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THE IDs STRIKE BACK



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It is rare to find IDs taking a stand, and rarer still for Regulators to endorse the position they have taken. Is this going to be a new trend, knowing however that one swallow does not make a summer?

For most matters that have gone wrong in corporate entities, the Independent Directors (IDs) have either been held to be responsible, or are perceived to be responsible. Their differentiated role, as distinct from those having executive responsibilities, seems to be ignored whenever there is an allegation of corporate misdemeanour. They have been the preferred punching bags of the commentariat, and the subject matter of considerable derision, being often termed as holders of sinecures, post their superannuation.

It is in this background that one has noticed, with considerable appreciation and approbation, the conduct of some of the former IDs on the Board of PTC India Financial Services (PFS). Having had to deal with the proprietorial attitude of the Managing Director (MD) and the Non-Executive Chairperson for a considerable period of time, the IDs, at least 3 of them, pushed back on every conceivable occasion, to prevent executive excesses. When their collective efforts to uphold the highest standards of corporate governance did not succeed, they walked out of the Board, recording the reasons for their departure, in detail, in well-articulated resignation letters, which shone light on the irregularities and worse in PFS.

In an order dated June 12, 2024 (Order), Mr Ashwani Bhatia, Whole Time Member of SEBI, has, in considerable detail, dealt with a number of breaches of various norms of corporate governance committed by the MD and the Non-Executive Chairperson of PFS. Portions of the Order deal with the conduct of management that should strain one's credulity. It is very difficult to imagine that the management of a subsidiary of a public sector company would cock a snook at the various issues raised by the IDs, and ride roughshod over all the relevant corporate governance principles and practices. This Order should be an eye opener for managements intending to take liberties with the Board and the Directors, and in the process giving short shrift to corporate governance. This is also the right context in which to applaud the IDs, who held aloft the practices and principles of corporate governance. Take a bow Santosh B Nayyar, Thomas Mathew and Kamlesh S Vikamsey.

The first issue which the SEBI Order addresses is the defiance shown by the MD in the matter of appointment of a newly selected Wholetime Director and Director (Finance), following the Board's laid down process. The dates are significant, and should raise eyebrows. On August 28, 2021, the Board decided to approve the appointment of Mr Ratnesh, with the MD recommending that the appointment should be only on absorption basis. This was overruled by the then Chairman, Mr Deepak Amitabh, who stated that the process laid down had already been followed, and the question of a candidate joining on absorption basis could be considered while finalising the terms and conditions of appointment of the candidate. On September 13, 2021, the Audit Committee (AC) approved the appointment of Mr Ratnesh. It is somewhat curious that the Board had approved the appointment more than a fortnight earlier. Even while the AC was in the process of approving the appointment, the MD, who was not part of the AC, raised concerns about the candidate not having adequate work experience in the NBFC sector, which according to him would be a major constraint. However, the AC went ahead with the approval of the appointment of the candidate. It is interesting that in the Board meeting on August 28, 2021, the MD's only issue was that the candidate should join on absorption basis. A fortnight later, his work experience being inadequate was mentioned as the reason. It is also relevant to mention that the MD, without being a member of the AC, expressed dissent when the AC was according approval.

Subsequent to the developments indicated in the preceding paragraphs, the candidate on October 29, 2021 submitted a joining report to the then Chairman, who by way of a noting, directed the MD to accept the joining report. The MD, without specifying any reason, did not accept the joining report. Meanwhile on September 14, 2021, the appointment of Mr Ratnesh had been disclosed to the Stock Exchanges. The Chairman of the Board meeting held on November 8, 2021, Mr Nayar, objected to the notice not having been given to Mr Ratnesh to attend the meeting. The last fig leaf, which the management held on to, was that the required documents were not submitted by Mr Ratnesh. Mr Nayar stated that not asking for the documents by PTC India (PTC) and PFS did not make his appointment invalid. The meeting was declared invalid.

The management also obtained legal opinions to support their contention that the joining process was not complete. This information was not shared with IDs while seeking the legal opinions, and was done behind their back. This merits serious attention since the IDs had already expressed their views, prior to the seeking of legal opinions, and it was absolutely necessary to keep them informed that such an opinion was being sought.

At the meeting on November 8, 2021, two nominees of PTC were invited. One of them subsequently became the part-time Chairman of the company. It is relevant to note that intimation regarding the appointment of the two nominees was given to the Stock Exchanges only on November 9, 2021.

