SHADOW DIRECTORS IN INDIA: EXAMINING LIABILITY UNDER COMPANY LAW

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ABSTRACT

In the usual conception, the decision makers in the corporation are the persons who have the title of the Board of Directors. But that's not quite right. There is another set of persons that influences the decisions taken by the Board. Such persons are called as 'Shadow Directors'. While the notion of shadow director has not been specifically defined under Indian legislation, by virtue of Section 251(1) of the Companies Act 2006 of the UK, the concept has been defined as a person in respect to whom the director of the company is accustomed to act in accordance with his/her directives or instructions. It is also intriguing to see if the notion of "accustomed to act" also impacts Indian jurisprudence. The fundamental issue, however, is whether or not these persons have any responsibility whatsoever, and if so, to what degree, should the Company face consequences as an impact of their proposal.

On a close scrutiny of the Indian law, there are a few clauses that tacitly deal with this issue. Relevant to us are: Sections 2(59), 2(60), 2(69) and 2(76) of the Companies Act, 2013, defining the words "Officers", "Officers in default", "Promoters" and "Related Parties" correspondingly. This paper specifically asks when a promoter within the meaning of Section 2(69), particularly under its third limb, which already acknowledges de facto control over company affairs, crosses the threshold into shadow directorship, a distinction which has important consequences for liability and which Indian courts have yet to resolve consistently. These laws are intended to cover within their purview any informal body which influences a Company. The paper also has a mention of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and points out a specific gap in Regulation 4(2)(f) and 26 which do not, as they are, cover those who have informal control without any formal title. The Insolvency and Bankruptcy Code, 2016 is also discussed as the most practically relevant forum in which questions of shadow directorship arise in India today, Sections 66 and 69 of the IBC, read with the Supreme Court's reasoning in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, provide a doctrinal basis to hold de facto controllers liable for insolvency-related violations, although there is a dearth of reported NCLT decisions applying

this framework to shadow directors in fraudulent trading proceedings.

The purpose of this study is to look at not only the basic legislation but also the applicability of such law in particular court judgments. For example, Indian Courts have tried to answer the question of how to identify and establish concealed form of control and it is still a tough subject to overcome. The paper also looks at the COVID-19 pandemic as a time that enhanced the conditions for informal control and notes that neither the Indian courts nor SEBI issued any decision or circular specifically dealing with shadow directorship in that context. The absence of such decision/circular itself is indicative of the inadequacy of the existing framework. A deep dive will answer the question if the Indian laws are successful or there is a need for revisions and the recommendations made are each linked to a specific gap or discrepancy revealed in the statutory or judicial analysis. Either way, the response will be a boon for the worlds of corporate transparency and ethical business and trade in this modern and fluid environment.

Methodology and Scope: The doctrinal and comparative techniques have been employed in the present study. It discusses the key statutory provisions of Indian company law, the Insolvency and Bankruptcy Code, 2016 and SEBI rules and puts them in conversation with judicial decisions from India, the United Kingdom and Australia. This comparative analysis is not simply an illustration but an attempt at identifying specific lacunae in the Indian framework and assessing suitable legislative fixes. The paper does not execute empirical and socio-legal research, but limits itself to a textual and analytical assessment of main and secondary legal sources.

Introduction

The magnificent stage of corporate governance holds the directors in its spotlight, but there are hidden *Marionettists* behind this curtain, pulling the strings and carrying the show forward. Now, the question comes, who are these *Marionettists*?

A Company, being an artificial legal person, does not have its own conscious and principles to take its own decisions. It entirely relies on the intelligence of a team of people, to make decisions on its behalf. This group of people are expected to take decisions for the benefit of the company and to ensure it, the State has enacted a plethora of Rules and Regulations to keep a check. This group of people are recognised as the Board of Directors under the Companies Act 2013 (herein referred to as Act or 2013 Act) in section 2(34) and the meaning of ‘director’ is defined under section 2(10) of the same Act. The other influential positions in a company besides the Board of Directors, is mentioned in the Act. For instance, section 2(24) defines 'Company Secretary' and Section 2(38) defines an 'Expert'. The reason behind discussing this is that at the time of any discrepancies or fraudulent act in the company, these defined positions will have their own share of liabilities, but it will be very hard to understand the liability of the other entities who might have impacted on the decisions and actions of these recognised positions.

