ARTIFICIAL INTELLIGENCE AND THE DUTY OF INDEPENDENT JUDGMENT IN INDIAN CORPORATE GOVERNANCE

Shantam Chakraborty & Shaikh Saiba, Amity Law School Kolkata

ABSTRACT

An Indian company can give software considerable influence over a board decision without giving it a vote. A valuation model selects the comparable firms, a fraud detector determines which transactions auditors see, and a summarisation tool decides which objections survive into the board papers. This article asks when directors may rely on such systems and how a court or regulator could distinguish reasonable reliance from abdication. It reads the Companies Act 2013 alongside Indian securities regulation and uses comparative cases on expert valuation, oversight, automated credit scoring and financial reporting. It argues that the intensity of scrutiny should turn on how much a system determines the outcome, what is at stake and whether anyone can effectively challenge it. The article develops that proposition through a related-party acquisition and a credit-screening example. It recommends recording material reliance on AI in existing board processes and giving independent directors access to evidence selected independently of management. This approach preserves room for expertise while supplying an evidential basis for accountability when a decision goes wrong.

Keywords: Corporate governance, directors' duties, artificial intelligence, independent judgment, board oversight, algorithmic accountability, India.

I. The decision before the vote

Consider the board of a listed Indian manufacturer asked to acquire a distribution business owned by its promoter. The papers give a price range, the names of six comparable businesses and an assurance that management used an independent vendor's valuation software. A director asks why two local distributors were left out. Nobody at the meeting can say. This is a hypothetical, but the question it raises is familiar to company lawyers. A board is entitled to seek specialist help. At what point does an inability to account for the advice make it unreasonable to act on it?

Much depends on what the software actually did. A program that converts six independently chosen valuations into rupees leaves the commercial premise available for inspection. One that chooses the six firms has already made a consequential judgment about what counts as comparable. A system that also drafts management's explanation can conceal the difference. The minutes may accurately record that directors debated the price for an hour. What those minutes cannot reveal, without some account of the evidence put before the meeting, is whether the debate could have altered the result.

Two strands of corporate-law scholarship approach this problem from different directions. Armour and Eidenmüller explore what happens to corporate organisation as machines take on functions previously assigned to managers. Enriques and Zetzsche ask who controls the technology and show why familiar conflicts of interest can survive improvements in information processing. Read together, these accounts suggest that a director's power to demand a different set of comparables is at least as important as a model's ability to process thousands of them.[1]

This is a doctrinal and comparative inquiry. It asks who may make a corporate decision, what evidence can justify reliance on an automated recommendation, and which consequences follow for the company or an individual director. Indian law supplies the governing rules. The foreign decisions have been chosen for the particular issue they illuminate, including the procedural posture in which it arose. Several predate modern AI. Their value lies in how they deal with reliance, knowledge and access to evidence. The examples are analytical

[1] John Armour & Horst Eidenmüller, *Self-Driving Corporations?*, 10 HARV. BUS. L. REV. 87 (2020); *see also* Luca Enriques & Dirk A. Zetzsche, *Corporate Technologies and the Tech Nirvana Fallacy*, 72 HASTINGS L.J. 55 (2020).

hypotheticals. No inference about the prevalence of a practice or its actual effect in Indian companies is drawn from them.

The article advances a reading of section 166(3) of the Companies Act 2013. The greater a system's influence on a consequential decision, the stronger the grounds a director should have for trusting its use in that setting. The suggested standard has a second limb. Someone accountable to the board must be able to obtain contrary evidence and do something with it. Otherwise, the director receives evidence of the software's conclusion while having very little evidence of its reliability. Neither limb requires universal access to source code.

II. What Indian company law entrusts to directors

Office and authority

Section 149(1) requires a company's board to consist of individuals. Section 166(6) renders an assignment of the office of director void. Section 179 places the company's exercisable powers with the board subject to the Act, the constitutional documents and the limits on matters reserved to members. It also identifies powers exercisable by resolutions at board meetings and permits specified delegations on conditions. Financial statements and the board's report, for example, require board approval. Calling software a director, giving it a seat at a meeting or describing its recommendation as binding in a procurement contract cannot give it a statutory vote.[2]

