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Corporate Governance Failures in India

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ABSTRACT

This research paper is solely based on the analysis of Sahara India, Kingfisher Airlines and PNB-Nirav Modi case. "Corruption in civilized society is disease like cancer which is not detected in time is sure to spread its malignance among the polity of the country leading to disastrous consequences". Corruption is exact opposite to democracy as well as social order. The detection of corruption and fraud has become a huge problem. This phenomenon is not limited to a particular area, city, or country. It is all over the world. The word fraud is defined under Section 17 of the Indian Contract Act, 1872 and Forgery is stated under Section 163 of the Indian Penal Code, 1860. The purpose of this study is get rid from fraud and corruption committed by the criminals, outsiders -customers and employees of the banks and financial institutions and other Central, state and local bodies, private and public sectors."

"The reason behind fraud in India has been unknown. Similar fraud keeps happening year after year where sum of money lump are involved. The financially weak sector of our country suffers the most. This paper highlights the major accounting frauds over the past years and provides the analysis and the cause for such fraudulent activities."

Keywords: Accounting Frauds, Auditors, Scam, Window Dressing, SEBI & Government, fraud, forgery, corruption.

I. INTRODUCTION

The time period company failure involves discontinuation of business enterprise's operations leading to lack of ability to gain enough profit or revenue to pay the commercial enterprise charges. It takes place due to poor control, incompetence, and awful marketing strategies.

In a business environment corporate failure of the firms is quite common wherein only those firms survive which adapt themselves according to the market.

(A) Symptoms of Corporate Failure

The basic symptoms of are:"

1. "Low profitability"

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2. “High Gearing”
3. “Low Liquidity”

“The organization's monetary tendencies might also constitute those symptoms, which can be associated with each other. First of all, the corporation encounters a downfall in its profit, that's pondered within the profitability ratios, including Profit Margin, return on Capital Employed and Return on Net Assets.”

(B) Causes of Corporate Failure

1. **“Economic Distress:** Economic downturn is one of the principal causes of corporate screw ups, throughout many organizations. The decline within the financial system can also result in the discount inside the activities, which adversely impacts the overall performance of many firms inside the economy.”
2. **“Mismanagement:** Mismanagement implies improper management control over the working of the personnel and different business activities. It refers to the “lack of managerial skills and” revel in, in terms of coordination, teamwork, strategic capability, leadership, foresightedness and many others. Resulting inside the failure of the business enterprise.”
3. **“Technological Causes:** With development in the technology new modes of doing commercial enterprise has been introduced, that is higher than traditional ones. If an enterprise fails to hire the cutting-edge records and production generation, then the threat of failure of the company can also boom.”
4. **Working Capital Problems:** When business enterprise is going through economic distress, it can face liquidity shortages. Because of the insufficiency of budget the organization fails to perform the day to day operations of business enterprise nicely and susceptible liquidity turns into obtrusive.””
5. **“Fraudulent Management:** Corporate collapse is also especially caused by the fraud of the control. There are times while managers are motivated by way of personal greed, due to which they use unfair way consisting of falsification in the financial statements and accounting reviews of the agency.”

Corporate governance is that framework that defines business relationships that exist among organization shareholders, control teams, the Board of administrators, and all other key stakeholders. The significance of corporate governance cannot be understated, and the improvement of associated guidelines which are enforceable and carried out constantly is also

essential. Strong and powerful corporate governance enables to cultivate an agency tradition of integrity leading to high-quality performance and sustainable commercial enterprise universal. Essentially, it exists to boom the responsibility of all people and groups within your enterprise, running to keep away from errors before they are able to even arise.”

When an employer has strong corporate governance, it indicators to the market that the employer is nicely controlled and that the interests of control are aligned with external stakeholders. As a result, it can provide your business enterprise with a sturdy aggressive advantage.”

Sahara India Case: It is a case based on optionally fully convertible debenture shares. Conglomerate the company having diversified interests. The company had raised money without informing SEBI. 2 group companies were registered under companies Act of 1956. It was based on raising capital from the public. It was considered to be the cheapest possible way out. It was less time consuming.”

Kingfisher Airlines Case: “Global aviation industry is passing through challenging times due to unprecedented fuel price hike during the last 4 years, turbulent financial markets and economic recession. Vijay Malaya’s dream bird, Kingfisher Airlines -popularly known as The King of Good Times -is witnessing its worst phase. Indian domestic aviation is suffering from a serious market failure, caused by misguided government policy and ministers need to step in quickly to fix it”. “In India, most of the upcoming airlines added a large number of aircraft since 2006 and deployed them mostly on metro sectors resulting into suicidal price war among all the airlines. Every airline in India is currently suffering from operating losses”.”

Kingfisher Airlines Ltd. Turned into owned through biggest liquor multi-millionaire of India with an ambition to turn out to be an industry chief. Growing proportion in the aviation market, a wide number of destinations and several awards, depicted a completely appealing and progressive photograph for the employer. Kingfisher airways achieved fulfillment in gaining purchaser pride by means of supplying the notable and cosy experience of flying to its passengers. However, inside the Indian aviation zone, Kingfisher had a quick but lasting effect. By the stop of 2011, the airlines suffered a large financial crisis. Kingfisher Airlines, UB Holdings Ltd. Changed into supplied loan by using many personal and public region banks in India, thinking about the popularity of its CMD. He became not being able to repay loans to most of the public sector banks, however, private sector banks recovered all loans. This paper describes downfall of the Kingfisher Airlines and the examination of financial condition of United Breweries Holdings. Here, we've tried to apprehend the business of the airlines and also

studied the role of the banks in extending loans and healing tries. Moreover, we've tried to emphasize all the reasons in the back of the economic failure of the business enterprise from the factor of view of mistakes in strategic decision making.”

