THE WEEK

GUEST COLUMN: Kotak report misses to re-imagine the board of future

By Mazher Hussain | October 09, 2017

Preventing cronies and political appointees from snuggling into boards might require some more creative and concrete measures

Poised as an emerging economic power with about three per cent of the GDP of the world, 2.5 per cent of global stock market capitalization and an ever growing market, India has become an attractive destination for investors with foreign direct investment clocking a record inflow of $60 billion in 2016-17. Retaining this robust investor confidence will require conducive business environment and the quality of corporate governance.

But corporate governance in India has never been exemplary and is badly exposed in recent times due to the ease with which well-known companies like Satyam, Kingfisher, Deccan Chronicle Holdings Limited and many others could indulge in long-term fraudulent practices due to bad or complicit governance.

Good corporate governance could become possible through the institution of independent directors of the board of a company who are required to have a fiduciary responsibility to work for the benefit of and safeguard the interests of the company without coming under the influence from anyone and without expectations of any financial gains. But in India, a majority of the listed entities continue to be promoter–driven with significant shareholding being held by the promoters and the so-called independent directors could well be kin or cronies subservient to the bidding of the promoter, even at the cost of sacrificing the interests of other shareholders or even the company itself. Hence, we have the phenomenon of billionaire promoters with bankrupt companies.

The situation of public sector undertakings (PSUs) is even more pathetic. The boards, including the independent directors, of State Bank of Hyderabad, State Bank of Travancore, State Bank of Mysore, State Bank of Bikaner and Jaipur, State Bank of Patiala along with Bharatiya Mahila Bank gave approval for the merger of all their respective banks with State Bank of India on the same single day through an item placed as a table agenda in their respective board meetings. Boards dissolving their companies and themselves not through at least a listed agenda but a table item must be unprecedented in the annals of the history of corporate governance. If there is any such incidence, then we have just missed a Nobel.

In such a situation, the Kotak committee on corporate governance and its report could not have come at a better time. Along with addressing other concerns of corporate governance like sharing of sensitive information, reliability of disclosures, protection of interests of minority shareholders, etc recognition of the importance, role, orientation, diversity and responsibilities of independent directors are rightly focused in the report. The recommendations for increasing the number of directors to six and of the independent directors to at least 50 per cent, appointment of at least one woman as independent director and increase in the number of board meetings from four to five could improve governance to some extent. But preventing cronies and political appointees from snuggling into boards may still require some more creative and concrete measures.

Another area where the report falls short is in provisioning for expanded scope and capacity for the boards of today and of the future that must also include the ability to factor in and address concerns of environment, sustainability and possible resistance to projects from local communities. By continuing to restrict themselves to monitoring financial performance in a sanitized commercial vacuum independently of the societal requirements and restrictions that are becoming a necessary environment for most businesses, the boards will be failing their companies, shareholders, banks and society at large.

A report dated March 15, 2016, in *Down to Earth* shows that delay or scrapping of just 10 projects due to environmental issues or social resistance has jeopardized over Rs 2.5 lakh crores that is mostly money from banks or markets and therefore from the public. If only the boards were oriented to also factor in environment and societal concerns as serious issues that could impact the implementation of the projects and equipped to act as self regulators, perhaps the projects could have been redesigned or even abandoned in initial stages to escape some of the debilitating losses that happen when official regulators come in and stall execution of the projects.

It is time to realize that companies can no longer be seen as profit-making machines for some individuals and groups but have to be re-conceptualized as societal assets that will protect environment, ensure sustainability, create employment and also generate some profits for the shareholders and promoters if humanity is to survive. Consequently, the members of the board should be those who can operate in the framework of company as a societal asset and transcend from protecting just the interests of a company to becoming sentinels for society.

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