



## Indian Chamber of Commerce, Calcutta

### Conference on Corporate Governance & Competition Law 17<sup>th</sup> October, 2011

#### Summary of Proceedings

##### **Observation by Dr M Veerappa Moily, Hon'ble Union Minister for Corporate Affairs**

In his address, the Hon'ble Minister made the following observations :

During the colonial rule the British followed a non-industrial model for India., when the rest of the world was emerging with vibrant industrial revolution. Kolkata was the trendsetters in industrialization with many significant companies, operating from here at that time.

**Official records show that West Bengal has been recording the highest compliance rate in regard to filing of balance sheets among all the states.** That really reflects the kind of standard Bengal is maintaining in corporate governance.

In 2010-11, the **registration of new companies**, particularly public limited companies was 4% but **this year, in last five or six months the growth has been 8% as against 4%. This is a very good trend for West Bengal.** It may even end up with 14% or 15%. This can be a record.

The MCA has adopted number of measures so that the interface with the MCA office and client visit is reduced to the most minimum. **Sometimes regulations in the laws are oppressively used against the corporate world. It has to be stopped.**

We need to acknowledge the world-best practices and our corporate bodies should follow world best practice. **We have to facilitate our corporate bodies to be the wealth creators. We need to dismantle many things as a reformer.** Being the Chairman of Second Administrative Reforms of Government of India I gave 15 reports. **Each report speaks of a principle what I call "creative destruction"**. We cannot create anything new unless something is destroyed. In that process we are very slow.

We only would like to store the past, so that there is no space for the future. Many times we tighten a law, instead we have to relax a law. For example, **a Competition Policy should have come first, then the Competition Law. Competition Law should have been the product of competition policy.** Competition policy, according to me, should be the second reform in the country after 1991 liberalization policy.

We need to create that kind of a situation where the Competition Policy works in a most comfortable way so that our corporate bodies will easily it. We are addressing those problems.

It is necessary that we need to create an absolutely healthy situation where competition works in his country, that alone will resolve many of the problems of wealth creation, many of the problems of inflation, many of the problems of the growth rate. It helps GDP in a large way. But **often we are overcrowded with only monetary economics, not the economics of either agricultural economies or the industrial economies** or anything like that. **Monetary policy alone is not a solution to tackle the inflation.**

**I would like to see that in the light of that Competition Policy the entire Competition Law will be revisited and appropriate amendments will be brought about** by making appropriate amends to the earlier law. **By December 2011, I would like to have the competition policy launched in the country and we have a new competition regime particularly after 1<sup>st</sup> January, 2012.**

Another point is good governance. **Our position is not happy as far as the Corporate Governance Index is concerned. In the Corporate Governance Index Mauritius is No.3 and our index No. is 163.** I am determined **that within two to three years our figure should become less than 10 which is quite possible.**

Corporate Governance cannot be neglected at all. You cannot just leave it to the whims and fancies of any corporate bodies. I think that an international standard will have to be set.

Today our country is the fourth largest economy and it has the fifth largest foreign exchange reserves. **India will be the third largest economy after US and China by 2035 and second largest by 2050, as per Goldman Sachs Company. FDI confidence index of 2010 according to the assessment of A.T. Kearney, show India at about third position globally.** We have second largest English speaking people which is a great asset. We have the youngest population in the world with average of 29 years, which again is the greatest asset.

**This kind of a situation came for the US about 250 years back.** Then with the kind of human resources developed and with the kind of systems and dismantling all the old systems and also by building the physical infrastructure today, they have become the master of the world. **That opportunity of demography dividend has come now to India. This is also the window of opportunity for West Bengal,** for India, and everyone of us. Everyone of the corporate body is to build themselves up, to face this kind of a challenge so that this opportunity is not lost. **Corporate bodies will have to play very crucial and pioneering role to make this opportunity fruitful.**

I once again **reaffirm that creation of prosperity in the country or building prosperity for the country cannot be done otherwise except creating the wealth creators. This is what we need to start, empowering the wealth creators** in the country. Whatever is necessary for this, as a Minister I can reassure you, we would do and work as facilitators.

Regulators at no point of time should obstruct any policies. They should not at any cost, at any place, become the oppressive agencies.

I am very optimistic about the Indian corporate bodies. They are very capable bodies. **I would like to see that trust deficit between the corporate bodies and the governments both at the State and the Centre and the trust deficit within various regulators and the corporate bodies,** all these things **will melt away** and ultimately at the end of one or two years there will be trust surplus all over the corporate world.

