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## LEAVING FOR THE RIGHT REASONS



M. Damodaran  
*Chairperson, Excellence Enablers*  
*Former Chairman, SEBI, UTI and IDBI*

*When Independent Directors leave their Board positions prematurely, a question arises in one's mind: Is it not better to express views in the boardroom than to make news when one leaves the Board?*

There was a time, not so long ago, when the infrequent resignations by Directors on the Boards of companies were all on account of "personal reasons". As the Cola advertisement said, there was nothing official about it. There was one extreme instance of an Independent Director (ID) who was threatened with bodily harm, and in the letter of resignation, stated that it was on account of personal reasons. When friends, who were aware of the circumstances of her quitting, asked her why she had not stated the factual position, her response was that even protection of life and liberty is a personal reason.

Then SEBI decided to play spoilsport, and to introduce some excitement in the proceedings. Directions were issued to the effect that no matter what reason an ID offers for resignation, he/she should state unequivocally that there was no other reason than the one stated in the letter of resignation.

The initial fears that with increasing liabilities, and inadequate compensation, Directors would vacate boardrooms in droves has been belied. The brave men and women that inhabit boardrooms, do not see the risk reward trade-off of being on the Board as being adverse to their interests. However, there have off and on been a resignation or two, and it is to those that we will turn our attention in this newsletter.

The most recent resignation, at least as is learned from media reports, is that of an ID who quit the Board of Dhanlaxmi Bank, a small community-based bank in southern India. In his letter of resignation, he set out quite a few reasons for leaving the Board, the common thread being that his inputs were "deliberately negated/ avoided/ overruled by the other members of the Board, just to support the belligerent attitude of the MD and CEO, who is on public record (in the vernacular press) that he cares little for shareholders and other Directors." The specific instances cited by him need not detain us. What is important is that he was appointed on the Board on December 5, 2022, confirmed by the shareholders on December 30, 2022, and resigned on September 16, 2023. A news item has surfaced stating that the largest shareholder of the bank had informed the Board that he would be bringing up a proposal for the removal of the ID concerned. According to that version, the Board was to consider the matter in 3 days, but the ID in question made a pre-emptive move to quit the Board.

The purpose of disclosing the real reason for resignation ought to be that those tasked with first level regulation, and second level regulation, should ask a few questions which have been given rise to by the contents of the resignation letter. It is not clear whether the Stock Exchanges have sought any report from the bank concerned. The obvious question is whether their responsibility ceases, by taking on record the resignation letter, and doing nothing more about it. As far as the second level Regulator, SEBI, is concerned, it should by now have asked for a detailed report from the bank to determine whether the alleged governance lapses have any merit, and if so, what corrective action(s) would be required. Unlike other listed companies, this bank also had on its Board, 2 representatives of the banking Regulator, and one of them has come in for "mention in dispatches". This is not a case of a Director not being found fit and proper at the time of appointment. The credentials and the relevant experience of the individual concerned are impeccable. Could a person have turned completely unacceptable in a matter of less than 9 months after appointment? Viewed differently, did the Director concerned find, in a short period of 9 months, that the Board, which he must have joined with great expectations, did not measure up in his eyes?

At the very least, RBI, and/or SEBI, should conduct a detailed enquiry to ascertain the real position, especially considering that this bank has had a chequered history in the recent past when it came to Board level conflicts, resulting in one case of the voting out of the MD and CEO by the shareholders.

Some other instances of resignations should also lead to raised eyebrows.

In the case of Manpasand Beverages, which was in the news around 4 years ago, there were interesting reasons given by the Directors for their respective resignations from the Board. The letter dated May 27, 2019 from the company to the Stock Exchanges stated that one Director resigned due to "preoccupation", and another resigned "mainly due to GST search". These two resignations were within one week of each other. Preoccupation is in the normal course, a very strange reason for resignation. Did the preoccupation come about after the Director was appointed, because of subsequent commitments? Nothing is clear from the communication to the Stock Exchanges. What is interesting is that the second Director resigned attributing his resignation to a GST search. Did the search lead him to adverse conclusions regarding the governance standards of the company? Was it for the same reason that the other Director resigned, citing preoccupation, and nothing else? On May 27, 2019, another Director resigned stating that the resignation is "mainly due to press release issued by GST department". In the absence of any readily available information at this juncture regarding the contents of the press release, or the findings of the search, it is idle to speculate on whether any threat was perceived by the Directors concerned from the investigative/ enforcement agencies. If they were not in the picture, in regard to the circumstances leading to the GST search, should they not have sought protection under Section 149(12) of the Companies Act, 2013? Also, this is not the only case where search operations by GST officials took place in the corporate world. One has not heard of Directors of other companies subjected to search, resigning in droves to protect themselves. As in the earlier case, there is no indication whether any Regulator reached out to the Directors to find out the real reasons, and to take whatever corrective action(s) would have been possible.