Legal Provisions on Shadow Directors

Shadow Directors is a recognised concept in English Law. It is simply a person who is not officially chosen as a directors, but behaves and/or affects the operations of the company as a legally chosen director. The concept of the Shadow directors is spelt out clearly in Section 251(1) of the Companies Act 2006 (UK) which states that the Shadow directors are the person with whom the directors of the company are accustomed to act. The in Companies Act 2013 also incorporates the essence of this concept. Section 2(59) gives the meaning of the term officer, in which case it contains the following, namely: any person, in the directions or instructions of which the Board of Directors or any one or more of the directors are accustomed to act. The same phase is also observed in section 2(60)(v) that says: any person on the basis of whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who is in a professional capacity of giving advice to the Board. In this section, the penalty and punishment to any officer in default i.e., any individual who is involved in fraudulent dealings, or under whose influence the directors or any other key managerial personnel have acted either willingly or unwillingly are basically stated. Similarly, the concept of 'related party' is also defined under section 2(76) of the Act, where the essence of this concept of the shadow director is highlighted using the same expression. In this section, the related party is widely defined which encompasses individuals and corporates. The definition goes beyond the KMPs and also recognises the impact of relatives and any other related bodies, as well as any other individual who has a high impact on the operations of the company. Such influence should be acknowledged since a Company must have transparency and accountability in all its transactions and be honest with its stakeholders. The Company must identify and list out its related parties and the regulators must scrutinise it to avoid any conflict of interest in any dealings of the company, financial misconduct, etc. An essential yet under-researched subject is when does a promoter cross the line and become a shadow director. 'Promoter' is defined in section 2(69) of the Companies Act 2013 as 'any person who has been mentioned as such in a prospectus or identified by the company in its annual return' or 'who has control over the activities of the company, directly or indirectly, whether as a shareholder, director or otherwise'. It is important to note that the third component of this description is very essential. A promoter who "controls the affairs of the company" is already recognised by the law as a person of significant influence, regardless of whether they are formally designated as such. The practical question thus is not whether a promoter may be classified as a shadow director but at what point does the nature of such control meet the evidential level of habitual compliance by the Board of Directors that the courts have mandated. A promoter who attends board meetings informally, influences strategy beyond the minutes, and to whose directions the directors are accustomedto acting without independent consideration, meets that criterion. The decision in Sahara affirmed that an individual is nevertheless liable even in the lack of a formal appointment. Even though the term "shadow directorship" does not exist in Indian law on its own, sections 2(59) and 2(60) together give a legislative hook that may be utilized to hold promoters accountable when they act in this capacity.

The problem of informal control must be seen in the context of the parallel legal framework of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). Regulation 4(2)(f) of the LODR Regulations provides the broad principles of corporate governance for listed firms. Regulation 4(2)(f)(ii) in particular, demands an acceptable number of independent members on the board of a listed corporation, and disclosure and identification of those in "effective control" of the company. This section implicitly accepts that the nominal makeup of a board may not always represent where decision-making authority genuinely lies and that regulators need to go beyond the register of directors to identify who indeed controls the company. Disclosure of substantial commercial and business transactions in which senior management and directors may have a personal interest that might conflict with the company's interests is one of the duties imposed on them by Regulation 26 of the LODR Regulations. Read collectively, these principles build a disclosure architecture intended in spirit to reveal informal controllers. However, the issue is that neither of these provisions specifically addresses those persons are not the members of the board. A shadow director, who takes the decisions without any official designation, is beyond the plain meaning of Regulation 26 and is not directly attainable under Regulation 4(2)(f) unless SEBI takes a broad interpretative approach. This is a distinct hole in the LODR regime which has not been filled up by the Board, either by subordinate rule or through explicit instruction.

