

Corporate Governance Structure: Issues & Challenges – Cases of Tata Sons & Infosys

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Companies incorporated under Companies Act are characterized by separation of ownership and management. Besides shareholders, stakeholders include banks/financial institutions, Board of Directors (BoD), employees, suppliers, customers and regulatory authorities. The company's operations are in its interest and are to mitigate conflict of interest of the stakeholders. This entails corporate governance, with the essential characteristics of transparency and accountability. Besides the meaning and significance of corporate governance, this paper discusses the legal aspects and practice relating to the system of BoD's functioning and the key tools of corporate governance. It also analyses the recent conflicting corporate governance experiences of two leading giant corporations in India viz. Tata Group and Infosys.

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Introduction

Corporate governance includes the processes through which corporation's objectives are set and pursued in the context of the social, regulatory and market environment. Governance mechanism involves monitoring the actions, policies, practices, and decisions of the corporation, their agents and affected stakeholders. Interest in the corporate governance practices of modern corporations, particularly in relation to accountability, increased following the collapses of a number of high-profile large corporations during 2001–2002 and after the financial crisis in 2008. In the words of Narayana Murthy, “good corporate governance is about doing what is fair in a transparent manner with full accountability accepted by senior leaders and board members for their actions. Good corporate governance results from following the adages – when in doubt disclose and let the good news take the stairs and the bad news take the elevator” (Balasubramanyam, 2017)

Corporate governance and corporate performance are inter-related. Twin indicators of good corporate governance

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are transparency and accountability. It reflects the relationship between BODs and the shareholders; the process of involvement of shareholders in the company's operations and BODs practices, functioning and its relations with stakeholders. Studies have shown that companies with good corporate governance have reported better performance. World over, countries have taken measures for improvement of corporate governance practices. Such measures vary among countries categorized as mandatory or collaborator, and have increased over the years. The law in India is exhaustive; the Companies Act 2013 lays down detailed provisions for the functioning of BODs, its duties, powers, role, and appointment and functioning of independent directors.

Legal Aspects

As per Companies Act 2013, BODs are required to hold a meeting every quarter and to take all policy decisions relating to the company's operations, finances and its functioning. According to Mahalingam (2015) the average Indian Board member is 58 years old and aging; CEOs are getting younger while boards are getting a fresh infusion of talent. Older board members are often unwilling to back the futuristic bets that CEOs want to take simply because they do not understand new businesses. Only 3.5 percent of Indian board mem-

bers are foreigners and nearly 9.5 percent constitute women. Less than 3 percent of directors are IIM graduates; only 0.7 percent has both an IIT and IIM degree.

With the increasing business complexities and time commitment of board members, board can set up committees with particular terms of reference. A committee can be delegated powers, though the final decision to accept will depend upon the board. Under Companies Act 2013, all the listed companies are required to constitute the following board committees (ICSI August, 2014):

Audit Committee is one of the main pillars of corporate governance mechanism. As a most powerful committee, it is charged with the oversight of financial reporting and disclosure and has the aim to enhance the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems. The committee shall consist of a minimum of three directors, two-thirds shall be independent directors. All members of the audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise (Dhameja, 2003). The committee makes recommendations to the board, however, the board shall disclose in its report non-acceptance of the recommendations along with the reasons there for.

Nomination and Remuneration Committee is expected to ensure among

other things that remuneration arrangements support the strategic goals of the business and more importantly to conduct performance evaluation of every director.

Stakeholders Relationship Committee shall act as a 'shareholders/investors grievance committee' to look into the redressal of shareholders and investors complaints like, transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc.

Corporate Social Responsibility (CSR) Committee is expected to formulate the corporate social responsibility policy of the company, recommend the expenditure that could be incurred for this purpose and monitor such policy from time to time. CSR is one tool for corporate governance and relates to responsibility of business to various stakeholders and to contribute towards well-being of people. India is the only country where CSR has been enforced by a legislation wherein profitable listed companies above certain size are required to contribute a certain percentage of profit towards prescribed activities. Studies have shown that total CSR spend in India fell short of the government mandate of two percent of profit. Education and healthcare attracted the largest CSR spend, while empowering women, support for senior citizens and armed forces veterans saw no takers. Dhameja (2016) highlights the need to examine whether mandatory approach to CSR would be more effective than the voluntary incentivized scheme prevalent earlier and elsewhere.