As if these incongruities were not enough, the Risk Management Committee (RMC) of the PTC went into the corporate governance issues in PFS, and submitted a report (RMC1 report) to SEBI. 2 members of the RMC found the conclusions in the report not acceptable. Subsequently, these 2 members submitted a separate report (RMC2 report), which had findings opposite to those of RMC1. Majority of the PTC Board supported had supported RMC1, whereas all the IDs of PTC supported RMC2.

It is difficult to recall another instance where the MD not only ignored the Board, but also acted contrary to the Board's decisions, with a view to obstruct an appointment of a senior functionary. For this, if for nothing else, the MD ought to have been removed. Questioning the Board's decision repeatedly, and obstructing the implementation of Board's decision, is not a matter to be taken lightly if corporate governance norms are to be adhered to.

There were some credit-related decisions where the concerns of the Board, especially the IDs, were completely ignored. In addition, the directions given by the then Chairman of the Board on August 5, 2021, were also not given any importance. When the Statutory Auditor had, in the AC meeting held on November 9, 2021, referred to the issues which had been raised by the then Chairman, the PFS management asserted "that none of these observations raises any concern of the Board on financial prudence of the company". Clearly, that was an unsatisfactory response. The Statutory Auditors stated that if the points raised by the then Chairman were not addressed before the year end, he would have difficulty in issuing an unmodified/ unqualified opinion on the financial statements. In spite of this observation of the Statutory Auditor, the MD did not appear to have made any attempt to address the issues, as raised by then Chairman.

In their resignation letters, the IDs specifically mentioned that communications by IDs were ignored, and limited/ incomplete information was presented to the Board members. To add to this, the notice dated January 14, 2022, scheduling a Board meeting on January 22, 2022, was not addressed to all the Directors, and did not contain any item for discussion regarding the corporate governance issues which the IDs had repeatedly raised.

SEBI's Order goes on to indicate that a forensic auditor was decided to be appointed on April 27, 2022. Even though the AC had selected the forensic auditor to be appointed, the management questioned the authority of the AC, and tried to go against the decision of the AC by appointing some other forensic auditor. Further, the employees were instructed not to share any information with the forensic auditor selected by the AC. Even when the information was shared subsequently, it was after a delay of more than 3 months, and was shared in bits and pieces, making the verification of loan accounts difficult. Delay in the commencement of forensic audit, and non-cooperation by the MD, led to delay in preparation of the forensic audit report, and consequently a delay in finalising the financial results of PFS for FY22. Resultantly, the scrip of PFS was shifted to Z category, impacting the price of the scrip.

In flagrant violation of SEBI's direction dated May 13, 2022, that the structure and composition of the Board should not be changed till the completion of forensic audit, the Chairman PFS reconstituted the AC.

Yet another case of dereliction of duty related to the scheduling of the Nomination and Remuneration Committee (NRC) meeting on December 10, 2021. The NRC Chairman had requested the Company Secretary to make the necessary arrangements for scheduling of the meeting. In response thereto, the PFS management, with the approval of the MD, stated that "there was no agenda attached for the meeting and any committee meeting may be finalised in consultation with Chairman PFS and management of the company." The Chairman of NRC suggested postponing the meeting to December 16, 2021 to enable the management to submit agenda items, if any. However, on December 10, 2021, one of the members of the NRC was withdrawn from the PFS Board, rendering the NRC non-functional, as only 2 members remained, and there was no quorum for an NRC meeting.

In the light of these unprecedented and serious violations, SEBI found the 2 Noticees, the MD and the Non-Executive Chairperson guilty of the charges, and imposed monetary penalty of Rs 25 lakhs and Rs 10 lakhs respectively on the 2 Noticees, and restrained them from holding any position of Director or Key Managerial Personnel (KMP) in any listed company or intermediary etc for a period of 2 years and 6 months respectively. It is likely that in determining these penalties, SEBI went by whatever norms had been laid down for determination of penalties. However the defiant and disruptive attitude that this episode captures should have merited a much harsher penalty, so that persons who treat corporate entities as their personal fiefdoms, are strongly discouraged from doing so. That notwithstanding, appreciation is due to the Whole Time Member, for an elaborate Order, laying bare all the transgressions that were brought to his notice.

In conclusion, it might be worthwhile for SEBI to consider a suggestion. Several Courts, especially the higher Courts, have often, while parting with the case in question, recorded their appreciation of persons who had a praiseworthy role to play. SEBI could make a start with Santosh B Nayar, Thomas Mathew and Kamlesh S Vikamsey for flying the flag of corporate governance. This could strengthen the institution of IDs.

PS: As this is being put to bed, comes the news that SAT has admitted an appeal, and stayed SEBI's order. We await the final determination of the matter.

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