

# UNEARTHING CORPORATE FRAUDS – THE EVER-INCREASING ROLE AND SCOPE FOR GOVERNANCE PROFESSIONAL\*

## INTRODUCTION

The incidence of corporate frauds has a significant impact on the stakeholders and the economy. Corporate Frauds has acquired an inevitable existence in the life of common man which is a huge threat to the economy as a whole. Any corporate fraud is not only a spot on the name and business of the country but it also has adverse effect on the interests of the stakeholders, particularly the investors. Occurring of any corporate fraud in the country not only impact the employee, investors and creditors of the company but also the capital market. Moreover, such adverse impacts have also been witnessed on the existing as well as on the potential foreign investors, whose contribution is significant for the growth of a developing economy like India. This prompted our lawmakers to statutorily address the growing problem of corporate frauds by introducing stringent laws in order to protect the interest of innocent investors.

## DEFINITION OF FRAUD UNDER VARIOUS LEGISLATIONS

***As per Section 17 of Indian Contract Act***, “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

1. the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. the active concealment of a fact by one having knowledge or belief of the fact;
3. a promise made without any intention of performing it;
4. any other act fitted to deceive;
5. any such act or omission as the law specially declares to be fraudulent.

*Explanation* - Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

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*Views expressed in the Article may not express the views of the Institute.*

**Section 447 of Companies Act, 2013 provides for the definition of fraud and also the punishment for committing fraud.** As per this section “Fraud” in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.”

‘Wrongful gain’ has been defined to mean gain by unlawful means of property to which the person gaining is not legally entitled. Similarly, “wrongful loss” has been defined to mean loss by unlawful means of property to which the person losing is legally entitled. Therefore, to fall within the meaning of fraud, the following should have happened:

- a) acts, omissions, concealment of fact or abuse of position should have taken place;
- b) such acts, omissions, concealment of fact or abuse of position should have essence of *mensrea* in them; and
- c) irrespective of the fact whether or not they resulted in ‘wrongful gain’ or ‘wrongful loss’.

## TYPES OF FRAUD

The forensic accountant could be asked to investigate many different types of fraud. The three categories of frauds are –

- **Corruption-** Corruption is a form of dishonest or fraudulent conduct by those in power and it typically involves bribery. It is abuse of entrusted power by those occupying a position, for private gain. A number of studies have revealed that there are certain factors that contribute to corruption in India like high taxes, complicated legislations, bureaucracy, low per capita income, illiteracy, the power vested with certain Government / public officer to question the citizens. However, now the scenario is slowly changing. Due to computerisation, demonetisation, restrictions of payment in cash, there is transparency in every field, human interface has reduced and hence scope for corruption has reduced to some extent. Authorities responsible for investigating Bribery and Corruption are
  - Central Vigilance Commission (CVC),
  - Comptroller and Auditor General of India,
  - Serious Fraud Investigation Office (SFIO),
  - Central Bureau of Investigation and Anti-Corruption Bureau,
  - Lokpal (Central Level) and Lok Ayukta (State Level), and
  - Enforcement Directorate.
- **Asset Misappropriation Fraud-** It happens when people who are entrusted to manage the assets of an organisation steal from it. Asset misappropriation fraud involves third parties or employees in an organisation who abuse their position to steal from it through fraudulent activity. It can also be known as insider fraud. Unauthorised use of

equipments, Fake Sales/Purchases, Inventory Shrinkage are some of the examples of asset misappropriation fraud.

- **Financial Statement Fraud-** • It can include deliberate falsification of accounting records; omission of transactions– either revenue or expenses, non-disclosure of relevant details from the financial statements, balances or disclosures from the financial statements; or the misapplication of financial reporting standards.
- **Other Indicators** include Delay in finalization of accounts; Frequent changes in accounting policies; Continuing losses; Over drawl of loans and advances; Higher cost per unit of production; High amount of losses or wastage shown in books; High investment in group companies; Profit not supported by increased cash availability. Insider trading practices

## UNDERSTANDING CORPORATE FRAUD WITH THE HELP OF SOME RECENT CASES

### 1. YES Bank Crisis

YES Bank was once the country's fifth-largest private lender by market capitalization. YES Bank was founded by Rana Kapoor and Ashok Kapoor in 2004. Fraud led to the unexpected and sudden fall of YES Bank which was emerging as a good competition to other private banks. The bank had a differentiated business model, with focus on technology, branches network, retail loans etc. and was ranked number 1 bank in the Business Today-KPMG Best Banks Annual Survey 2008.

