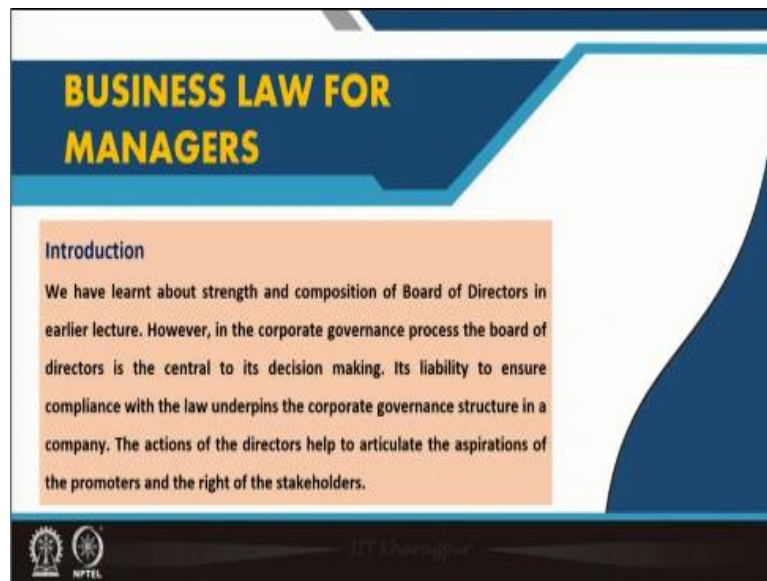


**Business Law for Managers**  
**Mr. Kaushik Mukherjee**  
**Vinod Gupta School of Management**  
**Indian Institute of Technology, Kharagpur**  
**Module-2: Corporate Governance**  
**Lecture – 9**  
**Duties and Responsibilities of Directors**

Good evening. Model 2, lecture 9 duties and responsibilities of directors.

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The board of directors are the most important body for the performance of a company. (0) (00:50), if you have a strong board, then the performance of that company financial, non-financial, both yardsticks would be obviously stronger and a company which have a weak board will always have even in a good business environment, the chance of collapsing. On the other hand, even with strongest of challenges and odd situations, a strong board will come out in flying colors.

There will be a temporarily dips; there can be temporarily adverse results, but a strong board will definitely fight back and the resilience and the resolve will file any reward and give returns to the stakeholders. So, there is an old saying how strong is your board depends exactly on how strong you have made to be. If you allow your board to be strong, it will be strong. By means of the board allow is who will allow and how will allow.

In Indian scenario, the board is strong only when the majority shareholders want the board to be strong to put it absolutely straight. If the majority shareholders do not want the board to be strong, then it will can never be strong. Even after all this SEBI has tried and the Ministry of Corporate Affairs has tried its best to make the board as strong as possible.

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Considering even the fact, the majority shareholders still hold the majority shares and the system still allows them to take decisions where majority decisions overrule the minority decisions. Having said that various provisions have been brought in; various disclosure mechanisms have been brought in; various other third-party interventions have been made, allowed by SEBI and Ministry of Corporate Affairs to ensure that the board becomes strong.

One of the ways of doing it, of course, is the manner of appointment the removal and resignation. The appointment of the board, no longer in the hands of only the majority shareholders. It has to be pre-approved by the nomination and remuneration committee consisting of majority independent, non-executive independent directors and Chairman, independent director. The new wall again cannot be at the whims of the majority shareholders again to the nomination and remuneration committee.

And for any reason, if the gentleman himself resigns, he has to give the reason for the resignation and it will be published everywhere in public domain why he has resigned. So, both the cases, any new wall, any resignation will have a mechanism and not at the whims of the majority shareholders which was there earlier. The other concept is independent directors, their role, their responsibilities, their code of conduct, their due diligence.

They cannot say after giving so much power by the Security Exchange Board of India that their appointment is no longer at the mercy of the majority shareholders. Their appointment once recommended by the nomination and remuneration committee, they are appointed stayed away for a period of 5 years.

