BEYOND THE DEAL: THE BOARD'S EXPANDING ROLE IN M&A GOVERNANCE

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ABSTRACT

Mergers and Acquisitions (M&A) are intricate business transactions that have a big impact on the firms involved and the stakeholders. The article explores how important the board of directors is to making M&A successful. We examine the diverse duties of the board: We look at the board's accountability for assessing alignment. Serving as a strategic guide, the board assesses how well the target company fits into the current business plan and long-term objectives. Potential synergies, market expansion prospects, and technical improvements are all evaluated in this analysis. Ensuring fiduciary duty to shareholders is another crucial function of the board. This calls for a thorough analysis of the deal's financial feasibility to guarantee that fair value is acquired or offered. The board will inevitably be in charge of the merger process. The board actively supervises the M&A process rather than just approving transactions. This involves exercising control over the outcomes of the due diligence process, controlling integration risks, and ensuring that communications with shareholders and other stakeholders are transparent. The changing M&A landscape—in which company purpose and financial criteria are increasingly taken into account—is also covered in the essay. Through efficient performance of its supervisory function, the board may present M&A as a catalyst for the generation of sustainable value.

Introduction

The process of merger is not a decision to be made hastily; it involves time and expertise. The board of directors is considered to be the representatives or agents of the shareholders, who are expected to make decisions in the interest of the shareholders. In other words, the board with expertise in business and related issues is expected to make decisions favoring the company and the shareholders.

The board is essential in each potential M&A transaction, regardless of whether the target firm initiates it, approves it, or whether it is the consequence of an unwanted suitor's offer. The board must determine if the proposed transaction is in the company's and its shareholders' best interests and whether it should be approved or refused.

It is essential to understand the steps a board should take to be well-prepared for any M&A transaction that may arise. Knowing the issues that boards should consider when evaluating a proposed deal is equally relevant. While valuing a target company, certain important characteristics need to be considered, like, the revenue growth that the target was making, the significant market share, or the safe and comfortable position that it held in the market.

The process of M&A is not just about growth but also about the search for innovation, business models that turned out to be disorganised, and intersection across industries and sectors, bringing new opportunities and challenges.

In situations where the board fails to play an active role in the process, the company may end up entering into a deal that it might later regret. The most common mistakes that are made are a lack of adequate planning, the hasty deadline for closing, failure to look at the possible post-closing integration problems, and projected collaborations that turn out to be delusional. Early involvement in the process of M&A, developing strategies, and carefully overseeing the role of the executive team can be adopted to ensure that these mistakes are avoided.

In this article, an analysis is done into the different dimensions of how the BOD plays a pivotal role during the entire M&A process. An analysis is made into the fiduciary duty of the BOD and how this duty influences their decision relating to M&A. The importance of due diligence before making an acquisition is also analysed. The article takes us through the provisions that specifically deal with the duties and responsibilities of the directors under the Companies Act.

Various other ingredients like the concept of "best interest of the company and the shareholders" that should be looked into and ensured in the process of M&A by the board is also envisaged in the article.

Legal Responsibilities of Directors

Corporate directors today possess immense power that must be regulated not just for the public good but also to protect those who invest in those companies[1]. Each director of the Board enjoys a position in the company that is susceptible to abuse. Some will be faithless in their trust and can abuse their strategic position in the company to serve their own benefits and interests[2]. The laws struggle against their artifice and impose certain duties on them. These laws, if properly implemented, can tremendously reduce the chances of abuse. The legal responsibilities of the Board of Directors during M&A in India are governed by various laws, such as the Companies Act, 2013, the Competition Act, 2002, the Foreign Exchange Management Act, 1999; and the Income Tax Act, 1961[3]. Some of the key responsibilities are as follows:

- To act in good faith[4] and in the best interests of the company and its stakeholders and to avoid any conflicts of interest[5].

- To exercise due care, skill, and diligence[6] in evaluating and approving the M&A proposal and to seek independent professional advice if necessary[7].