#### What has led to a crisis at YES Bank?

Promoter of the bank, Rana Kapoor had, over a short period of time, built an overwhelming image in the industry and had developed contacts with top industrialists of the country. Most of the decision making on key matters including large loans was centralised in his hands. He had the ambition to make YES Bank the largest private bank of the country. It was this ambition which perhaps led to the sharp downfall in fortunes of the bank, steeper than its rise to an eminent position in the banking industry.

The bank's loan book on March 31, 2014, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2019. While deposit growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Yes bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risky businesses and facing some challenges in their business like the Anil Ambani-led Reliance group, DHFL and IL&FS. All this happened in Rana Kapoor's tenure. The exposure of loans to such bad performing companies was huge in Yes Bank's case, and to add up they were hiding the NPAs or misreporting the same. After the above fiasco, Ravneet Gill took charge of Yes Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Uttam Prakash Agarwal, resigned from the board in January 2020 citing governance issues.

### Several reasons behind the crisis of YES bank were:

- a. **NPAs:** YES Bank ran into trouble following the central bank's asset quality reviews in 2017 and 2018, which led to a sharp increase in its impaired loans ratio and uncovered significant governance lapses that led to a complete change of management. The bank subsequently struggled to address its capitalisation issues. YES Bank suffered a dramatic doubling in its gross NPAs between April and September 2019 to Rs 17,134 crore.
- b. **NBFC crisis:** The crisis in India's shadow-banking space started with the unravelling of Infrastructure Leasing & Financial Services (IL&FS) and then extended to Dewan Housing Finance Limited (DHFL). YES Bank's total exposure to IL&FS and DHFL was 11.5 per cent as of September 2019. In April 2019, the bank had classified about Rs 10,000 crore of its exposures, representing 4.1 per cent of its total loans under watch list, as potential non-performing loans over the next 12 months.
- c. **Governance issue:** YES Bank faced several governance issues that led to its decline. On January 10, independent director Uttam Prakash Agarwal quit citing deteriorating corporate governance standards and compliance failure at the lender. In 2018-19, the bank under-reported NPAs to the tune of Rs 3,277 crore, prompting RBI to dispatch R Gandhi, one of its former deputy governors, to the board of the bank. Rana Kapoor, who was instrumental in building YES Bank from scratch, was asked to step down as chief executive in January 2019.
- d. **Excessive withdrawals:** YES Bank's financial condition dissuaded many depositors from keeping funds in the bank over a longer term. The bank showed a steady withdrawal of deposits, which burdened its balance sheet and added to its woes. The bank had a deposit book of Rs 2.09 trillion at the end of September 2019.

### Steps taken by RBI against YES Bank

- i. RBI has taken over the YES Bank management
- ii. The central has imposed a moratorium on the lender
- iii. RBI announced a draft 'Scheme of Reconstruction' that entails SBI investing capital to acquire a 49% stake in the restructured private lender.

## 2. Punjab National Bank Case

Punjab National Bank is one of the largest public sector banks in India. The scam of Rs. 11,300 crores in the Punjab National Bank scam has come into the limelight. The PNB scam and irregularities, forgery commenced in the year 2011 and continued for six long years with the knowledge of a few banking officials of PNB. It is a case where Letter of Undertaking (LOU) from Punjab National Bank was taken by Nirav Modi without having a sanctioned credit limit or collaterals. The dispute mainly started due to illegal LOUs issued to Nirav Modi by few PNB banking officials.

