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Infosys: Is this all overdone?

“When in doubt, disclose” NR Narayana Murthy, founder Infosys Limited

Those who have read the [letter](#) that Nandan Nilekani, chairman Infosys Limited issued, will know the sequence of events.

A director at Infosys Limited received two anonymous complaints on 30 September 2019. One dated 20 September 2019 titled “Disturbing unethical practices” and the second undated with the title, “Whistle-blower Complaint.”

Infosys has a protocol for when it receives whistle-blower complaints; it triggers a sequence of steps. In line with its guidelines the company placed both complaints before the Audit Committee on 10 October 2019 and before the non-executive members of the Board on 11 October 2019.

Post the Board Meeting of 11 October 2019, Deloitte, the statutory auditors, were brought into the loop, following which the Audit Committee began consultation with Ernst & Young, the independent internal auditors on terms of reference for them to investigate the veracity of these letters. Then on 16 October 2019, the company was made aware of a letter dated 3 October 2019 which was purportedly written to the Office of Whistle-blower protection program, Washington D.C. This letter refers to the 20 September 2019 complaint, and to emails and voice recordings in support of the allegations. After which Shardul Amarchand Mangaldas & Co., a law firm has also been brought into the room.

Somewhere along the board decided to investigate these allegations to the fullest extent.

The letters themselves

The letter titled “Disturbing unethical practices” dated 20 September 2019 (see Annex A), alleges that Infosys has followed some aggressive accounting policies, that not all client acquisitions being reported are accretive to the bottom-line, the CEO’s absence from Bengaluru and trips to Mumbai, and being pressurized to provide selective information to the board.

At cursory glance, the language and style make it difficult to take the 20 September letter seriously. But it may have been written in a manner to deliberately misdirect from who the writer is. And the letter, not surprisingly, is unsigned.

A closer scrutiny of the charges can also be easily dismissed. Accounting policies change, and there is little evidence that this is more aggressive. Client acquisitions can serve a strategic purpose and may even lead to losses. This is a business call. The whistle-blower must get over their obsession with the Infosys CEO being in Bengaluru. They had a similar grouse against Vishal Sikka and as an IT Company selling digital solutions to their clients, they should get used to their CEO's virtual presence. And finally, what goes into the board agenda is always going to be one person's judgement over another's. I will weigh in favour of the CEO deciding, in consultation with the chairman. But it is for the investigations to tell us the truth.

Whistle-blower disclosures

It is heartening that as soon as the board became aware of the letters, it triggered a series of actions at the company end. Bringing in internal and external auditors, and external legal help, are all the correct response. But then they lost control of the narrative.

As the 20 September letter started bouncing around on WhatsApp over the 19 October 2019 weekend, news started filtering to mainstream media. Since Mumbai markets were closed over this period and on 21 October 2019 on account of State Elections, and in the absence of any news regarding the seriousness of the allegations, the Infosys ADR's were the first to feel the brunt, falling 16%. It did not help that by then details about trades in the derivatives market and conspiracy theories about who knew what and when, had taken hold (– and it is wholly appropriate for the regulator to examine these trades in the interest of market stability and orderly conduct). The company it appears was left with little option but to disclose the whistle-blower letter and the investigation.

Given the damage that this episode has caused, one can argue that the company should have been more forthcoming. There were occasions when the company could have made a full disclosure and if nothing else issued a holding statement. It could have done so when the letter was first received or after the board meeting where it was decided to investigate this fully or when tasking its auditors to do so.

But conversely, there is such a thing as opening yourself too much through excessive disclosure. Does a disclosure of an investigation into a whistle-blower complaint fuel more fears or does it provide comfort? What if the board feels the complaint is frivolous, but it turns out that there was substance in the allegations? Or the management panicked, and dispensed time and energy only to find it was boxing shadows? When should the disclosure be made – once a complaint is received or when the board decides to investigate or once the investigation is complete and there is something more tangible to share with investors? Unfortunately, there are no straight answers.

What however is expected is that the board will have protocols that are triggered once a whistle-blowers letter is received that they will have process and importantly the desire, that will quickly help them find the right answers. We should trust some boards to take the right call and do the right thing; it is those who do not, that need to be disciplined.

This week it has been easy to forget that the governance premium that Infosys enjoys today was earned over 25 years since its listing, one disclosure, one shareholder meeting, one analyst call at a time. It will be a shame if this is allowed to fizzle away.

Annex A: Whistle-blower letter

Board of Directors

September 20, 2019

Infosys Ltd,

Bangalore.

Respected Sir / Madam,

Disturbing unethical practices

We have high respect for all of you and bring to your notice the unethical practices of CEO in recent quarters. Same measures are taken up in current quarter also to boost short term revenue and profits. We are Infosys employees and we have emails and voice recordings on these matters. We hope the board will conduct immediate investigation and take action.

In last quarter, we were asked not to fully recognise costs like visa costs to improve profits. We have voice recordings of these conversations. When auditor opposed, the issue was postponed. This quarter, there is a lot of pressure to not recognise reversals of \$50 million of upfront payment in FDR contract, which is against accounting practice. As this will reduce profits for the quarter and negative for stock price, they are putting pressure not to take the charge. Critical information is hidden from the auditors and board. In large contracts like Verizon, Intel and JVs in Japan, ABN Amro acquisition, revenue recognition matters are forced which are not as per accounting standards. We have emails and voice recordings and we will share when investors ask us. We are asked not to share large deal information with auditors.

Large deals approvals have irregularities. CEO is bypassing reviews and approvals and instructing sales not to send mails for approval. He directs them to make wrong assumptions to show margins. CFO is compliant and he prevents us from showing in board presentations large deal issues. CEO told us, "no one in the board understands these things. They are happy as long as share price is up. These two Madrasis (Sundaram and Prahalad) and Divya (Kiran) make silly points. You just nod and ignore them." We have voice recordings of this. Several billion dollars deals of last few quarters have nil margin. Please ask auditors to check deal proposals, undisclosed upfront commitments made and revenue recognition. All information is not shared with auditors.

CEO spends two and half days in a week in Ecity and rest in Mumbai. All his travel expenses are paid by the company, for these weekly personal trips. He is green card holder and avoids deduction of taxes during his US travel which is non compliance. Please check and details will be provided.

In board meetings, we are told not to present data on large deals and important financial measures as it will get board attention. CEO and CFO are asking us to show more profits in treasury by taking up risks and make changes to policies. This will provide short term profits. They ask us not to make key disclosures in 20 F and annual report and to share only good and incomplete information with investors and analysts. This is regulatory issue. We have mails and voice records and will share during investigation. Whoever disagrees is sidelined and many of them leave. In large deals finance team, important employees are left due to pressure to make deals look good.

We know you will take action and we await to provide details and evidence to investigators.

Ethical Employees.

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