- To comply with the disclosure and reporting requirements under the applicable laws and regulations, such as filing of notices or forms with the relevant authorities, obtaining approvals or exemptions from the shareholders or creditors, and making public announcements[8].

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[1] William C. Douglas, Director who do not Direct, (1934) 47 Harv L. Rev. 1305, 1307
[2] Ibid 1317.
[3] Global Legal Group, 'International Comparative Legal Guides' (*International Comparative Legal Guides International Business Reports*) <https://iclg.com/practice-areas/mergers-and-acquisitions-laws-and-regulations/india> accessed 9 June 2023.
[4] S. 166(2) The Companies Act, 2013.
[5] Anubhav Pandey, 'Duties of Directors under the Indian Companies Act, 2013' (*iPleaders*, 19 May 2017) <https://blog.ipleaders.in/directors-duties/> accessed 9 June 2023.
[6] S.166(3) The Companies Act, 2013.
[7] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.
[8] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.

-To not involve in deals or situations in which he may have a direct or indirect interest that conflicts, or may possibly conflict, with the interest of the company[9].

- To ensure that the M&A transaction is fair and reasonable and does not adversely affect the competition[10] in the market or the public interest[11].

- To safeguard the interests of the minority shareholders and other stakeholders, and to ensure that they are treated fairly and equitably in the M&A process[12].

There are various concepts that need further clarification, like the concept of the 'best interest of the company', 'best interest of the shareholders', 'duty of care', 'due diligence', and more.

In the UK, directors have legal responsibilities that are outlined in various legislations and principles. The primary legal responsibility of directors in the UK is to act in the best interests of the company. This means they must prioritize the success and prosperity of the company above their own personal interests or those of any specific stakeholders. Directors in the UK also have a duty of care and skill. In addition to the duty to act in the best interests of the company and duty of care and skill, directors in the UK have several other legal responsibilities. These include the duty to promote the success of the company. Directors are required to act in a way that they consider, in good faith, will promote the long-term success of the company. The duty to exercise independent judgment is another legal responsibility of directors. They must exercise their powers independently and not be influenced by external pressures or personal interests. Directors must avoid situations where their own personal interests conflict with the interests of the company [13](S.174 of the companies act,2006). While the UK has a statutory framework outlining directors' duties, the US relies more on common law principles. The primary legal responsibility of directors in the US is to act in the best interests of the company and its shareholders. This means they must prioritize the success and prosperity of the company above their own personal interests or those of any specific stakeholders, similar

[9] S.166(4) The Companies Act, 2013.
[10] *Hindustan Lever Employees' Union v Hindustan Lever Ltd And Others 1995 AIR SC 470.*
[11] 'The Role of the Board in Mergers & Acquisitions | Stout' <https://www.stout.com/en/insights/article/role-board-mergers-acquisitions> accessed 9 June 2023.
[12] 'Duties, Responsibilities and Liabilities of the Board of Directors and the Board of Commissioners of an Indonesian Limited Liability Company. - Directors and Officers - Indonesia' <https://www.mondaq.com/directors-and-officers/160710/duties-responsibilities-and-liabilities-of-the-board-of-directors-and-the-board-of-commissioners-of-an-indonesian-limited-liability-company> accessed 9 June 2023.
[13] Companies Act 2006, https://www.legislation.gov.uk/ukpga/2006/46/section/172/2011-04-22 (last visited Jan 4, 2024).

to the UK. Directors in the US also have a duty of care, which requires them to act with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances. They are also required to exercise good faith and an honest belief that their actions are in the best interests of the company.