(C) Review of Literature

Corporate Governance basically mean the fulfilment of law, application of best management practices and ethical standards for effective distribution and management of wealth and discharge of the social responsibility for sustainable development of the stakeholders. It provides the framework for a company to reach its goals and objectives. Corporate governance aims to determine ways to reach the most effective and strategic decisions and to ensure transparency which in return ensures a strong as well as balanced economic development for the organization.

“In the case of Sahara India group which did a fraud with their own investors. The company failed to comply with a Supreme Court order in 2012 to repay investors in the bond scheme which the court has said was illegal. With this regard the Delhi police arrested Sahara group owner Subrata Roy in march 2014 and was asked to appear in court over the failure of two Sahara companies and to pay Rs 19,000 crore by way of dues that was to be paid to the investors. The lawsuit concerns two unlisted Sahara group companies which started raising funds in 2008. These two companies were not registered under RBI but only three Sahara group entities that are registered with RBI -- Sahara India Financial Corp. Ltd (SIFCL), Sahara India Corp Investment Ltd (SICIL) and Sahara India Infrastructural Development Ltd. (SIIDL).Of these three entities, SIFCL, a residual non-banking company, has been directed by RBI to phase out acceptance of deposits from the public.SICIL and SIIDL are not at all authorized to accept deposits from the public.”³”

Similarly “in case of Kingfisher Airlines, random decision making and untimed merger with Air Deccan led to the failure of the Company. Choosing and inducting Aircrafts, being an important asset of any airline requires major decision making skills. Highly successful Southwest Airlines teaches us that using one or two models of planes keeps maintenance as well as operations costs low. The business model of Kingfisher was such that it did not have any aircrafts of its own and all aircrafts of kingfisher were dry leased. It also inherited additional models from Air Deccan takeover. The other problem faced by the airline was duplicity of tasks since it operated aircrafts of two different makes, both Airbus and ATRs

³ Kashmin Frenandes, Biggest Corporate Governance Failures in India, The CSR Journal, April 20, 2021, available at <https://thecsrjournal.in/corporate-governance-failures-india/> (Last visited on 28th April, 2021).

which requires double personnel and thereby increased operational costs instead of bringing cost synergies post-merger.”⁴

Same concern was found in “PNB-Nirav Modi case where Punjab nation Bank being one of the country’s largest public-sector lenders, found itself in the middle of a Rs. 11,400 crore transaction fraud case in February 2018. The bank had detected and informed the Bombay Stock Exchange about some ‘fraudulent and unauthorised transactions’ in one of its branches in Mumbai to the tune of \$1771.69 million (approx). The CBI then received two complaints from Punjab National Bank against billionaire diamond merchant Nirav Modi and a jewellery company alleging fraudulent transactions worth about Rs. 11,400 crore. This was in addition to the Rs. 280 crore fraud case that Nirav Modi was already under investigation for, again filed by PNB. Modi is facing two sets of criminal proceedings. The Central Bureau of Investigation case relates to the large-scale fraud upon PNB through the fraudulent obtaining of ‘Letters of Understanding’, while the Enforcement Directorate is investigating the laundering of the proceeds of that fraud.”⁵”

Governance flaws that led to the situation were mainly:

1. Poor Risk Management
2. Dubious Role of Auditors

II. CORPORATE GOVERNANCE STRUCTURE AND IMPORTANCE

Corporate governance is the system with the aid which an agency is directed and also controlled. Clear roles as well as the responsibilities from the board to the management, team of workers and the stakeholders are actually critical for a corporation to characteristic efficaciously and to make sure that every stage is held at bay by a gadget of the tests and balances. Clarifying corporate governance systems method establishing a machine of sound approaches via which the organizations are controlled and directed, focusing each on inner and also on external corporate structures. Clean corporate governance structure allow tracking of the moves of control and administrators and thereby mitigate the business enterprise risks that could stem from the misdeeds of group of workers individuals. Fee powerful and efficient control and operation can simplest be realized if the leadership inside the water zone employer

⁴ Paravir Singh, Sahara India Corporate Governance: Failure of two Sahara Companies, Available at https://www.academia.edu/6816216/Sahara_India_corporate_governance_Failure_of_two_Sahara_companies (Last visited on March 30, 2021).

⁵ J P Sharma, Ruchi Goyal, Corporate Governance Failure of Five-Star Accredited “Kingfisher Airlines”, Journal of IMS Group, Vol. 14, No. 1, January-June 2017, pp. 10-25, available at <http://www.publishingindia.com/GetBrochure.aspx?query=UERGQnJvY2h1cmVzfC80NTk2LnBkZnwwNDU5Ni5wZGY=> (Last visited on March 30, 2021).

is guided by using the tenets of the suitable governance.

