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PERSPECTIVE ARTICLE

YES Bank fiasco: a corporate governance failure

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Abstract Financial market has been jolted on 5 March 2020 when the central government has put YES Bank Ltd., India's fourth largest private bank, under moratorium, and the RBI has come out with a bailout package. The former CEO had extended loans in quid pro quo non-arrangement to the companies confronting financial turmoil. Theoretically, independent directors supposed to bring independent judgement about strategy and risk management which, for the bank, has been miserably failed and has extended loans without considering the borrowers' ability of repayment. The audit committee has too failed to show its acumen and approved the management's proposals.

Keywords Bank · Corporate governance · Independent director · Audit committee

Introduction

The Indian banking system since the economic reforms of 1991 is undergoing a transformational phase with a specific focus on the accountability, independence, transparency and integrity of the system, and accordingly, it has attracted attention from the multiple stakeholders (Rakshit and Ghosh 2009). In an environment of information asymmetry, good corporate governance (henceforth CG) practices likely have appeared as a check and balance mechanism (Bryane 2003); notwithstanding in the ambit of trust deficit mere presence instead of strict enforcement would be obtuse (Proimos 2005). Inasmuch the CG being a complex issue incorporating therein cultural, political, technological and market valuations, without setting sound strategic objectives, values and ethical standards by banks it is unlikely to find a strong footing. Literature has reported that better CG practices by banks are likely to counter multiple agency conflicts between the controlling and minority shareholders, and/or between the shareholders and creditors (Becht, Bolton and Röell 2011; Peni and Vähämaa 2012). Interestingly, the instances of banking failures were not new phenomena inasmuch such catastrophes have siphoned crores of rupees from the Indian stock markets and even the investors were left with nothing. On 5 March 2020, Indian banking sector once again jolted when the YES Bank Ltd., India's fourth largest private bank, was put under moratorium by the central government. Thereafter, the Reserve Bank of India, the country's central bank, has claimed that consistent deteriorating financial position in the multiple parameters such as liquidity, capital and others along with lack of any credible plan for capital infusion has forced for immediate intervention. By invoking Sect. 45 of the Banking Regulation Act, 1949, the central

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government has also imposed a 30-day moratorium to all payments to its depositors or a creditor in excess of INR 50,000, superseded the board and has appointed an administrator. CG literature on banking has argued that the presence of independent directors (hereafter IDs) has significantly influenced the probability of insolvency (Wang and Hsu 2013; Battaglia and Gallo 2017), and accordingly, the role of board governance for banking stability has been tested during the crisis (Iqbal, Strobl and Vähämaa 2015; Vallascas, Mollah and Keasey 2017). Moreover, board competences probably have allowed the board members in assaying the banks' risk profiles or its impacts on the performances in a better way (Walker 2009; Hagendorff and Keasey 2012; Nguyen, Hagendorff and Eshraghi 2015). In course of preliminary investigation, it has been revealed that the last reported non-performing assets (NPAs) of the bank stood at 4.35% with DHFL, ADAG group, IL&FS and others deeply troubled corporates in its borrowers list, notwithstanding better CG practice minimizes the total bad loans as evident from the scholarship (Zagorchev and Gao 2015). Interestingly, NPAs have been considered an 'unwanted by product' of bank's credit creation process (Umar and Sun 2018), and in the Indian panorama, it has been documented that loans extended to government-specified sectors unlikely to increase the quantum of NPAs (Gaur and Mahapatra 2021). Ironically, the YES Bank management has extended loans to the private sectors struggling with their numbers, creating a precedence of poor CG practice. Furthermore, the saga has contested with the recent literature which has indicated that banks having efficient performance and accruing higher profits are likely to suffer less from the NPAs vis-a-vis other banks (Shkodra and Ismajli 2017; Farooq et al. 2019). It has been in corollary with prior studies which have conceded that banks having weaker boards are unlikely to implement adequate risk control mechanisms (see Caprio, Laeven and Levine 2007; Millon, John and Tehranian 2009; Vallascas, Mollah and Keasey 2017).