The chronological dates on which the events and transaction concerning the scam took place is briefed as under:

- Punjab National Bank filed an FIR against Nirav Modi, Mehul Chowskhi and other charged with criminal conspiracy and cheating amounting to the tune Rs 11,300 Crores
- Central Bureau of Investigation (CBI) was handed over the investigation into the matter
- The Enforcement Directorate (ED) had registered a money laundering case against Nirav Modi and others under the provisions of PMLA based on the FIR registered by CBI under Sections 120-B r/w 420 of IPC, 1860 read with Section 13(2) read with 13(1)(d) of PC Act, 1988
- The Enforcement Directorate seized some movable assets like diamond, gold and jewellery worth Rs. 56.74 billion from the house of Nirav Modi and his office CBI after an investigation into the matter arrested two employees of Punjab National Bank and detained one representation of Nirav Modi Group. Simultaneously, Government of India suspended passport of Nirav Modi and Mehul Choskwi for the involvement in the PNB Scam.
- Subsequently, the Central Bureau of Investigation arrested the Chief Financial Officer (CFO) and two Senior Executives of Nirav Modi firm. It also sealed the Nirav Modi farmhouse at Alibaug, Mumbai.
- CBI seized nine luxurious cars which belong to Nirav Modi and his firm which worth crores of money.
- The Magistrate Court issued first bailable arrest warrant against Nirav Modi and Mehul Chowski. Enforcement Directorate on the same day filed a petition before the Special Court, Mumbai for seeking issuance of a non- bailable warrant (NBW) against the diamantaire – Nirav Modi and his firm.
- Enforcement Directorate moves before the Special Court to issue extradition proceeding against Nirav Modi.
- Government of India sent a letter requesting the UK authorities to initiate extradition proceeding against Nirav Modi.
- CBI officials requested Interpol Manchester to detain Nirav Modi about Nirav Modi presence in the country.
- UK authorities confirm the presence of the accused – Nirav Modi in the country.
- In a British newspaper named as UK Daily Telegraph which published a report on Nirav Modi presence and roaming in London streets. After knowing the incident Enforcement Directorate requested the Government of UK to take further action on the extradition proceeding of Nirav Modi in the UK court.
- Government of UK took action on the request of the Government of India and the Westminster Court, London issued an arrest warrant against Nirav Modi Nirav Modi was arrested in London by Scotland Yard Officers and produced before the Westminster Court. He applied for which was rejected by the Court. The accused Nirav Modi was sent to Her Majesty's Prison (HMP), Wandsworth till 29th March, 2019

- The Westminster Court rejected the bail petition of the accused /fugitive offender – Nirav Modi on the ground that he may not appear before the Court on the fixed dates for further hearing of the matter.( 29th March ,2019)
- After the plea made by Enforcement Directorate, Nirav Modi has been declared as Fugitive Offender by the Mumbai Court under the Fugitive Offender Act ,2018. Nirav Modi is currently in Wandsworth Prison in London, from where he is fighting for extradition charges.

### **Action taken by RBI after detection of PNB Fraud**

- Reserve Bank of India discontinued the practice of LOUs/ FLCs for trade credits for imports into India.
- RBI also ordered all the banks to reconcile transactions in Nostro accounts on a real-time basis so that unrecorded and illegal transactions can be identified immediately.

