INDIAN JOURNAL OF LEGAL REVIEW [IJLR]
VOLUME 4 AND ISSUE 1 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by
Institute of Legal Education
https://iledu.in

COMPLICATING CORPORATE GOVERNANCE FOR EFFECTIVE SHAREHOLDERS MANAGEMENT

AUTHOR - DHRUV GAUTAM PATEL, STUDENT AT UNITEDWORLD SCHOOL OF LAW, KARNAVATI UNIVERSITY

BEST CITATION – DHRUV GAUTAM PATEL, COMPLICATING CORPORATE GOVERNANCE FOR EFFECTIVE SHAREHOLDERS MANAGEMENT, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (1) OF 2024, PG. 111-120, APIS – 3920 – 0001 & ISSN - 2583-2344.

The evolving corporate landscape in India underscores the increasing importance of strict adherence to corporate governance principles, especially in safeguarding the interests of minority shareholders. As the corporate sector expands rapidly, the responsibility of managing companies grows, necessitating a strong focus on corporate governance practices.

One of the catalysts for this heightened focus on corporate governance was the Satyam scam, which revealed significant shortcomings in India's company laws. The scam prompted lawmakers to enact amendments aimed at minimizing the possibility of such fraudulent activities in the future. Both the government and shareholders have a responsibility to enact and enforce strict laws and actively participate in company affairs to protect their interests.

Shareholders, as the owners of the company, must not only assert their statutory rights but also actively engage in the company's affairs. Shareholders' activism has become increasingly prevalent in India, mirroring trends in countries like the USA. This active involvement of shareholders has led to a transformation in the day-to-day functioning of companies, ultimately contributing to increased profitability.[187]

One significant development in this regard is the introduction of e-voting provisions by SEBI in 2012, later incorporated into the Companies Act, 2013. This has significantly enhanced shareholder participation in company affairs by providing a convenient and accessible means of voting. Mandatory e-voting compliance for all companies further underscores the commitment to transparency and shareholder empowerment.

The provisions related to oppression and mismanagement under the Companies Act, 2013 have significantly empowered shareholders to address grievances against the management. Previously, a minimum stake of 10% was required for minority shareholders to approach the tribunal in cases of oppression. However, the new Act allows the tribunal to grant permission to individuals with less than 10% shareholdings to file applications against oppressive acts by the management.

Additionally, the introduction of class action suits under Section 245 of the Companies Act, 2013 enables shareholders to represent a class against the same defendant. This provision, a long-awaited demand, enhances shareholders' ability to protect their interests collectively. The concept of independent directors further strengthens shareholder empowerment. Independent directors, who have no other interests in the company apart from their remuneration, act neutrally in the company's and shareholders' interests, safeguarding against unfair practices by the management.[188] Shareholders also wield significant influence in decisions regarding directors' remuneration, as

[187] Grahan Nand, 'Corporate governance and shareholder activism in India' (PhD Thesis, Delhi University 2020).

[188] *ibid.*

such decisions require approval in general meetings through the exercise of voting rights. This ensures that even a small group of shareholders can oppose unjust decisions through activism.

Amendments like the Company Law Amendment Act, 2017, which reduces the need for Central Government intervention in certain matters, and the role of proxy advisory firms have further bolstered shareholders' activism. Proxy advisory firms play a vital role in educating shareholders about the potential consequences of company decisions, thereby guiding their voting decisions. The increase in cases of shareholders' activism brought before tribunals in recent years indicates a growing trend towards shareholder activism in India. This trend is expected to continue, with shareholders' activism becoming an integral component of corporate governance in the country's corporate landscape.