Interestingly, the bank was in difficult zone since 2011–2014 and then 2018 onwards, but, it had turned around by declaring a net profit of INR 1700 crore in March 2019 with a capital adequacy ratio of 16.5 percent coupled with robust return-on-assets (ROA) and return-on-equity (ROE) ratios even higher than that of the State bank of India (Shah 2020). The ROA and ROE of the bank for the year ended March 2019 have been reported as 0.5 percent and 6.5 percent, respectively, vis-à-vis 0.02 percent and 0.39 percent, respectively, that of State bank of India (Source: Banks' Annual Reports 2019). The earnings quality has received considerable policy attention post-global financial crisis of 2008–2009 when the banking system was reformed along with introduction of the new regulations on the financial reporting (Kanagaretnam, Lim and Lobo 2014). Even the bank governance factors have found effective in improving the earnings quality and risk management practices (Mollah and Zaman 2015). YES Bank failure has been inconceivable in countries like India where the RBI has been consistently vigilant on the banks, monitors their working, oversees the accounting standards and ensures the stakeholders about the integrity. Unfortunately, neither the Indian banking system nor its deposit insurance framework has been equipped enough to deal with the failure of large commercial banks with around INR 2 lakh crore deposit bases. Inasmuch the bank, a large corporate lender, the freezing of its operations would likely to adversely impact the range of businesses and their withdrawals, current account operations, bank guarantees, collaterals and other services due to the said moratorium which, according to the credit rating agency CRISIL, would affect 680-odd corporates. Since banks and financial institutions have been significantly different from the non-financial firms, failures of the formers could bring serious repercussions in the economy hence heavily regulated than the non-financial firms (Flannery 1998; Farhi and Tirole 2012). Surprisingly, the owners of the bank have unlikely internalized that such systemic risk could pose significant threats to the broader economy as well (Laeven and Valencia 2013).

Corporate governance role

The core purpose of the CG is the protection of non-controlling shareholders' interests notwithstanding it has a wider scope ranging from directing and monitoring the board in achieving the objectives stipulated in the company's mission statement, assisting it during the difficult situations and assuring the going concern assumption. With the passage of time, it has widened its scope to incorporate other stakeholders and societal aspects in its ambit. In the context of information asymmetry and conflicting agent–principal

relationships, boards have been performing as a building block in the corporates' CG structure. It has been expected that a well-governed company, its board and management should concentrate in making the company resilient and a company having strong fundamentals de facto likely to significantly contribute in turnaround from the crisis, at least partially. The board is supposed to periodically review the important sub-systems when the entity has been performing well for ensuring strong fundamentals inasmuch the financial and non-financial performance parameters unlikely to detect any misdeeds. The appropriateness of the CG systems across countries has been linked to the robustness of those countries' underlying regulatory mechanisms. The CG system has been broadly segregated into *principle-based* CG codes and *rule-based* CG codes where the former has referred the voluntary/non-binding set of recommendations, standards and best practices for governing the corporates, while the latter has created ample scope for government to intervene in the CG by framing stringent laws which must be complied with by the corporates without deviations there from (Osemeke and Adegbite 2016). In the Indian context, as a rule-based CG code country, the capital market watchdog the Securities and Exchange Board of India (SEBI) has a mandatory requirement for having risk management committee for every listed company which would identify the risks the company likely to encounter in achieving its objectives and provide inputs to the management in framing the counter strategies. It has been documented that the CG in banks has come into limelight only after the financial crisis of 2008 which probably occurred due to failure of the CG system (Aebi, Sabato and Schmid 2012) and accordingly the risk management mechanism should be emphasized more in the governance of banks and other financial institutions. Furthermore, an ID, a non-management (outside) member of the board having no fiduciary relations (except fees) with the concerned corporate, is a part of institutionalized governance mainly included in the board to mitigate the agency cost and to prevent the corporate misdeeds including financial shenanigans. The Good CG practice has required that the management should provide relevant and detailed information in agenda papers to the IDs notwithstanding the onus to gather more information is lying with them and in no situation they could blame the management for the same. Empirical studies have conceded that the effective role of the IDs has positively influenced the bank performances in the UK (Tanna, Pasiouras and Nnadi 2011), and they could likely to play significant role than their counterparts of the developed countries as the banks of the developing economies have higher tendencies to involved in the related party transactions (RPTs) and extending excessive loans. Such opaqueness of the banking industry is a proxy for higher participation of the IDs in the bank boards for improving the transparency of the reporting system, a vital parameter for safety and soundness of the industry (Bhattacharyya and Rao 2004).

