

Elon Musk and CEO salaries in India

The numerous observations in Elon Musk's trial resonate in our market: Musk's relationship with the independent directors; his 21.9 per cent equity ownership in the company at the time the board approved his compensation plan, and what this implies; Mr Musk being a superstar CEO; and Mr Musk's trifecta of roles - CEO, chair, and founder.



Last month, the Delaware Court of Chancery struck down Elon Musk's gravity-defying \$55.8 billion pay-package at Tesla, approved by shareholders in 2018. At \$55.8 billion maximum value and \$2.6 billion fair value, the compensation was almost entirely through stock grants. The plan was "250 times larger than the contemporaneous median peer compensation, 33 times larger than the plan's closest comparison, which was Mr Musk's previous compensation plan." In 2022, it was estimated to be around six times larger than the combined pay of the 200 highest-paid executives in 2021.

The judge, Chancellor Kathaleen McCormick, found the process for securing the approval deeply flawed. Her numerous observations in the [post-trial opinion](#) resonate with those in our market. These include Mr Musk's relationship with the independent directors; his 21.9 per cent equity ownership in the company at the time the board approved his compensation plan, and what this implies; Mr Musk being a superstar CEO; and Mr Musk's trifecta of roles - CEO, chair, and founder.

A question repeatedly asked in the order is the need for a generous compensation to incentivise Mr Musk to remain and grow the business. Mr Musk's 21.9 per cent ownership of the business was considered incentive enough for him to remain and do what is right by Tesla.

Compensation committees in India often miss this point. True, as owner-managers many promoters drive the businesses, but their wealth is tied-up to their companies doing well, so over-the-top compensation is unwarranted. More on this later.

During the time leading up to the award, Tesla had a nine-member board, including Elon Musk and his brother, Kimbal. The other seven were Ira Ehrenpreis, Brad Buss, Robyn Denholm, Antonio J. Gracias, Steve Jurvetson, James Murdoch, and Linda Johnson Rice. The first four were members of the compensation committee, responsible for negotiating Mr Musk's compensation plan, with Mr Ehrenpreis as its chair.

The opinion cites various grounds questioning the independence of the compensation committee. Mr Ehrenpreis netted over \$200 million, by exercising less than a quarter of his options, and is known to have said that being a Tesla director "has been a real benefit in fundraising." Nearly 44 per cent of Mr Buss' net worth was accounted for by Musk "controlled" entities. Ms Denholm described her financial benefits from Tesla as being "life changing". Mr Gracia has amassed "dynastic or generational wealth" from investing in Mr Musk's businesses for years. Personal ties to the other independents are also brought out. This closeness and Mr Musk's control of the process was an important reason the order cited for there being no meaningful negotiations over the size and terms of the grant to Mr Musk.

The good thing in our markets is that neither promoters nor independent directors are eligible to receive stock options/grants. This eliminates a very material conflict from the equation. And while we do have independence defined, it is unclear whether many are independent for ticking the box.

Mr Musk's compensation was approved by the shareholders. Here the order highlights that his 21.8 per cent ownership tilted the scale in his favour. In India too, promoters vote on their compensation.

If a promoter owns 30 per cent of the equity shares, they need two out of the seven shares voting in favour for the resolution to be approved, and five of seven

for it to be defeated. And for each percentage of abstain votes, the scale continues markedly in the promoter's favour.

IiAS' assessment of 201 remuneration resolutions for promoters presented in 2022 shows that 68 (34 per cent) of these would have been defeated had promoters not been allowed to vote. And this is why we at IiAS (- disclosure: It's where I work), have been advocating the majority of minority votes for promoter compensation.

Although there is no rule-based definition of a superstar CEO, we know that they exist and that their presence shifts "the balance of power between the management, the board, and the stockholders," who "doubt their own judgement and hesitate to question the decisions of their superstar CEO." And that this "is true for all corporate decisions, but the risk becomes more acute for issues where the superstar CEO's interests are directly concerned. Nowhere is that truer than the superstar CEO's compensation." Having promoters sit in the room is no different.

Our market continues to experience such excesses in many newly listed startups and a few older ones. As long as the stakeholders benefit from the presence of big-name CEOs, we should not expect any pushback. But the presence of tall leaders is enough to block the sunlight, leading to commandeering power and entrenchment. Currently, it appears that only regulators can slay superstar CEOs.

In our markets, remuneration levels of promoters and executive directors have been a cause of concern as increase in salary has exceeded both revenue and profit growth. This disquiet can be assuaged by using the right benchmarks and having a tight process to determine the appropriate compensation levels. Disclosing these yardsticks and moving the resolutions to majority of minority will give the shareholders the comfort they need. As will keeping the salary levels in check.



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