

Role of Independent Directors in protecting Company from Promoter family's feuds

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The debate on whether Independent Directors are truly independent is a global one — India is no exception. With a large part of corporate India being family-controlled, the two things that are certain are related-party transactions and intra-promoter feuds. Therefore, in India, the role of independent directors extends beyond stewardship of the company. An integral part of the role comprises managing the controlling shareholders, and often protecting the company from the promoters themselves.

Yet, there are very few examples of independent directors successfully thwarting the unbridled ambitions of promoters, or navigating a family feud. Perhaps all of this happens inside closed rooms, and there is, to that extent, little credit given to stronger boards. However, public disputes have been a cause for concern: in several instances, companies are being dragged into the family feuds.

Take for example the Kirloskar family feud. The Kirloskar Industries Limited's (KIL) board is asking if Kirloskar Brothers Limited (KBL)'s independent directors have independently verified the claims made by Sanjay Kirloksar in relation to the Deed of Family Settlement — and more importantly, does the Deed of Family Settlement bind KBL? The KIL's board also questions whether the KBL's independent directors have approved the ensuing litigation, given that the company has been dragged into family dispute. Independent of the veracity of the claims from either side, stakeholders will ask if the companies need to be dragged into a fight between the brothers.

When Rana Kapoor was fighting Ashok Kapur's family (wife and daughter) on their right to nominate board members, Yes Bank* was dragged into the family feud, and the board took a position supporting Kapoor, rather than distancing the bank from the feud. As a result, a significant time and focus of the board was spent on the dispute — including the Nomination and Remuneration Committee rejecting Madhu Kapur's nomination to the board, even though

she had not even asked to be nominated to the board! The issue came to a head when the RBI too was dragged into the battle and co-opted into the litigation.

Another on-going battle is with the Finolex group — between the Prakash Chhabria and Deepak Chhabria factions. Prakash Chhabria controls, through promoter shares and public shareholding, over 45 percent of the voting rights in Finolex Cables Limited: these shares were, up till the 2021 AGM, voting against all independent directors' appointments. As a result, FCL was unable to stabilise its board and governance structures for three years. In the 2022 AGM, the resolutions to appoint independent directors were passed — perhaps there was a negotiated ceasefire, or perhaps the regulatory change on appointment of independent directors drove better decision-making.

Where families fight, boards have a responsibility towards the company first. In the entire Cyrus Mistry-Tata Sons saga, some of the listed company boards showed maturity in being neutral and following due process, rather than picking a side. Family feuds can be settled outside the boardroom as well — some of the larger businesses houses in India, including the TVS group, recently, have managed a family separation without animosity within the factions.

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