### **3. Infrastructure Leasing & Financial Services Limited (IL&FS) Case**

- IL&FS is a systemically important Core Investment Company with the Reserve Bank of India and is engaged in the business of giving loans and advances to its group companies (and holding an investment in such companies). IL&FS has a large number of group companies across various sectors such as Energy, Transportation, Financial Services.
- IL&FS Group, which had approximately over Rs. 91,000 crores in debt, was facing a severe liquidity crisis. Between July 2018 and September 2018, two of the subsidiaries of IL&FS Group reported having trouble in paying back loans and inter- corporate deposits to banks/lenders.
- In July 2018, the road arm of IL&FS was facing difficulty in making repayments due on its bonds. Further, in early September 2018, one of the subsidiaries of IL&FS Group was unable to repay a short-term loan of Rs. 1,000 crore taken from Small Industries Development Bank of India (SIDBI). Also, certain group companies defaulted in repayments of various short and long-term deposits, inter-corporate deposits, and commercial papers.
- IL&FS failed continuously to service its debt and the imminent possibility of a contagion effect in the financial market led the Central Government to move an application under Sections 241 and 242 of the Companies Act, 2013 before the NCLT (National Company law Tribunal). Section 241 deals with the cases of mismanagement and oppression by company's management.
- The NCLT suspended IL&FS board members and management and restrained the suspended members from alienating their personal assets.
- In view of the prima facie findings of ICAI and the SFIO interim report dated November 30, 2018, the Central Government filed a petition before the NCLT, Mumbai Bench under Section 130 of the Companies Act, seeking re-opening of the books of account of IL&FS and its group companies for the past five financial years. The NCLT vide its judgment dated January 1, 2019, allowed the petition of the Central Government.

- Upon an application filed by PTC India Financial Services Ltd, the NCLAT has, without going into the rival contention of the parties, made it clear that due to non-payment of dues by IL&FS or its entities including the ‘Amber Companies’, no financial institution will declare the accounts of IL&FS or its entities as Non-Performing Assets (NPA) without its prior permission.
- By its order dated May 2, 2019, NCLAT allowed the banks to declare as non-performing assets the accounts of IL&FS and its group companies that have defaulted on payments. However, the tribunal clarified that the banks cannot initiate the recovery process and debit money.
- On May 30, 2019 SFIO submitted a chargesheet against 30 parties, including two auditor firms, for concealing information by not flagging the alleged criminal conspiracy and misreporting the financial statements of the IL&FS firms.
- MCA moved against the auditors, Deloitte Haskins and Sells as well as BSR and Associates LLP and their former auditors, under Section 140(5) of the Companies Act, for their role in “perpetuating the fraud” at IFIN, a subsidiary of IL&FS. The Ministry sought debarment of these audit firms and their audit partners. It also sought interim attachment of their properties, including bank accounts and lockers.
- On June 4, the Supreme Court allowed the SFIO to reopen and recast accounts of IL&FS and two of its subsidiary companies for the last five years. The MCA had approached the Supreme Court seeking a vacation of the stay imposed by the Supreme Court through its order passed on April 29.

### **Reasons for Failure**

- IL&FS hadn’t disclosed bad loans on its books for years despite a big part of its loan book having soured.
- As it was the shadow bank or NBFC, "Unscrupulous, negligent and dormant management decisions were the main root cause of failure.
- Poor fund management and controls as IL&FS lent funds to insolvent entities and troubled projects.
- “Deficient audit” by the auditors as they failed to issue warnings.
- The auditors did not highlight the Reserve Bank of India’s (RBI’s) inspection report, which had labelled IFIN as over-leveraged, besides failing to report negative cash flows and adverse key financial ratios.
- RBI or any other entity did not strictly regulated NBFCs. The IL&FS crisis has raised concerns over the management of such entities.

### **Steps taken by RBI**

- RBI is constantly monitoring NBFC’s to prevent systemic shocks.
- RBI is monitoring top 50 NBFCs more closely. These 50 NBFCs represent 75% of the sector.
- Wherever necessary, RBI is making deep dive into their books, their balance sheet and other numbers.

- RBI has allowed bank lending to registered NBFCs for on-lending to agriculture.

#### 4. DHFL Case

Dewan Housing Finance Corporation Limited (DHFL) is a leading housing finance company, headquartered in Mumbai with branches in major cities across India. Mr. Rajesh Kumar Wadhawan is the Founder of DHFL.

