's management. It was felt that just by being an Independent Director, one is not aware of the day-to-day affairs of the company. So, independent directors can not be held responsible for the things beyond their influence. The Companies Act 2013 section 14(12) was framed with this logic.

Case study on Liability issue of Independent Directors of Zylog Systems Limited (Mansukhlal Hiralal & Company, 2017)

The Securities and Exchange Board of India ("SEBI") recently passed an order, in the matter of Zylog Systems Limited ("**Company**"), crystallizing the liability of independent directors of a company.

Facts:

1. The Company had declared a dividend, which was approved at its Annual General Meeting held on 25 August, 2012. However, the Company failed to disburse the dividend, within a period of 30 days, as mandated by Section 207 of the Companies Act, 1956 which resulted in several shareholders filing complaints with SEBI.
2. SEBI therefore issued a show cause notice, to all individuals who were directors at the time the dividend was declared. Two of the aforesaid individuals, Mr S Rajgopal and Mr V Ramani were independent directors of the Company at the time of declaration of dividend and submitted that they were not involved with the day-to-day administration of the Company.
3. One of the independent directors Mr S Rajgopal, stated that he came to know of the default in November 2012 and in support of his contention, furnished minutes of the meeting of the Audit Committee, of which he was the chairperson, where the Committee had chastised the Company for its failure to pay dividend distribution tax.
4. Mr VK Ramani stated that he came to know of the default at the board

meeting held on 14 November, 2012. Both individuals relied on their remarks made in the aforesaid board meeting regarding the statutory lapses of the Company, which inter alia included comments on the unpaid dividend. Both individuals had also resigned as directors of the company, soon after the board meeting on 14 November 2012. Mr S Rajgopal on 20 November, 2012 and Mr V Ramani on 2 January, 2013.

Order:

In view of the aforesaid facts and circumstances, SEBI held that since the two independent directors had tried to convince the Company at its board meeting on 14 November 2012 to pay the dividend due, and resigned on account of its non-compliance to do so and owing to the fact that they were not involved in the day-to-day affairs of the Company, both individuals had discharged their duties as independent directors of the Company and no action would be taken against them.

MHCO COMMENT

In order to absolve themselves of liability, independent directors of companies must ensure that they record their objections to the wrongful conduct of the company, in the minutes of Board meetings and take appropriate steps to ensure that the non-compliance is communicated to the management of the Company.

Suggestion

From above case studies it is very much clear that Independent directors need to be protected against all this. However if Independent Directors are not playing their role diligently, then they should be held accountable and punished accordingly. United Breweries which was once a very profitable came into red after it floated Kingfisher Airlines. Here the independent directors failed to act diligently. Indian Corporate Sector is full of these examples where Independent Directors acted with negligence. So here blanket protection would not serve the purpose, as this will lead to negligence on their part as they will feel that are protected under the law irrespective of what they do. It will make them ineffective.

Conclusion

Indian Corporate governance norms on Independence Directors need to be stringent. They need to be empowered so as not to be dominated by controlling shareholders and also their liability

need to be clearly defined otherwise there would be continued vulnerability of individuals who occupy that office. The legislators and regulators ought to take cognizance of glaring loopholes and drawbacks of Indian Laws and address them in the appropriate manner.

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