#### **Questions & Answers :**

What is the present **status of the Companies Bill ?**

**Minister replied :**

It has gone to the cabinet. May be in the next cabinet itself, it may be approved. **I would like to see that in the first half of the winter session of the Parliament, it gets passed.**

**Question :**

Why not introduce the **indexing system based on corporate governance ?**

**Minister replied :**

That is a good suggestion. **Yes, I would like to introduce that index system.** I would also like to introduce some big national award of the best company, which has the best corporate governance. I would like to come out

with a national corporate governance policy and what should be the road map to build the best corporate governance in the country.

**Question :**

Central government should **plan out in phases as to how the entire financial reforms as well as corporate governance should be implemented** in phases and the industry to be informed in advance so that they can plan out their strategies for future development.

**Minister replied :**

This is a good point and **I do agree with you that a number of things and process will have to be put in place. As far the IFRS is concerned, of course there is some issue with the Institute of Chartered Accountants, they want it should be done only in 2013. I am waiting only for the direct tax code to come.** We have finalized many policies also, the cabinet has already cleared and you also know that **we are going to establish a Commercial Court** so that any investor or anybody need not go from pillar to post, from one court to another court. **One court will decide everything.** We are also introducing this in matters like Arbitration. For example, **for every international arbitration we have to go to either Paris or Hong Kong or Singapore or London.** Now, as a law minister **I have already finalized and it is again coming before the cabinet shortly, some comprehensive amendment to the Arbitration and Consolidation act which will make India the most preferred destination for international arbitration.**

**Question :**

When IFRS is implemented, the taxation laws should be aligned in such a way that we do not have to prepare two sets of accounts.

**Minister replied :**

It is only with that spirit we are going to adopt this, which is going to happen.

**Question :**

While finalizing the Companies Bill, Government should look at harmonization because **what industry has experienced is that many a times we have the Companies Act saying something but SEBI regulations are on a different level, different parameter.**

## **Minister replied :**

In fact the SEBI are not under the direct charge of our ministry. **But it is not that they work on parallel lines but they will have to work in harmonization, that is what we like.**

## **Observations made by other Speakers**

### **Inaugural Session**

#### **Mr B B Chatterjee, Executive Vice President, ITC**

In his address –

- Competition is healthy, Competition benefits primarily the consumers besides other stakeholders. **Hence, the so called large Indian corporations need to be nurtured and supported to enable them to compete with the global giants.** Opening up the airline sector and the telecom sector to competition has worked wonders.
- Good corporate governance may not be the engine of economic growth but it is essential for the functioning of the engine.
- In corporate governance, the spirit of the laws and principles is much more important than the letters. Consequently, **developing a positive culture and atmosphere of best practices is essential in obtaining the desired goals.**
- More needs to be done to ensure adequate corporate governance in the average Indian companies.

#### **Mr. R. K. Agarwal, Chairman of the Taxation & Company Law Expert Committee, ICC**

- Corporate governance is not something new to the business world, yet after the debacles of certain corporate giants, both on global basis and in our own country the need of good corporate governance today is probably felt much more than any time in the recent past.
- **Corporate governance was initially perceived as an obstacle in the growth of a company, but it has now been clearly established and proved beyond doubt that good corporate governance provides a unique opportunity to the corporates to redefine their vision and**

**mission.** It is because of the enormous benefits flowing out of corporate governance that the companies today are competing with each other to be one up in terms of implementing the most stringent and internationally established corporate governance norms, and that too not merely for legal compliance but more importantly to create a positive image for itself in the marketplace

- Given the separation of ownership and management in a corporate model, strong corporate governance becomes quite critical and important for the companies to provide confidence and comfort to the desired level.
- **Corporates with better governance norms have much easy access to the capital, they are in a much better position to attract and retain employees, they enjoy much better brand positioning in the market,** and all these, obviously culminates into their sustainable growth at a much accelerated pace than their competitors in the long term.
- Corporate governance is not a one time exercise but it is something which needs to be followed and practiced by the companies on a sustainable basis so that it becomes a way of life for all the people in the organization.
- Tone at the top is a very important and crucial aspect for the success of any initiative in an organization and therefore it is obvious that corporate governance at the board level has to exist at the maximum and at the top optimum.
- **Under present situation, the role of independent directors and statutory auditors is very critical and important in terms of Corporate Governance since they are supposed to be the watchdogs** responsible for safeguarding the interest of minority shareholders.
- Corporate governance guidelines and best practices have evolved over a period of time both globally and in India. However in the current scenario, the present guidelines are probably not enough and there has to be a constant endeavour to bring in more and more stringent norms of corporate governance not only with respect to the listed entities but also for unlisted companies.
- A trend has started off late whereby more and more listed companies are planning to de-list. Therefore, it is high time that appropriate governance standards are set and made applicable to large unlisted entities as well.
- It would be a good idea if SEBI could formulate a corporate governance index and assign ratings to the companies based on their performance evaluation. This would be a benchmark for other companies to follow and

provide enough indications to the potential investors about the culture and character of the management of the respective companies.

