SHAREHOLDER DEMOCRACY VIS-À-VIS CHANGING LANDSCAPE OF CORPORATE GOVERNANCE

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ABSTRACT

Shareholder Democracy is an expression of inherent democratic rights of a Shareholder of a Company that the shareholders have access, influence, and imprint on the Governance matters of an organization. A person's investment in the equity capital of a Company, with an expectation of return on investment and capital appreciation, is based upon the performance of the Company against set vision, targets, and decisions that are in the interest of the Company's profit-making ability. A Shareholder's right to express his/her assent/dissent proportionate to his/her the percentage of voting shares of a shareholder is a Shareholder Democracy. "Higher the shareholding, higher the voting power" has been at the core of shareholder democracy.

But what happens when this basic shareholder democracy is ceded to create better corporate structures? Is it fair on the part of the legislators subdue and, in some cases, even disregard shareholder democracy to protect certain interests?

Corporate Governance in India has travelled a fair distance since the enactment of the Companies Act, 1956. The Kumar Mangalam Birla Report on Corporate Governance and subsequent inclusion of the Clause 49 of the Listing Agreement, the Companies Act, 2013 and the updated renditions of the SEBI Regulations, especially in respect of Listing Obligations and Disclosure Requirements. What is common in all these pieces of legislation is the fact that some rights (some may call it power) are taken from the majority and ceded to the others.

This paper intends to study the gradual and continuous trespass of legislation under the garb of Corporate Governance into the democratic rights of a shareholder.

CHAPTER 1: INTRODUCTION

Purpose of this Article

This Paper critically analyses -

- the developments in the corporate law that have affected the democratic rights of a shareholder.
- Whether corporate governance, at the cost of seizing shareholder democracy of one set of shareholders and disproportionate rights in favour of another set of shareholders, is an ideal corporate governance?

These questions are attempted by critically examining the primary sources of legislations, majorly the Companies Act, 2013 and the Rules made thereunder, the Companies Act, 1956 and the Rules made thereunder, the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the voting structures in listed companies.

CHAPTER 2: HYPOTHESIS OF THE ISSUE – COLLATERAL DAMAGE OF CORPORATE GOVERNANCE

History of Corporate Governance

It was the Confederation of Indian Industries ("CII") that in 1996 set up an initiative to promote a certain code of corporate governance for Indian corporate entities. However, it was the Kumar Mangalam Birla Committee ("Birla Committee") set up by the Securities Exchange Board of India ("SEBI") in May, 1999 that formed the basic structure of corporate governance in India. The Birla Committee recommended formulation of an audit committee, composition of Board of Directors, role of independent directors and remuneration standard and financial reporting which eventually led to addition of a Clause 49 in the listing agreements of the corporates with the stock exchanges.

With Clause 49, the SEBI had limited powers of adjudication over governance of the listed entities and their internal governance structure. It was only with the formulation of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") that the SEBI could gain a substantial

adjudication power as well as governance powers into the affairs of the listed companies.

Until this point, the governance standards were focused on formation of committees, defining composition of Boards, delegation of Board's power, defining standards and manner of reporting in financials as well as non-financial reporting. Even the Companies Act, 2013 which tightened the provisions related to related party transactions and voting pattern and disclosures and the subsequent enactment of LODR had a basic assumption of existence of 'conflict of interest" while a corporate entity goes about its business. They brought in disclosure requirements, reporting requirements, better levels of decision making but never they tried to encroach on a shareholders' basic right of vote.

The Era of Encroachment-Based Governance

In came the amendments of 2018[1] to the LODR according to which *"All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2), shall require prior approval of the shareholders through resolution* ***no related party shall vote to approve such resolutions*** *whether the entity is a related party to the particular transaction or not*."[2]

Unlike the Companies Act, 2013, the LODR define related party transactions very broadly to include right from sale, purchase, service transactions to remuneration and appointment to office aspects and even share subscription related transactions.

Now what this amendment basically meant is that no matter the stakes involved in the transaction, of a person is a related party, he cannot exercise his democratic right to vote on the matters put before the shareholders. What this also technically means is that the person having the highest stakes in the success of the transaction has no right to vote and must rely on the other dis-interested and least invested shareholders to decide their fate.

[1] Subordinate Indian Legislation by the Securities Exchange Board of India - SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2018 dated 9th May, 2018 effective from 1 April, 2019.

