

Women on the Board, and recent SC ruling

Dr S. Chandrasekaran



Introduction

Board diversity refers to the presence of women on corporate Board of directors. Good corporate decision-making requires the ability to hear and consider different points of view, which come from people who have different backgrounds, experiences, and perspectives. A diverse Board is better positioned to thrive in today's global economy where the pace of change is accelerating and rapidly changing economic scenarios require strategic and well informed directors.

Women on Boards bring different perspectives to the various issues that are faced by a company. It is widely believed that diversity of thought results in better decision-making. In 2015, the Gender Diversity Index of Fortune 1000 Companies showed that 17.9% of corporate directors were women. This is a small number in comparison of that the women comprise about half of the total US workforce; hold half of all management positions. It's time that companies took advantage of this untapped pool of qualified Board candidates and increase the number of women who serve on corporate Boards.

The Companies Act, 2013 and SEBI Regulations

The introduction of compulsory quotas for the number of women that must be appointed on the company Boards would certainly result in gender diversity on Boards, as has been demonstrated in Norway and France. India has adopted the mandatory approach to gender diversity. Companies Act, 2013 (the Act) introduced the mandatory appointment of women on the Board of directors of certain classes of companies. The Securities and Exchange Board of India (SEBI) on its part also directed stock exchanges to have a mandatory appointment of women on the Board in new listing regulations which had a similar norm for enforcing gender diversity.

Diversity on Boards in India is currently low, because many companies do not have any female directors; as of 31 March 2016, 1,375 BSE-listed companies (of the total of 5,541 companies) and 191 NSE-listed companies (of the total 1,759 companies) were non-compliant with the regulations and fined by the respective stock exchanges.

The worrisome factor is that the need to comply with the regulation has become a primary driver of gender diversity and it is stronger than the belief that it adds value or creates the brand image of a progressive organisation.

Recommendation of the Uday Kotak Committee

The latest committee formed by SEBI on June 2, 2017 under the chairmanship of Uday Kotak, with the aim of improving standards of corporate governance, has submitted its recommendations. One of the recommendations of the Committee is to have a mandatory women independent director on the Board of every listed company. The Committee not only intends to give more voice to independent directors, but also put the onus on them in case of any lapse in corporate governance.

Recent SC ruling

The Act has given some relief to independent director and he shall be held liable only in respect of such acts of omission or commission by a company which have occurred with his knowledge, attributable through Board processes and with the consent or connivance or where he had not acted diligently.

Recently, the Hon'ble Supreme Court, in order to protect the interest of many home buyers, has restrained all the directors of the company that includes both independent directors and promoters as well as their family members from transferring any personal assets or property without the Court's permission and they will be held for criminal prosecution or contempt of the Court's order if found in violation.

Conclusion

While the regulators and the companies acknowledge that greater Board diversity is good, opinions differ as to how best to achieve this. Across the globe, larger companies are found to have more women on their Boards due to their high visibility and consequently outside pressure for greater diversity. The corporate industry needs to be more flexible. Companies need to introduce internal policies and processes to welcome women into the industry and make them stay. But in the wake of the cases where public are put into losses and inconveniences, one may question that whether independent directors are ready to take such personal liability for being on the Board of the company. A question one may have is whether women would like to take such challenges and if not, whether the recommendation of Kotak Committee on independent women director would give any positive results.

(Dr S. Chandrasekaran is Senior Partner, Chandrasekaran Associates, Delhi.)