### **On Competition Law, he made the following observations**

- With globalization it became necessary to allow the Indian firms to grow in size without any restrictions but at the same time to develop a mechanism so that entities are not in a position to abuse their dominance. The thrust should be not on controlling competition but on promoting competition in a healthy and effective manner since it is competition only that promotes efficiency, encourages innovation, facilitates better governance and one that obviously differentiates between success and failure.
- The Competition Law also intends to regulate combinations through merger, acquisitions, and restructuring and has defined certain conditions and limits beyond which combinations will generally not be allowed since it will be presumed that they would have an adverse impact on the competition.

### **Mr. Sadhan Pandey, Honourable Minister of Consumer Affairs, Government of West Bengal**

- It is a burning issue all over the world as to how to improve the governance of corporate sectors and ensure a free and fair competition and trade practices and to significantly reduce the damages inflicted by present worldwide recession, especially on corporate cum industrial growth
- Some of evils of globalization, which has so long taken a back seat in corporate cum industrial growth, are now inflicting injuries to all sectors with respect to corporate growth.
- **India is surrounded by very big countries which are manufacturing products and selling to our country.** We have to find out means to make our slogan “Made in India” heard. Today, certain things which were imported earlier are not preferred by Indians. Indians prefer domestic items. This is what we want from the corporate world and corporate world so that the corporate world and the consumer world goes side by side.
- We want India to prosper. There are countries, which want to pump in their products. **We cannot become a traders’ country. We want to become a manufacturing country.** We have to be very careful as to how we can meet our product needs, the cost of the products and the quality of the products. The corporate world has a very responsible work to do and

Indian Chamber of Commerce as a leading body of the industrialists will be able to guide them.

### **First Technical Session “Whether corporate governance is just a regulatory burden or tool for shareholders value creation.”**

#### **Observations by Mr. Sukanta Nag, Executive Vice President, CARE Ratings**

- Governance is the other name of discipline. It is a prerequisite for any civil society, for a family, for an individual, for a club, for an institution, everywhere governance is required, discipline is required. So corporate being an active constituent of any society, cannot be away from the governance.
- **On the topic of shareholder’s value creation he said shareholders are of course an important stakeholder for a corporate but other stakeholders are also equally important; lenders, suppliers, customers, employees and government.** If the company does not have discipline, does not produce the desired results, does not have the required profit that it should have otherwise, then the government loses tax. If the company is not positive, is not diligent in its fiscal payment the government, the exchequer loses also. So all the stakeholders around the corporate suffers in the process.
- **Sometimes it is seen that good financial condition of a corporate does not necessarily indicate good corporate governance.** We have seen in a rating perspective the company having got a very good rating in debt servicing does not get the highest rating in corporate governance. So, had the governance been the top, the value creation would have been better, the results would have been better, the profitability would have been better. We should not be carried away by the good financial condition alone.
- **One needs to have a willingness to govern oneself. In a corporate also, the senior management should have an intention to do good.** The contents come from the regulation, from the rating, from the environment. Environment brings lots of informal legislation or the informal rules, informal practices, and also credit rating comes to support it. So, the intention has to be good that we must do well, we must be disciplined, we must have a proper practice, etc. and regulation, legislation, etc. are the supports.
- Corporate governance helps ensuring corporates taking care of all constituents in the communities, it balances interest of all stakeholders to ensure a survival and growth in the long term



- **Good corporate governance should be practiced by optimizing the size and composition of the Board.** The selection of the members has to be transparent; selected members should have an experience in the field the company operates. It's not just a showcasing and there should be providing adequate and timely information to the Board so the Board members can utilize it for the benefit of the company.
- **Implementing sound MIS at various levels of the organization, prudence in finance function, and adherence to best accounting policies and practices, efficient capital expenditure planning backed by sound rationale are some of the measures for achieving good corporate governance.**
- Corporate governance rating acts as a big supportive tool to the entire process. Rating agencies is more of a passive participant, more precisely a silent observer to whatever happens in the society but it reacts only when there is a need and thereby brings better value on the table and corporate governance is a yardstick to measure the quality of governance a corporate follows. It suggests areas for improvement and helps in strengthening the system. It determines the relative standing of the corporate vis-à-vis the best practices being followed in the global and domestic arena. Even for the investors and the other stakeholders, it helps to identify and differentiate between two corporates. If there is a corporate governance setting for an investor, for an employee, for a supplier, for a customer, one can differentiate which company one should choose for his purpose and it attempts to facilitate evaluation more on spirit rather than a compliance, beyond mere adherence of guideline .