Changes and Challenges Incurred in Corporate Governance

SEBI Amendments

The Satyam scandal, likened to the collapse of Enron, had a significant impact on investor confidence and the Indian stock market. Investors became wary of companies audited by PWC, leading to a drop in the share prices of around 100 companies ranging from 5% to 15%. The news of the scandal caused the benchmark Sensex index of both the BSE & NSE to plummet by around 5%. Satyam's shares experienced a record low, with a 70% decline in share price.[189] The Indian government intervened by initiating an investigation while also appointing a new board of directors for Satyam. The government aimed to distance itself from any responsibility for the fraud or any appearance of attempting to cover it up. They immediately engaged with various stakeholders such as bankers, accountants, lawyers, and government officials to devise a plan for the sale. The board worked diligently to restore stability and confidence in the company, crucial for facilitating its sale within the designated timeframe. To expedite the sale process, the board enlisted the services of Goldman Sachs and Avendus Capital, charging them with the task of selling the company as quickly as possible. This strategic move aimed to ensure the survival of Satyam and minimize the fallout from the scandal.

In April 2014, the SEBI introduced amendments to the Listing Agreement. These amendments aimed to enhance corporate governance practices among listed companies. Key provisions included:[190]

- Establishment of a Vigil Mechanism: Listed firms were now obligated by the Listing Agreement to set up a monitoring mechanism wherein directors and staff could report concerns regarding unethical behavior, fraud, or misconduct. This mechanism provided a platform for whistleblowers to report such matters without fear of retaliation.
- Enhanced Role of Audit Committee: The role of the Audit Committee was expanded, particularly concerning cases of suspected fraud or irregularities. The committee was tasked with overseeing the investigation of such matters and ensuring appropriate actions were taken.
- Responsibilities of CEO and CFO: The amendments outlined specific responsibilities for the CEO and the CFO regarding financial reporting and disclosure to the Audit Committee. This aimed to ensure transparency and accuracy in financial disclosures.

In 2015, SEBI introduced the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). These regulations replaced the Listing Agreement and applied to all listed companies. The LODR imposed stringent guidelines on reporting and disclosure

[189] *ibid.*

[190] Kunal Bhardwaj and others, 'Corporate Governance in Listed Entities: Evolution and Challenges' [2020] SSRN Electronic Journal <http://dx.doi.org/10.2139/ssrn.3718364> accessed 13 March 2024.

of material events, as well as actual and suspected fraud. Key features of the LODR included:[191]

- Material Events Reporting: Listed companies were required to promptly report material events that could affect their financial condition or operations. This included events such as acquisitions, mergers, restructuring, and defaults on loans or obligations.
- Fraud Reporting and Disclosure: The LODR mandated robust mechanisms for reporting and disclosing instances of fraud or suspected fraud. Companies were required to promptly inform regulators and shareholders about any such incidents, ensuring transparency and accountability.

Amendments in the Companies Act 2013

E-Voting

The Companies Act 2013 introduced several provisions aimed at empowering shareholders and facilitating their activism in company affairs. One such provision is Section 108, which grants shareholders the right to vote in both general and special meetings through electronic means.[192] This provision enhances shareholder participation by enabling them to vote conveniently without the need to attend physical meetings. The widespread access to the internet in India has further facilitated shareholder activism through electronic means. With a large portion of the population having internet access, shareholders can now easily participate in company affairs from anywhere, contributing to the potential growth of shareholder activism. The recent data boom driven by telecom providers like Jio has significantly increased internet penetration, further fueling shareholder participation.

Additionally, the availability of demat accounts has empowered individuals to trade stocks and shares independently, strengthening their engagement with the stock market. As shareholders become more informed about company activities and their implications, they are increasingly challenging management and board decisions, leading to a rise in shareholder activism cases. The shift in shareholder behavior from passive to active can also be attributed to technological advancements. Shareholders can now easily buy and sell shares using smartphone apps, making transactions quick and convenient. These apps provide real-time updates on company events and activities, allowing shareholders to stay informed and engaged with their investments.

Class Actions

A key advancement in Indian corporate law was the introduction of the idea of class action lawsuits in Section 245 of the Companies Act, 2013. Unlike the Companies Act of 1956, which did not include provisions for such suits, the inclusion of Class action suits in the 2013 Act provides shareholders with a powerful tool to protect their interests and seek redressal for grievances. In the aftermath of the Satyam scam, shareholders in the USA were able to seek relief through Class action suits and receive compensation from Mahindra Satyam. However, in India, where no such provision existed at the time, many shareholders were left without recourse and felt cheated.