Corporate governance-in practice

The CG literature has indicated that the internal audit should play like ears and eyes of the board and should monitor standard operating procedures and operating policies in course of business operations; hence, these would play a critical role in the CG. The Clause 49 of the SEBI's Listing Agreement has empowered the audit committee (in short AC) to review the performance, its adequacy and findings comprehensively but, unfortunately, the AC in most of the companies spend inadequate time for examining the internal audit reports (Bhattacharyya 2015). The AC in its own interest should adhere with the rules in letter in spirit and should establish intensive engagement with the internal auditors for better understanding the challenges it face and to chalk out strategies to overcome those challenges for achieving the corporate excellence. Interestingly, in order to protect the statutory auditor's independence, the Companies Act, 2013, has transferred the power of appointment and remuneration of the auditor from the management to the AC, and it has been expected that the AC should discuss about the audit with the auditors before the commencement of the audit, during the audit and after the audit. Unfortunately, the AC in most of the situations showing lenient approach and simply approve the recommendation of the management regarding the appointment and remuneration of the auditor like a routine work without spending much time for discussing the audit with the auditor. This passive approach of the AC could have been contributed by several factors, e.g. in practice the IDs who serve in the AC have been nominated by the management or the AC members have failed to assess the adverse

consequences on the audit independence or the audit risk which could have been emerged due to their professional gross negligence. In India, de facto controlling shareholders appoint director who supposed to support the board's decisions as the appointee is by and large close relative or friend of the dominant shareholder. Similarly, the IDs have also been included in the board on the recommendation of the dominant shareholder or promoter and they actually perform like lame duck and approve the decisions of the board without many discussions. Accordingly, it would be unfair to expect that they would recommend any punishment of the board members for their misdeeds. The IDs notwithstanding could bring objectivity in the board room deliberations but their dissension unlikely to resist the management in taking detrimental decisions against any stakeholder or group of stakeholders. The IDs hardly could record their note of dissents in the minutes of the meeting but, in practice since this go beyond the board decorum, the IDs rarely prefer it. It should be keenly remembered that in the 'Ease of Doing Business Report, 2018′ India is ranked fourth in protecting the minority shareholders' interest, above the US and UK's ranking, which has indicated India's robust CG infrastructure, institutions and regulations. Ironically, the Uday Kotak Committee constituted by the SEBI has recommended that the corporate India should move to the 'Custodian' model from the 'Raja (Monarch)' model for running the business, which would only increase the compliance cost as enhancing regulations unlikely to improve the CG standard. Even for an effective management of the Indian corporates a new significant provision has been introduced in the Companies Act, 2013, for mandatory induction of the IDs, women directors on the board beside others unlikely is a significant move for improving the CG practices (YES Bank Annual Report 2019).