Corporate Governance deals with company internal processes and therefore is basically about anticipating the problems and coming up with innovative ideas as well as solutions. Company secretary and the board of directors are two important elements of a company as well as the reason behind good corporate governance practices. Accountability and transparency of stakeholders are considered to be important in relation to the good corporate governance practices. Sturdy and powerful corporate governance enables to cultivate the business enterprise tradition of integrity, maintain high quality performance and sustainable business typical. Essentially, it exists to boom the responsibility of all people and groups inside the organization, running to avoid errors earlier than they could even occur.”

“Corporate governance refers to all the legal guidelines, regulations, codes and practices that define how a company is administered. It determines the rights and obligations of all the active retailers within a business enterprise, attracting the skills and financial capital, boosting the inner efficiency, and providing monetary price to the stakeholders for lengthy time period.

The importance of the corporate governance is made obvious through the wonderful influences that occur while the risks are all controlled and organizational methods are streamlined and steady. Organizations can see a number of direct advantages with appropriate corporate governance.

An absence of the corporate governance can prompt benefit misfortune, defilement and a discoloured picture, not exclusively to the organization, yet to the general public, or much more terrible will impact the worldwide all in all. This type of corporate governance the executives is likewise intended to restrict chance and take out destructive components inside an association.

One guideline of the corporate governance is investor acknowledgement, which is an arrangement that guarantees that all the investors have a say in the internal functions of an organization. Investor acknowledgement likewise gets the estimation of an organization’s stock. The guidelines and obligations of the board individuals should likewise be clarified to ensure that everybody shares a uniform vision of the organization’s future. Partner interest tends to the requirements of members who are not investors. Contacting non individuals accordingly cultivates better correspondence and association with the individuals from press and local area. Moral rules of corporate governance are likewise vital to get higher benefit and stay with the out of law difficulty. These standards apply to the workers and the board individuals. Straightforwardness should be evident, which should appear as record keeping and

reports on pay.”

Poor corporate administration can make possible irreconcilable situations, confiscation and uncalled for of minority investors. It just advantages the gatherings in questions yet don't influence worth to different partners, little investors with little effect on the stock cost are dismissed to clear a path for the interests of larger part investors and the chief board. It can incredibly disintegrate public certainty and dis-coloured society, or worldwide in general. It lays infrastructure of the accurately disciplined board and a healthy harmony between possession and management capable of taking freelance decision, alongside building the trust between the corporate and external shareholders of the organization. It enhances the important reasoning of management by introducing independent directors to the board, to bring the intellectual expertise to the company, with none biased approach. Its responsibility for the graceful performers of the company. It provides allegiance among the investors as their interest is taken care of during a high manner by an organization that adopts sensible management practices.

Corporate governance is much needed for the creation of a corporate culture of transparency, responsibility and disclosure. Corporate performance improved the governance systems and tactics ensure first class selection making, inspire effective succession making plans for senior management and beautify the lengthy term prosperity of organizations, impartial of the sort of agency and its asset of finance. This could be linked with the improved corporate performance both in phrases of share fee or profitability. More desirable investors agree with: investors take into account corporate governance as vital as monetary overall performance when comparing organizations for the investment. Buyers who are provided with excessive stages of disclosure and transparency are in all likelihood to invest overtly in those organizations. The consulting company MCKINSEY surveyed and decided that global institutional buyers are organized to pay a top rate up to 40 percentage for stocks in businesses with advanced corporate governance practices. Better get right of entry to the global marketplace: excellent corporate governance structures appeal to the funding from worldwide buyers, which sooner or later lead to extra efficiencies inside the economic quarter.”

III. CASE ANALYSIS OF SAHARA INDIA”

Corruption is seen as an unavoidable expense and it is tragic, of making things happen in India, which corporate and political dignitaries are firmly adhering to. The powerful political-corporate connection in India help this kind of large-scale fraud. Strong political pressures inevitably prevent market regulators like the Indian Securities and Exchange Board from

exerting a tight supervision over financial institutions. SEBI⁶ is almost a judicial body entitled to enforce disciplinary action on bribery and other corrupt activities. SEBI is also authorized to require such firms on one or more stock exchanges to list their shares. The indigenous conglomerate of Sahara India Pariwar is based in Lucknow, India. It was established in 1978 in Gorakhpur by Subrata Roy. This case involves social corporate irresponsibility to taxpayers and the weakness of the Sahara Group's corporate governance system. For both the politicians and authorities, this raises concerns. The court ruled out how the regulatory and administrative powers of the Indian SEBI were bypassed by two Saharan Group enterprises⁷. The case raises the topic of the compilation and synchronization of information between numerous regulators in the financial sector. The infamous cash raising activity preceded the 2008 ban by the Reserve Bank of India on Sahara's para-bank operation. SEBI, however, only warned about operations two years after Sahara began to do so when a legal public concern was addressed by a community company. There is obviously inadequate degree of coordination among the various regulators in the financial sector. Subrata Roy's company was linked by prompting the public to participate in the production of resources. With his development, a group of companies was established in Sahara India Pariwar. Mr. Subrata Roy was Chairman of the party. His primary business activities include banking, infrastructure and accommodation, the media and culture, consumer goods, IT etc. With a combined workforce strength of about 1.4 million the company runs over 5,000 establishments throughout India. It is a company that has not been listed. It has been widely argued that the capital is undisclosed, and that other fraudulent activities, including money laundering, fictional owners and silly shares are unknown. In the short term, the Revenue department had already its eyes on this business. This scam came to light for the first time in 2009-2010. The matter first came to the attention of an Indore-based chartered accountant, Roshan Lal, who forwarded a note to National House Bank demanding that the National Housing Bank investigate irregularities of housing bonds issued by Sahara Group two companies: Sahara India Real Estate Corporation and the Sahara Housing Investment Corporation. He commented that for the time being the bonds are not released in accordance with the rule. He commented that for the time being the bonds are not released in accordance with the rule. Due to the lack of jurisdiction, the NHB⁸ transmitted the complaint to the SEBI. SEBI, the regulator of the capital markets, revised an initial public bid draft of the two companies' red herring prospectus for raising the capital for the Sahara Prime City Limited real estate venture. SEBI has also sent a related letter from the Professional

⁶ Security exchange board of India Act, 1992.

