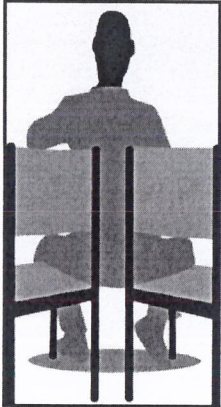


Let boards take a call

Sebi diktat on splitting CMD's post



At CII's post-budget interaction, Finance Minister Nirmala Sitharaman, who is also corporate affairs minister, did what any good politician would do when confronted with a tricky question. She deftly tossed India Inc's demand to do away with the controversial norm around splitting of chairman-cum-managing director (CMD) post by April 2022 to the Sebi's court, stating that the capital market regulator must also hear out the business community's concern on this front. But the FM also made it clear that she agreed that the way Indian companies are built over the decades depends on the family members and relatives being on the board. That must have been music to the ears of Sanjiv Bajaj, CII president-designate, who is also the CMD of the company he runs (Bajaj Finserv). Flagging the issue, he sought the government's intervention on the issue, which he described as 'regulatory overreach'. As Bajaj and other industry captains have highlighted on previous occasions as well, many of these corporate governance requirements mooted by Sebi for listed companies are not mandatory in all advanced economies. Why then in India?

According to the Sebi chairman's public statement, the "separation of the roles will reduce excessive concentration of powers in a single individual." The official regulatory goes thus: When a person occupies both the posts, he or she is the virtual power centre. One person can decide everything or can delay almost anything by virtue of his role. A chairperson, who is a non-executive, unless otherwise specified, has absolute command over the board agenda items and will command the proceedings of the board meetings, including the power to adjourn the meeting, if necessary. In board matters, he can not only decide the agenda items, but also answer all the questions and issues arising thereon. The MD, in this context, will be 'reporting' to the board, of which the chairperson is the presiding head. Most Articles of Association allow the chairperson to have the casting vote in case of any deadlock; if the CMD role is combined, that individual has two votes in a deadlock.

Of course, there is the flip side of the coin. If the board has a 'rubber-stamp' chairperson (basically brought in by the MD), then the splitting of the roles of chairperson and MD is meaningless. Some companies may attempt to side-step the regulation by appointing an executive vice-chairperson or appointing a family member,

who is not considered a relative under the Companies Act 2013, as chairperson. That would defeat the very spirit of the regulation. Only a chairperson who has the moral compass and the gravitas to stand up to a powerful MD will make this regulation useful.

The Sebi rule was originally meant to come into effect from mid-2020. However, following industry representations, an additional time period of two years (till 1 April 2022) was given for compliance. Now that this time is drawing near, the issue is bound to take the centre-stage again. Apart from the separation of role of chairman and MD, it has also been suggested that chairman and MD should not be related and that the chairman should hold only non-executive positions. Currently, over a third of the top 500 companies by market capitalisation are yet to comply with Sebi's requirement, according to data compiled by primeinfobase.com. These include leading private sector companies such as Reliance Industries, Hindustan Unilever and, of course, Bajaj Finserv. Several public sector giants like ONGC, NTPC and Coal India are yet to fall in line with Sebi's diktat. But many companies have split the post of chairman and managing director, led by the banking sector — both public and private.

When Sebi brought in this norm four years ago, it said that this was in line with the global best practices and introduced with the aim of improving corporate governance so that companies are run professionally. But the way Indian family-run companies have been built over decades, even centuries (in fact, over 300 of the 500 top companies are family-run) Sebi's so-called reforms have run into resistance. One of the arguments of the industry has been that these promoter-executives have built the businesses from the ground-up and have their wealth concentrated in those entities. So, they need to call the shots. They have a point, as does Sebi when it says that some family businesses also need to sharply address concerns about weak governance. So, a meeting point has to be found. Till that happens, it is best if a decision like splitting the post of chairman and MD is best left to the discretion of the board and shareholders. Currently, section 203 of the Companies Act requires all companies to have a separate chairperson and MD/CEO, unless the Articles of Association of the company provides otherwise. *