Best interest of the company and shareholders

The concept of "best interest of the company" is a complex one that has been interpreted in different ways over time. In general, it refers to the duty of the board of directors to act in the best interests of the company and its shareholders. This means that the board should make decisions that are in the long-term interests of the company, even if they may not be in the best interests of the shareholders in the short term[14]. It is a common law principle and is usually subjective in nature. Courts have historically and consistently shown a deference towards the actions of business directors. That doesn't imply that they are immune to critics. In Re Smith and Fawcett Ltd[15], the concept of good faith was given clarity as to its subjective nature in cases. The court opined that it is not the lens through which the court looks that is considered to be the best interest of the company rather, it is through the eyes of the director, what the directors consider to be the best interest of the company and if they act in good faith for performing that best interest[16]. Though this case is not directly about mergers and acquisitions (M&A). Instead, it is a fundamental instance in corporate law about what directors are supposed to do. This case, which was decided by the English Court of Appeal in 1942, is important because it set out the general rule about what directors should do. The main problem in the case was how directors used their own judgment. The case was about owners of a company who were allowed to give out shares based on the company's articles of association. The articles of association of the company gave the directors a great deal of discretion t o decide not to register the transfer of shares. The conflict started because the directors refused to record the transfer of shares. The question was whether they used their discretion in a way that was beneficial to the company. The court said that directors' decisions are immune to challenge as long as they are made in good faith. The court ruled that directors must use their power in good faith and in line with what they perceive is the best interest of the company. The court used a primarily subjective test to decide if the directors had acted in good faith. The directors have

[14] 'Best Interests Duty' <https://www.aicd.com.au/company-policies/corporate-social-responsibility/examples/best-interests-duty.html> accessed 21 July 2023.
[15] *Re Smith & Fawcett Ltd [1942] Ch 304*.
[16] *Re Smith & Fawcett Ltd [1942] Ch 304*.

the power to do what they think is best for the company, and not what the court thinks is best. The test was based on what the directors thought was best for the company. People often point to this case to show that leaders must really act in what they think is best for the company. It makes it clear that directors have a responsibility to do what is best for the company, and that this responsibility is based on what they personally think is right, not on an objective standard. This principle is important for both general corporate governance and M&A situations, where directors must make choices that are in the best interests of the company when they approve or reject mergers or acquisitions. Even though "In Re Smith and Fawcett Ltd" isn't directly about mergers and acquisitions, the rules it sets out about directors' duties are very useful for M&A because they help directors make decisions that affect the future of the company, such as possible mergers and acquisitions. There are a number of factors that the board should consider when determining what is in the best interests of the company[17]. These factors include:

- The company's financial performance
- The company's long-term strategic goals
- The company's competitive position in the marketplace
- The interests of the company's employees, customers, and suppliers

The concept of "best interest of the company" is a fluid one that is constantly evolving. As the business environment changes, so too will the factors that the board should consider when making decisions about the company. However, the board's duty to act in the best interests of the company will always remain a fundamental principle of corporate governance. The board of directors should carefully consider all of the relevant factors before making any decision about the company. The board should also be prepared to justify its decisions to the shareholders and other stakeholders. The "best interest of the company" in mergers and acquisitions (M&A) means making decisions and taking actions that maximize long-term shareholder value while also taking into account the needs of other stakeholders, such as workers, customers, and suppliers. This means that the business shouldn't just think about making money in the short term; it should also think about how its choices will affect everyone in the long term. Figuring out what is in the best interest of the company in an M&A deal is a

[17] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.

complicated process that requires careful thought about many things. For example, the purchase should make the business more competitive, help it reach more customers, or give it a wider range of products to choose from. It is also significant that the deal should save money, bring in more money, or make the company more profitable. The business should have the management skills and tools to successfully merge the new business. Considering the cultural aspect, for the integration process to go smoothly, the business's culture should fit with the culture of the company that was bought. Risk assessment whereby, the business should think about the possible risks that come with the purchase, like regulatory problems, antitrust issues, and problems with integrating the two companies.

The board should also consider the interests of the shareholders, but these interests should not be the sole factor in the board's decision-making process. The board should also consider the interests of other stakeholders, such as the company's employees, customers, and suppliers. In recent years, there has been a growing trend towards considering the interests of stakeholders other than shareholders when making decisions about the company. This is due in part to the increasing recognition that the success of a company depends on the support of a wide range of stakeholders.