Judicial Reasonings in International Case Laws

To understand this concept better, the English case laws can be examined since they have over the years outlined the scope and the nature of shadow directorship. This can be an essential learning tool as the English courts deals with a well-structured framework of laws on Shadow directors. This may be considered as a value of persuasion in the Indian context since many of the Indian corporate laws have been borrowed after the English principles where most of the sections of the Indian laws are direct imitations of the English laws. A notable case of UK that dealt with the concepts of shadow directors, de-facto directors and de jure directors and made a distinction between them is the case of *Re Hydrodan (Corby) Ltd.*[1]. The Court's ruling formed a boundary of shadow directorship in the company and the evidentiary test of the same. The Court also considered that the burden of proving such case is on the claimant or the plaintiff. The Court basically provided two significant test to prove this control. These are-

1. There must be a substantive evidence of a direct control over the company. Just because the said person is associated with the company, as in the given facts of this case, the parent company cannot inevitably be called as the Shadow Director.

2. It must be proven that the directors had habitual obedience towards the alleged person. The court also warned that just one such obedience or influence could not pass this test. The court, as in the case, would not assume that the directors of the subsidiary company were used to and habituated to acting on the advice of its parent company.

Moreover, the decision of the English court in the case *Ultraframe (UK) Ltd v. Fielding*[2] is intriguing because it used the narrower method in the discussion of the boundaries of shadow directorship and their area of responsibility. The Court distinguished between shadow directors and de facto directors and held that the concept of shadow directorship is entirely statutory and is not an extension of formal management. It found that shadow directors, because they do not actively manage the business's activities or exert control over its assets in the same way as de facto directors, often do not bear fiduciary responsibilities to the firm. The Court held that the indirect influence of a shadow director, by way of instructions or commands which were adopted by the board, was not enough to trigger the entire range of fiduciary duties. However the Court also stated that transactions between a corporation and a shadow director might be

[1] Re Hydrodan (Corby) Ltd., [1994] 2 B.C.L.C. 180 (Ch.) (Eng.).
[2] Ultraframe (UK) Ltd. v. Fielding, [2005] EWHC (Ch) 1638 (Eng.).

rescinded if statutory requirements were not observed. In addition, a shadow director was required to declare to the board any profits or benefits received from transactions in which they had been involved by their advice or directives. The ruling has been attacked for being too restrictive on the liability of shadow directors. The Court's general reluctance to impose fiduciary duties in most circumstances has thus established a paradigm which may allow powerful persons working in the background to escape liability even where they exercise a significant degree of influence over corporate decision making. This view does not reflect the present state of business affairs where major players may not be formally appointed but still have influence on corporate policy and transactions. However, the case is significant because it shows the ongoing struggle of the judiciary to balance commercial freedom against the need to prevent abuse of informal corporate control.

This discussion on establishing the boundary of the shadow directorship is furthered by an Australian case of *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd.*[3]. This judgement also holds a persuasive value as both India and Australia follows common law principles and their statutory principles usually aligns with each other. Firstly, the Court created a separation between advice and control that board does not have to follow all the advice provided to it until it comes in the form of an instruction. Secondly, it is likely that the directors would always take the recommendation made by a specialised party such as a consultant or bank or by a highly experienced individual in the business area concerned to prevent losses and enhance management. Such cases should not be viewed as the impact in the notion of shadow directorship. It has to be a true interest of such third party in the affairs of the company. Thirdly, when the directors are accustomed to without any reasonings, but on the instructions of a third party to make a major managerial and financial decision in the company, then such individuals may be considered as the shadow directors. This is very common in the cases of a boardroom split, like this case, where the third party can easily influence a fraction of the Board, indirectly controlling the decisions of the whole board.

These rulings are important due to the applicability of its principle in Indian jurisprudence. Majorly there are family-owned companies where the promotors, and majority shareholders are significantly involved in the affairs of the company. Here, this test is crucial to separate and identify if there is actual control of such promoters or the shareholders over the decisions of the directors. Also, while investigating any discrepancies within the company by

[3] Buzzle Operations Pty Ltd. v. Apple Computer Austl. Pty Ltd., [2011] NSWCA 109 (Austl.).

the regulators under SEBI or Companies Act and Rules, these principles can be deployed. Such regulators should demonstrate the influence and control of the so-called shadow director significantly. Nevertheless, the principles have its limitations. Especially in such closely knitted, family- owned companies, it is very difficult to prove “habitual obedience”[4] as there can be a lot of informal meetings, a culture of obedience to the elder members of the company etc.