⁷ Sahara India Real Estate Corporation and Sahara Housing Investment Corporation.

⁸ National Housing Bank, 1987.

Investor Protection Association, an Ahmadabad-based Advocate Group. In the investigation initiated by SEBI on the publication of the allegations, the two firms have, for the past four years, incorporated into their capital pool of which no transparency is due, a further 4,000 rs. Crore and 32,300 rs. Crore. The firms were unable to explain the inflow of money on a show cause alert. The two companies raised massive amounts of money from the public through OFCD⁹ according to their own prospectus.

Two kinds of markets are developed to raise money from the economy. For this reason, the primary and secondary markets. Methods including public issues, rights issues, private investments, risk capital, financial institutions bonds and similar are and require primary sector. Securities distributed on the stock market are exchanged and acquired on the secondary market. It consists of those investors who deal with proverbial stock market financial securities. The Sahara prospectus declared the business a privately owned enterprise that acted as a public enterprise. A red herring prospectus was registered for debentures by Saharan Prime Region, a Sahara India Pariwar group firm. The prospectus referred to the tax disputes faced by the corporation in respect of the issuance of OFCDs worth Rs. 34 crore against the income tax department. It also raised money by issuing OFCD from 25 April 2008 to 13 April 2011, which was a direct breach of the terms of the business prospectus. IPO¹⁰ also was released by the firm. Over this time, Rs. 17,656 Crore had been collected. Approx. 30 million people collected the sum. Moreover, SEBI, the market regulator, declined to disclose the same. The company's debt had risen to Rs. 20,000 Crore by the end of 2009. The Reserve Bank of India prohibited the company from issuing more debt and ordered the company to initiate the closure process. This was the beginning of the real problem. SEBI became aware of the remittal of the case from the NHB. Sahara questioned competence when the case was heard and clarified why Sahara has not been approved by SEBI. Sahara said then that those bonds were hybrid products of the corporation, and thus were not subject to SEBI jurisdiction but rather were ruled by the company registrar under the Corporate Affairs Ministry.”

Sahara reported that before issuing the bonds, it had applied its red herring prospectus to the ROC. Consequently, they commit no scam. The two Sahara firms were directed by SEBI to cease issuing bonds and refund the money to investors. It instructed both firms to repay the money received from the people involved, and passed an order on 23 June 2011. SEBI recognized this matter. The promoters like Mr Subrata Roy were further restricted from entering the stock market until further orders were issued. Sahara lodged an appeal against

⁹ Optionally fully convertible debentures.

¹⁰ Initial public offering

order of SEBI before the SAT¹¹. The SAT¹² checked the order and kept it. The Hon'ble Supreme Court of India eventually approached the Sahara. The Supreme Court was called in to prove to the Group if the funds used for the claimed return payments were funded. The argument was raised. The party could not meet the same requirement. The Supreme Court ruled that the SEBI had the right and jurisdiction to investigate this case, interpretation of provisions of the Company Act, 1956, the SEBI Act of 1992, and the rules and regulations included in it. Although the OFCD is in kind hybrid instruments, it was considered as "securities" in accordance with the Company Act of 1956. For the purposes of the companies Act¹³, SEBI¹⁴ and the Securities Contracts (Regulation) Act¹⁵, debentures are also regarded as securities. The company's goal was to make an issue of private placement with OFCD, but it cannot be kept if more than 50 individuals subscribe. This situation, it becomes a public deal immediately. The jurisdiction of SEBI is therefore upheld in this matter. Furthermore, the Supreme Court observed that Section 60B¹⁶ of the Company Act of 1956 had been infringed. It was also held that since it is issued to over 49 entities, the non-listing of shares is a valid legal mandate. In the present case, the Supreme Court noted the maxim "acta exterior indicant secreta¹⁷" appropriate. The effort to raise money from public in the attire of a private corporation to escape several layers of responsibility obviously illustrates the Sahara's attempt to delude the government into unethical business practices. SEBI's authority to probe problems pertaining to both listed firms and unlisted companies is undeniably a cornerstone of the corporate jurisprudence of India. It also closes the divide between the MCA's¹⁸ and the SEBI's jurisdictions, as was specified in this decision that SEBI and MCA are competently competent in matters of public interest. This Supreme Court ruling in all respects constitutes a significant precedent that dissuades them from engaging in such incoherent schemes. The Supreme Court's observation from any point of view is justified by the fact that Sahara attempted to overturn the laws of numerous actions, including the SEBI Act, 1992 and the Companies act, 2013 which threatened the lives of so many investors who mostly belonged to the lower strata of society and were barely able to maintain their body and soul. It sought to split the life of a group of individuals who have little or no understanding of an enterprise's financial status, thereby taking advantage of schemes such as the OFCD, where knowledge

¹¹ Securities appellate tribunal

¹² Established under Section 15K of SEBI Act 1992

¹³ Established under Section 15K of SEBI Act 1956.