Women Representation

Company Act 2013 makes it mandatory for every listed company and every public company having a paid-up capital of Rs. 100 crore or a turnover of a minimum of Rs. 300 crore to appoint at least one woman director. Further, SEBI, the stock market regulator mandated that every public listed company to have at least one woman director; this norm came into effect from October 1, 2014. According to a study by Prime Database, approximately sixty percent of 1463 companies listed on NSE did not have even one woman director on their boards; i.e. 886 companies were yet to appoint a woman director as on July 24, 2014. Of the companies which since complied with the requirement of one woman director, about twenty had been filled by appointing women belonging to the promoter or friendly group (Dhameja & Agarwal, 2014). Issue for consideration is whether the presence of woman directors on the board has any positive relation with the financial performance of the company or is an obstacle to company's performance.

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The problem of women director exists everywhere but has been well dealt in Australia. Instead of setting targets like the British, France or Scandinavian countries, Australia has set how many women

they prepare for boards (Amrit Raj, 2014). The Australian Institute of Company Directors, together with the Australian Federal Government, has said that each chairman had to monitor two people over next 18 months. Lastly, prime mover for women empowerment and gender equality would be to harness basic development indicators like education, life-longevity and per capita income for women. As per Monster Salary Index (MSI) on gender for 2016, women in India earn 25 percent less than men (Mathur, 2017).

Independent Directors

As per the Companies Act, 2013, one-third of the directors on board of every public-listed company must be independent directors. In case the company does not have a regular non-executive chairman, at least half of the board should comprise independent directors.

The Act 2013 levied more responsibilities on independent directors and also made them criminally liable for oversight. Two key changes introduced include; a person can hold across firms to seven from the earlier limit of 15. Secondly, limiting the tenure of two successive five-year terms after which he can come up for reappointment only after three years of cooling period, the ten year tenure to be counted prospectively. Globally, only a few countries such as France, Hong Kong and Singapore have a cap on directors' tenure. According to Wall Street Journal March 2014 Report, France prevented directors from qualifying as independent unless they sit on a board for 12

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years or more. Hong Kong has a nine-year limit on the tenure of external directors unless shareholders vote for an extension. In England independent directors are called senior independent directors, in United States they are lead independent directors. Many top executives of companies including, Godrej Group, Ready's Laboratory Ltd, Mahindra and Mahindra Group, and Lupin Ltd. feel that the length of tenure does not affect the ability of a director to remain independent. For instance, in the words of Adi Godrej, Chairman of the Godrej Group (Ramanathan, 2014), "Length of the tenure has nothing to do with independence. All you need is a person to be logical. Some of the most independent directors have been close family members. It all depends on the individual characteristic". According to N. Vagul, Chairman ICICI Bank Ltd. "tenure is not relevant to be independent. There can be people who are not independent from day one, while there are others who can not be independent even after ten years. Tenure is not going to determine the sanctity of independence, but the quality of the director is". Vagul has been on the board of Wipro Ltd for over 17 years.

Minority Shareholders & Institutional Investors:

At times minority investors become active in raising their concern. There are instances where minority shareholders

defeated resolutions related to proposals such as board appointments and compensation, related party transactions (RPTs), royalty payments, delisting and setting up of a new unit. According to a Report (Raychaudhari & Jain, 2014), the incidence of shareholder activism is more in India than in other Asian countries. Companies Act 2013 requires that related party transactions (RPTs) of over Rs. 100 crore to be specially approved by shareholders. This legal change illustrates the activism of minority shareholders. Similarly, number of votes on shareholder resolutions by domestic mutual funds has increased from 54 percent in 2011 to 61 percent in 2013 and they are required by SEBI to disclose how they voted on shareholders resolutions. Such minority investor activism and disclosure by domestic mutual funds is a healthy sign of corporate governance. Institutional investors in India normally do not actively participate in corporate performance and have limited interest in the recovery of their outstanding money. However, in the recent Infosys proposal (Mint April 3, 2017) to increase the salary of Chief Operating Officer, U B Pravin Rao by 35 percent to Rs. 12.5 crore found majority shareholder support as 75 percent of institutional investors voted in favor, even though 67 percent of non-institutional investors, voted against, founder members also did not favor such a proposal. The instances of minority investor activism include the following:

- In Cadbury India Ltd. High Court directed the company on July 17, 2014 to pay Rs. 2014.50 per share to buy back its stock, 50 percent more

than its original offer of Rs. 1,340 made in 2009 to its minority shareholders.

- Maruti Suzuki India Ltd planned in January 2014 to invest Rs. 3000 crore in a factory in Gujarat and the cars produced there would be sent to Maruti Suzuki India Ltd. This was perceived as a tactic to shift revenues of Mumbai listed company to offshore parent and minority shareholders including institutional ones came together to oppose the plan forcing the company to alter its proposal.
- Shareholders of Tata Motors Ltd successfully stalled compensation proposal of top executives and the company failed to get 75 percent of minority shareholder votes for a proposal for payment of remuneration to its former managing director, Karl Slym, who died in January 2014, in excess of permissible limits.
- The Children's Investment Fund (TCI) filed cases in 2012 and in 2014 against Coal India Limited (CIL), questioning the pricing policies followed and to prevent from signing fuel supply agreements with private firms guaranteeing lower than the market prices.

Case of Tata Sons Ltd

The Company, the promoter of the major operating Tata companies commonly referred to as Tata Group, is the largest Indian multinational conglomerate set up in 1868 producing salt to software products. It has a revenue of about \$ 103

billion and employs above 660,000 people. Each Tata company or enterprise operates independently under the guidance and supervision of its own board of directors and shareholders. There are 30 publicly-listed Tata enterprises with a combined market capitalization of about \$116 billion as of March 2016. About 65.3 percent of the equity capital of Tata Sons Limited was held by philanthropic trusts endowed by members of the Tata family. The largest of these trusts are the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust, which were created by the families of the sons of Jamsetji Tata, the founder.

The Cyrus' Mistry family headed by Cyrus's father, construction baron, Pallonji Mistry which held 18 % stake in Tata Sons was the largest individual non-Tata shareholder in the Tata holding company. Cyrus Mistry joined Tata Sons board in 2006 and in 2011 he was picked up as the successor of Ratan Tata as chairman by a five- member selection committee of which he and Ratan Tata were also the members. In other words, Ratan Tata cherry-picked Mistry in 2011, and it was seen as the victory of youth. Ratan Tata's advise to his then 43 year-old successor was perceived as 'Be your own man'. But soon, youth was perceived as insolent, precocious and to destroy, the core values that the group stood for. (Kalesh, Vijayraghavan & Barman, 2016)

In a dramatic announcement in 2016, Cyrus Mistry was replaced by the board of Tata Sons, without assigning any reason. Since then two sides have been locked in a bitter feud. There have been

allegations and counter allegations between Tata Sons and Cyrus Mistry regarding performance of Tata group companies and the working of the Chairman, Cyrus Mistry. There was a fundamental disconnect between Mistry and Tata, particularly with regard to ethos, values and the direction that the group was heading on; detailed letters sent to Mistry asking him to spell out his vision, five-year-plan etc., the responses of which were vague and non-specific. (Kalesh, Vijayraghavan & Barman, 2016). Mistry's war on the legacy of the old guard, and the comment about the necessity of 'tough love' with the organization, also did not go well within the organization. Tata Sons in their nine-page statement released to the media stated that:

- During the past three years, the group had written down, or written off or made provisions for impairment worth thousands of crores; its indebtedness has increased by Rs. 69,877 crore to Rs. 225,740 crore over the past four years; and despite huge investments, the returns are not reflected in increased profits.
- The Chairman had full autonomy to manage opportunities and challenges.
- 'The board of Tata Sons had overwhelmingly lost confidence in Mistry's ability to run the group and majority of them voted in favor of his ouster.
- Several of Mistry's decisions including the sale of urea business of Tata Chemicals, disposal of some of Indian Hotels Company's properties;

move to sell UK steel operations did not go well with Tata Trusts.