[2] Subordinate Indian Legislation by the Securities Exchange Board of India - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 23 (4).

Add the amendments made to the Rule 24[3] of the Companies (Management and Administration) Rules, 2014, according to which *"the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;"*[4] What happens here is that voting has been completed even before the meeting in which it is proposed to be discussed has not commenced. This takes away another natural right – the right of being heard of an individual. Even if the shareholders later become convinced with the matter, they cannot go back on their decision as they have already voted nor can they make any modification to the proposed resolution.

While there have been many writings and committees set up to find more ways of implementation of higher levels of corporate governance, a very of them deal with the collateral damage that these corporate governance provisions may have on certain fundamental rights of the stakeholders in a public entity. One needs to really dwell deeper into this trespassing subordinate legislating powers of the SEBI as well as the Ministry of Corporate affairs and try to answer whether it has the necessary powers to subdue the democratic and statutory right of a shareholder.

CHAPTER 3: CASE STUDIES – REGULATORY ENCROACHMENT AND THE 4X EFFECT ON CORPORATE DEMOCRACY

The regulatory encroachment on the rights of a democratic right to vote of a shareholder, by disbarring them from voting on any resolution that they are interested, has not been without consequences. This has led to failing of resolutions in the general meeting. The special resolutions, that require votes in favor of at least three fourths the votes in against, have borne the biggest brunt of this usurping of democratic voting rights. In a company where 75% shares are held by Promoters and remaining 25% by the public shareholders, the voting power of these shares increases 4-times in a business item where a promoter is a related party, this is what can be termed as the "4X effect". The 4X effect, originating from the regulatory authority overstepping its jurisdiction, has given the non-interested but also least invested persons the ability to vote 4-times their voting power,

[3] Subordinate Indian Legislation by the Ministry of Corporate Affairs - Notification no. G.S.R 207 (E) dated 19th March 2015.
[4] Subordinate Indian Legislation by the Ministry of Corporate Affairs - The Companies (Management and Administration) Rules, 2014, Rule 24 (4) (vi).

Some cases in point are discussed below: -

Kinetic Engineering Limited

Mr. Ajinkya Firodiya would never have imagined having denied another term as Managing Director at the 50th anniversary of the Company that carries legacy of his family business had it not been for restriction on voting by the related parties.

As per the voting results[5] available on the website of the BSE Limited where Kinetic Engineering Limited is listed, the shareholders at the 50th Annual General Meeting of the Company held on 28th September 2021, voted 61.31% against his reappointment as the Managing Director of the Company. The promoter group, despite holding 49.13%[6] of votes through 7,721,893 shares at that point in time, had no say in the proceedings of the matter where the public shareholders holding nominal 5,801 number of shares and a mere 0.04% of the total stake in the Company had the right to decide the fate of the upcoming leader within the group.

Balaji Telefilms Limited

Ms. Shobha Kapoor, Managing Director and Ms. Ekta Kapoor, Joint Managing Director of Balaji Telefilms, whose names do not need introduction in the television industry, faced similar fate. As per the voting results[7] available on the website of the BSE Limited, a handful of shareholders meagre holding of 207,927 shares representing only 0.21% of total voting capital of Balaji Telefilms Limited, voted against the resolution approving their remuneration. Ekta Kapoor received 55.4% of votes against and while Shobha Kapoor bagged 55.7% votes against. Again, a whopping 3,473,2876[8] shares representing 34.34% of total voting power in Balaji Telefilms limited went begging to be heard in what is expected to be a democratic structure, the annual general meetings. It is surprising

[5] Voting results of the 50th Annual General Meeting held on 21 September, 2021 of Kinetic Engineering Limited <https://www.bseindia.com/xml-data/corpfiling/AttachHis/76f7d28a-7844-4374-ba6a-093afbadaeab.pdf.> accessed on 30 April, 2022.

[6] Shareholding pattern of Kinetic Engineering Limited for the quarter ending September, 2021 <https://www.bseindia.com/corporates/shpSecurities.aspx?scripcd=500240&qtrid=111.00> accessed on 30 April, 2022.

[7] Voting results of 27th Annual General Meeting of Balaji Telefilms Limited held on 31 August, 2021 <https://www.bseindia.com/xml-data/corpfiling/AttachHis/2525bad5-63cf-4713-b59f-7d71d1146056.pdf> accessed on 02 May, 2022.

