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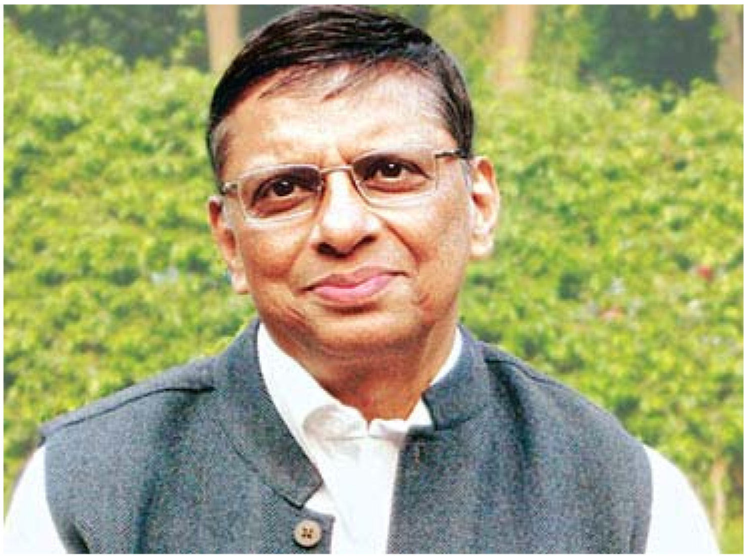
Infosys saga: Issues in corporate governance

While the founder-shareholders' intervention was not a surprise, using a public forum to do so was

Asish K Bhattacharyya March 13, 2017 Last Updated at 23:34 IST



Infosys, a global leader in information technology (IT) and consulting, is in the news after its founder-shareholders, who together hold around 13 per cent of the outstanding equity shares, voiced their concern over certain corporate governance issues. A whistle-blower has raised the same issues in a letter to Sebi. They relate to alleged overpayment in the acquisition of Panaya, in which Hasso Plattner, the co-founder of SAP (the company in which Infosys CEO Vishal Sikka worked earlier), had 8.33 per cent shareholding; and the unusually high severance pay of Rs 17.38 crore (Rs 5.2 crore actually paid) to the erstwhile CFO (Rajiv Bansal), who, according to the whistle-blower, initially was not in agreement with the acquisition of Panaya. According to N R Narayan Murthy, the highly respected founder of the company, the high severance pay could be "hush money" to silence Bansal. Other issues raised by the founders are the significant pay hike of Sikka, departure of former compliance officer David Kennedy with significant severance pay and appointment of Punita Kumar Sinha, who is the wife of a minister in the central government.

Across the globe, outside block holders (large shareholders who do not occupy a position in the board or executive management) monitor the performance of the board and directly intervene, for example, by writing letters to the chairperson communicating suggestions and concerns or raising issues in general meetings. Therefore, intervention by the founder-shareholders of Infosys is not a surprise. The use of the public forum (e.g. media) to raise issues was.

The allegation that the board had approved payment of "hush money" to the former CFO in the form of unusually high severance pay is a very serious allegation. The board on its part got the issue investigated by a highly reputed law firm (Cyril Amarchand Mangaldas), which did not find any wrongdoing or cover-up of wrongdoing. Ostensibly, the founders were not satisfied with the investigation. If, founders believe the high severance pay was "hush money", they should have taken recourse to options available in the Companies Act. For example, they could call an emergency general meeting for removing the chairman of the board and chairman of the nomination and remuneration committee from the board. Indicting the board for wrongdoing and pressuring the chairman to resign by making noise in the media is undesirable shareholder activism, which harms the company more than benefitting it.

Excessive compensation to the CEO and members of senior management is always an issue in corporate governance. The board has the responsibility to critically examine the employment contracts with them before approval. The Infosys board has indirectly accepted that high severance pay to the former CFO was an error. This is definitely a failure of the nomination and remuneration committee.

The founders had expressed concern about the increase in the ratio of CEO's salary to the median salary. Although it is generally believed that the high ratio reflects poor corporate governance, there is no norm. High ratio of CEO's pay to median pay is not always against the principle of "fairness to all employees". An independent board should apply its judgement based on the demand and supply of capabilities that are required for different positions/jobs for strategy implementation. Usually the board benchmarks salary with salary levels in comparable companies. For example, as Sikka has an opportunity to work for a global company in a similar position in US and he is allowed to operate from the US, his compensation should be comparable to a CEO in a global IT company operating from the US. On the other hand, salary of employees located in India should be comparable to salaries in global IT companies operating from India. This could be the reason that the ratio of Sikka's compensation to the median compensation in Infosys has exceeded the earlier normal.

It goes without saying that if Sebi finds truth in the whistle-blower's allegations of unethical practice, the board should be held responsible. On the other hand it would be a mistake to hold Infosys hostage to its founders' original approach to business. A "way of doing business" is not the same thing as "core values" like a commitment to integrity and ethical standards, mutual respect and fairness to all stakeholders. The latter should certainly not change. But to raise a certain way of doing business to the same status as these fundamental values can only do a disservice to the company and leave it without the ability to adapt to changing business contexts.

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