- Group Executive Council (GEC) created as Mistry's main brain trust, was perceived as a parallel power centre, its members as key advisers of Mistry were being questioned and were not considered as 'inspirational leaders'. The GEC was disbanded and its members were shown the door on the removal of Mistry.
- Mistry did not relinquish his Irish citizenship though as Tata Sons Chairman, he was expected to resign.
- Mistry cleared Tata Power's \$ 1.4 billion acquisition of Welspun's solar farms without seeking approval from either Tata or other key stakeholders. Tata Power was a cash guzzler but generated very little profit. As such a big buy-out, the principal shareholder was kept in the dark.
- The business and strategic plans presented by Mistry in June 2015 and September 2016 respectively lacked "specificity one would expect of a robust plan".
- "Progress on pursuing new business opportunities and rationalization and consolidation of existing ones were slow. The plan proposed by Mistry lacked concrete implementation steps and milestones. Mistry took almost two years after his appointment in December 2012 to address the conflict of interest arising from his position at the Tata Group and his family's Shapoorji Pallonji Group's business of construction and real es-

tate, though, within one year of taking over, Mistry had sent a mail to all Tata Group companies spelling out that no new contracts were to be awarded to Shapoorji Pallonji Group.

- Mistry had never highlighted to the board that there was ongoing 'mismanagement' of Tata Sons that he was seeking to rectify or that the petitioners were being oppressed.

Mistry responded that the statement contained unsubstantiated claims and half truths without a word of explanation as to why it became necessary to remove him summarily violating natural justice.

- Cyrus Mistry criticized the decision to replace him in harsh and scathing terms as a move unparallel in the annals of corporate history, and termed it as invalid and illegal. He alleged that he was pushed to position of 'lame duck Chairman', he had not been allowed freedom of action to manage the affairs of the company because of changes in the articles of association of Tata Sons which had reduced the powers of the Chairman to reverse the blunders of the past and to prevent Tata Group from sliding into an even deeper remorse.
- He was forced to keep the Nano project going, pushed into investing in two aviation businesses despite the group's huge debt and was told to ignore frauds to the tune of Rs.22 crore.
- Articles of Association were modified changing rules of engagement

between Trusts, Tata Sons board, Chairman and the operating companies.

- The board of Tata Sons was expanded on August 26, 2006 by inducting Piramal Enterprises Chairman Ajay Piramal; and TVS Motor Chairman Venu Srinivasan to tighten the grip of Tata Trusts over Tata Sons. Such an expansion of the board was a surprise for everyone.
- The trustees were oppressing the minority shareholders and that the nominee directors on the board of Tata Sons were acting as “puppets”, “hand maidens” or “postmen”. In response, the trustees maintained that they (petitioners) never complained earlier about their rights being oppressed or that Tata Sons were being mismanaged because of interference by the trustees. (Upadhyay, 2017)

The sacking of Cyrus Mistry could be seen as “clash of culture and values between the old guard and the now-sacked leadership team”

- The sacking of Cyrus Mistry could be seen as “clash of culture and values between the old guard and the now-sacked leadership team’s alleged attempts at micro-managing a sprawling business portfolio” (Barman, 2016). The war between two warring factions has been over alleged erosion of principles of corporate governance. Reflecting in terms of human relations, Tata job had been

considered as ‘secure’ as a government job, the unceremonial dismissal of Mistry as chairman of Tata Sons has left the executives of the group shell-shocked as ‘hire & fire’ was never a part of Tata Group culture; a message going around social media and What’s App reads as ‘*kitne bhi bade ho jao, job security toh sirf government job mein hi hai*’.