YES Bank—a corporate governance failure

Literature on the CG has indicated about the twin fiduciary responsibilities of the board and directors—the *duty of care* and the *duty of loyalty* to the corporate. The former has implied that the board and every director should take decisions faithfully and prudently, while the latter has referred that the directors should be completely loyal to the company, should not reveal any secret information and should avoid conflicts of interest as far as practicable (Bhattacharyya 2020). Similarly, in the banking sector, the role of the CG has remained significant inasmuch the wider conflicting interest it has likely to address and even due to the change in the business model, i.e. transition from the low-risk relationship management to high-risk trading activities such as fee-based services. The existence of the effective risk governance (Risk Management Committee and presence of the Chief Risk Officer in the board) would likely to mitigate the risk of large losses known as 'tail risk' (Ellus and Yerramilli 2013) which, probably, has remained ineffective for the YES Bank. The significance of composition and independence of the IDs in assuring board's effectiveness which play the role of shareholders' first line of defence against the management's opportunistic tendency and improving the firm's market value is enormous. This particular issue has gained momentum for banks where the CG supposed to protect the interests of not only of the shareholders rather varied stakeholders such as the depositors, borrowers, clients, employees, other banks and regulators as well. Further, the failure of the board of a bank like the YES Bank has serious consequences inasmuch it is likely to impede the banking system and could potentially lead to financial turmoil and crashing of share price as it has been witnessed in the instant case. The 'Agency theory' has posited that managers (agent) and shareholders (principal) do not have common goals in the organization (Jensen and Meckling 1976), and such conflicting goals have emerged multiple CG mechanisms including the enhancing role of the boards. It is well settled that the board diversity with the IDs having versatile expertise, experience and networks would probably improve the performance of the organization (Carter, Simkins and Simpson 2003) which unlikely was practiced by the bank. Again, since the chief executive officer (CEO) is likely to control the flow of information and board meetings' agenda, those could be detrimental for the bank management. Surprisingly, Mr. Rana Kapoor had served the CEO of the bank since its inception and only in January 2019 was forced to step down from the post. Moreover, whenever CEO gain power and influence the board's decisions, it has negative impacts on the IDs' independence and even ROA could decrease for the same. Opposing the literature (Rowe, Shi and Wang 2011), the bank's board

notwithstanding had six non-executive IDs including the chairman Mr. Brahm Dutt, but it was unsuccessful to paint any significant positive impacts on the performance. Moreover, larger boards of banks have been expected to perform their managerial roles comprehensively accessing better resources they likely to possess (Upadhyay and Sriram 2011; Adams and Mehran 2012), but, per contra, the YES Bank board has been miserably failed to show any such competence. The political connections of top management have also significantly influenced the lending decisions of the Chinese public sector banks to the private sectors (Grove et al. 2011), which likely has been replicated by the bank which has extensively sanctioned loans to the corporates confronting financial instabilities. A close review of the board members' tenure has also revealed that except the chairman tenure of other members were less than 2 years and mostly were staying in India which likely have prevented them to disclose negative opinions about the excessive borrowings as literature has indicated for the Asian firms (Tang, Du and Hou 2013). The inclusion of foreigners as IDs has significant positive impact on the firms' performance and board's independence (Kang, Ding and Charoenwong 2010; Liang, Xu and Jiraporn 2013) which, for the YES Bank, was not tenable as all the members were Indian citizens. Further, the news of IDs' dissension likely to incur more media exposure, reduced loan provisions for the borrowers and the investigation and sanctions by regulators as well as and greater turnover of top executives unlikely been witnessed. Such lack of whistle blowing attitudes by the IDs and other board members has raised a pertinent question about their independence. As far as the citizenship of the board members has been concerned, all the members were Indians which probably has played bottleneck for the board independence, instead with the inclusion of foreign members likely to strengthen the CG as evidenced from the Korean firms (Choi, Sul and Kee Min 2012). The role of the AC in the CG practice has remained enormous, and research has concluded that inclusion of higher proportion of IDs in the AC is likely to mitigate the lenders' perceived risk on firms with political nexus (Bliss and Gul 2012) which unfortunately could not be capitalized inasmuch only four IDs were included in the said AC of the bank. Moreover, the 'Managerial Hegemony Theory' has indicated that mere appointments of the IDs in the AC are unlikely to protect the interest of the non-controlling minority shareholders in a culture of 'high-power distancing' where IDs have probably avoided the obstructive scrutiny which could negatively affect their managers' reputations (Zinkin 2011). Such arguments likely aptly applicable for the YES Bank as highly reputed and qualified IDs like Mr. Anil Jaggia, Mr. Maheswar Sahu and others have failed to smell the red flags about the excessive lending. The theory has further stipulated that inclusion of such IDs in the AC is an evidence of compliance with the existing regulations rather to protect the interest of the non-controlling shareholders. Again, the IDs with multiple appointments have higher tendency to join the board meetings and closely monitor of the affairs for the Indian corporates (Sarkar and Sarkar 2009) which, for the bank's board members, could not found since only two members were simultaneously serving in the boards of other corporates. Notwithstanding the Clause 49 of the SEBI's Listing Agreement has incorporated elements of the UK's Combined Code and the Sarbanes–Oxley Act and in some respects even more stringent than these (Khanna and Black 2007; Afsharipour 2009), but, the YES Bank's CG system has likely miserably failed to protect the interest of the non-controlling shareholders along with other stakeholders. Moreover, banks with more effective boards are less likely to lend to the riskier borrowers (Faleye and Krishnan 2017) which was contradicted in the present instance and the lean prosecutions and penalizing system has also catalyzed the perpetrators in extending loans excessively to the debt-ridden corporates (e.g. Kaushik and Kamboj 2012).