The grounds for filing such a suit include preventing the company from engaging in acts that violate its articles or memorandum, declaring void resolutions passed by misleading means, seeking damages or compensation for fraudulent or wrongful acts by the company, its directors, auditors, or other parties involved. These provisions give shareholders a legal mechanism to hold companies and their management accountable for any actions that may harm shareholder interests. Class action suits provide a collective platform for shareholders to seek remedies and protect their rights, thus promoting transparency and corporate governance in India.

[191] *ibid.*
[192] ibid.

The Companies Act of 2013 provides detailed provisions regarding the filing of suits by members or depositors against a company for acts that are prejudicial to their interests. Here are the key points outlined in the Act:[193]

- Requirements for Filing Suit: In companies with share capital, the suit can be filed by at least one hundred members or a prescribed percentage. For companies without share capital, the suit can be filed by at least one-fifth of the entire membership. Depositors can also file suits based on prescribed criteria related to their numbers or the amount owed to them by the company.
- Considerations by the Tribunal: The Tribunal will consider various factors before admitting an application, including whether the applicants are acting in good faith, evidence of involvement of persons other than directors or officers, and whether the cause of action can be pursued by the applicants themselves. The Tribunal will also consider whether the act or omission in question could be authorized or ratified by the company.
- Procedure upon Admission of Application: All class members or depositors will receive public notice. A lead candidate may be selected to lead the class in the consolidation of comparable petitions from different jurisdictions in a single application. For a given cause of action, only one class actions petition will be accepted. The company or responsible party will bear the cost or expenses related to the class action application.
- Binding Orders: Any decision made by the Tribunal will be enforceable against the corporation as well as against its associates, auditors, depositors, and members.
- Penalties for Non-compliance: Failure to comply with the Tribunal's order may result in fines for the company and imprisonment for officers in default.
- Frivolous Applications: Frivolous or vexatious applications may be rejected by the Tribunal, and the applicant may be ordered to pay costs to the opposite party.
- Exclusion of Banking Companies: These provisions do not apply to banking companies.
- General Provision: Any person, group, or association representing affected persons may file an application or take action under this section, subject to compliance with its requirements.

Non-Cash Transactions for Shareholders

Section 192 of the Companies Act imposes restrictions on directors and persons connected to them regarding the acquisition of property of the company. Here are the key points outlined in this section:[194]

- Approval Requirement: A resolution presented at a general body meeting of the company must offer prior authorization for any firm to buy property through its director or a person connected to the director. A general meeting of the holding company is required to seek approval if the director or a linked person is a director in the holding company.
- Notification of Approval: The notification of the resolution's approval should outline the terms under which the property will be purchased as well as the assets' proper, registered value determined by a valuer.
- Voidability of Arrangements: Any agreement entered into in violation of this clause will be voidable at the company's request; provided, however,

[193] Companies Act, 2013, s. 33, at s 245.

[194] *ibid.* at s 192.

that the agreement may not be voidable in the following situations: Restitution of funds or other consideration involved in the agreement is not possible; the company has received indemnification from a third party for any loss or damage it has suffered; or any right has been acquired lawfully for value without knowledge of any other party's violation of this clause.

