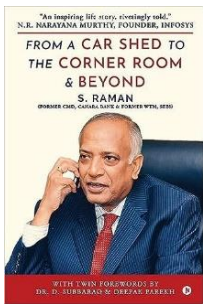


Book extracts

From a car shed to the corner room & beyond

Three vignettes from a recent book by S Raman who retired as whole-time member of SEBI. The first focuses on the business case for good governance, the second discusses a few corporate battles from his time at SEBI and the third underlines the central message contained in the Kotak Committee report.



The business case for good corporate governance

Irrespective of Regulations and Rules, there are many companies known for good corporate governance, even when the legal requirements were not specifically laid down. Once a group establishes a good reputation, it is able to improve business faster, attract better business partners for collaboration, command better prices, be it for purchases or sales, better rates of interest for borrowings, better response from government authorities when needed, attract investors to expand capital whenever needed etc etc.

Even in corporate battles, corporations known for good corporate governance are in a position to deflect challenges much more easily!!! A silent but significant advantage!

I also believe, from my own personal experience, that Corporate Governance is something that is top driven. YATHA RAJA, TATHA PRAJA, is a maxim truly applicable in India!

I would strongly recommend a full reading of the Kotak Committee Report as well as the Listing Obligations and Disclosure Rules (LODR) to anyone interested in this very important subject.

A few interesting corporate battles (during 2016-17)

When does SEBI have to step in?

There were a few high-profile corporate battles during my tenure (as whole-time member SEBI), the biggest of two being the 'TATA vs MISTRY' and the 'FOUNDERS OF INFOSYS vs the MD'.

In both cases, there was saturation coverage in the business press and TV. Many journalists were also commenting why there was no immediate action on the part of SEBI. Many times, I would be asked what SEBI was doing. I would reply we were "watching the developments closely", and, if and when there was a necessity for us to take action because of violation of any of the legal provisions / Regulations, we would surely do so.

Corporate battles are generally high voltage affairs (like a fight between gladiators), and everyone, especially the press and commentators, would keep on urging SEBI to intervene, so that another interesting element gets introduced in the drama!

Within SEBI, we had serious debates on the issues involved, and our line of action was always clear i.e., we would intervene only in case of infractions of law we are mandated to administer, like some provisions of the Companies Act which fall in our ambit, corporate governance in listed entities, besides our own Regulations like the Listing Regulations etc.

INFOSYS

In the case of Infosys, the main issue was the unhappiness of the founder promoters about what they felt was the CEO straying from the path of frugal / ethical culture of the company by splashing some big money for acquisition of a company, excessive remuneration paid to the top executives at a point in time when there was hardly any increase at lower levels etc.

This was a real conflict of cultures and there was heavy criticism of the management from the founders. The management felt that the criticism was unfair, and it was because the founders were not really prepared to let go of their power even after relinquishing their membership in the board. It was also their case that the company was board driven, and that all the decisions taken were taken with the proper approvals of the board.

On the other hand, the founders felt that they had never interfered with the functioning of the board once they left the board but had every right to criticise the management when they felt that the ethics and values with which the company was run from its inception were being violated. Furthermore, the founders continued to be treated as the promoter group, as they still had in excess of 10% equity in the company. As such, it could never be said that they had no right to criticise the management, when in their opinion, things were going wrong.

All this was good fodder for everyone, including commentators, newspaper columnists, veterans and armchair experts!

The point before SEBI was simple. Is there any role for SEBI in this cultural struggle?

To us the answer was a clear NO. The company itself had to resolve this type of issue.

But when it got revealed in a SEBI examination that the severance payment made to the earlier CFO was done in violation of some provisions of the Listing Agreement, SEBI instituted Adjudication Proceedings, which were settled in February 2019, upon payment in accordance with SEBI (Settlement Proceedings) Regulations.

In sum, it is SEBI's philosophy to intervene only when there are violations of Regulations or other provisions of law relevant to SEBI. Sheer public pressure will not make SEBI enter an issue which does not pertain to it.

Subsequent events did vindicate SEBI's approach as after some time the company and its board and shareholders found a workable solution and we have since seen only serene times

in the iconic company, once some changes were effected in the Board as well as the management.

TATA SONS

The issue in this case was the manner in which the earlier Chairman of Tata Sons Ltd was removed and a new Chairman installed. This was again a high-profile case in which the entire press, nay, the entire nation got involved! Everyone had his own opinion as to who was right and who was in the wrong!

As usual, there were snide comments from some sections of the press wondering what SEBI was doing! We had strong debates within SEBI as to what should be our approach. The clear answer once again was that we had to intervene only if there were infringements of SEBI Regulations or provisions of the Companies Act over which we had oversight responsibility.

The entity in this case was Tata Sons, which was not a listed entity. Hence, we really had no locus-standi in this matter. It was to us an ownership battle, which had to be fought and settled by the two contesting groups. There was some fallout of this development on some of the listed companies in the group, but not something, in our judgement which warranted any action on the part of SEBI.

Here again our approach was vindicated, as all the litigation was in fora like the High Courts, NCLT, NCLAT and the Supreme Court, which finally upheld the case in favour of the Tata Group.

As in the case of the Infosys issue, we took a clear decision NOT to do anything from SEBI's side, as the matter, in our considered opinion, was not requiring our intervention.