Further, reverting back to the analysis of the YES Bank's IDs especially the women IDs' academic qualifications and their perceived roles on the CG practice, those have reflected some interesting facts. A meticulous study of the annual report of the bank has indicated that the board had 11 directors of which one female Non-Executive ID Dr. Pratima Sheorey, Director, Symbiosis Centre for Management and HRD had joined the board in mid-June 2018 having marketing background. It has to be noted that, earlier in July 2013 the bank management had turned down the claim of Mrs. Madhu Kapoor (widow of YES Bank co-founder Lt. Ashok Kapoor) to include her daughter Mrs. Shagun Kapoor Gogia in the board citing she was less competent to hold the post notwithstanding she

had double majors in Economics and Biology from the Tufts University, USA, and an MBA from the IBS, Hyderabad. Notwithstanding she was inducted as a non-executive ID only in June 2019 but her early induction could have significant impacts in the risk management, improving the reporting quality and efficiency level of the bank, in line with literature (Ramly et al. 2017). The management's earlier decision to reject the plea of Mrs. Kapoor has an indication of gender discrimination, the stigma of glass ceiling in corporate India as evidenced from the CG literature as well (Doldor et al. 2012). Interestingly, the misdeeds of the bank probably could be checked with the induction of more female IDs in the board like Mrs. Gogia having finance background. In corollary, it can likely be assumed that other women IDs like Mrs. Gogia having finance specialization expected to better analyze the riskier loan proposals of the bank and could prudently oppose such loan approvals inasmuch research has shown that women have been conservative and reluctant to take excessive risks in banks and even risk-averse to frauds and opportunistic earnings management practices (Palvia, Vähämaa & Vähämaa, 2015). Furthermore, the monitoring role of the IDs likely to accelerate with the positive attributes from the women IDs as they have wider perspectives in contribution in the quality decision making (Liao, Luo and Tang 2014) which has been unfortunately lost by the bank due to the presence of merely two women IDs in the board and even one of them was probably lacking banking, finance and accounting acumen.