Provisions for Independent Directors

Section 151 of the Companies Act 2013 introduced the concept of independent directors in Indian company law. Here are the key provisions outlined in this section:[195]

- Minimum Number of Directors:
  - Every business needs a board of directors made up of real people. Depending on the kind of business, different minimum numbers of directors are needed:
  - Three directors or more for publc businesses
  - Two directors or more for private
  - one or more directors for one-person
- Appointment of Independent Directors:
  - Independent directors must make up at least a third of the the total quantity of directors in a publicly traded corporation.
  - The total quantity of independent directors for particular groups of firms may be set by the government of India.
  - An independent director is defined as a director, other than a whole-time director, managing director, or nominee director, who possesses expertise, integrity, and experience.
- Criteria for Independent Directors:
  - The corporation, its subsidiaries, or its promoters cannot have any financial link with independent directors or their families.
  - They cannot have worked for the corporation or any of its subsidiaries for the previous three fiscal years, nor have they ever had a managerial role.
  - They must not have been partners, employees, or proprietors of auditing firms, consulting firms, or legal firms that had significant transactions with the company.
- Declaration and Remuneration:
  - Independent directors must provide a declaration confirming their independence.
  - They are entitled to remuneration in the form of fees and commission, subject to certain provisions.
  - They cannot receive stock options and are subject to sections 197 and 198 of the Companies Act.[196]
- Appointment and Tenure:
  - Appointing directors who are independent is permitted for a maximum of two consecutive periods, each lasting five years.
  - Following a three-year cooling-off time frame, they may be nominated again for a further term.
  - They are only accountable for actions taken by the business that they knew about or approved.

[195] *ibid.* at s 151.

[196] *ibid.* at s 198.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR]
VOLUME 4 AND ISSUE 1 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

- Exemption from Rotation: The terms pertaining to the rotational retirement of directors are not relevant to the appointment of independent directors.

Section 150 of the Companies Act 2013 describes the process for selecting and appointing independent directors. It mandates the establishment of a data bank for independent directors by a designated institution, body, or association selected by the Central Government.[197] This data bank will contain information about eligible candidates interested in serving as independent directors, and it will be made publicly available on the institution's website. A declaration from the Board verifying that, in the Board's opinion, the nominated director meets all requirements must also be included in the notice of the general meeting. Moreover, while calculating the maximum number of directors permitted inside a business, independent directors appointed pursuant to the Companies Act or any other legislation are not included in the total number of directors.

The Central Government has the authority to prescribe rules governing the collection of information for the data bank and the procedures for selecting independent directors. Additionally, the notice for the general meeting must include a statement from the Board confirming that the proposed director possesses all the necessary qualifications according to the Board's opinion. Furthermore, independent directors appointed under the Companies Act or any other law are excluded from the total number of directors for determining the maximum number of directors allowed within the company.

Amalgamation

Section 395 of the Companies Act 2013 outlines the requirements for transferring shares from one company to another. It mandates that consent from at least 90% of the shareholders is necessary for such transfers, thereby safeguarding the interests of minority shareholders. Dissenting shareholders may be given a notice by the transferee company expressing its intent to acquire their shares. To address potential injustices, Section 235 of the Companies Act 2013 grants power to acquire shares of dissenting shareholders who oppose schemes approved by the majority, provided the majority consists of shareholders holding not less than 90% of the shares.

Section 92 of the Companies Act 2013 pertains to the disclosure of a company's information, which is crucial for the proper functioning and development of the company.[198] Shareholders and stakeholders need accurate information about the company's financial situation to make informed decisions and actively participate in company affairs. Under Section 92, every company is required to prepare an annual return containing various particulars about the company's activities, financial status, directors, key managerial personnel, meetings, remuneration, penalties, and more. The information provided in the annual return must be accurate and signed by a director or company secretary. Failure to comply with the filing requirements may result in penalties for the company and its officers. Sharing data is necessary to safeguard the best interests of investors, particularly minority shareholders, and to make managers responsible for any acts of fraud, particularly at listed firms. The legislation imposes liability on the management for any inaccuracies or failures in disclosure, aiming to prevent harm to shareholders due to fraudulent practices.

Challenges to Indian Companies

India's corporate governance framework is considered stringent globally, but weak enforcement has led to numerous corporate scams and failures. Some notable examples include DLF being barred by SEBI due to non-disclosure of financial records, allegations against Ranbaxy for systemic fraud, Reebok India's fraud scandal, Fortis Group's corporate

[197] *ibid.* at s 150.

