Are shareholder meetings dead?

The new Companies Act's e-voting provision and SEBI's circular could eliminate the platform for retail shareholders to organise themselves

Talk to any company and it will tell you that the new Companies Act is complicating rather than simplifying matters. Companies are talking about how industry's suggestions have been ignored, why it is just not possible to implement large swathes of the new regulations and what now needs to be done: a band-aid cannot fix this and only the full surgery of redrafting will provide companies a cure—in other words, companies are saying, "Scrap it".

In contrast, the (small) shareholders have been happily ensconced in the belief that the new Companies Act empowers them. But the new Act has been cruel to them too. A provision which eliminates the need for shareholders meeting altogether has found its way into the regulation.

The Companies Act 2013 (section 110), read together with a Sebi circular (May 21, 2014), allows mergers to be approved by a majority of shareholders by voting either through a postal ballot or by electronic voting in advance of shareholder meetings. Since the votes are expected to be in before the meeting, all the chairman will do at the shareholder meeting is read out the agenda and provide the vote count. So, why hold a meeting then?

The case against meetings is bolstered by looking at the actual experience of holding meetings. Institutional shareholders tend to resolves issues with managements before the meeting. In any case, their votes are with the custodian well before the meeting. Small shareholders find it expensive to attend such meetings. Those that do, provide anecdotal evidence that other than listening to some poetry being recited, no substantial business is conducted. The e-voting platform enables those in the sleepiest town to vote, without the inconvenience and expense of travelling.

At the heart of this is the question, "What does my shareholding entitle me to?" Is it just to vote and receive dividends? Not quite. Typically, in exchange for investing in a company, a shareholder gets a bundle of rights, including the right to attend shareholder meetings. These meetings are the key fora where shareholders hold the managers of companies to account. These meetings are platforms for conveying information to shareholders, and they provide the medium for questioning the company managements directly.

This feature of confrontation or face-to-face accountability is particularly valuable to retail investors. This is the issue which the Bombay High Court is now addressing.

A brief summation of the case: Wadala Commodities is being merged with Godrej Industries. The question before the high court is, "Can the company do away with the shareholder meeting?" Justice GS Patel, while welcoming the need to provide alternate voting mechanisms, noted, *"we must remember that at the heart of corporate governance, lies transparency and a well-established principle of indoor democracy that gives shareholders the qualified, yet definite, and vital rights in the matter relating to the functioning of the company in which they hold equity. Principal among these is not merely a right to vote on any particular item of business so much as the right to use the vote as an expression of an informed decision. That necessarily means that the shareholders have an inalienable right to ask questions, seek clarifications and receive responses before they decide which way they will vote. It may often happen that the shareholder is undecided on any particular item of business. At the meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, may finally make up his mind. In other cases, he may have strong views and may desire to convince others of his convictions … the right to persuade and the right to be persuaded are of vital importance … to say that no meeting is required and that a shareholder must cast his vote only on the basis of the information that has been sent to him by post or email seems completely contrary to the legislative intent and spirit."*

He then goes on to say that *"nothing could be more detrimental to shareholders' rights than stripping them of the right to question, the right to debate, the right to seek clarification; and, above all, the right to choose, and to choose wisely. A vote is an expression of an opinion. That vote must reflect an informed decision. Dialogue and discourse are fundamental to the making of every such informed decision. (The Counsel's) submission seems to me to relegate shareholders, in the guise of greater inclusiveness, to a very distant second place in the scheme of corporate governance, seeing them merely as a necessary evil. Nothing could be further from the mandate of corporate law and governance. We strive today to greater transparency; that means more should be given the opportunity to speak and to exercise their rights as shareholders. But that cannot come at the price of their right to speak, to be heard, to persuade, even to cajole. What corporate governance demands is the government of the tongue, not the tyranny of a finger pressing a button."*

The court has shared its thinking. One way out is that shareholders attend meetings where they discuss and debate issues, hear out management—if the meetings are video-conferenced, investors can participate from remote locations. Voting then takes place after the meeting is over, and to facilitate this, e-voting facility be provided at the meeting venue itself. Further postal ballots are accepted 48 hours after the meeting, rather than before, reversing the existing timelines. This matter requires a quick resolution.

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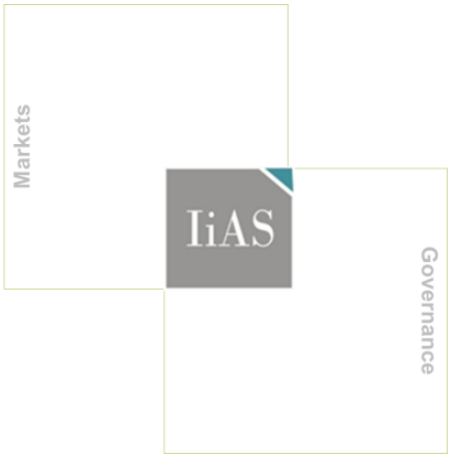

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