As the former Prime Minister, Sri P V Narasimha Rao once famously said, doing nothing is the best course of action at times, rather than to get involved where not necessary!

COMMITTEE ON CORPORATE GOVERNANCE: CHAIRMAN, SRI UDAY KOTAK

Corporate Governance is a subject that has fascinated SEBI, GOI, and trade bodies such as CII etc on a continuous basis. There were many committees appointed on this subject such as the CII Code of Desirable Corporate Governance (1998), SEBI Committee on Corporate Governance headed by Sri Kumar Mangalam Birla, (2000) CII Task Force on Corporate Governance chaired by Sri Naresh Chandra (2002), SEBI Committee on Corporate Governance Chaired by Sri Nayana Murthy (2003) etc.

As the important issue of corporate governance had not been examined by a SEBI appointed committee since 2003 i.e. 14 years, our new Chairman, Sri Ajay Tyagi, took this as one of his first initiatives. A committee¹ was appointed with Sri Uday Kotak as Chairman. It was a 23-member committee, with well-known corporate figures such as *Sarvashri* Keki Mistry of HDFC, Rishad Premji of Wipro, R. Shankar Raman, CFO, L&T, Prof. Krishnamurthy Subramanian from ISB, eminent lawyers like Zia Mody and Cyril Shroff, Joydeep Sengupta of McKinsey's and

¹ Amit Tandon, managing director IiAS was a member.

leading figures from accounting firms and proxy advisory firms and senior officials from Govt of India. The composition of the committee, like all SEBI committees, was very broad based and this provided for vigorous discussions at the committee meetings.

Sri Uday Kotak was a wonderful Chairman of this large group. Besides being a highly successful banker, Sri Kotak commanded a stature which most people can only dream of. He was a benign but commanding presence, and it was a joy for me to watch and also occasionally participate in the deliberations. He led the discussions with great purpose, and the result was a much-acclaimed report, which was submitted on October 5, 2017.

As I retired from SEBI on September 6, 2017, the SEBI Chairman made me a member of the committee, at the request of Sri Kotak, till the presentation of the report.

The SEBI team consisting of Pradeep Ramakrishnan, Nila Khanolkar and Rohan Vijay were very efficient in coordinating the arrangements and providing technical inputs and secretarial assistance with lightning speed and efficiency. I felt so proud of representing SEBI while seeing Pradeep and Nila in action!

The much-heralded report has 11 chapters on different areas, with multiple recommendations under each of them. This report is a must-read for anyone interested in this hugely important subject of corporate governance.

The chapters broadly cover the following areas:

- Composition and Role of the Board of Directors
- The Institution of Independent Directors
- Board Committees
- Enhanced Monitoring of Group Entities
- Controlling Shareholders and Related Party Transactions
- Disclosures and Transparency
- Accounting and Audit Related Issues
- Investor Participation in Meetings of Listed Entities
- Governance Aspects of Public Sector Enterprises
- Leniency Mechanism
- Capacity Building in SEBI

As can be seen from the above, the report covers almost every area which could be thought of in the context of corporate governance. The report has for good reasons been hailed as a watershed report which would shape the corporate governance subject for many years to come.

An interesting comment made by Sri Kotak in his preface to the report is that in India, there are broadly two types of management - the "*Raja*" or the Monarch model and the "*praja*", or the Custodian model! In the Raja model, the promoter's interests i.e., self-interest precedes the common interests of all the stakeholders.

On the other hand, in the *Praja* model, promoters, boards and management act as 'trustees,' and act in the interests of all the stakeholders - shareholders, investors, employees, customers etc.

The report is an attempt to define issues and practices which would enable the corporate sector in India to move from the '*Raja*' model to the '*Praja*' model!

I thought it was a nice way to explain the committee's report!

As readers might recall, I had, in the earlier chapters of this book, described the Raja Model as the 'YEH MERI MARZI' school of management!

Another important point worth mentioning is that the committee also covered the aspect of 'capacity building' within the SEBI to meet the requirements of the present-day environment of rapid change in technology as well as the ever fast changing landscape. It showed that SEBI had the humility of inviting suggestions for its own improvement!

After deliberations, SEBI accepted most major recommendations, and many of these were implemented either entirely in one go or in a staggered manner over a period of 2 or 3 years. A few recommendations have been modified, a few given more time for implementation than what was recommended by the committee.

A recommendation regarding mandatory splitting of the position of an executive chairman-cum-managing director has recently been made voluntary rather than mandatory.

The emphasis on Protection of Minority Shareholders has enabled India to jump in the ranking from 13 in 2017 to 4 in 2018 in "Protection of Minority Investors" as per the World Bank Group Flagship Report - Doing Business 2019.



S.Raman is a career banker. He began as a clerk in State Bank of India and after two years joined Bank of India as an officer where he spent 35 years, with a last posting as Chief Executive, New York. He was appointed Executive Director, Union Bank of India, in October 2008 and was Chairman & Managing Director, Canara Bank from SEP 2010 TO September

2012. After this he served as a Whole Time Member, Securities and Exchange Board of India for about five years.

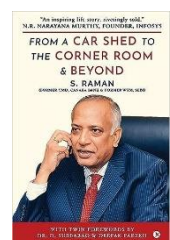
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This article contains the authors opinion and excerpts from his book. It is a commentary on the general trends and developments witnessed in the securities market.

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