It is observed that India and UK explicitly consider the interests of the stakeholders while the US gives priority to the interests of the shareholders.[18] While considering the value creation aspect, the rulings in India and UK advocate the long term value creation, while the contention in the US continue to be confusing.[19]

Duty of care

According to corporate law, the directors of corporations have a fiduciary duty of care. They are required to make decisions that are reasonable and prudent. The directors must use sound judgment and all relevant information to make choices that are in the best interests of the organisation. A director must exercise good and independent judgment [20] after acquiring facts

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[18] Freeman, R. & Mcvea, John. (2001). A Stakeholder Approach to Strategic Management. SSRN Electronic Journal. 10.2139/ssrn.263511.

[19] Reena Kohli & Bikram Jit Singh Mann, *Analyzing Determinants of Value Creation in Domestic and Cross Border Acquisitions in India*, 21 INTERNATIONAL BUSINESS REVIEW 998 (2012), https://www.sciencedirect.com/science/article/pii/S0969593111001879.

[20] 'Duty of Care (Board of Directors) - Explained' (*The Business Professor, LLC*) <https://thebusinessprofessor.com/business-governance/duty-of-care-explained> accessed 12 June 2023.

in order to fulfill their fiduciary duty[21]. The key is an impartial procedure with informed board deliberation. The board's fiduciary obligations of loyalty, care, and good faith are the basis for the board's evaluation of an M&A transaction and for judicial review. The relevant standard of judicial review, which relates to the crucial question of who is required to prove a board action to be in breach of fiduciary obligations, relies on the specifics of the transaction and whether there are conflicts of interest. The burden of proof is with plaintiffs to demonstrate that board decisions were not taken in good faith by independent, disinterested directors on an informed basis in the majority of cases (those to which the business judgment rule applies). When reviewing plans to sell or buy or merge, it is essential that the board of directors exercise proper oversight, especially in addressing the strategic issues, compliance with legal obligations, and mandatory disclosures. Another aspect is with regard to pricing[22]. The investments made in the company are by the shareholders and the creditors, it is important that the directors while making decisions for M&A consider their claims and ensure that it is adequately redressed. In Tata Sons (P.) Ltd. Vs. Cyrus Investments (P.) Ltd.[23] the Supreme Court of India decided that the board of directors of a company has a fiduciary duty to act in the best interests of the company and its shareholders. The Supreme Court dismissed all charges of oppression and mismanagement against Tata Sons Limited that were made by entities owned by Cyrus Mistry. The Indian Supreme Court made its decision in the case of Tata Sons (P.) Ltd. vs. Cyrus Investments (P.) Ltd. on March 26, 2021. The bench led by Chief Justice S. A. Bobde made the decision, which was favorable to the Tata Group. The Supreme Court dismissed all of Cyrus Mistry's claims that Tata Sons Limited was oppressive and mismanaged its business. Based on what the Supreme Court said, if someone is removed as chairman of a company and it is not seen as unfair, mismanaged, or oppressive to the company, its members, or the public as a whole, Section 241 of the Companies Act, 2013 says that the Company Law Tribunal cannot stop the removal. The court also held that the board must not act in a manner that is oppressive or unfair to the shareholders.

Duty of loyalty

Directors are seen as agents of the company [24]hence, it is required that they must act in the best

[21] *Needle Industries (India) Ltd And Others v Needle Industries Newey (India) Holding Ltd And Others 1981 AIR SC 1298*.

[22] ‘Role of the Board in M&A’ <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.