- DHFL has sanctioned and paid funds in unsecured and dubious loans.
- Loan amounting to thousands of crores of rupees were given to newly incorporated shell companies.
- The said loans were provided without any security or collateral and the proceeds were utilized by for private asset creation.
- DHFL has not adequately disclosed the terms of loan and repayment in the financial statements. They also ensured that most of the shell companies have hidden the name of the lender i.e. DHFL.
- Approximately 6 lacs dummy accounts were established at one branch, using the names of borrowers who had already repaid their loans. These accounts were used to issue loans to promoter firms, which were then used to syphon funds. These loans turned out to be non-recoverable in the end.
- The act of DHFL ensured that the recovery of such dubious loans would be impossible since the companies or their directors themselves do not own any assets.
- The promoters and their associates used these dubious loans to acquire personal assets which were completely ring-fenced from the recovery process since the companies or their directors themselves do not own any of these assets.
- Due to poor Corporate Governance concerns, the Reserve Bank of India (RBI) superseded the board of debt-laden DHFL.
- RBI has initiated the process of resolution of the Company under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Finance Service providers and Application to Adjudicating Authority rules, 2019).

#### Reasons for failure:

- DHFL case is absolute failure of Corporate Governance.
- The act of promoters in diversion of loan amounts to shell company without scrutiny or security shows a complete deviation from the corporate governance policies.

### ROLE OF GOVERNMENT AGENCIES IN COMBATting CORPORATE FRAUD

Many scams were unearthed during past few years and the enforcement agencies have now become alert and proactive in monitoring instances of Corporate Fraud. To monitor various frauds, a number of anti-corruption legislations have been enacted in India which includes Prevention of Corruption Act 1988 (PCA); The Benami Transactions (Prohibition) Act 1988 (amended in August 2016), Prevention of Money Laundering Act 2002, Lokpal and Lok



Ayukta Act 2013, Foreign Contribution Regulation Act 2010 (FCRA) (amended in 2016), The Black Money (Undisclosed) Foreign Income and Assets and Imposition of Tax Act 2015, Companies Act, 2013, Right to Information Act 2005 (RTI), Indian Penal Code 1860 (IPC), various Regulations framed by SEBI to curb malpractices in the securities market etc.

### 1. **Fugitive Economic Offenders Act, 2018**

Over the past few years, India has seen a rise in the number of banking frauds. The reason behind the fraud can be attributed to various factors such as negligence of the authorities, absence of due diligence while giving out loans as well as rampant corruption among the hierarchy of the employees of the banks. There have been several instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or sometimes during the pendency of such proceedings. The absence of such offenders from Indian courts has several deleterious consequences, such as, it obstructs investigation in criminal cases, it wastes precious time of courts and it undermines the rule of law in India. Further, most of such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are inadequate to deal with the severity of the problem.

In order to address the said problem and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, Parliament enacted a legislation, namely, the Fugitive Economic Offenders Act, 2018 to ensure that fugitive economic offenders return to India to face the action in accordance with law. The said Act will also facilitate the functioning of the Prevention of Money Laundering Act, 2002. The proceedings commenced under the former will come to an end as soon as the economic offender submits himself before the jurisdiction of the Indian Courts. Thus, this is an act, to bring back the economic offenders to the country. The act facilitates the recovery of dues from these economic offenders by empowering the investigative agencies to confiscate and sell the properties. It has come as a ray of hope for the banks and financial institutions who are primary victims of such offences.

As per the act fugitive **economic offender** is a person against whom a warrant for arrest had been issued for any scheduled offense, which is above the value of 100 Crores, and such a person had left India so as to avoid criminal prosecution.

**Scheduled offense** under the act primarily includes offenses listed under various Indian statutes (IPC, Negotiable Instrument Act, Prohibition of Benami Property transaction Act, Prevention of corruption Act, Companies Act, SEBI Act etc.) provided the value of the offense must be over 100 Crore. In total this act lists out 55 offenses which includes counterfeiting currency and government stamps, dishonoring of cheques, benami property, tax evasion, money laundering, insider trading etc.