Judicial Interpretation of Indian Case Laws

The question is whether the available provisions can protect the interest of the company or there is a gap or a lacuna where the broad interpretation of these statute is necessary. This concept has been impliedly or explicitly recognised by judiciary in a few precedents. Beginning with a 1983 judgement, the case of *In Re: Swastik Textile Mills Ltd.*[5], the court mentioned a similar principles as stated in abovementioned English cases and impliedly accepted the concept. The court analysed if certain individual had an influence over directors’ decisions and if there was an ‘interconnected undertakings’ between the parties. For doing so, the court analysed if the board of directors were habitually influenced by the alleged person. The court also decided that the State could not assume such influence of the alleged person merely because they were in the position of mere advisory influence. In the case of *Raj Chawla v. SEBI*[6], while Delhi High Court still did not use the term Shadow Director but used the principle to quash a criminal proceedings against the petitioner. But court acknowledged that there can be a de facto control of affairs of the company by a person. In this case it is interesting to note that the Court decided that the resigned director was not liable to any wrongdoing in the company. The Court ordered SEBI to provide evidence to show that the supposed individual still exercised control and influence over the company despite having resigned. This ruling in effect is a bad precedent that if the director steps down prior to the actual action of the company, then the same director would be free of liability even if they could be involved in influencing such an act of misconduct. The discussion on this concept grew in the case of *Sahara v. SEBI*[7]. Here the Supreme Court decided against Subrata Roy Sahara since he was the officer in default and the reasons provided by the court were congruent with the notion of shadow directors. The court observed Mr. Sahara’s de-facto control over the affairs of the company as he was not

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[4] Re Hydrodan (Corby) Ltd., supra note 1.
[5] *In re* Swastik Textile Mills Ltd., 1983 SCC OnLine Bom 367 (India).
[6] Raj Chawla v. Sec. & Exch. Bd. of India, 2010 SCC OnLine Del 90 (India).
[7] Sahara India Real Est. Corp. Ltd. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603 (India).

formally appointed as the director. The court decided that his position of founder, promoter and majority shareholder of the company brought him to this power and position where he can be held personally liable to the non-compliance of the applicable SEBI rules.

Lastly in the case of *Ionic Metalliks v. Union of India*[8], the division bench of the Gujrat High Court recognizes the Shadow Director as one of the categories of the directors as defined under Companies Act and Listing Agreement as stipulated by SEBI. The concept defined by the Court was as follows.

> “'Shadow' Director: A person, who is not appointed to the Board, but on whose directions the Board is accustomed to act, is liable as a director of the company, unless he or she is giving advice in his or her professional capacity. Thus, such a shadow director may be treated as an 'officer in default' under the Companies Act.”[9]

Nevertheless, the Court did not go into the depth of this notion. The Supreme Court in a recent judgement *Tata Consultancy Services Limited vs Cyrus Investments Pvt Ltd*[10] also recognised the word Shadow director in their judgement. Although the Court did not deliberate much on the scope of this concept, but the Court properly distinguished between the shareholder’s influence vs. shadow directorship. The control of Ratan Tata was as a majority shareholder and not as the director as the Court remarked that

> “If someone, aggrieved after his removal from office can engage in shadowboxing through the companies controlled by him, he cannot accuse the very same person who chose him as successor to be a shadow director. Someone who gained entry through the very same door, cannot condemn it when asked to exit.”[11]

This is intriguing as the Court acknowledged the control of Ratan Tata while appointing Cyrus Mistry and remarked that Cyrus should not challenge it afterwards when he was being removed as he did not object to such power when he benefited from it. This shows that the Court recognised the power and influence of Ratan Tata, but they refrained to call him a shadow director.