¹⁴ Established under Section 15K of SEBI Act 1992.

¹⁵ Established under Section 15K of SEBI Act 1956.

¹⁶ Section 16B, Companies Act, 1956.

¹⁷ acta exterior indicant secreta- "The outward act shows the secret intention".

¹⁸ Ministry of corporate affairs.

of the company's success and fundamental information about time needed for these debentures to become securities that would be beneficial to them. Such investors do not know the risk of such enticing plans, and they place all of their money in the expectation provided to them by the unscrupulous management of these businesses out of ignorance.”

IV. CASE ANALYSIS OF KINGFISHER AIRLINES”

(A) The king of Good Times- Kingfisher

An Indian businessman and a former Rajya Sabha member who was once known as the most glamorous personality now has been carrying a tag of economic offender. After the death of his father, Vijay Mallya took over the United Breweries. Residing as Chairman since 1983 when the turnover of the company was just 350 crores. Under his Chairmanship the company's profitability went from around 350 Crores- 6000 Crores. It was a huge turnover for the company as now Vijay Mallya took United Breweries to global level. Although the company was known for its beer brand but he had started investing in newspaper business, chemical business etc. Soon he became a popular figure whom people referred as the 'liquor baron'. But there were also some challenges coming along his way as alcohol advertisement was not permitted in India during that time. Alcohol was something that was taboo. For the long time in India the kind of moralism and political pressure that surrounds the liquor industry has meant there's this impulse to enforce prohibition. Because of the way drinking was figured in colonial culture, it received a lot of contempt from the country more broadly. Thus Mallya started other modes of advertising "Kingfisher Beer" which we can say was surrogate advertising. He started with doing event sponsorship, he bought an IPL team, his house in Goa- Kingfisher Villa as well as he used his flamboyant lifestyle to represent Kingfisher beer. In 2015, UB group was the "2nd largest liquor maker in the world". Forbes 2007 declared Vijay Mallya as the "40th richest person in India".

(B) Kingfisher Airlines- Rise and Downfall”

In 2005, Vijay Mallya launched the Kingfisher Airlines. Although it was not a means of advertising its beer but of course an expansion of the brand. India had a middle class, a rising middle class, that was larger than the entire US population and a low cost carrier was a model of that time. No meal serving, no first class and it was a high-frequency, low cost, short-haul flying. Soon it became 2nd largest airline in domestic market having 1/4th of India's shares of domestic travellers. Within 2 years, in 2007, he applied for international route but was denied as the criteria for permission was to have minimum experience of 5 years. So he went for the acquisition of Air Deccan which was a low cost airline in order to get hold of the international

slots. But here was Vijay's first mistake when he decided to provide the luxurious service in his airline with high standard meals and a division of First, Second and an Economy class but all with low fares. He renamed Air Deccan as Kingfisher Red which provided luxurious facilities like Kingfisher Airlines but at lower fares. Travelers started preferring Kingfisher Red over Kingfisher which led to negative profit and increasing debt. The Airline had to increase its ticket rates then due to various reasons such as increasing fuel price as well as recession in 2008. The business was not generating as much as it needed to survive on a daily basis. Costs went higher than the revenue. Vijay then went for the acquisition of a Formula 1 team while he was borrowing more and more money to his airline floating. Meanwhile Bangalore and Hyderabad Airports demanded for the prepayment of landing charges. HP and Bharat Petroleum banned Kingfisher because of the outstanding dues. Indian Oil asked for cash basis payment. In 2011, a Canadian research firm Veritas in its report 'A Pie in the Sky' said the Airline was on the verge on bankruptcy but Vijay Mallya kept on denying everything. He made seem from outside that everything was fine and the business was running well. He started taking loans from different banks to run his business. In 2012, tried for Foreign Direct Investment (FDI) to come out from this situation. He even successfully convinced Etihad to invest in Kingfisher but FDI was not allowed in Civil Aviation Industry in India as it was fully domestically owned business. Thus he tried convincing government to change the policies by filing an application but the delayed response and no certain approval led to no FDI from Etihad. He lost this opportunity from his hand.

A number of problems could be listed in the functioning of the Kingfisher Airlines if studied in reference to the Stakeholder's theory which clearly states that, "the company must function in the interests of all its stakeholders composed of shareholders, boards, employees, customers, banks, suppliers, creditors, government"¹⁹ It could be said that, "the company failed to protect the interests of all its stakeholders. Corporate governance failure had a disastrous effect on company's stakeholders"²⁰

"Mallya kept on taking loans from 17 different banks mostly out which were PSUs. Although SBI has declared Mallya as bankrupt, other banks continued to lend him loans. Thus it can be said that there was a huge negligence on the part of the banks as well. Firstly, it can be said that banks depended only on the projections that were provided by the company and did not look

¹⁹ J.P Sharma, Ruchi Goyal, Corporate Governance Failure of Five-Star Accredited "Kingfisher Airlines", Journal of IMS Group, Vol. 14, No. 1, January-June 2017, pp. 10-25(March 30, 2021, 4:30PM), <http://www.publishingindia.com/GetBrochure.aspx?query=UERGQnJvY2h1cmVzfC80NTk2LnBkZnwwNDU5Ni5wZGY=>

²⁰ Ibid.

at the audited numbers. Secondly, Mallya used the brand value of Kingfisher Airlines in order to get additional loans from banks which also can be considered as irresponsible banking. Approximately, SBI loaned him 1600 Crores while IDBI loaned him 800 Crores. He mostly got denial from private banks but ICICI and HDFC banks gave him loan by securing some shares of Unites Spirits and recovered their money by selling those shares. The company was running out of money and non-payment of employee's salaries led to several months of strike and they started leaving the company. Burden of loans from banks increased and then airline closed. Kingfisher Airline's license was cancelled in December 2012."