#### **Economic offenders and relevant case laws**

##### **Vijay Vittal Mallya is an Indian businessman and a former Member of Parliament.**

He was once known as 'the king of good times' before he got into the controversies starting right from 2012 when his giant airline company closed down due to insolvency and subsequently failure to pay the salaries of its employees. By March 2016, the Consortium of banks approached the SC to holdout against him from going abroad by the

time, he left India. He became the first fugitive economic offender under the new FEO Act, 2018

## 2. **Serious Fraud Investigation Office (SFIO)**

Section 211 of the Companies Act, 2013, empowers the Central Government to establish an office called Serious Fraud Investigation Office (SFIO) to investigate frauds relating to companies. No other investigating agency shall proceed with investigation in a case in respect of any offence under the Act, once the case has been assigned to SFIO. The SFIO has power to arrest individuals if it has reason to believe that he is guilty based on the material in possession. SFIO shall submit a report to the Central Government on conclusion of investigation. Central Government may direct SFIO to initiate prosecution against the company. SFIO shall share information they possess regarding a case being investigated by the latter and vice versa.

Auditors shall report material fraud to the Central Government within 30 days. Immaterial fraud shall be reported to the board or the auditor of the company. Audit committee is required to monitor that every listed company shall establish a vigilance mechanism for directors and employees to report genuine concerns. The vigilance mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism. It shall make provision for direct access to the Chairperson of the Audit Committee in appropriate cases.

Independent directors shall report concerns about actual or suspected fraud. They must also ascertain and ensure that the company has an adequate and functional vigilance mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use.

## 3. **Role of Securities and Exchange Board of India in curbing Insider Trading Practices**

SEBI's insider trading probe revolves around Unpublished Price Sensitive Information (UPSI) and its possession by entities that have traded in the stock and their linkages. Insider trading erodes investor confidence, and affects market integrity. To address these concerns, SEBI has taken several initiatives to curb the insider trading practices and to build the confidence of the investors who are investing in the Indian market. Insider Trading Regulations, 2015 is much appreciated as it deals with a wide range of problems related to Insider Trading and also has severely reduced loopholes.

When it comes to detection of insider trading cases, in the two years including the financial year (FY) 2018-19 and 2019-20, SEBI detected 119 cases of insider trading, which is higher than the number of cases detected by SEBI in any of the previous years since its inception. The highest number of insider trading cases which SEBI detected was 34 in 2016-17, which has jumped to 70 in 2018-19 and 49 in 2019-20. Trends in investigations by SEBI suggest that share price rigging has gone down and is at its lowest in nearly a decade. However, insider trading is on the rise. Among others, detection of Insider trading in Aptech; Kishore Biyani of Futures Group; Sun Pharma board members; and Spice Jet etc. are a few examples which were taken up by the SEBI aggressively in its clean-up drive.

## ROLE OF GOVERNANCE PROFESSIONALS IN UNEARTHING CORPORATE FRAUDS

### 1. Role of Independent Director and Audit Committee

The corporate governance norms have been strengthened by the new Companies Act, 2013 and the regulations of the Securities Exchange Board of India (SEBI) for listed companies where key emphasis is given to the frauds by recognizing it as a key risk and has placed the accountability of the effective risk management on the Board of directors and the senior management. In the case of listed entities, there is additional fencing by 'Audit Committee' where independent directors on the board of directors to have necessary checks and take pro-active measures of risk mitigation.

The provisions of the Companies Act, 2013 require companies to have proactive fraud risk management policies. The Act requires independent directors to increase safeguards against fraud and reminds them of their whistleblowing responsibilities. Objections must be documented, and now that the Act defines fraud and safeguards explicitly, ignorance of the parameters of either will no longer be a defense.

The Satyam case has brought out the failure of the corporate governance structure that hinges on the Independent Directors, who are supposed to bring objectivity to the oversight function of the board and improve its effectiveness. An Independent Director is a Non-Executive Director who does not have a material or pecuniary relationship with company, except sitting fees, but is one who is enriched with appropriate balance of skill, experience, independence and knowledge of the corporate and assigned with the task to monitor and guide the Board in risk management, thereby improving corporate credibility and accountability and also play a significant role by acting as a watchdog in various committees constituted by the company to ensure good Corporate Governance and enhancing the corporate or company image in the business world.