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[8] Ionic Metalliks v. Union of India, 2014 SCC OnLine Guj 10066 (India).
[9] *Id.*
[10] Tata Consultancy Servs. Ltd. v. Cyrus Invs. (P) Ltd., 2021 SCC OnLine SC 272 (India).
[11] *Id.*

Shadow Directors in Insolvency: Section 66 and 69 of the IBC

The problem of shadow directorship in India is mainly pertinent under the Insolvency and Bankruptcy Code, 2016 ("IBC"). The question of who are the real controllers of a company assumes heightened significance in the context of bankruptcy proceedings, since the National Company Law Tribunal ("NCLT") has the power to fix responsibility for fraudulent and unfair trade on persons beyond the formal board. The research is mostly concerned with two parts of the IBC, these are sections 66 and 69. Fraudulent trading is addressed in Section 66 of the IBC. If the Resolution Professional or Liquidator applies to the NCLT, the NCLT can hold a person personally accountable for all of the debts and liabilities of a corporate debtor if that person knowingly defrauded creditors or acted fraudulently in the course of running the debtor's company. Here important term to focus is "any person": the section intentionally does not limit itself to duly designated directors. It applies to any person involved in the management of the company with fraudulent purpose, wording which is wide enough to include a shadow director who influences or directs illicit transactions without being registered as a director. Similarly, Section 69 makes "officers" liable who have engaged in misconduct, fraud or falsification of books and as stated above, the term of "officer" under the Companies Act 2013 explicitly includes those on whose orders the board is in the habit of acting. Therefore reading of Sections 66 and 69 of the IBC read with sections 2(59) and 2(60) of the Companies Act provides the legal foundation for attaching insolvency-related liabilities on shadow directors.

The judiciary's interpretation of the proposition that the IBC requires courts and tribunals to look behind the formal corporate façade to identify the real controllers, rests on the Supreme Court's landmark judgment in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*[12], under Section 29A of the IBC. While the decision dealt with the subject of the eligibility of resolution applicants and not Sections 66 or 69, the Court's reasoning bears directly on the question as to how "control" is to be determined in bankruptcy proceedings. At paragraph 32, the Court stated that "A wooden, literal, interpretation would obviously not permit a tearing of the corporate veil…", but that a purposeful and contextual reading of the IBC is imperative, and that it is "not only permissible but imperative for the competent authority to find out as to find out as to who are the constituent elements that make up such a company". This approach was extended to group business structures at paragraph 37 where the Court noted that it is allowed to "consider the economic entity of the group as a whole". In paragraphs 49 to 51, the Court held

[12] ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 S.C.C. 1 (India).

that "control" under Section 2(27) of the Companies Act 2013 included not only de jure control but also de facto control. The Court found that "so long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be in control." In paragraphs 55 to 57, the Court construed the definition of "promoter" under Section 2(69) of the Companies Act and expressly held that sub-clause (c) of the said definition applies to a person who "need not be a member of the Board of Directors" but who "in fact advises, directs or instructs the Board to act", words which are functionally synonymous with shadow directorship. In paragraph 60, the Court finally entrenched the substance-over-form concept into the IBC framework by requiring that "antecedent facts reasonably proximate" to a relevant date "can always be seen, to determine whether persons are, in substance, seeking to avoid" their statutory responsibilities. However, it must be emphasized that recorded judgments of the NCLT directly applying Sections 66 and 69 to shadow directors or de facto controllers in the context of controlling the decisions of the company are still uncommon and undeveloped. The *ArcelorMittal* principles have been laid down at the level of the Supreme Court in the context of Section 29A and the systematic translation of these principles into the Section 66 and 69 framework by the NCLT is a development that Indian insolvency law is currently awaiting. The interpretive foundation laid by the Supreme Court and its application in fraudulent trading proceedings is itself a significant finding: it shows that the IBC, while providing the textual and doctrinal tools to address shadow director liability, has not yet been employed to do so in a consistent or reported way.

Theoretical and Enforcement Lens- Control without office

The concept of shadow director is more comprehensible when we consider it through the prism of corporate power and not corporate paperwork. The theory of Corporate governance draws a distinction between the ownership, control and accountability, which generally dissolves in practice. Theoretically, the shareholders own, the director manages and the laws enforce the fiduciary and statutory obligations. This framework of dispersed ownership and control is an efficient structure in theory, but it fails in the jurisdictions where the actual control is held by a small number of dominant shareholders and promoters. In India whereby ownership and control appears to be distinct on paper but in reality, the Board is relegated to formality and decision making takes place elsewhere.