Related party transactions and corporate governance

Lexicographically, the CG literature has referred that a related party is a person who has been related to any corporate and if one party has control over the other or has significant influence on the other (directly or indirectly) in the financial and/or operating decisions, then the parties are to be treated as related parties. In the Indian corporate world, the RPTs have been identified as those transactions executed between the controlling shareholders and/with the members of a company group. Notwithstanding, the Indian CG system has been designed to protect the non-controlling minority shareholders from any abusive RPTs, but, the precedence of the infamous RPTs was unlikely uncommon. RPTs have significant impacts on the CG both positively and negatively, i.e. one school of thought has advocated that it has likely to optimize the internal resource allocation, improve the ROA (Ge et al. 2010), would reduce the transaction costs substantially and would overcome the difficulties in enforcing property rights and contracts that are inevitable for the company (Jian and Wong 2010). Conversely, based on the Agency Theory if it is used opportunistically by the management it has likely to produce misleading operating results adversely affecting the interest of the minority shareholders (Gordon, Henry and Palia 2004). The saga of the financial shenanigans have indicated that the accounting scandals have been committed in prominent firms such as the Enron, WorldCom, Adelphia and Tyco in the USA, Satyam Computers in India and others across the globe which have shook the financial markets and RPTs proved as a major problem (Kohlbeck and Mayhew 2010). Furthermore, a careful analysis has revealed that the RPTs have been executed through complicated transactions between the corporate and related parties and in which it is a herculean task for the outsiders to unearth the frauds, if any committed by the perpetrators. The presence of the RPTs probably has represented potential conflicts of interest which likely provided greater incentives to the related parties to expropriate minority shareholders and accordingly manipulate earnings for such expropriations. In the Enron episode, during investigation sleuths have revealed that the managers had used RPTs for deriving misleading financial statements and to dupe the gullible investors (Swartz and Watkins 2003). Theoretically, the shareholders entrust the management which could maximize their wealth in entering into contracts, but in a number of instances such as the Enron, Satyam Computers and even in the YES Bank-related parties, e.g. the controlling shareholders, officers and directors have siphoned the resources through the RPTs jeopardizing the interest of the other stakeholders—a variant of agency problem as recognized in scholarship as well (Jensen and Meckling 1976). The CG has a significant role in effective monitoring the process of the RPTs, while in a defective CG monitoring system opportunistic-related parties could exploit the other stakeholders via RPTs. Interestingly, the CG characteristics such as the board independency and audit quality likely to moderate the

negative effects of the RPTs on the firm performance. RPTs have been created a cause of concern for the regulators inasmuch of its inadequate and inappropriate monitoring along with its non-disclosures by the executing entities. The Enforcement Directorate while filing a prosecution complaint for the alleged financial irregularities in the YES Bank has claimed that, with an unscrupulous intent by using RPTs, the perpetrators (Kapoor family) have diverted INR 5,050 crores through Morgan Credit Pvt. Ltd., RAB Enterprises India Pvt. Ltd., YES Capital Pvt. Ltd. and over 100 other subsidiaries. For diversion and laundering of funds, Mr. Kapoor had created multiple entities in India and abroad where his family members and close associates were appointed as directors, majority of those were non-operative and were used for siphoning off illegally obtained money. Due to slack CG monitoring system of the bank, initially funds were transferred from the bank under the garb of debentures and loans and then perpetrators have received kickbacks and gratification for the same in the tune of INR 600 crores. In the charge sheet submitted to a special Prevention of Money Laundering Act Court in Mumbai, the investing agency has accused Mr. Kapoor and his family along with YES Capital, Morgan Credits and RAB Enterprises for money laundering and kickbacks in lieu of loans to borrowers. Further, it has been alleged that the Bank had lent INR 3700 crore to DHFL against debentures issued by the company in April-June 2018; simultaneously, DHFL sanctioned a loan worth INR 600 crore to Doit Urban Ventures (India), a company fully owned by Kapoor's three daughters through Morgan Credits. Interestingly, having a mala fide intent YES Bank had also extended loan to Doit against collateral of five properties whose market values were inflated from INR 40 crores to INR 735 crores for justifying the loan proposal, surprisingly which was also approved by the management without smelling any red flag.