So, if they are appointed for a period of 5 years, they can be appointed for a period of 5 years, they cannot be touched further for that period of 5 years, unless they themselves resigned or they are removed and removed is a strong word, there has to be sufficient reasons one cannot get removed like that, almost zero removal, resignation quite a few, we have seen and each time that reason is very important and had an impact on the company.

At the same time, SEBI is demanding also. It is giving protection to the independent directors. It is giving protection from the majority shareholders. Clearly, today independent directors knows that I am protected; my seat is protected. If I raise my voice, I will not be thrown out that fear or that you know, kind of you know, threat perception to put it blank I mean state, is no longer there.

So, SEBI has also become demanding from the independent directors that if I am giving you so much comfort, support, then what are you delivering? You have to deliver this way. These are what I require from you. You have to do your due diligence. You cannot say that I have tried, I have done whatever is best. You are not going to decide what is best. SEBI is going to tell you what you are doing in that company, when you find any irregularity there.

You cannot sit tight; you cannot just keep your eyes closed and say I have abstained from voting; abstain from voting will not give you escape. You have to protest; you have to record your dissent. Earlier independent directors of repute used to keep their eyes closed. I am not a party to that decision. So, no question of dissent, no question of assent. Now, SEBI is no. You cannot remain neutral; you have to take a decision.

You are an independent director, why are you on the board then? So, various directors have resigned in the recent past from companies where they were not comfortable. I know a particular case, I know for quite a few cases, very established persons, they have resigned

from the board because they were not feeling comfortable, because their due diligence will be challenged.

Their question of brand, their question of their image that they have in the society and the other person is key managerial personnel. The 3 key managerial personnel managing director, company secretary, CFO, they all along are exposed to anything that is happening, which is too due with non-compliance fraud or anything. They have to give an undertaking that they have checked, they have seen; no question of to the best of our knowledge and belief.

This word has been deleted by SEBI as far as a KMP is concerned. You cannot say to the best of your knowledge and belief, because your job is to find out what it is happening. If you also say I am to the best of my knowledge and belief, then who is having the knowledge of that which is not the best of knowledge, there is no question of best of knowledge. Your knowledge is there or your knowledge is not there.

If your knowledge is not there, you are incompetent, you should resign. If your knowledge is there, then you have to give an oath and under undertaking. Therefore, every CFO, every managing director in every quarter for all listed companies have to extend their neck and give an undertaking to the board of directors including the audit committee that all the records, all the accounts, all the entries, all the reflection in the accounts are correct and free of any fraudulent activities.

If for anything happens, then these 2 and 3 persons can have not or have any escape from that. Therefore, various CFOs, MDs nowadays do not you know, take decisions based on what is understanding is correct or anything which feels has got, you know, 2 sides of it, what they do, they get a legal opinion from a counsel. They keep it in their file or from financial expert, third party experts keep it in their file as a measure of production that they have done their best.

There is nothing called absolutely correct or absolutely right. And you can never go wrong. Point is, have you done your due diligence? One is your due diligence; other is where you are failing, you take the expert view and keep it in your file. But important thing is, it should not be something which is grossly wrong on the looking at it. If there is an interpretational issue, get a legal opinion.

If there is no question of interpreting an issue, you know, it is wrong, you are chartered accountant you know, it is wrong, you are a company secretary, you know, it is wrong, then there is no question of taking a third-party opinion you should have frothy said no. It is not possible. The key managerial personnel are extremely important.

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**Board of Directors**

**Manners of appointment, removal/resignation of Directors**

- The ultimate responsibility to appoint/remove directors should be that of the Company (Shareholders). Government do not intervene in the process of appointment and removal of Directors in non-Government companies.
- Presently, it is necessary to obtain the approval of the Central Government for appointing a person who is not resident in India.
- The obligation of maintaining the required minimum number of directors on the Board should be that of the Company.