This leaves a massive accountability gap in terms of law and economics. The reason is that the individual, who can exercise the effectual control, reaps the benefits of managing the policies, in accordance to their convenience, without being subject to the vices of the accountability and legal responsibility, to which the laws are designed to subject them. The fault of poor compliances is transferred to the formal directors and the stakeholders are affected. The Shadow directorship in its nature is a governance failure since the accountability is taken after the titles rather than power.

In India, the company decision is normally based on unofficial family decisions and advice of family heads. This forms a system of routine obedience and seldom records in the minutes of the meetings. This lessens the documentation of the expressive directions of the formal directors, and it is hard to evaluate it by regulation norms. The lack of a coherent statutory framework in the Judiciary has forced it to depend on ad hoc reasonings, which have had the effect of giving the factually similar cases a different outcome each time. The other jurisdictions such as UK and Australia can be regarded as more pragmatic in the sense that the Court in these jurisdictions adopts the substance-over-form approach i.e. who actually makes corporate decisions as opposed to their titles. A similar approach was touched upon in India in the case of *Sahara v. SEBI*, but without a legislative backing, these intervention will remain uncertain and sporadic.

COVID-19 and the Changing of Corporate Decision-Making: Broadening the Room of Shadow Directorship.

The COVID-19 pandemic was a structural shift in the corporate governance, not only in the sense of operations or finances, but in the very framework of the decision-making process of companies.[13] Whereas the literature on the topic has mostly dealt with liquidity stress, insolvency risks, and regulatory relaxations, the pandemic effect was more subtle, but still significant: it restructured the decision-making in corporations and by whom it was being made. This change is especially pertinent to the discussion of shadow directorship since it has provided an environment in which the informal control mechanisms can be extended beyond the formal Board framework.[14]

[13]OECD, OECD Policy Responses to Coronavirus (COVID-19), OECD, https://www.oecd.org/en/publications/serials/oecd-policy-responses-to-coronavirus-covid-19_68ccfcab.html (accessed Mar. 25, 2026).
[14] William Kucera et al., COVID-19 and Corporate Governance: Key Issues for Public Company Directors, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 29, 2020),

Among the most instantaneous transformations of the pandemic, a shift towards remote governance must be mentioned. Meetings of the board were virtual and there was little time to deliberate since the decisions made concerned survival or restructuring or continuity. Such changes, which were necessary, undermined the traditional governance protections of face-to-face deliberation, thorough scrutiny, and effective dissent by permitting virtual board meetings and reducing procedural requirements. This shift to remote governance has considerably made it harder to monitor the informal influence of the owner shareholders on the management and control of the company.[15] Decision-making in such an environment became more and more centralized in the hands of a few powerful people rather than the Board as a group.

This period saw the promoters and controlling shareholders, especially in Indian companies with a high level of concentration, play a more prominent role as these individuals were seen as the natural decision-makers because of existential risks that companies faced and their experience and financial interest in the company. This overshadowing of the formal board of the company in the pandemic can be incurred by the empirical evidence mentioned in the report by *Pani & Mishra*.[16] Their report indicated that the promoter-based ownership, which was already prominent in India, became the dominant factor in navigating the COVID-19 crisis. Such a dependence, however, often resulted in a situation whereby the Board get accustomed to acting in the way they told them to, thus satisfying the essential threshold regarding shadow directorship developed in *Re Hydrodan (Corby) Ltd*[17]. In spite of these dramatic changes, judicial or regulatory involvement in the implications of pandemic-era governance has been scarce with respect to shadow directorship. This is due to various factors. First, numerous decisions made during the pandemic were deemed as emergency measures and were less vulnerable to judicial review. Second, it is difficult to provide evidentiary support due to the informal character of influence that is frequently conducted by virtual means and unrecorded interactions. Third, the priorities of the regulators in the pandemic were more aimed at stabilising the economy and not the strict compliance with the rules of governance.[18] However,

https://corpgov.law.harvard.edu/2020/04/29/covid-19-and-corporate-governance-key-issues-for-public-company-directors/. (accessed 21st March 2026).

[15] Srishti Singhania, Challenges in Corporate Governance in India Post Pandemic, IPBA J. (Sept. 2021), https://singhanialaw.com/corporate-governance-in-india-post-pandemic/. (accessed 25th March 2026).