The way forward

Lessons from bank failures especially the Lehman Brothers have shown that bank failures could have catastrophic effects on the financial system of a country as well as on the global economy. Notwithstanding bank failures were taken place earlier and could recur in future even after the YES Bank debacle; the regulators, promoters, board members and all other stakeholders of Indian banks should consider multiple issues for prevention of such fiascos. Experts across the world have categorically emphasized distinct separation of ownership and control inasmuch capping on promoter's holding unlikely have any substantial impacts in preventing such debacle (Bhusnurmath 2020). The rating agencies such as the CRISIL, CARE, S&P and others have been usually verifying the promoters' applications before sanctioning the banking license by the RBI and no periodical or continuous reviews have been carried out post obtaining the 'fit and proper' license, which must be reviewed consistently for preventing the red flags. There must be a provision for shorter duration for the CEOs of banks for preventing the misuse of their positional powers as it had occurred in the instant case where Mr. Kapoor had extended loans to corporates and influenced management for the same even after stepping down from the post. The selection of the board members should be very rigorous and reputed names should be selected due diligently as the former union Finance and Agricultural Secretary have failed to blow the whistles and had approved the loans. Further, the members having longer demographic and socio-cultural distance from the chairman and management likely be more independent and more effective in monitoring the business activities. CG literature has posited that boards should be collectively responsible for the governance of the company and ensure compliance with the relevant laws and in corollary every IDs should understand the business well and must have adequate knowledge to assay the management issues (Bhattacharyya 2011). Further, the perpetrator IDs have suffered less punishments than the board members for corporate failures notwithstanding the IDs having accounting backgrounds have been punished severely for their professional negligence; hence, IDs with accounting and finance backgrounds should be preferred for improving the CG practices. It should be cautiously noted that the instances of the resignation of IDs have raised to 1,393 in 2019 vis-a-vis 767 in 2018 due to the increasing risk of prosecutions for the corporate frauds and for minimizing such tendency the Ministry of Corporate Affairs (MCA) has stepped in and has ordered no prosecution should be initiated against the IDs without government's approval. Interestingly, the provisions of the Sect. 149(12) of the Companies Act, 2013, has

stipulated that the liability of the IDs or non-executive directors (NEDs) who were not Key Managerial Personnel (KMP) is restricted to the actions of omission or commission committed by a company which had taken place with the knowledge of the ID or NED and with his/her consent, connivance, or where he/she had not acted diligently. Again, per contra, the Sect. 2(60) of the Act has defined ‘officers in default’ which has included the directors of the company including the IDs and NEDs and in a circular dated 2 March 2020 the MCA has clarified that civil or criminal proceedings should not unnecessarily be initiated against the IDs or NEDs unless sufficient evidence exists against them, where the registrars are required to follow a standard operating procedure, while initiating proceedings against the ‘officers in default’. In a critical note, the circular has unlikely provided any blanket relief to the IDs or NEDs (non-promoter and non-KMP) from any prosecution under civil/criminal proceedings under the Act; instead registrars have been empowered to follow a principle-based approach and to apply their minds in understanding the nature and gravity of the default before initiating any such proceedings. The spirit of the Sections if keenly studied would indicate that the Act has put the IDs and NEDs in the helm of the CG system at par with the executive directors notwithstanding there is a presence of substantial information asymmetry between themselves. Furthermore, the circular has attempted to address the mater by putting a significant responsibility on the registrars to examine the pertinent corporate information and records before any proceeding likely to improve the Indian CG practice significantly since the IDs and NEDs have been expected to discharge their roles more professionally and free from any unnecessary litigation phobia. As far as the fraud detection and curbing of abusive RPTs in banks have been concerned, the management should curb the same substantially by several ways, e.g. by monitoring the transactions, seeking justification for the RPTs, alerting suspect or anomalous transactions and through prompt and diligent scrutiny of early warning signals such as applying the AI-based anti-fraud technology solutions. Finally, the selection of the auditors should be completed meticulously as they have been entrusted with protection of the shareholders’ interests inasmuch both of the auditors of the YES bank (SR Batliboi & Co. and BSR & Co.) have deplorably failed to qualify their audit reports and probably have approved the window-dressed financial statements.

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