[198] *ibid.* at s 92.

governance lapses, the removal of Cyrus Mistry raising questions about transparency, and Nirav Modi's scandal involving Punjab National Bank.

These failures can be attributed to several key challenges:

- Family-Run Entities: Many Indian companies are family-run, leading to a concentration of power within the family and potentially inadequate oversight.
- Reactive Regulations: Regulations often react to scandals rather than proactively addressing governance issues, leading to a cycle of tightening regulations after each scandal.
- Freedom of Independent Directors: Independent directors in listed entities play a crucial role but may face limitations in promoter-run companies where decisions are often influenced by promoters.
- Conflicts of Interest: Conflicts arise when the interests of company members or officers conflict with those of the company itself, posing challenges to effective governance.
- Inadequate Disclosure: Balancing transparency with the need to protect sensitive information poses challenges in determining the extent of disclosure necessary for good governance.
- Differentiation of Functions: Distinguishing between the roles of company management and the board is essential for effective governance.
- Separation of CEO/MD and Chairperson Roles: Combining these roles concentrates power and may lead to conflicts and misgovernance.
- Appointment of the Board: While shareholders technically have the power to appoint the board, in practice, appointments are often influenced by promoters, leading to concerns about independence and oversight.

Addressing these challenges requires comprehensive reforms in governance structures, enforcement mechanisms, and regulatory frameworks to ensure transparency, accountability, and effective oversight in Indian corporations.

Recent Developments on the Control of Shareholders for Effective Corporate Governance

Prior to this work, influential literature on "law and finance" in the late 1990s had suggested a correlation between high levels of legal investor protection and ownership dispersion. This literature often claimed a causal relationship between the two, implying that widely-held firms thrived in environments with strong legal protections for investors, while controlling shareholders were associated with jurisdictions lacking such protections.

Gilson summarized this perspective by suggesting that widely-held firms were predominant in 'good law' environments, while controlling shareholders were more common in "bad law" jurisdictions.[199] However, the Controlling Shareholders and Corporate Governance research challenged this viewpoint by highlighting the potential benefits and efficiencies that controlling shareholders could bring to corporate governance practices. By questioning the negative stereotype associated with controlling shareholder systems, this research opened up new avenues for understanding corporate governance dynamics across different legal and regulatory environments. It prompted scholars to reconsider the nuanced roles that controlling shareholders play in corporate governance, recognizing that their presence does not necessarily imply inferior governance practices but rather may offer unique advantages in certain contexts.

Indeed, a notable shift has occurred in the ownership structures of large companies over

199 . Kunal Bhardwaj and others, 'Corporate Governance in Listed Entities: Evolution and Challenges' [2020] SSRN Electronic Journal <http://dx.doi.org/10.2139/ssrn.3718364> accessed 13 March 2024.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR]
VOLUME 4 AND ISSUE 1 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

time. While historically, many of the largest companies had dispersed ownership structures, today it is increasingly common to see controlling shareholders, albeit often in the form of controlling-minority shareholders. The widespread occurrence of dual-class share schemes has enabled this transition. Certain shareholders, usually firm founders, executives, or other insiders, are able to acquire share with more voting rights than the general public thanks to dual-class share designs. This arrangement effectively grants these controlling-minority shareholders disproportionate control over key decisions within the company, despite owning a minority of the total equity.

While dual-class structures may provide certain benefits, such as enabling long-term strategic vision and protecting against short-term pressures from the market, they also come with significant drawbacks. One of the main concerns is the amplification of agency costs, as the interests of controlling-minority shareholders may not always align with those of minority shareholders or other stakeholders. This misalignment of interests can lead to governance challenges, reduced accountability, and potentially harmful decision-making that prioritizes the interests of the controlling-minority shareholders over the broader shareholder base. As a result, the prevalence of dual-class structures and controlling-minority shareholders has sparked debates about corporate governance practices and the balance of power within companies. Regulators, investors, and governance advocates continue to grapple with how to address these challenges while preserving the benefits of dual-class structures and promoting fair and transparent corporate governance.