These rules settle who holds office. They leave ample scope for assistance in preparing a decision. A director could scarcely evaluate a merger without depending on accountants, valuers and industry specialists. The Supreme Court recognised the limits of judicial revaluation in *Hindustan Lever Employees' Union v. Hindustan Lever Ltd*. Different valuation methods could yield different exchange ratios, and the Court attached weight to the expert work behind the proposed amalgamation. In *Miheer H. Mafatlal v. Mafatlal Industries Ltd*, the Court likewise identified limits on substituting judicial commercial judgment for that of the approving class where the statutory conditions for sanction were satisfied.[3]

[2] The Companies Act, 2013, No. 18 of 2013, §§ 2(34), 134(1), 149(1), 166(6), 179(1), (3)(g) & first proviso to § 179(3) (India).
[3] Hindustan Lever Emps.' Union v. Hindustan Lever Ltd., 1995 Supp. (1) S.C.C. 499 (India); Miheer H. Mafatlal v. Mafatlal Indus. Ltd., (1997) 1 S.C.C. 579, ¶ 29 (India).

Both decisions concerned judicial sanction of schemes. Neither excuses an uninformed vote at an earlier board meeting. They do, however, expose a weakness in the proposition that directors must personally reproduce a model's result. An external valuer earns reliance by bringing expertise, identifying assumptions and accepting responsibility for an opinion. Where the Act requires a registered valuer, a software subscription cannot perform that office. A valuer may use software and remain responsible for the valuation. The better question for a board is whether the person defending the figure can identify a reasonable change in assumptions that would move it materially.[4]

Care and proper purpose

Section 166(3) joins care, skill and diligence to independent judgment. The distinction matters. A director might spend days checking the accuracy of a forecast without asking why management chose to forecast earnings over just one year. The figures could be impeccable and the project unattractive over five years. Section 166(2) also directs attention to the company's objects and the interests identified by Parliament, including employees, shareholders, the community and environmental protection. The Act supplies no arithmetic for reconciling them. A board that chooses a planning horizon or assigns a price to a plant closure makes a choice for which directors must give their own reasons.[5]

Indian fiduciary law offers a concrete illustration. In *Dale and Carrington Investment (P) Ltd v. P.K. Prathapan*, the managing director used an allotment of shares to obtain control. The Supreme Court examined the purpose for which the allotment power had been exercised. A model recommending the same allotment on the ground that it stabilises the company's ownership would leave the legal question intact. Indeed, a management instruction to treat preservation of incumbent control as a benefit might supply important evidence about purpose. The parameters supplied to the system may be more revealing than its final recommendation.[6]

There is an affirmative case for using AI here. An independent director with access to the underlying material could use a second analytical tool to test whether the proposal remains attractive when the control premium is removed. Directors who usually depend on management to prepare every alternative could formulate one themselves. But two apparently independent

[4] The Companies Act, 2013, § 247(1)-(2) (India).
[5] *Id.* § 166(2)-(5).
[6] Dale & Carrington Inv. (P) Ltd. v. P.K. Prathapan, (2005) 1 S.C.C. 212, ¶¶ 11-15 (India).

estimates may use the same vendor, historical period and list of comparable firms. Agreement then tells the board little about the premise that most needs testing. Independence in this setting concerns the source of the evidence as well as the identity of the person casting the vote.

Knowledge and the position of an outside director

In *Official Liquidator v. P.A. Tendolkar*, a misfeasance proceeding arising from bank management, the Supreme Court linked responsibility to a director's position, association with management and the obviousness of the irregularity. In *N. Narayanan v. Adjudicating Officer, SEBI*, it applied that reasoning to a whole-time director in a case concerning false financial figures. A director closely involved with the business could not simply disclaim knowledge of figures bearing his approval. Neither decision makes every board member an insurer of accuracy. Each asks what this director, in this position, could reasonably have missed.[7]

Section 149(12) gives that distinction particular importance. An independent director, or a qualifying non-executive director, is liable under the Act only for acts or omissions meeting the conditions in that provision. Those conditions refer to knowledge attributable through board processes, consent or connivance, or failure to act diligently. Schedule IV expects independent directors to seek clarification and, when necessary, obtain external professional advice at company expense. It also expects them to have unresolved concerns recorded. An executive who selected a model and received failed validation reports occupies a different position from a newcomer first shown its recommendation at the meeting. The newcomer's response on learning of the failed tests may nevertheless become highly material.[8]