So, basically, the ultimate responsibility remove should be that of the company shareholders, the government do not intervene in the process of appointment that was what the shareholder's approval is majority shareholders. But now, anything that has to do, has to be routed through the nomination remuneration committee. Once they recommend, then only the majority shareholders views will hold good because ultimately it will be the shareholders appointment in the annual general meeting.

But independent directors' appointment again will be the shareholders appointment, but after passing through the nomination and remuneration committee.

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**Board of Directors**

**Manners of appointment, removal/resignation of Directors**

- It is the duty to inform ROC of particulars regarding directors including their appointment and removal/ resignation/ death, or otherwise ceasing to be Directors should be with the company. Every Director, in turn, should be required to disclose his residence and other particulars, as may be prescribed, to the Company.
- Resignation should be recognized as a right to be exercised by the director and should be considered

Any director is ceasing to be, director should be company in turn should be declared the residents' other particulars as we prescribed. He has to inform the stock exchange. He has to inform the registrar of companies regarding directors that appointment, viewable, everything. ROC is the control of companies but more important for listed companies is not the ROC, is the stock exchange.

You have to give the reason also why you have resigned. You cannot simply write personal reasons to resign. You have to specify why you have resigned. Unless it is for health reasons, you have to give for health reasons, you have to give for my preoccupations. Normally, these are the reasons which are going in the market, health and preoccupation. Wherever they do not want to give you know really put the nail on the head, they find Okay, let me resign and go.

There is nothing that has happened to me or till I am there. So, I do not want to disclose anything because I do not have any fact control but I am anticipating something might go wrong. Let me just resign. Even that is happening without anything happening directors are resigning. I understand, directors are resigning after something happening. Here, directors resigned before something is happening on that dissipation something is going wrong.

But they cannot right what is going wrong. Therefore, they give the personal reasons or preoccupations. But foreign institutional investors know all this; they understand all this when they say a person of repute is resigning from owning company, giving a personal reason, there are 1000 questions to that company. What may be the reason? Why he is

resigning? He is still in the board of so many companies, why he has resigned from your board giving personal reasons or preoccupations or health reasons?

Personal reasons do not hold good; now, they give health reasons. It becomes very challenging for the company to answer those questions. What do the director independent received as remuneration? Basically, they receive 2 things as remuneration. One, they cannot get ESOP right. The moment they get ESOP, they are not independent directors. They are no longer allowed to have any kind of ESOPs, employee stock option schemes.

No, they cannot have because they are not employees. Independent directors can have seating fees, fees for attending the board meeting. The amount maximum that can be paid is one lakh per board meeting. If you have to pay more, you need to have central government approval for that. Normally, companies do not go for it. One lakh for any meeting, whether it is board meeting or audit committee.

So, he attends an audit committee, he gets 1 lakh; he attends a board meeting, he gets 1 lakh. How many meetings in a year? Minimum 4 meetings, 4 board meetings, minimum 4 audit committee 4, 8. So, he gets 8 lakhs per company. Maximum how many companies he can get? 7 companies, 7 listed companies. So, 8 lakhs into 7, 56 lakhs but he gets also commission. Commission is what? Percentage of the net profits of the company.

Now, it varies from company to company 1% to 3%. This is variants in Indian Corporates of Commission. Supposing, the net profit is 100 crores, so 3%, 3 crores. Supposing, there are 10 directors, it will be divided into 10 directors. So, 30 lakhs so, 30 lakhs, he gets the commission from one company. So, this is what the remuneration he gets normally.

It depends, some independent directors do not want to work in companies if the remuneration is too low, because they feel it is not good for them. Why? Because they spent so much time in studying in giving their advice which they could have given otherwise to any company and they would have charged as consultancy. So, they feel this is not what; there is another case where good companies, unless you pay well, you do not get quality independent directors.