"Ultimately by March 2016 the outstanding loan of Kingfisher was 9000 Crores. It was impossible to get out of this huge load of debt. Vijay continued negotiating with the banks. He agreed to pay approximately 6000 Crores that was the principal amount but they should wave off all the interests. The banks were not ready for this and one day Vijay Mallya escaped to Britain. Now he is in the 'Wanted List of India' for wilful default. Thus he who was once an Urban Legend, now is an economic offender. An extradition case was filed against the for Liquor Baron. Vijay Mallya has sold away majority of his alcohol business. His Formula 1 team folded in 2018. As of Summer, 2020 Vijay Mallya remains in London and continues to fight against his extradition to India."

(C) Case Analysis of Pnb- Nirav Modi"

1. The Luxury diamond jeweler and designer and the Founder of - Fire star Diamond."

Nirav "Deepak Modi born 27th February 1971 is an Indian Businessman, who was ranked 57 in "the Forbes list" of billionaires in 2017, and "also the founder of the Nirav Modi chain of Diamond" jewelry retail stores and the Fire star Diamond has now been tagged as a Fugitive Economic Offender". "Nirav Modi "is the chairman of Fire" star international. "The parent of the Nirav Modi chain, which has store" in key market across the globe. He used to have 16 stores in diverse location in Indian as well as outside India Such as Delhi, Mumbai, New- York, Hong Kong, London and Macau. Regarding his early life Nirav "was Born in Palanpur, Gujarat, and grew up in Antwerp" Belgium". His "family has been in the" precious stone Diamond business for a few generations." "When "he was 19, he and his" dad "Deepak Modi moved to Mumbai to work" with his uncle's business, Mehul Choksi, the head of Gitanjali Group, a retail gems organization "with 4,000 stores in India."

"And from him, he learned a lot about this business, "After schooling, Nirav Modi started studying at The Wharton School, University of Pennsylvania, USA but he dropped out the college and went India where he joined his maternal uncle Mehul Choksi's company and

worked there for around ten years Later he met his future spouse, Ami, the little girl of a jewel finance manager Amukuraj Choksey. “In 1999, he established his diamond adornments firm Fire star Diamond International”²¹.”

“After some time, he designed the earring pair according to the solicitation of his companion. He at that point transformed his passion into the brand to whom he gave the name Nirav Modi. He has designed so many countless extraordinary examples like Riviere of Perfection, Golconda Lotus Necklace, and so forth that make his image of the brand so well known. “His Golconda Lotus Necklace was sold in 2010 at the Hong Kong sale of Christy for RS. 16.29 crore and his Reverie of Perfection was sold in 2012 at Hong Kong closeout of Sotheby”.”

2. Nirav Modi diamond mogul's - Downfall.”

In “2010 Nirav Modi was “1st Indian jeweler to be featured on the covers of Christie's and Sotheby’s Catalogues, in 2013 Modi was “Featured on the Forbes list of Indian billionaires” and he received Patents of “ Jasmine cut diamond, United States Design Patent” USD763118S1, JEWELRY “DESIGN, United States Design Patent US D738,777 S”. Besides achieving all of the above a tragic moment came into view “In “February 2018, Punjab National Bank filed a complaint against Nirav Modi by alleging that he was defrauding the bank of approximately Rs.11, 400 crores.” As per the reports, “his wife Ami Modi, uncle Mehul Choksi and brother Nishal Modi have also involved in this case of fraud. The bank also claimed that they were fraudulently involved in issuing bank guarantees or Letters of Undertakings at the Mid Corporate Branch of the bank in the Brady House of Mumbai. The Directorate of Enforcement handles this case. His passport has also been cancelled by the Ministry of External Affairs for four” weeks”²². “But Nirav Modi got some inside tip before-hand and left India and went to UK “Nirav Modi along with his his family escaped India in early 2018, days before the news of the scam became public. PNB (Punjab National Bank) scam has been dubbed as the biggest fraud/scam in India's banking history”. Now How does this 11,000- crore scam happened in the first place²³”.”“

The “Bank initially said that the two Bank employees at that branch were bribed by Nirav Modi and they were involved in the scam” .The bank's core banking system was “bypassed when the corrupt employees” issued LOUs to “overseas branches of other Indian banks”,

²¹ Nirav Modi Wiki, Age, Wife, Family, Caste, Controversy, Biography & More, In News, Wiki How, “https://wikibio.in/Nirav-Modi/#google_vignette”.

²² Nirav Modi Wiki, Age, Wife, Family, Caste, Controversy, Biography & More, In News, Wiki How, “https://wikibio.in/Nirav-Modi/#google_vignette”.