Alleging mismanagement of Tata Sons and oppression of minority shareholders, Cyrus Mistry’s family filed a suit with the National Company Law Tribunal (NCLT). In response, Tata Sons in their affidavit, asked NCLT to dismiss the case since the petitioners do not hold ‘at least 10% of the issued share capital of Tata Sons representing total number of members as required by under the Companies Act. It was further pointed out that Mistry family held only 2.17 % of the total issued share capital of Tata Sons if preference share capital was also included. The Act is not clear as it does not specify share capital and therefore it is open to interpretation and gives power to NCLT to waive off.

As mentioned earlier, the Tata Trust having a two-third stake in the Tata Group companies, rely primarily on dividend income to fund their wide-ranging philanthropic activities. For the year 2015-16, the dividend payout by all Tata companies was 41 % lower than the year before. In money terms, 27 Tata companies paid out Rs. 11,196 crore against Rs. 19,167 crore from 36 companies in the year 2014-15 (Mandavia, Oct. 27, 2016).The Trust had assured returns in

the form of hefty dividends till 2012 when Ratan Tata was the Chairman. Cyrus Mistry slashed the dividends on the ground that the companies needed to conserve cash for making investments. Cyrus Mistry said in his letter to Tata Sons “I had to take many tough decisions with sensitive care to the group’s reputation as well as containing panic amidst internal and external stakeholders. Despite bad press, impairments were taken to clean the books but substantial exposure remains. Dividends were reduced to conserve cash for needed investments in the teeth of shareholder fury”. Reduced dividend payments by Tata Group companies during Cyrus Mistry tenure as Chairman may have been one of the key reasons for his abrupt exit. Tata Sons contended that Cyrus Mistry was adopting “a scorched earth” policy of tarnishing the reputation of Tata Group and was replaced as chairman because he had lost the confidence of the board (Marwah, Jan. 2017).

Reduced dividend payments by Tata Group companies during Cyrus Mistry tenure as Chairman may have been one of the key reasons for his abrupt exit.

Nusli Wadia, Chairman of Wadia Group which controlled a food-to-aviation empire and which had a board seat in three major Tata companies, viz. Tata Steel, Tata Motors and Tata Chemicals, was removed as director in a special shareholders’ meeting of group companies in December 2016, along with Mistry claiming that Wadia had been “galvaniz-

ing” other independent directors to act against the interests of Tata Group (Karmali, 2017). Wadia refuted the allegation as false and baseless arguing that Tata Sons as the “promoter” in the operating companies should not be allowed to vote to remove an independent director. It raises policy issues relating to the institution of independent directors, whether promoters be allowed to vote for the removal of independent directors; whether, independent directors be removed by a ordinary resolution requiring a simple majority, in particular when their appointment required special resolution having three-fourth majority.

The Case of Infosys Ltd

This is another case wherein certain developments highlight issues of importance of corporate governance. N. R. Narain Murthy, co-founder expressed concern in the media over the “drop in governance standards” and raised serious issues as:

- Enhancement of the salary package of CEO Vishal Sikka to \$ 11 million including variable pay subject to certain performance-based targets along with the increase of his tenure up to 2021.
- Providing huge severance pay (with 100% variable) to some departing employees while giving only 80% variable pay to employees. Such payments raised doubts whether the company is using such payments as “hush money” to hide something. Rajiv Bansal former chief finance

officer (CFO) was in the eye of storm for being awarded a severance package of Rs. 17.38 crore, the highest severance package though only Rs. 5.52 had been actually paid because of legal intervention.

In the acquisition of Panaya Inc, a US-based provider of automation technology, for \$ 200 million, the second largest IT company, Infosys denied any wrongdoing as valuation was done by Deutsche Bank and the price at which the company was acquired was within the band recommended by them.

