PUBLIC SECTOR GOVERNANCE: CAUGHT BETWEEN CONFLICTING PRIORITIES

A **GREAT OPPORTUNITY TO DEFINE** corporate governance in the public sector was lost when in December, The Children's Investment Fund (TCIF) of Britain withdrew its class action suit against Coal India (CIL). This suit could have provided the right impetus to set up a road map at a time when corporate governance has assumed unprecedented significance as a protector of public and private interests.

TCIF, the second-largest shareholder, had accused CIL and its majority shareholder, the Indian government, of breach of fiduciary duties: First, CIL was being forced by the government to sell coal at a discounted price. Second, CIL's board of directors was not independent. The result: CIL took decisions against the interests of minority shareholders and violated the promises made to those investors while floating the public issue in 2010.

The government contested the charges, saying that the decisions were in "public interest" and, therefore, justified. TCIF was told that if it did not like the government's action, it could sell its holdings. Seemingly, TCIF did just that and like most cases in India, the entrenched shareholder had its way and failed to keep the promises made when the company attracted overseas private capital.

The government's interference in decision-making is not limited to CIL. It pervades public entities operating in oil and gas, banking and finance, metals and minerals, fertilisers, and telecom sectors. Its origin can be traced to either nationalisation between the late '60s and early '80s or to the Industrial Policies of 1948 and 1951—the post-Independence era when India was still struggling to find its feet. The private sector was small, over 50% of Indians were poor, and the rural population accounted for more than 82%. Consequently, the government had to lean on public investments to shape and drive the economy, ensuring social equity and distributive development and creating employment. It played the role of regulator, lawmaker, and grantor of licences, besides being owner and manager. The government continues to play a similar role in many cases. Driving higher profits was not a strategic or pervasive priority, although public sector enterprises (PSEs) seemingly operate in a market-driven economy and compete with leaner and more focussed private players.

The notion that state-owned companies are an extension of the government and working for public good changed irrevocably when PSEs started listing on Indian stock exchanges and some even got listed overseas. Minority shareholders, including Indian and global funds, entered the fray with an equitable interest in the affairs of these companies. They looked for economic returns and did not necessarily share the ideology that capital should be used for the greater common good.

The management, including the boards of PSEs, are appointed by the ministries and they consist of mostly public servants who are remunerated, evaluated, and even terminated by the authorities. Hence, they are most likely to lean towards the government if any conflict arises with other shareholders.

The other vanguard of corporate governance—independent directors—are also appointed by the government and not independently by the company. In other words, the government's control over the board is pervasive and is often perpetuated by public servants serving the PSEs.

How does the rest of the world do this? Most countries strive to create a balance between governmental controls over the businesses they own and the purpose for which such entities are created—to earn profits. However, there is no cure as long as the government and public servants believe they have no accountability towards private capital in a PSE and such entities are merely vehicles for seeking rent in perpetuity.

Indian PSEs need to be unshackled and run as business enterprises. They have depth of management and expertise honed over decades. Now, the management needs to determine what is in the best interest of the enterprise and not just what is best for the government.

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