²³ IANS Panaji, Lack of ethics in corporate governance led to Nirav Modi scandal: Goa B-school director, Education (Aug.19,2018,11:30 AM),https://www.business-standard.com/article/news-ians/lack-of-ethics-in-corporate-governance-led-to-nirav-modi-scandal-go-a-b-school-director-118081900136_1.html.

including Allahabad Bank, Axis Bank, and Union Bank of India, “using the international financial communication” system, SWIFT. The “transactions were noticed by a new employee of the bank²⁴. The bank then complained to the CBI, who is still investigating the scam apart” from ED and Reserve Bank of India. “On a later date, CBI named key officials Usha Ananthasubramanian, former CEO of PNB, executive directors KV Brahmaji Rao and Sanjeev Sharan in a charge sheet holding them responsible for failure to implement several circular and caution notices issued by the RBI regarding the reconciliation of SWIFT messages and core banking systems”²⁵. “Bankers used fake Letters of Undertakings (LOUs) at PNB's Brady House branch in Fort, Mumbai. The LOUs were opened in favor of branches of Indian banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines lay out a total time period of 90 days from the date of shipment. This guideline was ignored by overseas branches of Indian banks²⁶”. “They failed to share any document/information with PNB, which were made available to them by the firms at the time of availing credit from them”²⁷.”

“Nirav Modi “got his first deceitful guarantee from PNB(Punjab National bank) “on March 10, 2011 and” figured out how to get 1,212 all the more such certifications throughout the following 74 months”²⁸.

The “Enforcement Directorate (ED) recovered bank token devices of the foreign dummy companies used by the fugitive diamond trader to transfer the fraudulent funds”²⁹.

“The “probe agency found that Nehal Modi, brother of Nirav Modi had destroyed the devices and had even secured a server located at United Arab Emirates (UAE) soon after the scam broke out. These dummy firms had been receiving the fraudulent PNB LoUs and were based out in British Virgin Island and other tax” havens”²⁹.

“The enforcement agency has so far seized movable and immovable properties to the tune of

²⁴ Beena Parmar, A freshly appointed official first noticed the fraud at Punjab National Bank, Business (FEB. 15, 2018, 01:16 PM), <https://www.moneycontrol.com/news/business/economy/a-freshly-appointed-official-first-noticed-the-fraud-at-punjab-national-bank-2508727.html>

²⁵ Ram Sahgal and ET Bureau, Former MD of PNB was aware of Nirav Modi fraud, says CBI (May. 22, 2018, 09:30 AM), <https://economictimes.indiatimes.com/industry/banking/finance/banking/former-md-of-pnb-was-aware-of-nirav-modi-fraud-says-cbi/articleshow/64260412.cms>

²⁶ IANS Panaji, Lack of ethics in corporate governance led to Nirav Modi scandal: Goa B-school director, Education (Aug.19,2018,11:30 AM), https://www.business-standard.com/article/news-ians/lack-of-ethics-in-corporate-governance-led-to-nirav-modi-scandal-go-a-b-school-director-118081900136_1.html.

²⁷ IANS Panaji, Lack of ethics in corporate governance led to Nirav Modi scandal: Goa B-school director, Education (Aug.19,2018,11:30 AM), https://www.business-standard.com/article/news-ians/lack-of-ethics-in-corporate-governance-led-to-nirav-modi-scandal-go-a-b-school-director-118081900136_1.html.

²⁸ WHAT IS PNB SCAM, PNB Scam Business Standard, “<https://www.business-standard.com/about/what-is-pnb-scam>”.

²⁹ WHAT IS PNB SCAM PNB Scam, Business Standard, “<https://www.business-standard.com/about/what-is-pnb-scam>”.

Rs 2362 crore in the PNB fraud case”.

“In the complaint Nirav Modi, his wife Ami Modi, brother Nishal Modi” and uncle Mehul Choksi, all partners of the firms, PNB had named three diamond firms, Diamonds R Us, Solar Exports and Stellar Diamonds. along with PNB officials and employees, and directors of Nirav Modi and Mehul Choksi's firms have all been named in a charge sheet by the CBI”^{30 31 32} “India's Enforcement “Directorate has begun attaching assets of the accused and is seeking to immediate confiscation under the Fugitive Economic Offenders Ordinance”³³. “Modi is on the Interpol's wanted list for criminal conspiracy, criminal breach of trust, cheating and dishonesty including delivery of property, corruption, money laundering since February 2018. In March 2019, Modi was arrested in central London by UK authorities”³⁴.”“

V. CONCLUSION

Corporate governance must be strong. Third-party answerableness has to be created integral to operations and internalized as an important governance constituent. Early detection system of frauds as a region of fraud management, specialize in cyber security, usage of digital technology; encouragement to whistle processing, rigorous business approval processes and answerableness, risk management, anti-bribery mechanisms, and strict merchandiser and client governance are all aspects that require to be engineered into the system. The reasons for coming up of these kinds of scams in India are:

1. “According to Credit Rating Information Services of India Limited (CRISL), nearly 50 % of the Indian bottom line districts have just three banks per 100,000 of population and it thus paves the way for increasing Para-banking institutions in the country. The Para-banking institutions have more been exploiting people in several grounds, since there is no clear provision or guideline³⁵.”