[16] M. Anas et al., Investigating the Nexus Between Corporate Governance and Firm Performance in India: Evidence from COVID-19, 16 J. RISK & FIN. MGMT. 307 (2023). (accessed 25th March 2026).

[17] Re Hydrodan (Corby) Ltd., supra note 1.

[18] Securities & Exchange Board of India, Various COVID-19 Related Circulars Providing Regulatory Relaxations and Compliance Measures (2020–2021), SEBI, https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0 (accessed 25th March 2026).

the pandemic reveals a fundamental flaw in the current legal framework: it implies the use of formal indicators of control. The disparity between formal power and real impact increases when the governance processes become dynamic and responsive, as was the case in the COVID-19. This demonstrates the necessity of substance-over-form approach where emphasis is laid on behavioural patterns and not formal designation. In the context of governance changes during the COVID era, no Indian judicial decision addressed shadow directorship. Similarly, SEBI did not issue any circulars or guidelines during the pandemic that looked at or tried to regulate the issue of informal control made worse by remote governance. Instead of focusing on making informal controllers more easily identifiable or holding them accountable, SEBI circulars issued in 2020 and 2021 mostly aimed at easing procedural compliance requirements, such as allowing virtual shareholder meetings, extending deadlines for annual general meetings, and temporarily easing disclosure deadlines.[19] The lack of any regulation in this area is itself a significant finding: it shows that the Indian framework did not respond to the increased governance risk that the pandemic created and that the law remained static at the very moment when informal control systems were at their most active and most significant for minority shareholders and creditors.

Finally, COVID-19 did not radically change the notion of a shadow directorship but greatly increased its applicability. The pandemic highlighted the shortcomings of the current corporate governance mechanisms in capturing real control by hastening the transition to informal and centralised decision-making. It strengthens the argument that legal frameworks have to develop in order to make accountability consistent with the actual influence, especially during crises when the traditional forms of governance are most susceptible.

Analysis and Recommendations

Based on the above discussion, although it is safe to say that the Indian Courts recognises the power of certain persons who are not appointed formally in the Board but has a notable influence of the company's affairs, but there is a gap or an ambiguity due to a clear statutory framework. There has been a lot of inconsistencies in the interpretations taken by the judiciary as their approach and understanding has always been different. This is because imposing any liability on such individuals is challenging as the establishment of their directorship is case-specific. This is why it is relevant to enhance corporate accountability by

[19] *Id.*

bringing about such reforms that can definitely detect, control and punish the shadow directors. Firstly, there should be an amendment in Companies Act 2013 for a statutory definition of shadow director in the terms of Section 251(1) of Companies Act 2006 (UK). The inconsistency found in the Indian case law is the direct reason for this reform: the disparity between the expansive approach in *Sahara v. SEBI*[20] and the relative reluctance in *TCS v. Cyrus Investments*[21] shows that courts are currently dealing with this concept without legislative direction, leading to outcomes that are hard to predict or systematise. Statutory definition would provide the Courts the consistent interpretative foundation that it so desperately needs. Secondly, SEBI should revise Regulation 26 and Regulation 4(2)(f) of the LODR Regulations to specifically cover those who exert de facto control over the company, irrespective of whether they have a formal position or not. However, the current lacuna in the LODR framework stipulates that a shadow director, without any formal designation is outside the literal scope of these disclosure obligations, resulting in a structural blind spot in the regulation of a company and must be addressed by the Board directly rather than left to case-by-case interpretation. Thirdly, the IBC should be amended to add an express provision on shadow directorship in the context of Sections 66 and 69, that liability for illicit trading and unlawful conduct may extend to persons who exercised de facto influence over the affairs of a corporate debtor prior to insolvency. While the general phrase "any person" in Section 66 is legally sufficient in concept, the existing reliance on it has not yielded consistent results from the NCLT since the tribunal does not have a set criteria of what would amount to sufficient control. This revision would bring doctrinal clarity to the IBC framework, consistent with the recommendation for the Companies Act. Fourthly, the judges and regulators have to adopt a defined standard of proof for 'habitual obedience' using the tests in *Re Hydrodan (Corby) Ltd*[22] and *Buzzle Operations*[23] as their starting point. The difficulty revealed in cases such as *Raj Chawla v. SEBI*[24], where the absence of a clear threshold allowed a resigned director to escape accountability despite probable continued influence, illustrates the real-world impact of this gap. A test provided by statute or regulation would avoid such results and provide a solid norm for enforcement agencies and courts to adopt. Fifthly, precedent from the corporate laws of the United Kingdom and Australia shows that shadow directors are subject to the same fiduciary obligation as other directors, therefore their recommendations cannot be made in a governance vacuum without