To get quality independent directors, normally, it varies between 15 lakhs to 20 lakhs per company. So, 50 lakhs to 20 lakhs you have to can pay whereas, only in sitting fees and in

board meetings you get maximum 4 to 48, yeah 5 to 5 10. So, 10 into 1 is 10 lakhs, so, 10 lakhs you get, but there is still a gap of 5 to 10 lakhs, which comes from commission. So, if you get that much commission, then only they would join, otherwise you do not get quality independent directors. They do not come for anything. They have a price.

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The slide is titled "Board of Directors" and "Attributes of Independent Directors". It lists two attributes of independent directors:

- ❖ Is not affiliated to any non-profit organization that receives significant funding from the company, its promoters, its directors, its senior management or its holding or subsidiary company
- ❖ Has not been, and none of his relatives has been, employee of the company in the immediately preceding year

The slide also features an illustration of four business professionals in a meeting and a video inset of a man speaking.

Independent directors attribute, definition is very elaborate, it says you should not have any pecuniary interest in the company. You should not trade in the shares of the company. None of your near relations should be in the company. You should not be a consultant in the company. You should not have been an employee in the company in the last 3 years, cooling off period is 3 years. Quite a few restrictions are there to be an independent director.

You should not be a major supplier of the company. So, anything which has going to be a conflict of interest in your decision making, broadly speaking, should be avoided and you should disclose that. You should not accept your appointment as an independent director. Then you can be questioned by SEBI later on, then knowing fully well that you are a part of it, how could you declare yourself as independent director because an independent director has to declare in a letter to the company, I am an independent director.

I do not have 1 2 3 4 5 6 7. There are 10 to 15 such items, which he has to declare saying that I do not have any conflict of interest in any of this. If it temenos to later on disclosed that no it was a violation by him, he can be prosecuted, not even a substantial shareholder of the company, not even relative also.

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**Board of Directors**

**Attributes of Independent Directors**

- ❖ Is not, and none of his relatives is, a partner or part of senior management (or has not been a partner or part of senior management) during the preceding one year,
- ❖ Is not, and none of his relatives is, a material supplier, service provider or customer or a lessor or lessee of the company.
- ❖ Is not, and none of his relatives is, a substantial shareholder of the company

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**Board of Directors**

**Duties and Responsibilities of Directors**

International practice recognizes a very wide spectrum of duties to be discharged by directors of a company. There are certain basic duties, such as-

- Duty of care and diligence
- Discharging duties in the best interest of the company
- Exercising independent judgement
- Duty to have regards to the interest of the employees,
- Promoting the success of the company
- Avoiding conflict of interest

Now, this is the director's responsibility, duties and responsibility, not independent director, only the director. So, only a director is required to independent director is a part of the director. So, independent director has to comply with this plus the additional responsibilities given to them in the code of conduct. If we look at the even the director's responsibility which includes the majority shareholders, representative also, because the director also includes the chairman, who is the majority shareholder. A chairman is a director.

So, his duty of also is like that duty of care and diligence, discharging duties in the best interest of the company, not only his interests as the majority shareholder, is in the best interest of the company, exercising independent judgement. So, independent, even if you are

a non-independent director by definition, you are a director, still your independent judgement is required.

So, independent director is over one of these his responsibilities, over one of this responsibility is a code of conduct specifically for independent directors; duty, promoting the success of the company, avoiding conflict of interest, duty of care and diligence. This is very important.

**(Refer Slide Time: 19:16)**

The slide is titled "Board of Directors" and "Duties and responsibilities of Directors". It contains two main bullet points:

- **Duty of care and diligence:**  
The expected standard of care, skill and diligence are measured against both objective and subjective yardsticks. A director's actual understanding and abilities may not be enough if more could reasonably be expected of someone in his or her position.
- **Discharging duties in the best interest of company**  
It is the duty of directors to act in a way which do not breach the interest of the company, in some circumstances the breach of interest may be ratified by the companying resolution.

The slide also features a small video inset of a man in a blue shirt in the bottom right corner and logos for IIT Bombay and NPTEL at the bottom left.