³⁰ Somendra Sharma, Top jeweller Nirav Modi booked by CBI in Rs 280 embezzlement case, Trouble for Nirav Modi (Feb. 5, 2018, 04:14 PM), <https://www.dnaindia.com/india/report-top-jeweller-nirav-modi-booked-by-cbi-in-rs-280-embezzlement-case-2581654>

³¹ Gopika Gopakumar and Shaswati Das, CBI books billionaire Nirav Modi in Punjab National Bank cheating case, people (Feb.05, 2018,10:46 PM), <https://www.livemint.com/Companies/78tMnMPCVWcP2RgqE8NPMO/CBI-books-billionaire-Nirav-Modi-in-Rs280-crore-PNB-cheating.html>

³² Manish Pandey, PNB scam: CBI to file charge sheet against 19 accused by May 15 (May.02, 2018, 8:16 PM), <https://www.indiatoday.in/india/story/pnb-scam-cbi-to-file-chargesheet-against-19-accused-by-may-15-1225155-2018-05-02>

³³ PRESS TRUST OF INDIA, PNB fraud: ED to seek 'immediate confiscation' of Nirav Modi's assets under Fugitive Economic Offenders Ordinance, Indian News (May. 27, 2018 17:38:32 PM) <https://www.firstpost.com/india/pnb-fraud-ed-to-seek-immediate-confiscation-of-nirav-modis-assets-under-fugitive-economic-offenders-ordinance-4484551.html>

³⁴ BBC News, Nirav Modi arrested in UK amid India fraud case allegations, A billionaire Indian diamond trader, whose jewellery was worn by the likes of model Rosie Huntington-Whitley and actress Priyanka Chopra-Jonas, has been arrested in the UK (Mar.20,2019),<https://www.bbc.com/news/world-asia-india-47621519>

³⁵ Shishir Asthana, SC issued a non-bailable warrant against Subrata Roy after he failed to turn up in court for

2. “Lack of the powers and jurisdictions among different enforcement agencies in regulating the conduct of business. For example, SEBI often has difficulty in dealing with scams of unlisted (in stock exchange) companies. SEBI has as a rule the powers to regulate the business of only listed companies in India and that was the vindication of Sahara at Supreme Court against SEBI.”

3. “Lag in court procedure regarding disposing cases, which normally take years and it promotes scams. Indian judicial system is overburdened by cases of corporate nature and it promotes more crimes in financial sector in particular and business in general.

4. “Lack of clarity and transparency in the provisions, which regulate the conducts of business and for example, there is no clear cut provisions for regulating Para-banking institutions in India and therefore, it brings in to being financial irregularities in dealings. Absence of necessary provisions for dealing with new issues in business.”

5. “Corporate lobbying is another reason for rapidly increasing corporate scams in India and 2G spectrum scam is an example. In America, corporate lobbying is legal and companies spend millions of dollars every year to get a fair treatment at congress, as concomitant of capitalist economy.””

(A) Recommendations for improving the effectiveness of the corporate governance in India”

6. “Expand the jurisdiction of SEBI to control unlisted companies and their activities, since they constitute a large chunk of business in India. Normally SEBI has the power to control the behaviour of listed companies in India. It thus, needs to have more powers to control the nature of the business and look after the interest of share-holders, as well. The ultimate power in a company must rest with the shareholders and no shareholder should benefit from special advantages³⁶.”

7. “It is the responsibility of the government and its various nodal agencies to furnish every area of business with necessary provisions to ensure that it is working, according to the interest of the nation and different share-holders, at large. The shareholders must approve executive compensation. The board of directors must ensure alignment between executive and shareholder interests”.

hearing, On Feb 26, SC issued a non-bailable warrant against Subrata Roy after he failed to turn up in court for hearing (Feb.28,2014, 12:20 PM) http://www.business-standard.com/article/currentaffairs/10-things-you-need-to-know-about-sahararow-114022600863_1.html (Last visited on 22nd April, 2021).

³⁶ Madan Lal Bhasin, *Open Journal of Accounting*, 2013, 2, 26-38, Corporate Accounting Fraud: A Case Study of Satyam Computers Limited (Oct.20,2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2676467 (Last visited on 22nd April, 2021)

8. “Make necessary clarity and transparency in provisions dealing with regulating business towards the general objectives of the nation. The board of directors must have access to all the information it requires to fully discharge its responsibilities. The corporate governance related laws and practices should be strongly implemented and adhered to by all corporate houses”.

9. “Establish necessary banking institutions in the rural parts of India and make wakefulness among the people about various banking products. In essence, a loin share of people in rural parts of India does not have bank accounts for want of sufficient number of Banking institutions”.

10. “Pre-emptive policies should put in place to keep away corporate-houses from political interventions, which enlarge the magnitude of corporate scams. It is clear that behind every corporate scam, there is an unscrupulous political nexus with corporate institutions. For example, both 2G spectrum scam and Shraddha group financial scandal believed to have political patronage to an extent³⁷.”

11. “All the unofficial collective investment schemes must be brought under the jurisdiction of a centralized enforcement authority with necessary stipulations and moreover, discourage the unscrupulous investment schemes. There should be stringent control measures to prevent corporate frauds and an ambit for quick procedure to deal with such cases. The whistle-blowers must be given more autonomy and security.

³⁷ “Live Mint 24 November 2013” (Last visited on 22nd April, 2021).