**Mr. Madhu Sudan Kankani, Director, KPMG, India**

- **Indian AS or IFRS or for that matter any other GAAP can become a trigger for improving corporate governance across the corporate sector in India.** Corporate governance is not only about accounting or somebody forcing something on a corporate or any particular person. Corporate Governance is the culture of the organization. It is the tone at the top.
- **It is not IFRS, which will drive corporate governance, corporate governance could really be a trigger for improving corporate governance in an organization.**
- However, if every company takes it in the right spirit, the directors, most specifically the independent directors, question it, take it in the right spirit, the Corporate India image will really be built.

**Mr. D. P. Chakraborty, Vice President & Company Secretary, Goodricke**

- Emphasis has been given on the role of Independent Directors.
- Today Independent directors are really essential, in the audit committee, in the remuneration committee, and in the functioning of the Board itself which are the three basic areas.
- We need Independent Directors mainly for assessment of risk in an independent way.
- If you have good quality independent directors then obviously there is a chance of those particular projects, or cash flows, or projections, or going to new business arenas, given a fresh look. It is happening in various companies, the independent directors are now becoming aware of their responsibilities, becoming aware of their sort of strength or whatever be the safety net being offered by various institutions and they are questioning.
- On the qualification of independent directors, it is not just a general definition to go by. The Independent Directors have to have some specialization and some knowledge in some subject. Independent directors shall be professionals, either a chartered accountant, a cost accountant, a company secretary, or MBA from a recognized institution or a good quality engineer.
- A true independent director can render a lot of substance, a lot of gravity to the proceedings of the board. **Some sort of specialization is required because just a general person having independence in terms of relationship cannot really contribute.**
- The role of the audit committee is becoming quite important. The chairman of audit committee has been given a lot of authority. In fact, he can really call for specialized people to help him and also ask independently, to talk to various executives of the company. So, the audit committee itself can be a major sort of institution that checks and balances, which will go long way in corporate governance that itself needs a little strengthening and give a little more thrust of adding professionalism to independent directors

**Mr. Vinod Kothari, leading consultant :**

- Competition Act talks about encouraging competition, production and sale of goods and services and the takeover code similarly talks about competition but competition on ownership of companies.

- **As competition becomes more intensive, services to consumers do get an upliftment.** At the same time to an extent the propensity among the service providers to use devices to take consumers for a ride, also become more pronounced. That is invariably the after product of competition but on the whole competition tends to favour the consumer.
- Competition in ownership of companies is intended to be for the larger good of the shareholder, giving a better valuation to shareholders and the new takeover code as a whole makes the manner in the process of takeovers more transparent, organizes the takeover code far more systematically, far more in structured manner than was the case in the past.

### Observations by Mr. Anubhav Sinha

- Touching upon certain aspect of Competition Law he said for Competition Act to be given an effective role in reshaping our economy or our entire structure of company and corporatisation in any manner **we need to have parallel amendments. There is a rigorous requirement of change in Acts like Evidence Act, different provisions of the Contract Act, different provisions of the Transfer of Property Act which have to be effected for the Competition Act to be actually given a complete thumbs up.**
- All the objectives of the Competition Act which is to be implemented need new age of reforms by the Government. De-regulation reforms being a precursor or a key to open up new set of reforms. **The government companies and the government institutions, which are kind of having a strangled hold over the entire infrastructure that needs to be changed,** that entire scenario needs to be changed for us to actually move into a second generation of reforms.
- Our understanding of anticompetitive practices has to move beyond our competitor to destruction of choices for the end consumer.

### Observations by Mr. Vinod Kothari

On combinations in respect of the takeover code and the competition

- Section 5(1) gives general power that any business combination no matter what is the size of entity, etc., if it is anti-competitive can be voided by the Competition Commission. The second part which deals with asset sizes, in those cases, what needs to be done is prior to giving effective combination one needs to give a notice to the Competition Commission. That is pre-taking any effective steps for combination, before giving effect a takeover, before giving effect a merger or amalgamation.

- Acquisition of control or voting rights not exceeding 15% in ordinary course of business as an investment. You can continue to buy, make investments up to 15% of the assets of the investing entity. Acquisition of shares, if pre-acquisition holding is 50% or above, that could mean if you already hold control on an entity, acquisition of rest of shares of entity is also not hit by competition act.
- One must note that competition act as such does not have territorial nexus, which means even transactions happening outside India, which have impact on competition in India are still affected by Competition Act or transactions happening even in the public sector domain, if at all they have significant impact on competition in India, they are also still affected.
- Any business combination no matter what is the size of entity, etc., if it is anti-competitive can be voided by the Competition Commission.

