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(AN M. DAMODARAN INITIATIVE)

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# BOARD PROPOSES, MANAGEMENT DISPOSES?

*Managements run companies, and Boards are tasked to ensure that the managements run the companies well. How can Boards discharge this duty if managements defy directions?*

On December 5, 2025, the Securities Appellate Tribunal (SAT or the Tribunal) passed detailed orders in the context of an appeal filed by Dr Pawan Singh, the Managing Director (MD) and CEO of PTC India Financial Services Limited (PFS), challenging an order passed by Whole Time Member (WTM), SEBI on June 12, 2024. The impugned order by WTM, SEBI was against Dr Pawan Singh, the Appellant before SAT and Mr Rajib Kumar Mishra who was the Non-Executive Chairman of PFS.

On January 19, 2022, 3 Independent Directors (IDs) of PFS resigned from the Board, and sent copies of their resignation letters to SEBI, alleging violation of corporate governance norms. SEBI's impugned order indicates that there were 6 specific allegations made in the resignation letters of the IDs.

It is not the purpose of this newsletter to examine, in detail, each of those alleged violations, and to comment on the correctness, or otherwise, of SAT's orders in relation thereto. The present exercise is an attempt to look at the issues through the lens of corporate governance, taking into account the structural and consequential aspects of how companies are governed, and ought to be governed.

The first of the issues throws considerable light on the state of affairs that existed in PFS. One Mr Ratnesh, had been identified as a suitable candidate to join PFS as Whole Time Director (WTD) and Director (Finance). There were discussions relating to whether he should be appointed on absorption basis or on deputation basis. The HR department of PTC India (PFS is a material subsidiary of PTC India) was the entity that "predominantly handled the selection, the appointment and the joining process of Mr Ratnesh". Cutting to the chase, it is noticed that on October 29, 2021, Mr Ratnesh submitted his joining report to the then-Chairman of PFS, Mr Deepak Amitabh, who forwarded the papers to the Appellant, directing him to "accept the joining in terms of decision of PFS Board in 138th and 139th meeting". Subsequent thereto, the Appellant did not accept the joining report, and facilitate the joining of Mr Ratnesh as WTD and Director (Finance). After considering all the facts placed before it, SAT decided that "in these circumstances, specially when the release letter of NTPC states that it is a provisional release, the responsibility to not allow Mr Ratnesh to join as Director (Finance) cannot be SQUARELY (emphasis supplied) put on the Appellant". Based on this finding, SAT concluded that the findings related to these issues "are not CONCLUSIVELY (emphasis supplied) proved". There is a fundamental issue which needs to be grappled with. When there is a Board decision to allow an individual to join as Director (Finance), and when the Chairman directs the MD to give effect to that decision, is it open to the MD to not act on those directions? It is unquestionable that in the structure that obtains in a corporate entity, the Board of Directors is an authority superior to the MD and CEO or any other member of the management. Resultantly, the directions of the Board have to be implemented by the management. In the context of SAT's observations that the responsibility to not allow the joining cannot be squarely put on the Appellant, one wonders on whom the responsibility can be put. Even if for argument's sake, the use of the word "squarely" is intended to convey that it is not the exclusive responsibility of the Appellant to give effect to the orders of the Board, is there an element of partial or shared responsibility? Or can the recipient of the directions of the Board, communicated through the Chairman, get away scot-free, with non-implementation of the directions?

In an issue regarding alleged delayed reporting, SAT came to the conclusion that "Thus, it is clear that though there was delay, it was not deliberate, nonetheless there was dereliction without any malafide intention". This finding gives rise to a few questions. If, admittedly, there was delay in reporting, someone must have been responsible for such delay. The Committee of IDs, which examined this matter, concluded that "there was a dereliction of duty in non-disclosure of FAR 2018". One of the meanings of the word dereliction is "the shameful failure to fulfil one's obligations". It is not clear how a conclusion was reached that there was no malafide intention. SAT also noted that "this whole issue is to be viewed in the context that it was an isolated case out of 100s of loan cases dealt by PFS and NBFC". How was the conclusion reached that this was an isolated case?

The former Chairman, in a letter to the Board, on August 5, 2021, highlighted 7 points, which in his view, impacted adversely on corporate governance in the company. While dealing with this matter, the Appellate Tribunal stated that two of the issues had been discussed earlier in its order, and three issues were not pursued. Also, no finding has been given in the impugned order on one of the 7 issues. Accordingly, the Tribunal arrived at the conclusion that only on one point, namely, that the Appellant was responsible to ensure that correspondence addressed to the Chairman reached his office, was there a need for determination. In deciding this issue, the Tribunal observed that "MD and CEO is not expected to ensure that correspondence reaches the right person. In any case, the Chairman was an Ex-Officio Non-Executive Chairman and did not have a regular office". Even if the ex-officio Non-Executive Chairman did not have a regular office, he surely would have had an address at which he could have been reached. In disposing off this matter, the Tribunal observed "in our view, the issue is trivial and does not behove the Regulator to take up such matters seriously". The finding of the Tribunal that the issue is trivial, and that it does not behove the Regulator to take up such matter seriously, is an aspect on which no comment is offered.

Yet another issue considered by the Tribunal was the amendment in the terms of sanction without the approval of the Board. In regard to this matter, the Board on September 29, 2021 observed that "if the Board directives were not followed in the instant case, then responsibility for the same be fixed, and necessary action should be taken by MD and CEO". The Tribunal interpreted this direction of the Board to mean that since the Appellant was directed to fix responsibility, it was implied that the Board believed that the Appellant was not responsible for the amendment. The question arises as to whom else the Board could have given such a direction since there was no other Executive Director in the company at that time.

In their letters of resignation, the IDs had alleged that their communications had been ignored and limited/ incomplete information was being provided to them. It appears from the appellate order that the IDs sought the appointment of a legal counsel, and since no legal counsel was immediately appointed, they proceeded to appoint a legal counsel after a few days of making the request. The Tribunal noted that there was no undue delay on the part of the management in responding to the request of the IDs. However, the observation of the management that a separate legal consultation was “premature”, appears to have been glossed over. It is relevant to ask whether in such a matter, as appointment of legal counsel, the management should second-guess the IDs, and observe that such an appointment was “premature”.

In the matter of reconstitution of the Audit Committee, and not changing the structure and composition of the Board, the Appellant contended that SEBI’s mail to PFS was in the nature of an advisory, and was not in the nature of an order issued by SEBI. It is passing strange that in regard to a matter as serious as the structure and composition of the Board, a communication from SEBI should be treated as an advisory, and not as an order to be complied with.

What is most unfortunate is the finding of the Tribunal that “the entire issue was at the most a corporate battle in which such an interference by the Regulator was not called for”. One wonders whether the Regulator should have looked the other way when 3 IDs had resigned, and in communications to SEBI alleged that there were serious corporate governance issues. Also, when only one corporate was involved, it is difficult to understand how the goings on were described as a corporate battle.

As stated earlier in this newsletter, our focus has been on corporate governance issues, as they played out in PFS. Given the developments in this matter, and the fact that most of the findings of SEBI have been set aside by the Appellate Authority, it is perhaps time for SEBI, and also the Ministry of Corporate Affairs (MCA) to clearly lay down, in a no holds barred document, that the management will not have the freedom to question and defy the directions of the Board, and to not comply with those directions. The sanctity of the corporate structure must be preserved if corporate governance is to be ensured.