2019 threw up a few more cases of resignation. On June 19, 2019, a Director resigned from Wadilal Enterprises, stating, among other things, that he had in the past raised issues regarding arms length pricing between Wadilal Enterprises Limited and Wadilal Industries Limited, which are related parties. He also stated that there were serious issues amongst the promoters of the company, with them having made cross allegations. He further stated that the meetings of the Board and the committees were conducted in a hostile atmosphere, and he found it impossible to carry out his functions as an ID. He also stated that his integrity and independence were being questioned, and he was described as non-ID. The concerns expressed are clearly relevant and genuine. It is interesting that a Director who has insisted on arms length pricing between related parties is being described as a non-ID. It is also thought-provoking that the said Director, while resigning, had stated that the atmosphere in the boardroom was hostile. This is not the first such instance, nor will it be the last. The question arises whether having regard to the interest of the wide variety of stakeholders, the relevant authorities will adopt an attitude of benign neglect while boardroom battles are being fought, with value being destroyed in the process. The company's explanation that the matters had been gone into by a retired Supreme Court Judge, and that the transaction had been approved by the AC, raises yet another question. Were the two parties related? If so, what method did the Audit Committee (AC) follow to determine that pricing was at arms length. This assumes importance because in some companies, managements take related party transactions to the AC, and the latter takes the position (sometimes in the minutes) that the management had explained that the transactions were at arms length. Surely, that does not travel far enough as far as the responsibilities of the AC go.

When one looks at a few cases, and is about to reach a conclusion that the most interesting of them have been seen, another case surfaces, which makes the earlier resignations seem commonplace. One Director, who was appointed on the Board of Zee Media Corporation on January 24, 2019, informed the company on January 27, 2019 (exactly 3 days after appointment) that "the recent developments in the group, especially the big upheaval in the market, and the unprecedented fall in the share value, coupled with media reports of an open letter by the promoter, had left him perturbed and amazed". He added that he "will not be able to contribute in such turbulent times". He indicated that he would resign wef January 27, 2019. Several questions arise, the most fundamental of which is whether the individual



concerned had undertaken any due diligence whatsoever before joining the Board 3 days prior to his resignation on January 27, 2019.

2 Directors resigned from the Board of Zee Enterprises, one on September 21, 2019, and another on November 22, 2019. The first of them indicated that he was informed by the promoter, subsequent to sale of shares by the promoter group, that the new institutional investors expressed a desire to recast the Board. He therefore tendered his resignation with immediate effect. In his resignation letter, he has referred to a number of positive initiatives and efforts by the company, and wished the company a great future with its new aspirations and new Board. The other ID stated upfront in her letter of resignation that the primary reasons were “several instances of poor corporate governance in FY 2018-19”. She cited 8 specific instances of poor governance, and added that she felt “highly uncomfortable, and increasingly unsure about her ability to discharge her duties and responsibilities as an ID”. It is difficult to resist the comment that two resignations, within a space of 2 months, offer diametrically opposite reasons for the exits from the Board. With one of the alleged irregularities relating to diversion of funds, the securities market Regulator took up investigations, and passed orders thereon, holding the persons in charge and the company responsible.

In the case of one prominent non-banking financial company, 2 Directors exited around the same time. The first of them stated that he had served on the Board for 10 years, and found it very fruitful and rewarding. He gave no other reason for his resignation. The other Director, who resigned within 4 days of the earlier resignation, indicated, in considerable detail, that issues raised by the IDs were not taken seriously by the management, and in the absence of any indication that concrete steps would be taken on those issues, he was resigning from the Board with immediate effect. In his letter, he referred to a meeting of the IDs, during which the senior most ID, the one who had resigned after 10 years, had pointed out that the IDs had several concerns, and they were not being taken seriously. It is difficult to reconcile the position taken by these two persons in their letters of resignation.

In the case of Asian Hotels, one Director resigned in June, 2021 stating that the hotel had stopped functioning on account of “lack of finances, and with no funds coming from the promoters”. He added that despite repeated requests, the Chairperson did not “respond to a discussion on the financial problems of the company”. He concluded that his “usefulness to the company is no longer seen”.

3 IDs manifested their clear dissatisfaction while resigning from the Boards of PTC India Financial Services, a subsidiary of PTC India Limited. All of them gave fairly detailed resignation letters, setting out instances of corporate governance violations by the management of the company. These were gone into by the Regulator, with corrective action(s) being initiated, even though the stand of the company was that the IDs had not done what was expected of them. One wishes that similar corrective action had been initiated in all other cases where IDs have alleged corporate governance failures on the part of the management.

Self preservation is often a very strong reason for doing the right things, even if such action is somewhat delayed. There is reason to believe that in enlightened self interest, if nothing else, IDs will show a mirror to the management and the promoters, thereby ensuring the protection of the interests of all stakeholders.

Leaving corporate governance issues unaddressed is like leaving the balls outside the off stump. It will not disturb your presence at the crease (or in the boardroom), nor will it disturb the scorer. However, stepping out of the crease, and hitting a few balls out of the park, will keep the scoreboard (of independence) moving at a brisk pace.

*“When the One Great Scorer comes to mark against your name,  
He writes not that you won or lost,  
But how you played the game.”*

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