III. What a board can reasonably rely on

The starting point should be the decision the company wants to improve. Take an audit committee considering a system that flags duplicate supplier payments. Its apparent advantage is coverage. A reviewer can inspect only a sample of invoices, whereas software can compare the entire ledger. Its additional value may be modest if the accounts team already catches exact duplicates. Conversely, a system that identifies divergent spellings of the same supplier may expose losses conventional checks have missed. Management should therefore show how many

[7] Off. Liquidator v. P.A. Tendolkar, (1973) 1 S.C.C. 602, ¶ 45 (India); N. Narayanan v. Adjudicating Officer, SEBI, (2013) 12 S.C.C. 152, ¶¶ 31-35 (India).
[8] The Companies Act, 2013, § 149(12), sched. IV, pts. II-III, especially pt. III(2), (6), (8) (India).

additional verified duplicates the new process finds and what it costs to review the false alarms. A demonstration built around the software's best discoveries supplies neither figure.

A more serious difficulty concerns missed cases. Reviewing only the transactions that trigger alerts can establish how many alerts are sound. It cannot establish how many irregularities passed unflagged. An independently selected sample of unflagged transactions addresses a different question. A similar evidential problem arises in lending. The firm observes repayment by successful applicants. Ordinarily it cannot observe how rejected applicants would have performed on loans it declined to make. Research on prediction in other fields identifies this problem of selectively observed outcomes. An apparently impressive accuracy figure deserves less weight when the board cannot establish whose outcomes entered the calculation.[9]

Three points should influence how far directors pursue those questions. First, does the tool determine the available options, rank them or merely carry out an operation that can be verified elsewhere? Secondly, how costly would an error be, to whom, and how easily could the company reverse it? Thirdly, can anyone with relevant expertise inspect contrary evidence and suspend reliance on the result? These are proposed considerations for applying the statutory standard. They do not create a new cause of action. They explain why a reversible scheduling suggestion and a decision to close a factory deserve different treatment even if both use the same software.

The English delegation cases and the Australian financial reporting cases support this approach from opposite ends of the organisation. In *Re Barings plc (No. 5)* the directors' disqualification proceedings highlighted the continuing obligation to understand the business and supervise delegated work. Sections 173 and 174 of the UK Companies Act now state duties of independent judgment and reasonable care, skill and diligence. In *Australian Securities and Investments Commission v. Healey*, the directors approved accounts containing serious errors in the treatment of liabilities and guarantees. They had access to information that should have prompted questions. Their access to expert accountants and management did not remove the need to read the statements in light of what they already knew.[10]

[9] Jon Kleinberg et al., *Human Decisions and Machine Predictions*, 133 Q.J. ECON. 237, 239-44 (2018). The authors study judicial decisions. The lending and audit examples here apply the underlying evidential problem.
[10] Re Barings plc (No. 5) [1999] 1 BCLC 433 (Ch) 486-89 (Eng.), *aff'd*, [2000] 1 BCLC 523 (CA) (Eng.); Companies Act 2006, c. 46, §§ 173-174 (UK); Australian Sec. & Invs. Comm'n v. Healey [2011] FCA 717, ¶¶ 14-20 (Austl.).

Suppose a board has just renegotiated a substantial debt due in eight months. Its automated financial summary describes the debt as long-term. A director need know very little about machine learning to recognise a discrepancy worth taking to the finance director. Compare a hidden error in a currency-conversion library that has passed independent testing and produced no anomalies. Discovering it may have required specialist work that a reasonably diligent director had sound grounds to entrust to others. The two cases could produce identical losses. Liability judged solely by the size of the loss would miss the distinction on which reasonable reliance depends.

It is tempting to resolve these questions by insisting on an explanation for every output. Explanations differ in what they prove. A generated sentence identifying three factors behind a recommendation may itself be a prediction of what a plausible explanation would sound like. A controlled rerun that changes a key assumption while holding the others constant offers firmer evidence about sensitivity, although it does not establish that the assumption was lawfully chosen. A summary linked to the underlying contract clause is more useful than a second summary which agrees with the first. The relevant question for directors is what evidence would cause them to change their minds. If the answer is a source document, the board should have access to it.