LODR Provisions Regulation 17

Composition of Board of Directors

The Committee's recommendations on corporate governance reforms aimed to enhance accountability and diversity within the boards of listed companies. Here's a summary of the key recommendations and their acceptance by SEBI:[200]

- Amount of Directors on the Board: In light of the requirement for a diversity of backgrounds and skill sets, the Committee suggested raising the minimum number of directors on the boards of publicly traded businesses to six. This advice was approved by SEBI.
- Gender Diversity: The Committee recommended mandating that listed businesses' boards have a minimum of a single autonomous female director. The suggestion to support gender equality was adopted by SEBI.
- Quorum: The Committee recommended a higher quorum requirement for board meetings of listed companies, along with the inclusion of at least one independent director in the quorum. SEBI accepted this recommendation to ensure higher compliance standards.
- Separation of Key Positions: The Committee proposed separating the positions of chairperson and MD/CEO in listed companies where more than 40% of the shareholding was held by the public. SEBI accepted this recommendation with a modification based on market capitalization.
- Independent Directors: The Committee recommended including subjective criteria for assessing the independence of directors, along with objective criteria. SEBI accepted this recommendation without modifications and expanded the criteria for independence assessment.

SEBI's acceptance of these recommendations signifies a commitment to improving corporate governance standards in listed companies, promoting diversity, accountability, and transparency in decision-making processes. These reforms are expected to benefit smaller

[200] Grahan Nand, 'Corporate governance and shareholder activism in India' (PhD Thesis, Delhi University 2020).

listed entities by reducing excessive compliance burdens and enhancing gender diversity in Indian companies.

Regulation 31-A

In the event of a company transitioning to a professionally managed entity without a discernible promoter, existing promoters within the company may be reclassified as public shareholders. However, this reclassification process is subject to specific conditions. Firstly, promoters must formally request the reclassification. The restructuring proposal must then be approved, through either the board of directors' general meeting or during the yearly meeting of shareholders. Notably, those who are in the promotion group, those who are acting on their behalf, and promoters themselves are not permitted to participate on this issue.

A 'professionally managed' company refers to a scenario where no group of individuals acting collectively holds more than 10% of the company's share capital, inclusive of any holdings of outstanding depository receipts.[201] In the context of a listed company, additional constraints apply. Specifically, the board of directors cannot include the promoter or their relatives, nor can they accommodate a nominee director appointed by the promoter on the company's board. By adhering to these stipulations, companies aim to ensure transparency and independence within their management structures, thereby fostering trust among shareholders and stakeholders.

Better Management at the Board

To ensure sufficient safeguards for shareholders' interests, the reintroduction of provisions concerning directors' retirement age and limitations on the number of directorships an individual can hold is deemed essential. Additionally, emphasis is placed on ensuring effective contributions by directors during board meetings. Specific recommendations in this regard have been outlined in other chapters of the report. Furthermore, the Committee underscores the importance of disclosure to enhance transparency in company dealings with shareholders. Accordingly, it is recommended that amendments be made to directors' reports to shareholders and in the company's accounts. Additionally, it is proposed that all listed public companies publish a summarized abstract of their unaudited accounts along with a brief report every six months. These measures are intended to bolster shareholders' positions within the company and safeguard their interests.

The case of Akzo Nobel Merger, 2012[202]

In the Akzo Nobel case, the company decided to pursue a merger, which required approval through a resolution in a shareholders' meeting for the decision to be ratified. Despite facing opposition from a significant number of institutional shareholders, the crucial proposal was passed in the resolution after The Unit Trust of India (UTI) decided not to participate in the voting process.