“For an organization like Infosys, it makes immense sense to acquire an overseas headquartered company in emerging technologies. This would give them not just additional capability but also enhance their overseas market reach and overseas customer base,” said Sanjoy Sen, former Senior Director of Deloitte Touche Tohmatsu India.

In the words of V Balakrishnan, former Chief Finance Officer, communication between Infosys shareholders and board has broken down and the board should be reconstituted and all concerns should be addressed, and that the chairman must “resign”. Former Chief Finance Officer TV Mohandas Pai also backed the founders over executive salary and said that the founders who have built the company and created a value system have raised serious issues.

In response to the above concerns raised by the founders, Infosys management, in its first detailed statement denied “any governance lapses alleged by

some sections of the media in reports that purported rifts among the founders, the board and the management.” Infosys management said the issues of “CEO compensation, appointment of certain independent directors, and severance pay relating to former employees - are several months old, on which the company’s position has been repeatedly explained. While there could be differences in views on these matters, they have been overwhelmingly approved by shareholders, wherever required, and on which due disclosures have been made,”

It may be mentioned that Nandan Nilekani and Sudha Murty, wife of N, Murthy and chairperson of the Infosys Foundation approved Vikas Sikka’s re-appointment as CEO until 2021 and a higher salary (Sood, April 30, 2017). Infosys emphasized the board’s autonomy and said that its members were professionals with a vast experience. The independent directors have no interest other than their commitment to enable this great institution that has been assiduously built by the iconic founders, to succeed.

Chairman of the board, R. Seshasayee, backed CEO Vishal Sikka, and said that the company is “fully aligned with the strategic direction of the CEO and is very appreciative of the initiatives taken by him in pursuance of this transformation.” In addition, Vishal Sikka asked employees not to get distracted by speculations that question the company’s commitment to governance, integrity and values and to keep a “sharp focus” on executing the company’s strategy.

There is another recent case of promoters' disenchantment in Infosys against 35 percent rise in U.B Pravin Rao, Chief Operating Officer's compensation to Rs. 12.5 crore, though the proposal to increase the compensation was approved by majority shareholders. This was because, as mentioned earlier, 75 percent of institutional investors voted in favor of the proposal, though 67 percent of non-institutional investors and most of the founder investors voted against. It may be mentioned that, shareholding of Infosys in percentages comprises: founders 12.75; institutional (including foreign institutional investors and insurance companies) 59; and non-institutional (including retail investors) 28.25, respectively. Founder member N. R. Narayana Murthy did not favor such a resolution. According to Murthy (Balakrishnan, 2017), "I believe in striving towards reducing differences in compensation and equity in a corporation.... I have always felt that every senior management person of an Indian corporation has to show self-restraint in his or her compensation and perquisites.... This is necessary if we have to make compassionate capitalism acceptable to a majority of Indians who are poor. Without compassionate capitalism, this country cannot create jobs and solve the problem of poverty.... Further, giving nearly 60 to 70 percent increase in compensation for a top level person (even including performance-based variable pay) when the compensation for most of the employees in the company was increased by just 6 percent to 8 percent is, in my opinion, not proper" Criticism by Narayana Murthy of some of the deci-

sions taken by the company's board and expressing unhappiness over corporate governance lapses; and also arguing for 'compassionate capitalism', 'to create jobs and to solve the problem of poverty'; one could view such utterances as "cultural differences" and mixing of corporate governance with socio-cultural issues. R Seshasayee, non-executive Chairman rightly called such 'incidence part of the transformation underway at Infosys which is making the transition from a founder-run company to one run by professionals'. As mentioned earlier two pillars of good corporate governance are transparency and accountability of corporate functioning. In other words, corporate decisions in full view of stakeholders, reflect good corporate governance, though perception may differ.

India's Ranking

India has great reputation and high ranking with regard to corporate governance as compared to those of some Asian countries such as South Korea, China, the Philippines and Indonesia (Philipose, 2017). As per Corporate Governance Report in Asia by the Asian Corporate Governance Association, India ranked seventh out of the 11 Asian markets suggesting that the country still lags behind peers in setting and implementing governance standards, Honk Kong and Singapore jointly topped the list.