IV. When the board governs the company's use of AI

Reporting systems and the risk of filtered bad news

Board oversight presents a different problem from approving a single transaction. The board of a lender may never examine an individual refusal of credit. Its responsibility lies in deciding which evidence about the lending process reaches it. The Companies Act requires the board's report to address the development and implementation of risk-management policy, including risks which in the board's opinion may threaten the company's existence. The directors' responsibility statement addresses internal financial controls for listed companies and compliance systems more generally. Where an audit committee is required, its remit includes evaluation of internal financial controls and risk-management systems. Listing regulations separately address board responsibility for risk, audit committees and, for entities within its scope, the risk-management committee.[11]

[11] The Companies Act, 2013, §§ 134(3)(n), 134(5)(e)-(f), 177(4)(vii) (India); Securities and Exchange Board of

Delaware offers a useful comparison precisely because the threshold for personal liability is demanding. *Caremark* discussed a board's obligation to attempt in good faith to establish an adequate information and reporting system. *Stone v. Ritter* approved the distinction between an utter failure to implement reporting controls and a conscious failure to monitor existing controls. The Delaware inquiry centres on bad faith in the discharge of loyalty. Ordinary negligence does not satisfy it. Importing that threshold into section 166(3) would empty the Indian provision's express requirement of reasonable care of much of its force.[12]

In *Marchand v. Barnhill*, an ice-cream producer's food-safety failures led to a derivative action. Management had compliance information. The complaint nevertheless supported an inference that the board lacked a system for receiving information about a risk central to the company's business. The Delaware Supreme Court allowed the claim past the pleading stage. It did not make a final finding of director liability. The case asks an uncomfortable question of any firm whose core product depends on a scoring model. If serious complaints arrive at the operations desk and each is marked resolved after a refund, how would directors ever learn that the same defect affects the product as a whole?[13]

A board report can answer that question with quite modest changes. It can show the total number of decisions alongside complaints, record how many refusals were overturned and show where affected individuals lacked a practical means of complaining. A low complaint rate has little informational value if a customer must pass through the same automated system to reach a human reviewer. The audit committee could periodically select closed complaints for examination. The decisive feature is that the unit responsible for hitting a sales or approval target cannot also decide unaided which failures count as board business.

Outsourcing and the limits of contract

Indian securities regulation supplies a more direct answer for regulated intermediaries. Regulation 16C of the SEBI Intermediaries Regulations expressly addresses internally developed and third-party AI and machine-learning tools. Within its scope, the regulated person bears responsibility for investor and stakeholder data, output relied upon and

India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 17(9), 18, 21, sched. II, pts. C-D (India) [hereinafter LODR Regulations].

[12] In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 969-71 (Del. Ch. 1996); Stone v. Ritter, 911 A.2d 362, 369-73 (Del. 2006).

[13] Marchand v. Barnhill, 212 A.3d 805, 809, 821-24 (Del. 2019).

compliance with applicable laws. The provision gives a regulator a continuing addressee when the technical cause lies at a vendor. It does not establish a general rule of strict personal liability applicable to every director of an Indian company.[14]

A vendor indemnity may help recover money after a failure. It does little for a compliance officer who cannot find out which investors received defective advice following a software update. Relevant contractual rights include notice of material model changes, access to records sufficient to identify affected decisions, assistance with complaints, and the ability to revert to a tested process. Confidentiality can be protected through independent testing or restricted inspection. If the vendor refuses all three routes to verification, the procurement price should be evaluated alongside the cost of running the system within a narrower, independently checkable function. For some uses the price saving will disappear.

The national India AI Governance Guidelines and the RBI's FREE-AI committee report offer policy guidance on responsible adoption. The RBI committee's seven principles and 26 recommendations have a different legal character from SEBI's regulation. Their value to a director lies partly in specifying questions a competent buyer can ask of a vendor. The NIST AI Risk Management Framework similarly separates governing, mapping, measuring and managing risk. A board can use that distinction to expose a common procurement mistake. A supplier's successful performance test does not show that the purchaser has anyone with authority to act if performance later deteriorates.[15]

V. Whose interests enter the model

Credit decisions and the right to challenge a score

A lender introduces a score trained on its existing borrowers. Applicants with irregular monthly income receive low scores despite stable annual earnings. An officer can override a refusal, but each override requires a written justification and counts against the branch's monthly processing target. The board has been assured that every refusal receives human review. That

[14] Securities and Exchange Board of India (Intermediaries) Regulations, 2008, reg. 16C (India), *as amended by* Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2025 (India).