[23] *Tata Sons (P.) Ltd. Vs. Cyrus Investments (P.) Ltd. MANU/SC/0568/2020*

[24] *Lakshminarayan Ram Gopal And Son Ltd v Government Of Hyderabad, Through Commissioner, Excess Profits Tax AIR 1955 SC 364*.

interest of the company. The board can compose or appoint standing committees having independent, non-conflicted directors to review the terms of the particular deal and ensure fairness in the advices and opinions they make.[25]

The Role and Responsibilities of the Board of Directors in M&A

The question of what is the role of the Board in M&A transactions can be simply answered in 2 words, readiness, and oversight[26]. The board should always be ready and alert in making decisions in whatever circumstances come before it. Whenever a situation, either for the sale of assets or purchase of assets, comes up, the judgment of the director is of utmost importance. The board must carefully consider all the opportunities before them. The board of directors plays a critical role in mergers and acquisitions (M&A) transactions. They are responsible for setting the M&A strategy, approving the target company, negotiating the terms of the deal, and overseeing the integration of the two companies. The board must also ensure that the M&A is in the best interests of the company and its shareholders.

The involvement of the board in M&A activities is not merely a procedural requirement but a foundation for ensuring that such activities are conducted strategically, legally, and ethically[27]. Their role encompasses not only decision-making but also safeguarding the interests of various stakeholders. Through comprehensive planning, due diligence, constant monitoring, and effective communication, the board forms the backbone of successful M&A transactions. Its role is reflective of the broader principles of corporate governance, aiming at sustainable growth and long-term value creation. The board's active participation in M&A activities signifies an integral part of modern-day corporate leadership and strategy. The specific roles and responsibilities of the board of directors in M&A depend on the specific transaction. The following are some of such roles and responsibilities.

- Setting the M&A strategy: Firstly, the board of directors must decide whether M&A is the right strategic move for the company or not. If it is, they must then develop a strategy as to how to achieve their M&A goals. This may include identifying potential

[25] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.
[26] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.
[27] 'Modernizing the Board's Role in M&A | McKinsey' <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/modernizing-the-boards-role-in-m-and-a> accessed 7 June 2023.

target companies, setting financial targets, and developing a timeline for the M&A process.[28] In Hindustan Commercial Bank Ltd. v. British Motor Car Company (1934) Ltd. [29]the court held that the board of directors has a duty to act in the best interests of the company and its shareholders, and that this duty includes considering all material information before approving a merger or acquisition.

- Overseeing the due diligence process: The board of directors must oversee the due diligence process to ensure that the company is getting a fair deal. The due diligence involves investigating the target company to identify any potential risks or problems.[30]

- Approving the target/acquirer company: Once the board of directors has developed a strategy, they must then approve the target/acquirer company. While deciding on a target company, the board should evaluate the target company's financial performance, strategic fit, and cultural compatibility. The board must also consider the impact of the M&A on the company's employees, customers, and suppliers. On the other hand, while deciding on an acquirer company, the Board must analyse the credibility of the merger, its financial stability, proper redressal, and other compensatory benefits to the stakeholders of the target company.[31]

- Negotiating the terms of the deal: After the board of directors has given the target company its consent, they must then deal with the terms of the deal. This covers the acquisition cost, the method of payment, and the conditions of any earn-out agreements. The terms of the deal must also be in the best interests of the company and its shareholders.

- Communicating with shareholders about the transaction: The board of directors must communicate with shareholders about the transaction to keep them informed. This includes providing information about the target company, the reasons for the transaction, and the potential benefits and risks. In Gujarat Ambuja Cements Ltd. v.

[28] 'Mergers & Acquisitions - The Board Members' Role in M&A Deals | KPMG' <http://www.kpmginfo.com/role-of-the-board> accessed 12 June 2023.
[29] *Hindustan Commercial Bank Ltd v British Motor Car Company (1934) Ltd, (2012) 5 SCC 455*.
[30] 'The Role of the Board in Mergers & Acquisitions | Stout' <https://www.stout.com/en/insights/article/role-board-mergers-acquisitions> accessed 9 June 2023.
[31] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.