He has to have actual understanding abilities may not be enough, he can get help from outside. If he is thinking that I do not have the ability to understand finance, I do not have the ability to understand engineering, I do not have the ability to understand patents, copyrights, IPR, I do not know the ability to under cyber risks, why not get an expert? Understand from him in the board, invite him in the board so that every board member understands from him, pay him professionally. But you cannot go and say I was not an expert in that.

What prevented you to do a due diligence? What prevented you to ask for an expert opinion or a view or a presentation? So, that is very important.

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**Board of Directors**

**Duties and responsibilities of Directors**

➤ **Limitation of action:**

A company cannot go beyond the power stated in its Memorandum of Association which regulates the powers and fixes the objects of the company and provides the edifice upon which the entire structure of the company rests.

IIT Bombay  
NPTEL

Again, another responsibility of the director to see the company does not go beyond the memorandum of association. The object clause of the company does not go beyond the articles of association. It is his responsibility to see. He may not be a legal expert, but he has a company secretary sitting in the board, who is illegal expert, compliance expert.

He can jolly well get a confirmation from him that the business the company is going to embark upon now is covered in the memorandum of association of the company and is also supported in the articles. Moreover, nothing is there which violates, contradicts whatever is there in the memorandum of articles, you can ask the company secretary to do a study on this and put up a note for the board in the next board meeting and make a presentation before the board.

Apprise the board on this. Today, all board meetings are recorded another thing which has come from SEBI. All board meetings needs to be recorded, not to be disclosed to the stock exchange, because board meeting minutes are never disclosed to the stock exchange. Board meeting minutes are the most confidential documents who are privy to that, the board of directors and the statutory auditors, nobody else.

No one else even the shareholders cannot get a copy of the board meeting minutes, but the recording has to be there. Why? If there is any investigation, if there is any further requirement for the regulator to see what exactly happened in that board meeting, then the recording is a must. It has to be in the custody of the company secretary. So, even on compliance, very important aspects SEBI has dealt with in.

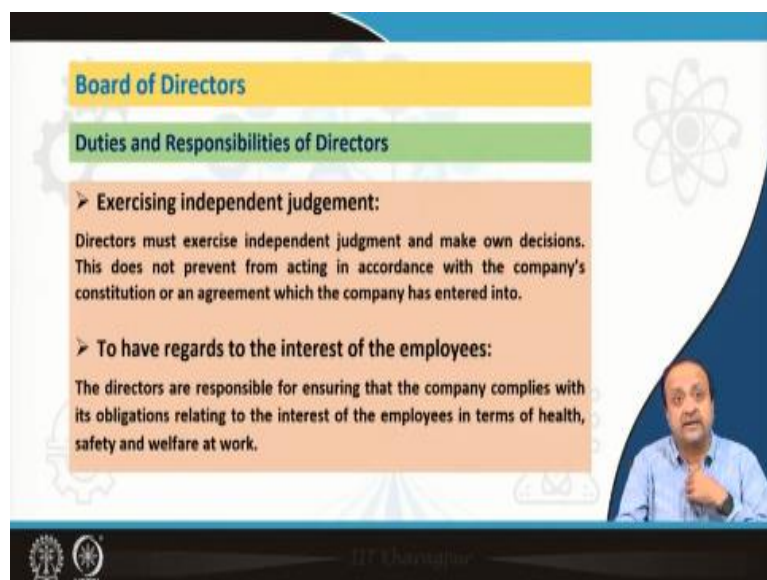
This the regulatory compliance, the compliance with law, the compliance with the various regulations. Not only law, it has got SEBI. It has got FEMA, it has got CCI, it has got the insurance. So, all these regulations even more. There are the environmental laws, specific laws for the states where we are operating. A company may be operating in a state called Gujarat, in a state called Kerala and there will be specific laws applicable to that state only.

So, all those compliance procedures has to be brought before the board and stated that everything is in order. If not in order, specify what is not in order. If you have not got the factory license now and you state that the factory has started, but the license is still pending, then it is a gross violation, the occupier of the factory, who can be jailed for that and who knows who is the occupier of the factory.