[15] MINISTRY OF ELECS. & INFO. TECH., INDIA AI GOVERNANCE GUIDELINES (2025); RESERVE BANK OF INDIA, REPORT OF THE COMMITTEE TO DEVELOP A FRAMEWORK FOR RESPONSIBLE AND ETHICAL ENABLEMENT OF ARTIFICIAL INTELLIGENCE (FREE-AI) IN THE FINANCIAL SECTOR ch. 4 (Aug. 13, 2025); NAT'L INST. OF STANDARDS & TECH., ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK (AI RMF 1.0) pt. 2 (NIST AI 100-1, 2023).

assurance describes the workflow accurately. It tells directors almost nothing about the officer's practical freedom to depart from the score.

Two judgments of the Court of Justice of the European Union sharpen the distinction. In *SCHUFA Holding (Scoring)*, generating a probability score could itself amount to an automated individual decision under article 22 of the General Data Protection Regulation where a third party drew strongly on that score when deciding whether to establish, implement or terminate a contractual relationship. Splitting scoring and contracting between firms did not settle the question. In *Dun & Bradstreet Austria*, the Court construed the right to meaningful information about the logic involved under article 15(1)(h). An intelligible explanation must enable the person concerned to understand the procedure and how their data were used. Merely communicating a complex formula is insufficient. Where protected information is at issue, the competent authority or court can balance the competing interests.[16]

For an Indian lender, these are comparative authorities. India's Digital Personal Data Protection Act 2023 has its own structure. Section 8(3) requires attention to completeness, accuracy and consistency where personal data are likely to be used for a decision affecting the individual or disclosed to another data fiduciary. Sections 8 and 10 also address safeguards and, for notified significant data fiduciaries, measures including periodic impact assessment and audit. Under the November 2025 commencement notification these substantive provisions are scheduled for the eighteen-month stage in May 2027. They are prospective at the article's cut-off. Reading the GDPR's article 22 into the Indian Act would supply a right Parliament did not enact in those terms.[17]

Return to the borrower with irregular income. If the monthly figures are wrong, correction may resolve the complaint. If they are accurate but the lender uses monthly volatility as a proxy for default risk, correcting the file changes nothing. The objection concerns the inference and the population on which the lender tested it. A board receiving only reports about data accuracy will miss this class of disputes. A workable review procedure allows the applicant to supply contrary evidence, lets an officer reassess the inference and feeds repeated successful

[16] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, arts. 15(1)(h), 22, 2016 O.J. (L 119) 1; Case C-634/21, SCHUFA Holding (Scoring), ECLI:EU:C:2023:957, ¶¶ 43-50, 60-73 (Dec. 7, 2023); Case C-203/22, Dun & Bradstreet Austria, ECLI:EU:C:2025:117, ¶¶ 54-66, 69-76 (Feb. 27, 2025).
[17] The Digital Personal Data Protection Act, 2023, No. 22 of 2023, §§ 8(1)-(6), 10-13 (India); Ministry of Elecs. & Info. Tech., Notification G.S.R. 843(E), cl. (c), Gazette of India, Extraordinary, pt. II, sec. 3(i) (Nov. 13, 2025) (India).

challenges back to the team that chose the proxy. An override without feedback can give individual relief while leaving the same error in place for everyone else.

The EU AI Act approaches some of these questions through the classification of uses. Subject to its scope and qualifications, Annex III includes certain recruitment systems and systems for assessing natural persons' creditworthiness, with a carve-out for financial fraud detection in the latter category. Articles 14 and 26 address human oversight and deployer obligations for high-risk systems. The allocation of duties between provider and deployer matters to an Indian group supplying or using a system in circumstances covered by article 2. The timetable also matters. The 2026 Digital Omnibus on AI places the relevant Annex III high-risk regime on a December 2027 timetable and the Annex I product-related regime on an August 2028 timetable. It would be premature to describe these duties as generally operative for those systems in November 2026.[18]

Employment and the evidence of exclusion

An employer that replaces a written application with a timed video assessment changes the population it can observe. An applicant unable to use the interface may disappear before the first score is generated. Comparing success rates only among candidates who finish the assessment could therefore make the least accessible version look fair. The Convention on the Rights of Persons with Disabilities addresses accessibility and employment, including measures by states in relation to private employment. In India, section 21 of the Rights of Persons with Disabilities Act requires every establishment to notify an equal opportunity policy. The rules prescribe particular contents for different establishments. A company that already undertakes to provide accommodations has a practical question to answer when its recruitment vendor offers only one means of assessment.[19]

