

## NSE scam is not just about 'Yogis' and Commissars

M Damodaran | Updated On: Feb 18, 2022



Restoring credibility will be a big task | Photo Credit: FRANCIS MASCARENHAS

The core issue here is that the board of a systemically important institution was reduced to an elaborate farce

At first sight, the National Stock Exchange (NSE) saga would seem to have more twists and turns than many works of fiction. Essentially, however, it is nothing more than a number of corporate governance failures, that have made the entity the laughing stock of the regulated universe.

To understand the nature of the NSE problem, it is necessary to focus on the dramatis personae, and their errors and omissions. Looking for a Himalayan Yogi, whose existence is itself in doubt, can be a weapon of mass distraction.

At the centre of this still developing story is the Managing Director (MD), who spent most of her career in the NSE. Her predecessor, in the position of MD, continued to remain associated, on being appointed as the non-executive Vice Chairman. These two persons, who were at different times the face of the Exchange, managed to confer extraordinary powers on themselves, and in the process create an illusion of indispensability. Reducing the Board of Directors to near irrelevance was a task accomplished over the years.

The information that is already in public domain, with the expectation that much more will surface, gives rise to the question as to what this collective entity known as the Board of Directors was doing all these years. The Board comprised non-executives such as the Chairman and the Vice Chairman, as well as representatives of the institutional investors, who for many years had disagreements with the management on why the IPO was being delayed.

### **Conflict of interest**

More importantly, the Board comprised Public Interest Directors (PIDs), appointed by the securities market regulator, to ensure that issues of conflict of interest were addressed at the Board level, and that the appropriateness of management decisions was challenged.

To think that such a Board, which admittedly had relevant information, chose either to turn a blind eye, or to be persuaded that everything was kosher, calls for a willing suspension of disbelief. Was this a Board that was captive to the whims and fancies of the management, led by an MD, who, on her own admission, was influenced by extraneous forces?

SEBI's regulatory intervention commenced with an investigation into what is popularly known as the Co-Location scam. Briefly stated, it meant the existence of arrangements made by the Exchange to ensure that critical information reached some entities ahead of some others, creating the perfect opportunity for undue benefits. In the course of the investigation, SEBI came across mails pointing to the sharing of confidential information with outside entities, who were not authorised to receive or to access such information.

### **Co-Location scam**

Alongside the Co-Location scam was the curious case of the appointment of a clearly underqualified person, without any process being followed, and at emoluments completely out of sync with his role in the organisation. Subsequent decisions leading to his extraordinary empowerment, and inflated compensation, should have alerted the Board and other persons in the senior management to question the legitimacy of the decision and the process. Nothing of the kind happened.

Compounding the sorry state of affairs, was the role of the Chief Regulatory Officer (CRO), who as the designation suggests, is tasked with ensuring regulatory compliance, and keeping appropriate authorities informed of any transgressions. Even when it was pointed out by the Secretarial auditors that a person with such functional responsibilities, and such high compensation as Anand Subramanian was receiving, should be categorised as a KMP, the CRO did not insist on acting on this audit observation.

The Company Secretary of the Board, who is a very senior functionary in the organisation, with the designation of President, did not ensure that the minutes of the relevant Board meeting captured the essence of its discussions. It was for him to have told the Board, no matter what the Board felt, that the unsavoury happenings in the matter of appointment, and subsequent empowerment, had regulatory implications.

When the view was taken that the real reasons for the MD exiting the organisation were confidential, and were not to be included in the minutes, the Company Secretary should have advised the Board appropriately. To add insult to injury, at the same Board meeting, where the reasons for her resignation were considered too confidential to be recorded, the Board recorded its appreciation of the services rendered by her in growing the business of the Exchange.

The Board, its NRC, its PIDs, the CRO, the Company Secretary, and other members of the senior management seem to have played their part in perpetuating the unhealthy situation that existed in the Exchange.

In the interest of sending out the right signals to the regulated universe, SEBI should travel far beyond the disproportionately small penalties imposed on the delinquents, and should claw back the payments made to the persons in all these categories for the period that the irregularities continued. Matters must not stop there. Clearly, passing on confidential information relating to a premier Exchange, should have consequences that attract the provisions of criminal law.

The news that investigative agencies have stepped in is welcome. It is now for them to unravel the entire mystery, with SEBI having addressed only the limited issues that fell within its regulatory ambit.

The spirit of PIT regulations has been violated. It would be futile for the defenders of the Exchange to argue that the regulations apply only to listed entities. An unlisted Exchange, that is seeking to list and is a first level regulator for listed entities, should judge itself at least by the same standards.

The chronology of correspondence shows that letters from SEBI remained unresponded to for weeks and months, with no explanation being trotted out. This itself merits punishment. It is not open to a regulated entity to decide when or whether it should respond to a regulator.

## **Corporate governance**

If credibility is to be restored, and that is a big ask, the Augean stables should be thoroughly cleaned, and new persons brought in to man sensitive positions. While some changes might have been made in the last few years, a lot more remains to be done, and in real time.

What we have witnessed, and continue to witness, is a significant body blow to the concept and the practice of corporate governance. Several matters need to be set right by the Exchange, and the regulator. Meanwhile, those that miss the wood for the trees can continue to speculate on whether the Yogi exists in the Himalayas or in the figment of someone's imagination.

The writer is Chairperson, Excellence Enablers , and former Chairman, SEBI, UTI and IDBI

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