

# The impact of the appointment and qualification of independent directors on the performance of the company's board

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**Abstract---** *The purpose of this study is to focus on frauds occurring in companies despite the appointment of independent directors. Despite various stringent laws, the concept of independent directors has come into the picture of corporations around the world following various scandals by the company's board of directors. Legislative authorities are constantly revising their laws to prevent these frauds and protect the interests of minority shareholders, creditors and investors. The concept of an independent director is one of the major amendments to the respective regulatory bodies of different countries of the world. Here, in India it was firstly introduced in the late 90s and subsequently it had been added in the Listing Agreement under Clause 49. Later in 2015, SEBI (LODR) Regulations are introduced, where it has mentioned that the companies as prescribed under such regulations have to appoint an Independent Director.*

**Keywords---** *Appointment, independent directors, shareholders, creditors, investors.*

## I INTRODUCTION

As per Companies Act, 2013, it is mandatory to appoint the Independent Directors in the Company who would handling conflict of interest between stakeholders, facilitate and balance counter pressure from majority shareholders, playing a useful role in succession planning, act as coaches, guides and sounding boards for their full-time colleagues, provide independent judgment and broad perspective.

In accordance with Schedule IV of the Companies Act, 2013, the Independent Director must ensure ethical standards of integrity in business-related decisions; perform your duties deliberately and constructively; perform its responsibilities in a bonafide manner for the benefit of the entire company; devote sufficient time and attention to their professional responsibilities to make informed and sound decisions; When the board agrees or disagrees with the collective decision in decision making, do not allow external scrutiny that concludes the practice of independent decision making by itself or its objective with the company's significant interest; refrain from misusing his or her position, for direct or indirect personal benefit or benefit, in the interest of the Company or its shareholders or any related person; abstaining from any act that affects his freedom; notify the board as soon as it is deemed to be adversely affecting its independence; help the company to ensure best corporate governance practices.

When it comes to the roles specified in the Companies Act, independent directors are given various important roles to protect the interests of all shareholders of the company's predominantly minority shareholders, but the question arises as to why companies still exist. Engaging in fraud is not afraid of the serious consequences of these frauds.

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In family-owned Indian companies, the promoters of the company have large control over the shares of the company, which diminishes the interest of the minority shareholders and appoints an independent director and removes the promoters' discretion, ie the majority shareholder. The Nomination and Remuneration Committee and other committees prescribed by law shall make appropriate decisions in the interests of the Company with the majority of the Executive Directors to appoint independent Directors on their Board. But in practically different organizations, independent directors are only willing to sign papers and papers and work on decisions made by the board of directors interested in managing the company. Although companies comply with the terms of the appointment of independent directors to meet the independence requirements under the Companies Act and SEBI regulations, when appointing them, companies do not have the knowledge and qualifications to ensure their or their duties. In fact, this assignment helps board diversity by focusing on its skills and experience, providing objective and independent board evaluation, and the leadership capability required to showcase the organization at large.

## **II Case incidents from Corporates**

### **PMC Bank**

In the case of the PMC bank, three independent directors of the bank were responsible for the fraud in the company. Jagdish Mukhe, age 75, was a professional tax expert. Mukti Bawasi, owner of a steel factory and a famous gynecologist, worked at the Government Hospital in Tripti Ban. It is believed that he was responsible and that he was not strictly working on the grant of loans and was not concerned with the recovery of the debt. Allegations indicate that he committed fraud, but his innocence or guilt is revealed only if the law goes his way.

Here, the main question arises as to whether they really have the knowledge and expertise in credit to evaluate a loan to obtain a loan. At lending and foreclosures, Bavisi and Bain, who are not finance professionals and are unfamiliar with financial statements when submitting loan proposals, ask the right questions and exercise due diligence when approving loans. And one of them was a pre-gynecologist, the other was a steel factory owner?

### **Tata Sons Case:**

In one of the most disputed case of renowned corporate, Tata Sons, the decision of removing Mr. Cyrus Mistry from the position of chairmanship of Tata Group had developed some kind of dispute and had led to threaten the ethically numero uno position enjoyed by house of Tata in Indian corporate world. The Independent Directors of Indian Hotels Company Limited used to give consent unanimously in every action of Mr. Mistry. Since Board of Directors possesses collective responsibility and accountability, hence the independent directors of the company along with Mr. Mistry held equally responsible and accountable for mis-governance happened. All the disputes with Mr. Mistry were confined to the dispute of legacy and hotspots. The Independent directors of Indian Hotels Company Limited and Tata Chemicals had unanimously decided to support Mr. Mistry on what basis? Whether they knew the truth? If yes, why they kept silent themselves over the years and allowed disputes to exist? Why they used to back Mr. Mistry when they knew that they are collectively accountable for affairs of Indian Hotels Company Limited since year 2000 onwards? Did the collective and supportive decision of independent directors to back Mr. Mistry comply with the objective of good governance? Whether they were