The decision by UTI not to cast its vote played a pivotal role in the resolution's passage. This decision differed from other major public companies in the insurance sector, such as General Insurance Corporation, Life Insurance Corporation, New India Insurance, and Oriental General Insurance, which opted to vote against the proposal. Had UTI voted in line with its peers, the outcome might have been different, potentially resulting in a rare victory for minority shareholders against the company's decision. When the voting percentage was disclosed, it was revealed that 23% of the votes went against the resolution. Although the company succeeded in passing the resolution, the vocal opposition from minority shareholders indicated dissatisfaction with the company's decision. Approximately forty-five percent of non-

[201] 'LODR - Regulation 31A | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR' (*Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR*) <https://ca2013.com/lodr-regulation-31a/> accessed 13 March 2024.

[202] 'Despite minor protests, Akzo Nobel's merger proposal set for smooth sail' (*The Economic Times*) <https://m.economictimes.com/industry/cons-products/paints/despite-minor-protests-akzo-nobels-merger-proposal-set-for-smooth-sail/articleshow/11800681.cms> accessed 13 March 2024.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR]
VOLUME 4 AND ISSUE 1 OF 2024
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

promoter votes went against the company, highlighting significant dissent among shareholders.

DLF Ltd. Scheme

DLF Ltd. introduced a new scheme aimed at retired directors, necessitating an amendment to the company's memorandum of association. To effect this change, a special resolution was proposed to modify the memorandum of association, and shareholders' approval was sought via postal ballot. On August 19, 2013, the voting took place on the special resolution. Despite approximately 99% of institutional investors voting against the resolution, it still passed. This outcome was due to the higher shareholding of the promoters in the company, which enabled them to outweigh the dissenting votes from institutional investors.[203]

ACC Shareholders Approval for Royalty

ACC's institutional investors opposed the proposed increase in royalty fees to ACC's holding company, Holcim. Additionally, an independent director of ACC Cement raised objections, which were highlighted by a proxy firm. As a result, the company decided to seek shareholder approval before implementing the royalty fee increase of 1% of net sales to its parent company, Holcim, even though it was not legally required to do so.[204] This decision is seen as a victory for small shareholders and may establish a precedent for companies seeking shareholder approval for royalty payments to their holding companies. Although the company initially proposed a 2% royalty hike, independent directors of both ACC Cement and Ambuja Cement decided against such a significant increase, arguing that the cement business did not require such advanced technology. Consequently, the proposal for a 1% royalty hike was approved.

Tata Motors

For the first time, minority shareholders of a company successfully impeded a proposal to increase compensation for top executives. The company sought to increase the remuneration of top executives beyond the prescribed limits, requiring the approval of minority shareholders with seventy-five percent of their votes in the company's meeting. The proposed increase in remuneration was intended for KarlSlym and two former managing directors of the company after their retirement.[205] However, the proposal failed to pass in the meeting, thanks to the opposition from minority shareholders. This outcome highlights the effectiveness of shareholder activism in India, particularly in larger companies that adhere more closely to corporate governance norms. In such companies, shareholder activism often leads to either success or partial victories for shareholders. Thus, this instance serves as another example of the growing influence of shareholder activism in India.

Interglobe Aviation Ltd., 2018

InterGlobe Aviation Ltd. attempted to amend its articles of association to enable it to buy, purchase, and sell stakes in the largest airline in India. According to regulations, such an amendment requires the support of 75% of votes in an extraordinary general meeting through a resolution. The company convened the AGM, where a special resolution was proposed, and shareholders cast their votes. Nevertheless, the resolution was not approved. Approximately 48% of shareholders voted in favour of the corporation, while 51% of investors voted opposing the special resolution at the special general meeting. The special resolution failed because it did not receive the necessary number of votes (75%), which was necessary for it to pass.[206]

[203] 'Corporate governance issue back to haunt DLF' (*BusinessLine*) <www.thehindubusinessline.com/markets/stock-markets/Corporate-governance-issue-back-to-haunt-DLF/article20511639.ece> accessed 13 March 2024.
[204] 'Royalty woes addressed, all eyes on volume growth at ACC, Ambuja' (*mint*) accessed 13 March 2024.
[205] Grahan Nand, 'Corporate governance and shareholder activism in India' (PhD Thesis, Delhi University 2020).
[206] *ibid.*