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## Sholay, Satyam and Fortis Healthcare

Gabbar Singh “Kitne aadmi thay?”

Kaliya “Sardar, do aadmi thay”

Gabbar Singh “Do aadmi? ..... aur tum teen....phir bhi waapas aagaye.  
Khali haath”

The above dialogues<sup>1</sup> from *Sholay*<sup>2</sup> still reverberate and if twisted, fit well with the current developments at Fortis Healthcare Limited (Fortis). The company has two long-standing directors (- if you exclude the two additional directors appointed recently<sup>3</sup>) on its [board](#). Three entities have put in a bid for the beleaguered entity. Had the brothers still been in direct control, then even ‘sardar’ would not be out of place. The unusual development leaves Fortis’ shareholders asking if the board has sufficient depth to deal with the complexity of the sale and come up with a decision that best serves the company and its stakeholders.

While the current situation at Fortis is unfolding in as dramatic a fashion as *Sholay* did, its fall from grace is perhaps similar to that of Satyam Computer Services Limited (Satyam). The allegations (as yet unsubstantiated) are that like Satyam, funds have been diverted in Fortis and that the company has cooked its books. The focus should not be on the similarities in their misconduct, but drawing on the solution that Satyam was offered.

Ramalinga Raju’s unexpected confession and the magnitude of his crime surprised all and emboldened the Ministry of Corporate Affairs (MCA) to act quickly. Within three days of Raju’s confession, they suspended the board and a day later reconstituted the board with Deepak Parekh, Kiran Karnik (- from NASSCOM) and C Achutan (- ex SEBI), being appointed. Thereafter they appointed Homi Khusrokhana ( - of Tata Chemicals), Ravindra Kulkarni (- a lawyer) and TN Manoharan (- a chartered accountant) to the board and AS Murthy was appointed the CEO of the company. By March 2009, some 90 days after Raju’s declaration, the company was put on the block, and by April 2009 it had been sold to the Mahindra’s. That ‘system’ got together to deliver this outcome is no doubt important, but it was the boards undisputable wisdom and independence from the ‘promoters’ that lent credibility to the process and the result.

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<sup>1</sup> Hindi to English translation in Annex A

<sup>2</sup> *Sholay*, a 1975 Bollywood blockbuster, is considered a classic in Indian cinema

<sup>3</sup> Apart from Harpal Singh and Dr. Brian Tempest, the company has two additional (independent) directors, Lt. Gen. Tejinder Singh Shergill and Ms. Sabina Vaisoha, on its board. They were inducted as additional directors on 12 February 2018 and 27 March 2018 respectively.

**Exhibit 1: Board Composition on 9 April 2018\***

	Name	Occupation	Category	Age	Tenure	AC	NRC	SRC	CSR	Attendance (%)	Other Directorships
1	Harpal Singh	Chairperson Emeritus	NED	68	18	M		M	M	100	6
2	Dr. Brian Tempest	Former CEO, Ranbaxy	ID	70	6	C	M	M		100	4

ID: Independent Director, NED: Non-executive Non-independent director, (C): Chairperson M: Member Committees: AC-Audit, NRC-Nomination & Remuneration, SRC-Stakeholders Relationship, CSR-Corporate Social Responsibility

\*The company also has two additional (independent) directors, Lt. Gen. Tejinder Singh Shergill and Ms. Sabina Vaisoha, on its board. The company through a postal ballot dated 20 March 2018 has proposed confirming the appointment of Lt. Gen. Tejinder Singh Shergill. IiAS has recommended voting against his appointment given his past association with the company/group. Lt Gen Shergill was first appointed on the board of Fortis as an independent director in 2003 and resigned in 2013. Later, he joined the board of group companies, SRL Limited in 2013, and SRL Diagnostics Private Limited in 2015 as an independent director.

To evaluate the three bids, shareholders need more credence at the board-level: all four members of the current board have been associated with either the Fortis group, Religare group, or Ranbaxy for long tenures in the past. Infact the two recent appointments should worry bidders and stakeholders more, about who holds the remote-control. Admittedly, one part of the solution – MCA's supersession of the board and appointing new directors, is neither in the company's nor shareholders' control.

Simply expanding the board has its own challenges. If the investors (singly or collectively) appoint their nominees on the board to give the board necessary heft, it may trigger an open offer under the regulations. Existing institutional investors are unlikely to want to put their hands into this can of worms. No one it seems is empowered to appoint additional directors, and the company does not have the luxury of time to expand the board: first draw out a list of suitable candidates, then identify those willing to join the board and finally seek shareholder approval. This is too time-consuming a process.

Shareholders need a decision-making body that is objective, independent, and does have a historical association with the promoter group or their companies.

The complexity of the decision making cannot be underestimated. The three bids are extremely diverse. [Manipal Health](#) wants to separate the hospital business from the diagnostic and create two listed entities. [IHH Healthcare Berhad](#) is proposing taking over the company and the [Munjali-Burman](#) combine, pumping in additional cash, and leaving the business to run as-is-where-is for now. The decision on which bid to accept cannot

be driven by valuation alone: there are questions regarding subsequent control and the issues regarding the 'current promoters' need to be dealt. And all three have very different consequences for the future of Fortis: taking the right call will now be crucial.

IiAS believes the current board can get additional support in assessing the three bids and coming to a decision among the complex sets of pulls and pressures, without necessarily waiting for board expansion. As an alternate to expanding the board, the company must appoint a special committee to the board, that will advise the board on the sale. This committee should be tasked with evaluating the bids and structures, narrow in on the most suitable buyer and negotiate the final contours and terms with the chosen buyer.

Institutional shareholders can, no doubt, suggest names for committee membership, either directly or collectively (through the Association of Mutual Funds – AMFI - and the Life Council). Having a set of eminent persons advising the board strengthens its ability to take the right call. More important, if such a committee is sensibly chosen it will add both credibility to the process and heft to the ultimate decision. And, nothing prevents the existing directors from being members (-or invitees) to this. Adding band-width aside, legally this offers the board a better shield.

In *Sholay*, Kaliya and his two comrades were eventually shot dead. There is no reason for the three bidders to dread such an outcome – they are not the baddies here. (In Fortis, if the process reaches its logical end, then only one of the three needs to agonize about the winner's curse). Meanwhile it is the shareholders that need to worry, because if the board does not measure-up, then all three bidders might return *khaali haath*, leaving the investors repeating one more memorable dialogue from the film '*bahut na-insafi hai yeh.*'

**Annex A: Hindi to English translation**

*Sholay*  
Embers

*Gabbar Singh "Kitne aadmi thay?"*  
*Kaliya "Sardar, do aadmi thay"*  
*Gabbar Singh "Do aadmi? ..... aur tum teen....phir bhi waapas aagaye. Khali haath"*

Gabbar Singh "How many people were there?"  
Kaliya "Boss, two persons"  
Gabbar Singh "Two persons? ..... and three of you....yet you came back empty handed (- without resolving issues)"

*khaali haath*  
Empty handed/ no deal

*bahut na-insafi hai yeh*  
Unjust or unfair

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