[8] Shareholding pattern of Balaji Telefilms Limited for the quarter ending September, 2021 <https://www.bseindia.com/corporates/shpSecurities.aspx?scripcd=532382&qtrid=111.00> accessed on 02 May, 2022.

to note that the flag bearers of shareholder activism, the Institutional Shareholders, opted out of voting and made absolutely no use of their 18.28% of shareholding[9] in the Balaji Telefilms Limited.

There have been many glaring examples of the 4X effect, to list a few: -

- Mr. Deepak Parekh, the person who led HDFC Bank Limited from the front for 3 decades, had a close shave as 22.64% voted were against his re-appointment as a non-executive director[10].
- The re-appointment of Mr. Neeraj Kanwar as the Managing Director faced a roadblock as his remuneration was not agreeable to the shareholders and the resolution missed the mark by 2.28% votes. He eventually had to take a haircut of 30% on his remuneration in order to be reinstated as the Managing Director at the premier bank[11].
- At the 35th Annual General Meeting of Tata Sponge Iron Limited, three resolutions for approval of the material related party transactions fell flat facing rejection by 66.76%, 66.77% and 66.78% votes against on the three resolutions that required a minimum of 75% votes in favour to be passed successfully. The Promotor Group holding 54.50% of shares could not do anything about it.[12]

The Curious case of Committees –

Section 177 and Section 178 of the Companies Act, 2013 read with Regulation 18 and Regulation 19 of the LODR provide for formation of Audit Committee and Nomination and Remuneration Committee. Since this study involves mostly listed entities, the research will focus on the LODR requirements of these committees for listed entities.

[9] *Ibid.*
[10] Press trust of India *"Deepak Parekh re-appointed as Non-Executive Director on the board of HDFC"* (Business Standard, 1 August 2018) <https://www.business-standard.com/article/companies/parekh-re-appointed-as-hdfc-director-despite-23-vote-against-continuation-118073101684_1.html> accessed on 03 May, 2022.
[11] Businesstoday.in *"Minority shareholders reject re-appointment of Neeraj Kanwar as Apollo Tyres MD"* (Business Today, 28 September,2018) <https://www.businesstoday.in/latest/corporate/story/minority-shareholders-reject-re-appointment-of-apollo-tyres-md-neeraj-kanwar-110010-2018-09-28> accessed on 03 May, 2022.
[12] Voting Results of the 35th Annual General Meeting of Tata Sponge Iron Limited held on 18 July, 2018 <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2018/7/146bc002-314d-4c40-a711-e942475992e4.pdf.> accessed on 03 May, 2022

In terms of Regulation 18 of the LODR, the Audit Committee must comprise of at least two-third of independent directors and chaired by an independent director. All the members of the committee must be financially literate and at least one member must have accounting or related financial management expertise. Regulation 19 of the LODR provides that the Nomination and Remuneration Committee is also be comprised of at least two-third of independent directors, chaired by an independent director and all members must be non-executive members except chairman who can also be a part of the committee despite being executive.

For instance, a related party transaction concerning the increase in remuneration of a director must go through the Nomination and Remuneration Committee, the Audit Committee and must also be approved by the Board of Directors of the Company. At all these three forums, the members must exercise their independent judgement, apply expertise in the field, keep interest of the Company and shareholders as a whole and keep in mind their duties imposed by the Companies Act, 2013, the Regulations created by the Securities Exchange Board of India and other relevant laws.

Now, when after such rigorous process, a resolution is proposed by the Board of Directors of the Company for the approval of the shareholders with all the requisite disclosures and such resolution is defeated at the meeting of the shareholders and such an instance is termed as "shareholder activism", it raises following questions: -

- Whether the Audit Committee and the Nomination and Committee and their terms of reference have no purpose to serve? When these committees have been given adequate terms of reference, duties, and obligations by law, why is the regulatory authority not confident of its processes?
- Whether the Securities Exchange Board of India believes that the Audit Committee and the Nomination and Committee are not competent enough to handle matters of related party transactions that they had to disbar the interested parties?
- Whether the Independent Directors are not independent in the eyes of the public shareholders? If the shareholders do not trust the independent directors, why do they re-appoint them at the same annual general meetings where they have rejected the related party transaction?