However, recent examples of above two leading corporations namely, Tata Sons and Infosys would lead to such reputation pulverized. Narayana Murthy's public criticism of higher com-

pensation package to CEO and of liberal severance package to former CFO could be taken as “hush money”. Though the findings of the law firm, Cyril Amarchand Mangaldas, commissioned by the company’s Audit Committee, is that the “severance pay was not with the intention of silencing him from disclosing any impropriety”. Infosys might have been known for good corporate governance standards but it could have been because of poor standards elsewhere. As the saying goes, in the land of the blind, one-eyed is the king. Even during Murthy Eyebrows were raised when he as Executive Chairman, decided to bring his son along. Similarly, there might have been a policy to keep away politicians in appointment as executive, but does appointment of Punita Sinha, a professional and wife of a union minister, as an independent board member of Infosys constitute any conflict of interest, or question good corporate governance?

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From the presentations of the two cases, it could be said that both the companies had strong and good corporate governance practices and with the changing times such practices have to be perceived not from the point of view of individual groups but from the point of view of the corporate. As such, both the company’s boards and managements have to take corporate governance lessons as the changing time warrants.

Could such differences be resolved by bringing in more clarificatory provisions, or by expanding the law further? Rather these differences are more a matter of attitude arising primarily due to time i.e. founder members vs. professional management; or old guards vs. young professional manager; majority vs. minority view. Majority view does not imply that minority is not correct. As in case of Tata Group, to look into the allegation of mismanagement and oppression of minority shareholder, inclusion of preference shares while deciding strength to be eligible to cast votes, are we not converting equity share holders into a minority group? It is a universal practice that minority interest should be safeguarded.

Further, the legal viewpoints need to be redefined in the following situations:

- For appointment of a director, special resolution is required; while removal requires only an ordinary resolution with a simple majority? Should removal process be not made more stringent, in particular in situations, affecting adversely the interest of minority investors?
- Whether promoters be allowed to vote on matters related to independent directors as they (independent directors) are the first level of check on listed companies?
- Whether capital market regulator, i.e. SEBI should not give a re-look at the level of decision making process that evaluates directors’ performance, or should consider whether decisions by board members are healthy and free-

flowing? Or whether critical and dissenting suggestions are welcome and whether conflict of interests are monitored and dealt with.

It would be appropriate to mention the case of Ireena Vittal who stepped down from the board of Axis Bank on August 23, 2016, about four years before her term was to expire in March 2019 citing conflict of interest issue (Vijayraghavan & Bhattacharayya, 2015). Ireena Vittal, wife of Gopal Vittal, CEO of Bharti Airtel which won a payment bank license in partnership with Axis Bank's rival Kotak Mahindra Bank, was a professional manager and was independent director on many other companies. Her resignation from the directorship of Axis Bank is an example of good corporate governance and to maintain the highest standard of corporate governance in order to avoid any potential/perceived conflict of interest.

Lastly, how far institutional investors are active and look for the interest of shareholders in general? To quote M. Damodaran (2014), "As for institutional shareholders, I think in India, institutional shareholders went to sleep long ago and they have not woken up. I don't see any institutional investor being active enough in AGMs (Annual General Meetings) or in board rooms. If it is a lender who comes into the board room, he is only looking at whether his installment is being paid in time rather than looking at how the company is doing. So institutional investors must see themselves as representatives of shareholders"

Sum Up

To sum up, from the above two cases, one can say that both sides are right, as they claim to follow good governance practices. In fact, they deserve to have good governance lessons; resolve their differences by mutual discussions rather than going to the press; and need to deliberate on aspects as:

- Role of founder/promoter shareholders vs. professional management for good corporate governance.
- Issue of majority shareholders vs. protection of minority investors.
- Minority investor activism and protection of individual interest.
- Though the role of management and independent directors for good corporate governance could be defined in law, is it not more a matter of one's personal attitude?

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