One of the board members has to be an occupier of the factory. So, an independent director may be an occupier and he does not know that the factory license is still pending, is the responsibility of the company secretary the compliance say to inform him, but it is also his duty to ensure that this is there, both ways. He cannot say the company secretary has not informed.

Have you asked him? Has it been recorded? Has he given a certificate that all complies in order? All licenses are in place. So, this kind of due diligence is required.

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The slide features a yellow header for 'Board of Directors' and a green header for 'Duties and Responsibilities of Directors'. It lists two key responsibilities: 'Exercising independent judgement' and 'To have regards to the interest of the employees'. A speaker overlay is visible in the bottom right corner.

**Board of Directors**

**Duties and Responsibilities of Directors**

- **Exercising independent judgement:**  
Directors must exercise independent judgment and make own decisions. This does not prevent from acting in accordance with the company's constitution or an agreement which the company has entered into.
- **To have regards to the interest of the employees:**  
The directors are responsible for ensuring that the company complies with its obligations relating to the interest of the employees in terms of health, safety and welfare at work.

Independent judgement is required from all directors. Even if he is a non-independent director, his judgement should be for the wider good, though majority shareholders directors only are guided for the larger guidance for the individual, I mean, basically majority shareholders goal, but he is saying, the requirement is for the independent judgement, interests of employees, avoiding conflict of interest, promoting success of the company.

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The slide features a yellow header 'Board of Directors' and a green sub-header 'Duties and responsibilities of Directors'. An illustration of five diverse people in business attire is shown. The main content is in an orange box with two bullet points: 'Promoting the success of company' and 'Avoiding conflict of interest'. A small video inset of a man in a blue shirt is in the bottom right corner. The NPTEL logo is in the bottom left.

**Board of Directors**

**Duties and responsibilities of Directors**

- **Promoting the success of company:**  
The directors must use or disclose the company's confidential information to promote success for the benefit of company.
- **Avoiding conflict of interest**  
The director must avoid such situation in which he/she/they could have an interest that can create conflict with the interest of the company.

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The slide features a yellow header 'Board of Directors' and a green sub-header 'Board Room, Drama'. An illustration of a boardroom is shown. The main content is in an orange box with five bullet points describing the 'drama' of a boardroom. A small video inset of a man in a blue shirt is in the bottom right corner. The NPTEL logo is in the bottom left.

**Board of Directors**

**Board Room, Drama**

- **Characters in the Drama**
- **Main Role i.e., the Hero of the Drama is the Chairman of the Board.** Normally a non-executive and non-independent Director.
- **Matching role in the Drama is played by another body i.e., Independent Director.**
- **An interesting and exciting character is always there in the Drama.**  
-- Here it can be the Managing Director.
- **Other side roles are played by the Company Secretary and Chief Financial Officer. (Facilitators)**
- **The success of the Drama largely depend on two key characters. (SHOLAY)**

Now this is a beautiful, I mean, I would say, I prepared this specifically, it is not from any book or any presentation. This is a kind of seen what happens inside a board. It is a boardroom drama I have given it, dynamics actually. The various characters in the drama. Main role is paid by the hero of the drama is the chairman of the board. There is no second thought on that. He calls the short.

Why he calls the short? Why he calls the short board? Because he is representative of the majority shareholders. He has the largest say in the company. He is the largest risk taker. Therefore, he is the boss of the board, boss of the board. Boss of the company is the managing director. Boss of the board is the chairman. He is the hero of the drama in a board meeting.

Normally, he is a non-executive and a non-independent director. Why? Because he never becomes an employee; he keeps himself as an employee. At the same time, he can never be independent because he is the majority shareholder. A matching role in the drama is more or less played by another person is an independent director, matching role, very important role.