This classic case of hypocrisy can be seen in the case Eicher Motors Limited when the resolution for re-appointment of its Managing Director, Mr. Siddharth Lal, and approval of his remuneration Managing Director was shot down by the shareholders but the resolution for re-appointment of its Chairman, Mr. S. Sandilya, who is also an Independent Director, sailed through[13]. The very Mr. S. Sandilya chaired the Board and committee meetings where the remuneration of Mr. Siddharth Lal was discussed within the four corners of law and in discharge of their duties. The intent doesn't match, and *hara-kiri* is created by the vested interests.

Proxy Advisory biasedness -

The proxy advisors, by way of their biased and not universally applicable advisory, seem to have found a way of bullying corporates into submission. A particular advice that may be fit for a mutual fund may not be fit for a retail shareholder. They have surely gained from the incapacity of the promoters to vote for resolution concerning their companies. One can argue that these advisories are generated by professionals and is research based but one cannot deny that interpretation of the same research data may vary and is susceptible to bias for own gains, whether monetary or otherwise and whether the retail shareholders gain from it or not.

Nullification of Natural Right – the Right of Being Heard

The amendments made to the Rule 24[14] took away the right of the directors or the promoters of the Company of being heard at the general meetings, present their point of view and provide explanations to the questions that the shareholders may have. Instead, now we have an e-voting facility wherein *"the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;"*[15] What this translates into is the exactly opposite of a democratic structure. The voting gets completed even before the meeting

[13] Voting Results of the 39th Annual General Meeting of Eicher Motors Limited held on 17 August, 2021 <https://www.bseindia.com/xml-data/corpfiling/AttachHis/1c56d54d-aa28-448e-aac8-628a9bf79399.pdf> accessed on 05 May, 2021.

[14] Subordinate Indian Legislation by the Ministry of Corporate Affairs - Notification no. G.S.R 207 (E) dated 19 March, 2015.

[15] Subordinate Indian Legislation by the Ministry of Corporate Affairs - The Companies (Management and Administration) Rules, 2014, Rule 24 (4) (vi).

in which it is proposed to be discussed has not commenced. This takes away another natural right – the right of being heard of an individual. Even if the shareholders later become convinced with the matter, they cannot go back on their decision as they have already voted. The shareholders cannot even amend the resolution during the meeting to arrive at a democratically discussed outcome.

The back-and-forth Governance for Private Limited Companies

The regime for private limited companies in India was regulated less rigidly under the Companies Act, 1956. The Companies Act, 2013 tried to touch upon "improving" the governance structures of private limited companies on the lines of public companies, faced a lot of criticism from the industries, especially the smaller ones. Its legislative history within a short span of 8 years of time, has been nothing less than underdone legislation.

Section 188 of the Companies Act, 2013 basically provided that any transaction which falls within the purview of Section 188 (1) (a) to (g), shall require a Board approval if the transaction was with a related party. The related party definition in terms of Section 2(76), among other relations, included Directors and his relatives as well as holding subsidiary relationship.

Section 184 (2) of the Companies Act, 2013 puts restriction on the interested director who held 2% or more the shares in the Company, to even participate at such meetings where the matters were proposed to be discussed. Similarly, second proviso to Section 188 (1) provided that transactions above certain limits shall require a Special Resolution of the Members and that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

These provisions created democracy issues, roadblocks in functioning and even impossibility in certain cases for private companies, especially those companies where family members were Directors as well as the shareholders and companies that were wholly owned subsidiaries. To discuss the most painful: -

- If the Director be disallowed to participate in a meeting of Board where a related party transaction was proposed to be discussed, how the quorum will be formed where there are only two Directors?
- If the same set of persons are Directors as well as the shareholders, whether it makes sense, considering compliance burden, costs and time involved, to call two different bodies which are exactly the same in composition?
- In a particular case, if the disinterested party holds 0.10% of shares, will eventually have whole 100% voting rights if the other party that holds 99.90% shares is interested in the transaction. This is neither in line with democracy nor in the interest of the shareholder who has invested 99.90% capital in the Company.
- A holding company could not do business with its subsidiary company and vice versa, without navigating through the complexities of law as well as the procedures involved.