[20] Sahara India Real Est. Corp. Ltd., supra note 7.
[21] Tata Consultancy Servs. Ltd., supra note 10.
[22] Re Hydrodan (Corby) Ltd., supra note 1.
[23] Buzzle Operations Pty Ltd., supra note 3.
[24] Raj Chawla, supra note 6.

responsibility. And finally with globalisation it has become important to harmonise some of the guidelines and norms relating to corporate governance so that any person exerting influence on the affairs of the company in multiple jurisdictions can be dealt with in a uniform manner especially given the cross border corporate structures through which informal control is often exercised.

Conclusion

Hence, 'shadow directors' as a concept continues to remain in a grey area when it comes to Indian company law jurisprudence. There needs to be a revision and broadening of the existing legal provisions to not only include such concepts but also to explicitly provide regulations for it. Here, the internal discourse within India as well as external discourse i.e. outside India, regarding shadow directors can work as an ideal guiding principle. Lastly, it should be kept in mind that regulation of such kind will ultimately work in favour of companies and harbouring stakeholders' interests.

Bibliography

CASE LAWS

Australia

Buzzle Operations Pty Ltd. v. Apple Computer Austl. Pty Ltd., [2011] NSWCA 109 (Austl.).

India

ArcelorMittal India (P) Ltd. v. Satish Kumar Gupta, (2019) 2 S.C.C. 1 (India).

In re Swastik Textile Mills Ltd., 1983 SCC OnLine Bom 367 (India).

Ionic Metalliks v. Union of India, 2014 SCC OnLine Guj 10066 (India).

Raj Chawla v. Sec. & Exch. Bd. of India, 2010 SCC OnLine Del 90 (India).

Sahara India Real Est. Corp. Ltd. v. Sec. & Exch. Bd. of India, (2012) 10 S.C.C. 603 (India).

Tata Consultancy Servs. Ltd. v. Cyrus Invs. (P) Ltd., 2021 SCC OnLine SC 272 (India).

United Kingdom

Re Hydrodan (Corby) Ltd., [1994] 2 B.C.L.C. 180 (Ch.) (Eng.).

Ultraframe (UK) Ltd. v. Fielding, [2005] EWHC (Ch) 1638 (Eng.).

LEGISLATION AND REGULATORY MATERIALS

Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

Companies Act 2006, c. 46, § 251 (UK).

Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, regs. 4(2)(f), 26 (India).

JOURNAL ARTICLE

M. Anas et al., Investigating the Nexus Between Corporate Governance and Firm Performance in India: Evidence from COVID-19, 16 J. RISK & FIN. MGMT. 307 (2023).

INTERNET AND INSTITUTIONAL SOURCES

William Kucera et al., COVID-19 and Corporate Governance: Key Issues for Public Company Directors, HARV. L. SCH. F. ON CORP. GOVERNANCE (Apr. 29, 2020), https://corpgov.law.harvard.edu/2020/04/29/covid-19-and-corporate-governance-key-issues-for-public-company-directors/.

OECD, OECD Policy Responses to Coronavirus (COVID-19), OECD, https://www.oecd.org/en/publications/serials/oecd-policy-responses-to-coronavirus-covid-19_68ccfcab.html (accessed Mar. 25, 2026).

Securities & Exchange Board of India, Various COVID-19 Related Circulars Providing Regulatory Relaxations and Compliance Measures (2020–2021), SEBI, https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=7&smid=0 (accessed Mar. 25, 2026).

Srishti Singhania, Challenges in Corporate Governance in India Post Pandemic, IPBA J. (Sept. 2021), https://singhanialaw.com/corporate-governance-in-india-post-pandemic/ (accessed Mar. 25, 2026).