Gujarat Narmada Valley Fertilizers and Chemicals Ltd.[32], it was held that the board of directors has a duty to disclose all material information to shareholders before approving a merger or acquisition, and that this includes information about any potential conflicts of interest. In another case, Bank of Madura Shareholders Welfare Association v. Governor, Reserve Bank of India, and Others,[33] it was decided that the board of directors has a duty to ensure that all shareholders are treated fairly in a merger or acquisition, and that this includes providing them with adequate information about the deal.

- Approving the final deal: The board of directors must then ratify the final agreement after the parameters of the deal have been agreed. This entails inspecting the completed paperwork and confirming that all required approvals have been received. The integration plan should address issues such as culture, operations, and technology.

- Overseeing the integration of the two companies: Once the deal has been approved, the board of directors must then oversee the integration of the two companies. This involves ensuring that the two companies are merged in a smooth and efficient manner. The board must also ensure that the integration is successful and that the two companies are able to achieve their M&A goals.

These are some of the general responsibilities of the Board of Directors during M&A in India. However, depending on the nature and structure of the M&A transaction, there may be additional or specific responsibilities that the Board of Directors may have to fulfill.

Impact merger has on the boards of the combining companies: deal with the change

The board of the acquired company (commonly referred to as the target board) is normally absorbed into the acquiring board after an M&A, changing the composition of the board in most cases. According to a study by Kevin W. McLaughlin and Chinmoy Ghosh of the University of Connecticut, only about one-third of the target board's directors—34% of the inside directors and 29% of the outside directors—retain their positions following mergers involving Fortune 500 companies. The study also demonstrates that outside directors who serve

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[32] *Gujarat Ambuja Cements Ltd v Gujarat Narmada Valley Fertilizers and Chemicals Ltd, (2009) 9 SCC 211.*

[33] *Bank of Madura Shareholders Welfare Association v Governor, Reserve Bank of India, and Others, 2001 (2) MLJ 147.*

on more than one other outside board have a higher likelihood of continuing to serve on the boards of acquiring companies[34].

The board can benefit from convening a special session (or often numerous sessions) to regroup and align before coming into the first official board meeting, regardless of how the board's makeup changes as a result of the merger or acquisition. They can identify the position of the board chair, check strategy, share information, and get to know one another and the leadership team during that initial meeting in order to "begin to function as an effective board."[35]

How to Improve the Board's Role in M&A

Since, it is clear that that board plays an inevitable role whenever a deal of merger and acquisition is considered. it is also important that they exercise this role in the best possible way. there are some factors or elements that can be considered that would enhance the boards function during mergers and acquisition. Firstly, it is important that the directors who make such decisions should have experience in M&A so that they can make informed decisions regarding the transaction. If such directors do not have the ample experience then the directors can either be educated or trained to help them understand the process and the potential risks that might come up in future considering various other real time M&A scenarios. Secondly, the board should be provided with all the informations and resources that it might need to make an informed decision. The financial analysis, the legal advices, datas of the potential target companies etc., help the directors to increase the likelihood of best decision in merger transaction. It is also important that the board creates a trust with the management creating a culture of open communication. Furthermore, it should be beneficial if the board in the M&A process is the same throughout the process as they would be better able to understand the risks and rewards of the transaction and make sure that the deal is in the best interest of the company and the shareholders. The Board should be made accountable for the decisions that it makes regarding M&A. They should be transparent in their decision making process by explaining and communicating it to the shareholders.

[34] Kevin W McLaughlin and Chinmoy Ghosh, 'The Dynamics of Post-Merger Boards: Retention Decisions and Performance Effects'.

[35] 'Role of the Board in M&A' <https://corpgov.law.harvard.edu/2015/09/07/role-of-the-board-in-ma/> accessed 29 May 2023.