Fortunately, the Ministry of Corporate Affairs ("MCA") heeded to the difficulties faced by the stakeholders and through various notifications and amendments, rectified its encroachment on the democratic structures of Indian corporates, however, limited only to private companies. These are discussed as under: -

- An interested director may participate in the meeting where the related party transaction is proposed to be discussed[16];
- The requirement of a special resolution for certain classes of transactions was reduced to an (ordinary) resolution[17];
- Companies sharing holding-subsidiary relationship are exempted from taking resolutions to shareholders for approval irrespective of the size of transaction;[18]
- Allowed interested shareholders to vote on resolution in case of a *"company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties"*[19].

[16] Subordinate Indian Legislation by the Ministry of Corporate Affairs - Notification No. GSR 464(E), 05 June, 2015
[17] Subordinate Indian Legislation by the Ministry of Corporate Affairs - the Companies (Amendment) Act, 2015 (21 of 2015), notified on 26 May, 2015, with effect from 29 May, 2015 vide notification S.O. 1440(E)
[18] Ibid.
[19] Subordinate Indian Legislation by the Ministry of Corporate Affairs - The Companies (Amendment) Act, 2017 dated 03 January, 2018 effective from 09 February, 2018.

The MCA has been kind on the private companies to bring these changes, much to the delight of the businesses. However, the public companies, especially the listed ones, continue to face the music of regulatory encroachment on democracy.

CHAPTER 4: ILLEGAL AND INCONVENIENT

Shareholder activism in India has been on an increasing trend and it must be to bring accountability of the executive at the helm of these corporate houses where the decision-making impacts all the shareholders and not only the decision makers. However, such empowerment of minority shareholders and setting up of accountability cannot be done by way of taking away the democratic statutory rights of persons who have not only invested the highest monetary stakes in the company but also years and decades of labor, vigor, and perseverance.

The questions we must really ask are: -

- Whether related party transactions are illegal in India?
  - No. related party transactions are perfectly fine if the full disclosures are made in accordance with the Law and the procedure laid down for the execution is followed.
  - The related party transactions, by its nature will be influenced by the parties who are interested in it. But it is also their money that is invested which gives them the right to decide on such matters. One share one vote.
  - The related party transactions may be inconvenient for some members of the company, are perfectly legal.

- Whether the directors or the promoters act against the interest of the Shareholders as a whole and the Company, in respect of decisions concerning related party transactions?

  - The said promoters are themselves have invested in the time and money in the company and will suffer more losses than the general public. If the directors or the promoters act against the interest of shareholders provisions of Section 166 and Section 169 of the Companies Act, 2013 is the recourse that is available to take legal actions against the acts or omissions of the directors or the promoters.

- Whether participation of promoters in the related party transaction is suppression of rights the other shareholders?

  - If the minority shareholders feel oppressed by the mismanagement of the directors or the promoters, they have the authority to take necessary recourse under Section 241 to Section 246 of the Companies Act, 2013 that deal with oppression and mismanagement.

Democracy is not only for Promoters, it is category agnostic: -

The single judge of the honorable Bombay High Court in its judgement in the Zee Entertainment Enterprises Limited V. Invesco Developing Markets Fund & Ors., dated 26th October 2021, had granted interim injunction on Invesco Developing Markets Fund ("Invesco") from taking any steps in furtherance of the notice they issued to Zee Entertainment Enterprises Limited ("Zee") for calling of Extra Ordinary General Meeting. At the core of the dispute is the notice issued by Invesco to Zee for calling an extra-ordinary general meeting by exercising its rights under Section 100 of the Companies Act, 2013 while proposing agenda for removal of the serving MD and CEO of Zee and appointment of six other individuals on the Board Zee.

Zee argued that the resolutions proposed to be discussed at the extra-ordinary meeting are illegal and the manner of their proposal is not in compliance with the Companies Act, 2013, the SEBI regulations and the requirement of the Ministry of Information and Broadcasting to obtain its prior approval for any changes to the Board and hence it cannot heed to the request. Invesco argued that the Section 100 of the Companies Act, 2013 only requires the mathematical fulfilment of at least 1/10th of the voting share capital and has nothing to with the intentions of the requestors or the subject matter proposed to be dealt at the proposed to be held meeting.