*Duties of independent director for prevention of fraud*

#### **Independent Director should:**

1. Ascertain and ensure that the company has an adequate and functional vigil mechanism and the interests of a person who uses such mechanism are not affected on account of such use;
2. Report about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
3. Act within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
4. Not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

### 2. Role of Forensic Audit in Unearthing frauds

Forensic Audit is an examination and evaluation of a firm's or individual's financial information for use as evidence in court. A Forensic Audit can be conducted in order to prosecute a party for fraud, embezzlement or other financial claims. Forensic auditing has taken an important role in both private and public organizations since the dawn of the 21st century especially in the advance economies. The catastrophe of some formerly prominent public companies such as Enron and WorldCom (MCI Inc.) and the recent incidence of frauds taken place in the corporates including PNB, IL&FS etc. have fueled

the importance of forensic auditing for ensuring the directed growth of the corporates and inclusive growth of economy. Forensic auditing procedures target mostly financial and operational fraud, discovery of hidden assets, and adherence to central regulations.

Forensic audit an apt tool in the contemporary times, ensuring financial health of the companies through aiding in the Prevention, Regulation and Penalization of financial frauds and scams. It is becoming increasingly frequent for top leadership searches as stringent corporate governance norms and increasing stakes are prompting Indian and multinational companies to make sure that the people they take on board have no blotches on their track record. This realizes the significance of Forensic Audit in the contemporary time for the corporates to rationalize premier principles of Good Governance.

### **3. Whistleblowing mechanism**

The term 'whistleblowing' is used when a person, mostly an insider of an organization like an employee or consultant, makes a disclosure or passing of information of illegal activity or suspected wrongdoing, frauds, etc. in order to bring the attention of those who are in charge to investigate and resolve the same.

A strong whistleblower policy should be in place to protect the whistleblowers and to maintain the confidentiality of information. Adopting a dedicated hotline for whistleblowers which the employees can use to report any kind of probable wrongdoing or instances of fraud. Many companies today have integrated a whistleblower hotline with their fraud risk management strategy.

### **4. Risk Management Committee**

Risk Management Committee is the committee formed by board of directors to oversee the risk management policy and global risk management framework of the business.

Risk Management Committee will assist the Board of Directors in fulfilling its oversight responsibilities with regard to the risk appetite of the Corporation, the Corporation's risk management and compliance framework, and the governance structure that supports it.

### **5. Fraud Monitoring Committee**

Although the fraud related aspects may be taken care of by the Audit Committee, but in some companies which are in field of financial services, there may be need of the separate fraud monitoring committee, which may take care of the checks and balances and preventive measures in order to discourage the employees in their modus operandi.

### **6. Formal policy for fraud prevention**

Every organisation has to put in place a policy that will define how the philosophy of the organisation in dealing with corporate frauds. The policy will also act as the base document for all the organisational training programs for the employees and where one will look for what to do in a given situation. It is a comprehensive document that defines fraud, the measures for detection and prevention of fraud, and how it will be dealt with by the organisation.

### **7. Internal control system**

The internal controls in an organisation attempt to detect any kind of wrongdoings, detect errors and frauds, and to safeguard the organisation's resources. These controls

should be dynamic which evolves and adapt to the changes in the business in order to respond effectively to fraud management.

A comprehensive review of risks has to be made by the management in order to strengthen the internal control systems. Though most organisations have an internal audit of control mechanisms, but an independent audit should be conducted on a periodic basis which gives a true and unbiased opinion on the existing internal control mechanism which will prevent any potential chances of fraud.

## CONCLUSION

Corporate Frauds have increased considerably over the last ten years. The cost to business and the public can only be estimated, as many crimes go unreported. It is truly said that 'Necessity is the mother of Invention'. Increasing number of corporate frauds has alarmed the Government to follow strict implementation of laws, proper investigation procedure and effective role of investigating agencies. Apart from the role of government and investigating agencies, a concerted effort must be exerted by the management, the external auditors, and by all employees of the organization in order to combat the corporate fraud. The role of professionals is also equally important. The duty of the auditor either Financial Auditor or Secretarial Auditor is to provide a true and fair picture of the company and detect the default and fraud in the company.

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