If the chairman is powerful holding the majority shareholders interest, the independent director also has to play a matching role to look at the inclusive growth, to look at the interest of all the stakeholders, particularly the minority shareholders. He has to play a matching role. Then in the boardroom drama really becomes interesting. Otherwise, it becomes one sided, no drama at all, failure. The film is a flop. The drama is a flop.

A very interesting character in the drama is of the managing director because he has to play both sides. He has to balance. A very intellectual, strong, effective managing director knows how to balance between the independent directors and the chairman. The chairman, he is his boss. He is the boss of the company. He is the boss of the board and he is the boss of the company. But the boss of the company is dependent on the boss of the board, because finally, he is a majority shareholder.

He is a salaried employee, but he knows the strength of the independent directors and the chairman who also wants him, then the independent directors should be kept under in confidence. They should not feel left out by any means. So, he has a very exciting character, I would say, a managing director, much of the success, ultimate success depends upon him how he balances.

Other side facilitator roles, normally their facilitator, they do not talk, they do not speak in a board meeting, unless they are told too, normally, they try to follow the line which direction it is going. They have no right to raise their voice or do very talking, unless they are told too

but they are the listeners. They are the real custodians of happenings in the board meeting, the company secretary and the chief financial officer.

Chief financial officer does not get path by right. Company secretary gets a path by right in the board. But chief financial officer does not get a path by right in the board, but is always an invitee in the board.

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**Board of Directors**

**Board Room, Drama**

- Chairman
- Independent Directors.

Therefore the success of the Board Room drama goes down to the fact how open is the Chairman to accept the views of the Independent Director or even allow them to air their views freely.

Secondly, if the first is not happening what action the Independent Director are taking.

Today in the new scenario- the unfolding of the Companies Act, 2013, SEBI stricter norms and surely but steadily the advent of shareholder activism in India we may start seeing a change in Board Room, Drama

The success of the 2 characters, the drama largely depend on 2 characters, right, as I told chairman and independent directors. I have given the example that chairman, independent directors actually are the success of the drama largely depends on how successful the drama is, the climax is, how they have raised the bar and discussion levels.

Now, one important thing is the chairman has to have a mindset to listen, a mindset to allow the independent directors to speak, open their mind and then a chairman would always like his independent directors to support him. So, he will find a reason, he will try his best to make them convince if they still want certain modifications, he will accept those modifications.

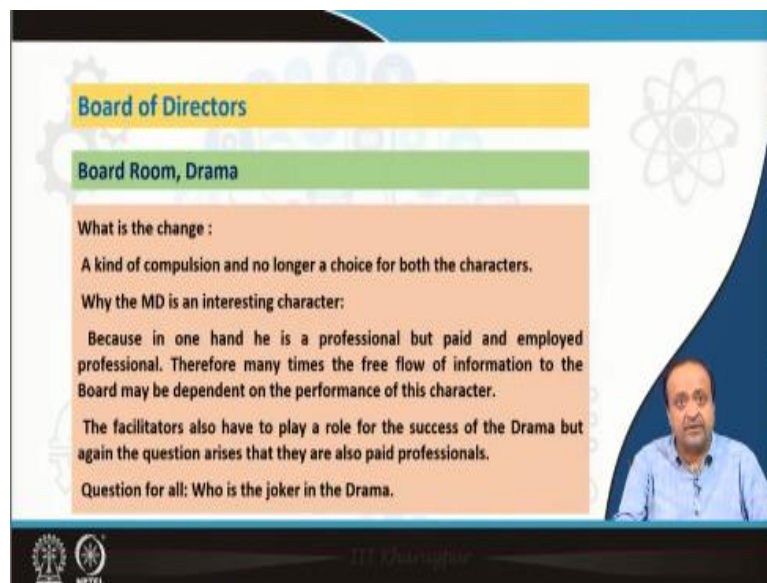
Even after this, he cannot make them agree, then a chairman would not take a decision against the independent directors. He will rather wait for the independent directors to fall in line into this scenario for a big listed company. He will never go in a conflict with the independent directors because he knows the market cap will further, I mean, will come down

like anything that is the last thing you want as the chairman, the market cap to go down; the share value to go down; the brand the net worth of the company to go down.