The Court, in its judgement, opined that *"This is not merely a question of form or substance, or one versus the other. This is a case where the form must follow the substance. If the substance is illegal, the form is illegal. The substance of the proposed resolution will dictate its form"*. The court held that the substance of the requisition is more important than the mathematical requirement and thus, took away the statutory right

of Invesco to call an extra-ordinary general meeting by granting injunction on any further action.

Invesco filed a review petition with the division bench of the Bombay High Court and the division bench set aside the single judge High Court Order and reinstated the statutory rights of Invesco. The Court quipped that *"If we were to open this flood gate, corporate democracy, as we understand it, would be rendered nugatory. Shareholders will be repeatedly restrained and injuncted from exercising their statutory rights"*. This is a shining example of democracy where irrespective of the intentions and substance, statutory and democratic rights of a shareholder were upheld.

It is the right of every shareholder to seek justice at the right forum and in the right form where there is a case of or even a potential case of oppression and mismanagement, right to information of shareholders being eloped or interest of the company and shareholders in total are not taken care of. Hence, a line must be drawn upon what is inconvenient and what is illegal. All the cases discussed in Chapter-3 above were cases of inconvenience not illegality.

What is next?

Is there a light at the end of the tunnel? Unfortunately, no. It gets worse. The SEBI, through Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021, has included "Promotors" within the definition of a related party. It doesn't end there, a shareholder will also be treated as a related party if he is holding equity shares of 20% or more from April 1st, 2022, and 10% or more from April 1st, 2023.

What the direction of SEBI, by controlling the related party transactions by showing lesser trust in creating processes but by encroaching democratic rights of shareholder, suggests is that: -

- being a bigger shareholder in a listed entity will become a more and more complex aspect to manage and will surely be among important ingredients of the investment decisions in the corporate houses.

- democratic right of decision making for the promoter group as well as the bigger shareholders will reduce, whether the same would be good or bad, is debatable. This will also reduce their role to execution rather than participation and execution.

- the right of shareholders to ask questions and similarly the right of Directors or the promoters of being heard and provide necessary justification holds less value and absolutely no value so far as the matters proposed to be discussed at the general meeting is concerned. The decisions on those matters have been already made via e-voting facility.

While this may be convenient for the Regulatory to build corporate governance as a fortress that cannot be breached, it is built at the cost of sacrificing democratic and statutory rights of hard-working business houses who put their life in what they build.

CHAPTER 5: CONCLUSION

When the topic of democracy is up for discussion, the election is the first thing that comes to mind. Consider if a candidate and his family is not allowed to vote for him during a general, state, or local elections? Also consider where a particular party's members are not allowed to vote for their candidate as they may be interested in the election of that candidate? In case of elections, the interests of the shareholders pale in front interest of the citizens of the biggest democracy in the world. What the legislators probably fail to contemplate is that being "interested" will not necessarily work in the favour of the Company. It is that very interest that will drive the right decisions as it will consequently impact the investment of that decision more than anyone else. Similarly, a shareholder who is not interested will not have - motivation, pressure, or fear of loss considering it is not his money that will get a hit.

Once can clearly identify, from the cases discussed earlier in this paper, that the shareholders are very keen on participating in the decision-making process, as they should be. However, what is very prominent is that there is well thought attack on the matters concerning executive remuneration, especially when the company is not doing well during a particular period. This was evident in the Eicher motors case where Siddharth Lal was not allowed to have his remuneration increased or where Ekta Kapoor

had to face the heat for increase in remuneration in a family-built company, Balaji Telefilms. How right is this trend will be subjective since all of the remuneration simply cannot be driven by the performance or profitability of the Company. What this also means is that the Board and the committees will now need to draft and propose the remuneration resolutions in more detailed, strategically structured, and in an inclusive manner.

In my opinion, not allowing an interested director to participate in a board meeting concerning the matters in which the director is interested is different than that for an interested shareholder. This is for the simple fact that the director may or may not have invested his money and the decision of others will not necessarily impact his stakes in the company. A shareholder's democratic right to vote, right to participate in profits and standing last to participate in the distributable assets of the company, have not changed since the concept of a joint stock company started to take shape centuries ago.

With increasing complexities of business, changes in society and the advent of technological solutions, the governance standards of regulators across the globe are bound to increase. However, such increase in standards at the cost of elimination of basic democratic right attached to a share will pose questions. Is this democracy? Is this shareholder inclusiveness?