acting to protect the value of shareholders? The question arises, whether a board where there is no consensus between all of them enhances collective shareholders' value or it destroys the letter and spirit of the Board of Directors functioning towards the interest of company as a whole. The corporate structure of well renowned Tata Group which existed under the Chairmanship and leadership of Tatas for over several years, presented the good example of good corporate governance practices within the company and outside the company. Mr. Mistry intentionally destroyed the same by placing himself as he is the sole decision making authority or representative in the boards of companies of Tata group. It is important to be highlighted here that Mr. Mistry who had himself introduced the Governance Guidelines Framework in 2015, incorporated a clause in the Guidelines that every employee of a Tata group must, after his or her employment ceases, immediately resign from Boards of all companies of Tata group in which he or she is serving as a Non-Executive Director, if any. Therefore, as per the guidelines, Mr. Mistry, on ceasing to be the Executive Chairman of Tata Sons, must have immediately resigned from Boards of all other companies of Tata group. But still he did not resign and vacate the post and taken the dispute to the concerned authority which obviously deteriorated the renowned image of Tata Sons which had been gained by following Good Governance over the years.

In recent years, various financial crimes have hit the corporate world of India. In a very famous case, the Satyam Fraud, all the independent directors were held responsible, and found guilty and imposed penalty for what was happened in the company. One of the Independent Directors of the company, named Krishna Palepu who was professor Harvard University was imposed fine amounting to Rs 2.66 crore by a court of Hyderabad in 2018. Other members on the board were imposed a fine of Rs. 20,000 each.

In another case, the role and involvement of the independent directors of IL&FS in taking unsound decisions which resulted into huge loss to the company and ultimately adversely affected the stakeholders at large is currently being examined by the Serious Fraud Investigation Office.

In the latest case of Yes Bank scandal, many independent directors in the company started resigning. There were resignations filed by Independent Directors of Jet Airways when the company suddenly fallen down. At a seminar on governance held in November 2019, many of the independent had raised a issue about their serious fears for the fraud and scandals in which they are held responsible.

#### **Findings:**

From the above discussion, as highlighted in the above two cases and all the issues come into the picture after frauds, two important questions arise, first whether the Independent Directors possess required knowledge and expertise to justify their positions? and what should be the independency qualification criteria i.e. their independency towards the decisions of the company, for the sake of interests of the all stakeholders.

In the PMC Bank, two Directors didn't possess the knowledge of banking as we can see, hence it should be mentioned in the Law to appoint an Independent Director must possess the required knowledge and expertise in the respective field. For example, in a Loan and Advance Committee, the finance professionals or bankers with experience and credit experience should be appointed. In an Audit Committee, the Directors having an auditing and its related matters knowledge must be appointed, so as to, they justify their appointments in the company and make sure the Directors are not indulged in any kind of frauds and the interests of minority shareholders can be protected.

Apart from the above, the Independent Directors too should keep in mind while they are being offered the post of Independent Director in the company, that whether they fulfill the criteria of the specific job and would deliver the job in the interests of the stakeholders at large, not only for the majority shareholders. Only then the scams can be curbed.

### **III Conclusion:**

The role of Independent Directors, in recent years, has been in public debate due to their involvement in various scams and frauds which results into failure of ensuring good corporate governance practices. This study analyzed and reached on the conclusion that the more independent directors with specific knowledge required in the respective committees in a board would be the better in bringing efficiency within the company and secondly they should be nominated by external professional body to ensure their independency towards the promoters who are holding majority shares in the company. As Independent Directors assist in proper functioning of corporate with their sound decision making in the interest of the company as a whole, due to the fact they do not have a material interest with company and they review the functioning of management of the company from time to time which further fulfills the primary objective of them, i.e., to protect and safeguard the interest of all stakeholders including small shareholders. In various cases, it is found that CEO of company viciously hides the real picture of company from potential investors and its stakeholders. Hence, it becomes mandatory under the law to appoint that person, who doesn't have any kind of relation with Board of Directors or promoters of the company and possess the specific knowledge and expertise in the area for which purpose he or she will act independently for benefit of its shareholders and stakeholders.

### **REFERENCES**

1. Raghu Palat is a banker, chartered accountant retrieved from <https://thewire.in/banking/india-banking-scams-independent-directors>
2. Meenu Gupta (ACS) retrieved from <https://www.icsi.edu/media/portals/86/Independent%20Directors.pdf>