And it can go down in weeks by 500 to 1000 crores for large corporate. For large corporate, it can go down to 500 to 1000 crores and that has happened. So, no one will do that, no one. It depends how you can bring the independent directors in line, see reason to your decision or modify it the way they want it or even then that has happened, they say no, we want to re-discussion, revisit, rethinking, shelve it for the time being.

The other important aspect is the shareholder activism which is coming which perhaps, it is not affecting the board right now. But independent directors are very much aware that the shareholders activism, meaning that IAAS, institutional investors advisory services are playing a big role today in making things happen.

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The slide features a yellow header with the text 'Board of Directors' and a green sub-header 'Board Room, Drama'. The main content is on an orange background and includes the following text:

What is the change :  
A kind of compulsion and no longer a choice for both the characters.

Why the MD is an interesting character:  
Because in one hand he is a professional but paid and employed professional. Therefore many times the free flow of information to the Board may be dependent on the performance of this character.

The facilitators also have to play a role for the success of the Drama but again the question arises that they are also paid professionals.

Question for all: Who is the joker in the Drama.

In the bottom right corner of the slide, there is a small video inset showing a man in a blue shirt speaking. The slide also includes logos for IIT Bombay and NPTEL at the bottom left.

MD, I told you that interesting character because he has to balance. The facilitator's role is there. Who is the joker in the drama? I mean, the joker in the drama would be somebody who is neither an independent director nor he is disclosed to be a majority shareholder, but he is somewhere in between. Who is this? This is the non-executive, non-independent director.

The non- executive director who is not an independent director so, he is not an independent director. He is non-executive; he is not in the board. He is not the chairman. Has been in the chairman? He would have become the chairman. So, he is actually sandwiched between everything. He is a yes man, maybe yes man to a chairman. But he cannot really come out



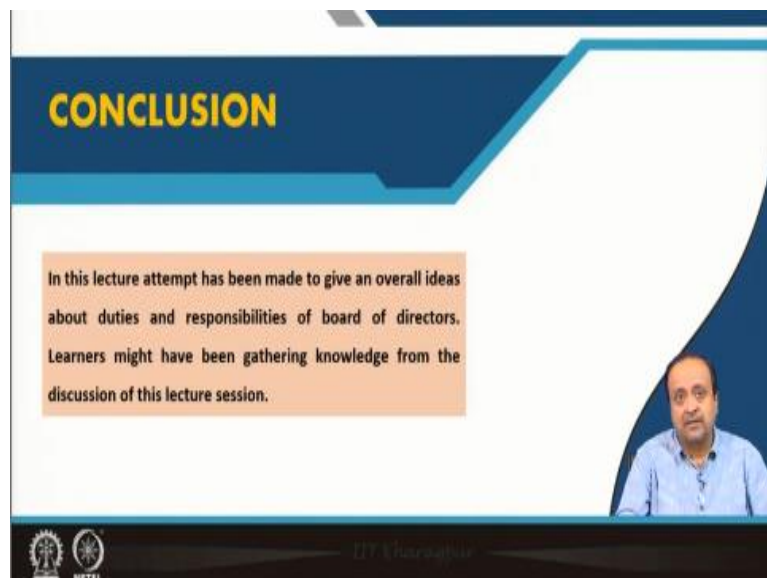
with a yes man because he has a responsibility also. So, he in the board, he almost becomes like a joker. Not much to say but still he is there in the meeting.

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References from all this, but actually, it from experience and what I have written and gathered in few of the taxman publications also, but references, of course have been taken from quite a few of them.

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The shareholder's activism does play a big role and independent directors are totally aware of that. However, I feel that non- executive directors, the persons who are non-executive directors and who are non-independent directors, they are somewhere sandwiched between the two and many times when they sit in the board, they feel suffocated. So, quickly have to take a decision whether they would remain like that or become independent. Thank you.