In *R (Bridges) v. Chief Constable of South Wales Police*, the Court of Appeal considered live facial recognition deployed by a police force. Among the defects it found was the force's failure to take reasonable steps to investigate possible differential bias under the public sector equality

[18] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (Artificial Intelligence Act), arts. 2, 6, 14, 26, 113, annex III, pts. 4(a), 5(b), 2024 O.J. (L 2024/1689), *as amended by* Regulation (EU) 2026/1744 of the European Parliament and of the Council of 8 July 2026, 2026 O.J. (L 2026/1744). The relevant dates are December 2, 2027, and August 2, 2028, respectively.

[19] Convention on the Rights of Persons with Disabilities arts. 9, 27(1)(h)-(i), Dec. 13, 2006, 2515 U.N.T.S. 3; The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016, §§ 2(i), 21 (India); Rights of Persons with Disabilities Rules, 2017, r. 8 (India).

duty. The litigant did not have to prove that the software actually discriminated to establish that failure of inquiry. The source of the duty limits the analogy. A private Indian employer is not that police force. The evidential point travels better. A vendor's assertion that it has found no bias is of little comfort if nobody asked who dropped out before its validation study began.[20]

International instruments offer guidance at different levels of authority. The Council of Europe Framework Convention on AI addresses states' treatment of public and private activities, with flexibility over how parties address risks arising from private actors. Its provisions on remedies, procedural safeguards and risk assessment place affected people within the inquiry. It supplies a comparative treaty framework, rather than a freestanding cause of action against an Indian board. The UN Guiding Principles on Business and Human Rights link corporate due diligence to identifying impacts, acting on findings and providing or cooperating in remediation where the enterprise caused or contributed to harm. The G20/OECD Principles place risk oversight and access to timely, accurate and relevant information within the responsibilities of the board. For the hiring example, one implication follows from all three. The board needs a channel through which people excluded before scoring become visible to it.[21]

VI. What investors and customers are entitled to believe

An investor presentation says that the company uses a proprietary AI system to select investments. In fact, the company licenses an ordinary screening tool and is only testing a separate model. Directors may regard the difference as loose marketing language. An investor deciding whether the firm has an advantage worth paying for could reasonably attach considerable value to both the claim of ownership and the claim of present use. The board should be able to reconcile the presentation with the deployed product and the rights actually acquired from the vendor.

In 2024 the US Securities and Exchange Commission settled proceedings against Delphia and Global Predictions over misleading statements about their use of AI. These were administrative

[20] R (Bridges) v. Chief Constable of S. Wales Police [2020] EWCA (Civ) 1058, [176]-[201], [2020] 1 W.L.R. 5037 (Eng.).

[21] Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law arts. 3(1), 14-16, Sept. 5, 2024, C.E.T.S. No. 225; John Ruggie, Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, annex, princs. 17-22, 29-31, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011); ORG. FOR ECON. COOP. & DEV., G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 2023 ch. V, princs. V.D, V.F (2023).

settlements concerning investment advisers under US law. Their relevance to India is the ease with which a statement about technology becomes an ordinary evidential question. Which product used the model? On what date? For which clients? For listed Indian entities, regulation 30 and Schedule III of the LODR Regulations govern disclosure of specified events and material information. The applicable category and materiality criteria must be examined for the event in question. Purchasing a model, suffering an outage and discovering that a widely publicised capability never existed are three different disclosure inquiries.[22]

A parallel distinction applies to customer communications. In *Moffatt v. Air Canada*, a customer relied on the airline's chatbot concerning eligibility for a bereavement fare. The British Columbia Civil Resolution Tribunal held the airline liable in negligent misrepresentation. That a different page contained accurate terms did not answer the claim concerning the information actually presented. For an Indian business, the Consumer Protection Act's definitions of misleading advertisement, unfair trade practice and deficiency, together with the relevant remedial provisions, determine the domestic analysis. A chatbot conversation is not necessarily an advertisement. The representation, its context, reliance where relevant and the remedy sought must each be identified.[23]

