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[AN M. DAMODARAN INITIATIVE]

Expert Expressions
Corporate Governance Demystified

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With Boards being at the apex of the leadership pyramid, it stands to reason that they must be well constituted. Relevant experience, the courage to decide, the ability and willingness to invest quality time, and a result-oriented mindset are a few of the many attributes that should get persons into boardrooms. Are there takeaways from our Tale of Two Boards?

Editor

A TALE OF TWO BOARDS

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

Many moons ago, two very distinguished persons were contesting for a single seat in the Graduates Constituency of a Legislative Council. Being opponents, but not enemies, they decided to address a segment of the electorate from the same platform. The first speaker, a distinguished medical practitioner, made an elaborate appeal, the centrepiece of his argument being that the person who gets elected must be a person of tact and courage. When it came to his turn, the second speaker, the soul of brevity, agreed wholeheartedly with his opponent that the person who gets elected, must be a person of tact and courage. He added that when there were problems back home, his opponent tactfully retreated to the cooler climes of the Continent, and he courageously returned once normalcy had been restored. It is worth pondering as to which of these two types inhabit modern corporate boardrooms.

A little over a decade ago, corporate India witnessed a governance scandal of mammoth proportions. In his letter to the stock exchanges and to the Securities and Exchange Board of India (SEBI), B. Ramalinga Raju, the Chairman of Satyam Computers Limited (Satyam) admitted that the accounts of the company presented, year after year, for several years, did not reflect the correct position. He added, for good measure, that he had mounted a tiger, and that it was difficult to dismount it. Of more significance to his stakeholders was the fact that his company had also mounted the tiger at his instance, and that there was no easy way to return to normalcy.

Desperate situations call for desperate measures. In a move that was both unprecedented and lightning fast, the Ministry of Corporate Affairs (MCA) petitioned the Company Law Board (CLB) to remove the entire Board, and to replace it with carefully chosen persons of repute. In a matter of a few days, a new 6 member Board, constituted at the instance of the Government, with members appointed by the CLB, and given statutory protection, assumed control. The composition of the new Board merits elaboration, if only to draw lessons therefrom. Deepak Parekh, a veteran of the corporate scene, Kiran Karnik, a former Chairman of NASSCOM, Tarun Das, who was synonymous with Confederation of Indian Industry (CII), C. Achuthan, a former Chairman of the Securities Appellate Tribunal (SAT) and T. N. Manoharan, a former President of the Institute of Chartered Accountants of India (ICAI), were handpicked to lead the recovery effort. At the instance of Life Insurance Corporation of India (LIC), a significant shareholder, B. Mainak was also appointed to the Board.

The backgrounds that the gentlemen had, and the rich and varied experience and exposure that they brought to the Board, ensured that the division of responsibilities could be easily attempted. Therefore while the legal luminary grappled with court cases and other legal issues, both existing and threatened, the financial expert did a deep dive into the questionable accounting entries leading to incorrect rendition of accounts. 3 other members reached out to the companies, and stakeholders, including investors, employees and clients, to assure them that matters would be set right soon.

In the effort of rescuing the company from its near-death situation, the Board sought and received information and support from the middle and senior management persons who were not prima facie culpable in this massive scam. The recognition that they were there for the short term, until an investor was brought in, imparted a sense of urgency and direction to the rescue efforts by the Board.

A decade later, the Infrastructure Leasing and Financial Services (IL&FS), a very large Non-Banking Financial Company (NBFC) and a systemically important institution, bit the dust. Unable to service its outstandings, it defaulted on a few payments, thereby attracting the adverse notice of the markets and the Government. Their reasonably well-publicised efforts to bring in a strategic investor, or to get the major shareholders to commit funds, also drew blank. The MCA ordered an investigation by the Serious Frauds Investigation Office (SFIO), and based on the report, moved the National Company Law Tribunal (NCLT) to dismiss the Board, and to allow the nomination of fresh Directors. This move was executed as soon as the NCLT passed favourable orders.

Recent reports seem to indicate that the rehabilitation efforts have not proceeded at the desired pace. It is useful to look at the similarities and the differences to take away the right lessons, should such a major meltdown happen in the foreseeable future.

The composition of the Board is a good starting point. It could not have asked for a more experienced or relevant leadership than that provided by Uday Kotak, a relatively young veteran of the financial sector. Vineet Nayyar, who led the integration efforts of Tech Mahindra and Satyam, was brought in as the Vice Chairman and Managing Director. A number of other persons with good track records in public administration, but no known experience in the corporate world, were also inducted on the Board. Conspicuously absent from the Board was a Chartered Accountant and a lawyer, the two specialisations that contributed phenomenally to the Satyam rescue efforts. Many insiders were taken out of the equation, and persons at the supporting levels were also brought in from the outside. It is entirely possible, though not certain, that this impeded the flow of information to the Board. One significant fact, that should not be lost sight of, is that Satyam was involved with only one sector, whereas IL&FS had its presence across a wide spectrum of businesses, with some companies in the group performing reasonably well and some others, especially in the infrastructure space, manifesting under-performance. It is a moot point whether having regard to the multiplicity of businesses, the reconstituted IL&FS Board should have appointed separate empowered Boards to deal with individual businesses in a focussed manner. If these problems were not enough, the IL&FS group was also owed a very large sum of money by Ministries as well as Government organisations.

The IL&FS saga played out after the NCLT and National Company Law Appellate Tribunal (NCLAT) mechanisms had come into being. Resultantly, even proposals for disinvesting some group companies had to contend with procedural issues, causing delay, a problem that Satyam did not face in the CLB days.

Of equal import is the fact that once the reconstituted Board of Satyam was appointed, it was left to its own devices. In the IL&FS case, in contrast, forensic audit reports that found their way into the public domain, and the near universal condemnation emanating from different official sources, of Independent Directors and auditors did not help the rescue efforts. It is also possible that the IL&FS Board saw itself as fully empowered. It is also not known whether such a perception is shared by all stakeholders.

The conclusions are obvious. When a large corporate entity goes under, it is necessary to place persons with expertise and relevant track records in charge of the process of reconstruction. Having done that, the Government and its agencies should ensure that they do not expressly, or by necessary implication, signal that the real power does not reside in the Board. Fast tracking legal mechanisms, that factor in the enormity of the problem, and the need for speedy resolution, must be activated to ensure that there are no procedural obstacles. Above all, the separation of the grain from the chaff as far as the senior management is concerned, should be completed quickly so that persons that are not culpable can be a part of the solution.

Column centimetres of space in the national press cannot be the answer to a serious problem. The entries in the various columns in the books need to be given much more attention.

READERSPEAK - Room at the top

Ananta Barua, Whole Time Member, SEBI
"Good one. Leading a board is a major challenge"

B.P. Vijayendra, Former Principal CGM, RBI
"Thanks for the "Room at the Top". Has several pertinent observations and I am sure it would provide very useful food for thought to many."

Dr. Pritam Singh, Former Director General, IMI
"Excellent piece."

Do let us know of any specific issues you would like to see addressed in subsequent issues.