Conclusion

The board of directors plays a critical role in mergers and acquisitions (M&A) transactions. By carefully considering the risks and rewards of M&A and by making informed decisions, the board can help to ensure that M&A transactions are successful and that they create value for the company and its shareholders. They are responsible for ensuring that the transaction is in the best interests of the shareholders and that it is conducted in a fair and transparent manner. The board should also be mindful of the potential risks associated with M&A and take steps to mitigate them. In 2019, the board of directors of AbbVie Inc. rejected a $63 billion takeover bid from Allergan PLC[36]. The board argued that the deal was not in the best interests of AbbVie shareholders, as it would have undervalued the company. There are various other instances where the Board of Directors have taken decisions rejecting merger deals whenever they are of the view that it is not in the interest of the company.

Directors are imposed with a variety of tasks and responsibilities under the company law as they play a vital role in the decision making of the company. These responsibilities are critical for the company's smooth functioning and safeguarding the interest of the shareholders.

Principal responsibilities for directors under company law include the following:

1. Duty to behave honestly and in the company's best interests: According to Section 166 of the Companies behave of 2013, a director of a company must act honestly to advance the goals of the organization for the benefit of all of its members as well as in the company's best interests. In order to fulfill this obligation, directors must use their authority and influence for the benefit of the firm rather than their own interests or personal gain.

2. Duty to exert reasonable care, skill, and diligence: Section 166 of the 2013 Companies Act stipulates that a company's director must exercise reasonable care, skill, and diligence in carrying out his obligations. In order to fulfill this obligation, directors must use their knowledge, skill, and experience to make well-informed choices that are in the company's best interests.

[36] Cara Lombardo, Jonathan D Rockoff and Dana Cimilluca, 'AbbVie Strikes Deal to Acquire Allergan for About $63 Billion' *Wall Street Journal* (25 June 2019) <https://www.wsj.com/articles/abbvie-nears-deal-to-buy-allergan-for-more-than-60-billion-11561458504> accessed 6 October 2023.

3. Duty to avoid conflicts of interest: Section 184 of the 2013 Companies Act establishes the responsibility of directors to steer clear of circumstances that might put their personal interests at odds with those of the company. In order to avoid a conflict of interest, directors must disclose their involvement in every agreement, arrangement, or transaction that the firm has engaged into or is about to participate into.

4. Confidentiality obligation: Directors have access to sensitive data about the business, its activities, and its stakeholders. As a result, they have a responsibility to uphold confidentiality and refrain from disclosing any information that can be detrimental to the organization.

5. Responsibility to stop insider trading: Directors are responsible for stopping insider trading in the company's securities. They have to make sure that no insider, not even themselves, trades in the company's securities based on any unauthorized price-sensitive information.

The Satyam affair is a fascinating story that highlights the significance of directors' obligations. One of the top IT firms in India, Satyam Computer Services, was involved in a significant accounting scandal in 2009. It was discovered that Ramalinga Raju, the company's founder and chairman, had manipulated its books for many years in order to overstate its revenues. The incident badly damaged the credibility of the Indian IT industry and caused billions of dollars in shareholder value to be lost. In this instance, it was determined that Satyam's directors had violated their obligations to stop the fraud and safeguard the interests of the business and its stakeholders[37]. The Satyam controversy makes clear how crucial directors' responsibilities are to a company's smooth operation and how important it is for them to behave in the organization's and its stakeholders' best interests. It also emphasizes the need for sound corporate governance procedures and the function of independent directors in managing the affairs of the company. To guarantee that a company runs smoothly and that the interests of all stakeholders are respected, directors' obligations are of the utmost significance. For a company to succeed, its directors must fulfill a number of legal obligations, such as the duty to act in good faith, use reasonable care and diligence, avoid conflicts of interest, maintain confidentiality, and prevent insider trading. To guarantee that the business runs transparently and effectively, directors must do their obligations with the highest honesty and care.

[37] Sneha Mahawar, 'Case Study of the Satyam Fraud Case' (*iPleaders*, 16 March 2022) <https://blog.ipleaders.in/case-study-satyam-fraud-case/> accessed 6 October 2023.