External responsibility and personal liability must remain distinct. A consumer can have a claim against the company even where the individual directors exercised reasonable care. Conversely, a misleading investor statement might expose an approving executive to proceedings on evidence of their own conduct. In *Sunil Bharti Mittal v. Central Bureau of Investigation*, the Supreme Court explained why a company's criminal conduct and intent cannot simply be attributed in reverse to its directors. A basis in personal participation with the requisite intent, or an applicable statutory provision imposing vicarious liability, is needed. An incident report that identifies only a board membership list cannot perform that legal work.[24]

VII. A contested acquisition as a test of the argument

Return to the opening acquisition. The promoter wishes to sell, management expects

[22] Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence (Mar. 18, 2024), https://www.sec.gov/newsroom/press-releases/2024-36; LODR Regulations, reg. 30(1)-(4), sched. III, pt. A.
[23] Moffatt v. Air Canada, 2024 BCCRT 149, paras. 24-32 (Can. B.C.); The Consumer Protection Act, 2019, No. 35 of 2019, §§ 2(11), 2(28), 2(47), 21, 39 (India).
[24] Sunil Bharti Mittal v. Cent. Bureau of Investigation, (2015) 4 S.C.C. 609, ¶¶ 42-44 (India).

integration savings and the valuation software supports the asking price. One independent director suspects that the comparable firms are too large. Another believes the company will lose the distribution network if negotiations are delayed. Both concerns deserve an answer within the time available. The starting point is to identify the relevant approvals and interests. Section 184 concerns disclosure of directors' interests. Sections 177 and 188 and regulation 23 of the LODR Regulations may require audit committee, board or shareholder approval, depending on the transaction, the entity and the applicable thresholds and exceptions. Better modelling cannot cure omission of a required approval.[25]

An audit committee could ask the valuer to do two limited pieces of work before the vote. First, identify the source population from which the six firms were selected and explain the inclusion rule. Secondly, rerun the valuation with the excluded distributors included and the projected integration savings removed. Suppose the first change materially reduces the price while the second barely moves it. Directors now know where negotiation should concentrate. If evidence shows that the smaller firms lack the target's territorial rights, exclusion may be justified. If the only common feature of the chosen firms is a higher earnings multiple, management has a much harder case. Neither conclusion requires directors to resolve a dispute over the mathematical architecture of the model.

The example also reveals why a right to independent advice matters in promoter-controlled companies. A vendor paid by the promoter is not necessarily dishonest. Its fee structure, instructions and access to data determine the assurance its work can give. A board may learn more from commissioning a narrowly framed review of the comparator selection than from paying for a second full valuation based on management's original data pack. The audit committee's statutory powers to investigate matters within its remit, obtain external professional advice and access company records provide institutional support for that choice.[26]

There are costs to delay. The seller may withdraw, an exclusivity period may expire or financing may become more expensive. The duty of care cannot mean putting every material transaction on hold until all uncertainty has gone. Directors could authorise negotiation within a lower range or approve subject to a specified condition, if permitted by the governing approvals. They could also accept the original price because the distribution rights justify it

[25] The Companies Act, 2013, §§ 177(4)(iv), 184, 188 (India); Companies (Meetings of Board and its Powers) Rules, 2014, r. 15 (India); LODR Regulations, reg. 23.
[26] The Companies Act, 2013, § 177(6), sched. IV, pt. III(2) (India).

independently of the disputed multiple. The distinguishing feature is the board's ability to identify a reason that survives a challenge to the software's result. A later loss would not by itself show that the reason was unreasonable when given.

What should be recorded? Section 118 requires minutes and observance of approved secretarial standards. SS-1 calls for a record of deliberations and, for major decisions, the rationale. A short record of the disputed assumption, the valuer's answer, the board's reason and any unresolved dissent would permit later scrutiny without reproducing a confidential model or a verbatim debate. A set of AI-drafted minutes presents a particular danger here. Software may turn a disputed assumption into a statement of consensus because the chair ultimately called a vote. The company secretary and chair should check the draft against the disagreement that actually occurred. The evidential value lies in preserving the distinction between an objection answered, an objection accepted and a dissent maintained.[27]

VIII. Reform and its limits

The case for a dedicated AI committee in every company is weak. A manufacturer using software to translate internal circulars has a different exposure from a lender whose pricing and approvals depend on a single vendor. A separate committee can also introduce a damaging division of labour. The audit committee may assume that someone else validated the forecast used in the accounts, while the AI committee believes it approved only a technical platform. A board should assign responsibility according to the decision affected. The audit committee needs assurance over a financial reporting input. The full board needs to understand a material dependence on one supplier. An executive with operational authority must be able to stop a malfunctioning system while the committees await their next meeting.

