Corporate Governance in the Indian Public Sector

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Hon'ble Justice Lalit, Lt. Gen. Nath, Mr. Munjal, Mr. Sethi, Ladies and Gentlemen

We had an outstanding presentation from **Mr. Jayant Sinha** on a broad challenge, the planetary challenge of climate change, and where corporations fit in with that challenge. We had two other presentations from **Mr. Sethi** and **Mr. Munjal**, born out of experience, with the challenges of the future boards of managing risks, managing diversity, and being a link between community and society.

I would just briefly touch upon these corporate governance challenges in the special context of Public Sector Enterprises. Just to give you a little bit of an idea about what the canvas is that I am trying to touch upon, we have 389 Central Public Sector Enterprises (CPSE's), which includes 162 parent CPSE's, and they have a revenue of about 32 lakh crores. This includes 57 listed companies whose market cap is now touching about 20 lakh crores. The annual dividend from these CPSEs is in the range of 50,000–60,000 crores. I'm not talking of banks and insurance companies; if we count them, there will be another 15 listed entities with a market cap of 15 lakh crores and an additional profit of about 1.5 lakh crores. These CPSEs account for a profit of about INR 2.5 crore annually.

With a view to widening public ownership, because CPSEs were initially government entities, i.e., 100% owned by the government, a number of them have been listed. We have 57 listed since 2014-15 itself; we have listed 17 CPSE's, which includes LIC, which is one of the largest financial institutions; and an additional market cap of about 7.3 lakh crores has been added. Why have we listed it? I think listing itself adds a whole lot to corporate governance because listed enterprises have been known to be much more transparent and efficient. They also look at minority shareholders, and their accountability increases manifold as compared to unlisted ones. So this is one of the reforms that the government has been persisting with, and we have been successful in listing several enterprises.

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The corporate governance framework is, to some extent, uniform with the rules and regulations of the Companies Act,

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2013 for companies and organisations. If you are listed, you are guided by the SEBI rules as well as the competition laws. But for public sector enterprises (PSEs), there are special rules and additional oversight. This is what is called 'DPE Guidelines' or the Department of Public Enterprises Guidelines'. There are MoUs, i.e., Memorandums of Understanding; there are sanctions and incentives linked to the performance of corporate governance; there is transparency in procurement through what is called a very major portal called GeM, i.e., Government e-Procurement portals; there are rules around minimum levels of procurement for MSMEs, including those from weaker sections; there are CAG audits; there are CBC norms; there are RTIs, and so on. This is an additional framework that is over and above what other private enterprises go through. In order to protect the interests of minority shareholders, the government has issued capital management guidelines, which include a consistent dividend policy, buybacks, bonus shares, splitting of shares, optimum capital structures, and so on. We have also deliberated our disinvestment strategies so that repeated share sales are not resorted to, which will actually add to the price over time. Then there are, of course, performance-based incentives under the MoUs. The reason I am saying so is because these are things that are pretty unique to CPSE's, and of course, they also throw some other challenges.

If you look at the market performance of some of the listed CPSEs over the last three years, you will be amazed to know that their market valuations have risen much more than those of other general nifty. For example, if you take nifty-50 and compare NSC-CPSE, which is an index specifically for CPSEs, if you take three years while there was a 75% increase for nifty-50, it was 145% for the CPSE Index; for two years, as against 21%, the CPSE index rose by 70%. If you take one year as against a 12% rise in the nifty-50, the CPSE nifty rose by 33%. So I think the market is also noticing the emphasis of the government not only on performance management but also on the great value that we place on the protection of minority shareholders and creating value for everyone, not just the government.

Now let me come to some of the challenges that CPSEs face. I think there are challenges that are common. But we have to note that the boards need to balance conformance with performance aspects as well. So conformance is only one part of it, and we have several regulations that need to be complied with. Now if you say that we have appointments with the board that also presents a unique challenge. Now, in government CPSEs, there are bodies that actually appoint, because these are government control companies, so therefore there is greater rigour in terms of recruitment to the board. That also presents some challenges because there are compensation issues, issues around long-term value, the ESOPs, and several other things that are not yet there. So bringing in that talent is itself a challenge. Then, another challenge is bringing in the correct non-executive directors with the correct attitudes, qualifications, vision, diversity, quality, women directors, and so on. So there is an appointment issue on which we need to focus. In the government, we can't have a CEO serve for 10 years. A CEO will have a tenure of three years and so on; these are some of the things institutionally that are slightly different.

Then there is also an issue of autonomy and accountability for the board. We may sometimes have too much oversight. Sometimes there is too much oversight, and there is a question of whether it impinges on the autonomy of the boards, so we have to constantly maintain a balance in operational and financial autonomy. As far as I know, our oversight is far broader and, to some extent, good because the questions of fraud and malfeasance are much less in the government companies because they are detected, there is a CAG audit, etc. So therefore, this is something that is again a specific challenge for the CPSEs.

Now the boards have to also look at geopolitics because the supply chains have fragmented. We have the big challenge of ESG and responsible artificial intelligence, and, of course, the whole task of sustainability.

You would be aware that some of our energy companies have actually been at the forefront of bringing in 'decarbonisation technologies' and are also investing in renewables. NTPC, for example, has actually brought in many renewable assets under a special subsidiary, which is going to be listed, and huge investments have been planned in solar energy and other energy types. The same is true with SJVN, NHPC, and several other companies that bring in specific vehicles for renewable energy, hydrogen, and so on.

Now we also have the problem of designing the right incentive system to really retain talent. The boards of the CPSEs need to really concentrate on risk management rather than the nitty-gritty, and leave the rest to operational management. But 'risk management' is something that the future boards of the CPSEs must also take care.

So I tried to slightly give a little bit of flavour to you all on the specific task of public sector corporate governance in India and the way we are addressing it. ■

Thank you.

Excerpts from the* *'Keynote Address'*** *delivered by* ***Mr. Tuhin Kanta Pandey, IAS****, Secretary, Department of Investment and Public Asset Management (DIPAM), Ministry of Finance, Govt. of India at the 'Opening Session' of IOD's Annual Directors' Conclave held on August 10, 2023, in New Delhi.*