A narrower reform would be for SEBI to invite material-use reporting through existing governance processes. For a listed company whose revenues, critical controls or customer access substantially depend on a model, directors could explain the function affected, the committee responsible and how material failures reach the board. They could state whether an independent reviewer has actually tested the intervention mechanism. A list of branded tools would make poor disclosure. It would age quickly and say little about dependence. Equally, publishing a detailed model inventory could compromise confidential business information or

[27] The Companies Act, 2013, § 118(2), (4), (10) (India); INST. OF CO. SEC'YS OF INDIA, SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS (SS-1) ¶ 7.2.2 (rev. ed. 2024).

individual privacy without helping investors assess exposure. The public account and the confidential evidence supporting it serve different readers.

Shareholders also need a realistic account of enforcement. Section 166 does not give a disappointed shareholder an automatic personal claim for the fall in the value of shares after a failed acquisition. Oppression and mismanagement proceedings have their own conditions, as do representative remedies under section 245. In *Tata Consultancy Services Ltd v. Cyrus Investments Pvt Ltd*, the Supreme Court examined the statutory grounds for intervention in an oppression dispute. Commercial disagreement alone cannot do the work of those grounds. For a minority investor challenging the hypothetical acquisition, the promoter's interest, the basis of the valuation and compliance with the approval process would offer a more concrete case than the bare assertion that directors used AI.[28]

There is a final objection. Requiring a record of model reliance may simply reward a company able to produce better paperwork. That danger is real. A standard form answering yes to human review, validation and board reporting could survive years of routine inspection. The answer is to ask for one traceable instance. Which rejected applicant obtained a fresh assessment? Which assumption changed after an independent director objected? When did a test last establish that the company could operate without the vendor? The appropriate evidence will vary, and a recently adopted system may have no past incident to report. A supervised exercise can still reveal whether the supposed reviewer can intervene before anyone is harmed. The exercise tests authority in practice and gives value to the minutes that record it.

IX. Conclusion

The independent director in the opening example had asked a small question about two missing companies. An answer could justify the proposed price, expose a conflict or establish that the board lacked enough information to proceed. Indian company law already gives that director grounds to ask, means to seek independent advice and a way to record an unresolved objection. AI changes where the decisive assumption can be hidden. It may sit in the selection of comparables, in the exclusion of rejected applicants from a test or in a reporting rule that quietly classifies every complaint as resolved.

[28] The Companies Act, 2013, §§ 241-245 (India); Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd., (2021) 9 S.C.C. 449 (India).

A defensible standard of reliance follows from those examples. Directors should be able to identify the part of a material decision entrusted to a system, the evidence that justified trusting it there and the person empowered to challenge its result. Scrutiny can then vary with the stakes, the possibility of reversal and the value of further inquiry. Such a standard leaves directors room to take a commercial risk. It also makes it possible, after the event, to distinguish a risk they chose to take from one they never had a fair opportunity to see.

Bibliography:

Scholarship

John Armour & Horst Eidenmüller, *Self-Driving Corporations?*, 10 HARV. BUS. L. REV. 87 (2020).

Luca Enriques & Dirk A. Zetzsche, *Corporate Technologies and the Tech Nirvana Fallacy*, 72 HASTINGS L.J. 55 (2020).

Jon Kleinberg et al., *Human Decisions and Machine Predictions*, 133 Q.J. ECON. 237 (2018).

Institutional publications

INST. OF CO. SEC'YS OF INDIA, SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS (SS-1) (rev. ed. 2024).

MINISTRY OF ELECS. & INFO. TECH., INDIA AI GOVERNANCE GUIDELINES (2025).

NAT'L INST. OF STANDARDS & TECH., ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK (AI RMF 1.0) (NIST AI 100-1, 2023).

ORG. FOR ECON. COOP. & DEV., G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 2023 (2023).

RESERVE BANK OF INDIA, REPORT OF THE COMMITTEE TO DEVELOP A FRAMEWORK FOR RESPONSIBLE AND ETHICAL ENABLEMENT OF ARTIFICIAL INTELLIGENCE (FREE-AI) IN THE FINANCIAL SECTOR (Aug. 13, 2025).

John Ruggie, Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).