

CORPORATE GOVERNANCE ISSUES AT BHARATPE

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INTRODUCTION

Ashneer Grover, former Managing Director (MD) and Co-founder of BharatPe got shown the door recently due to the events which unfolded in the first half of 2022. All of this began with a leaked audio tape in which a man identified as Ashneer Grover was heard harassing and threatening a Kotak Mahindra employee, prompting him to be placed on leave.

However, this was only the beginning, as his wife, Madhuri Jain Grover, the business's Head of Controls, was fired a week later after the company hired Alvarez and Marsal and PwC to undertake an independent audit. According to a preliminary assessment completed by the former, Ashneer Grover's company was at the centre of multiple corporate crimes, primarily owing to misuse of assets, where company funds were utilised for personal purposes and money was funnelled through fictitious HR departments which were linked to each other and also to Madhuri Jain's brother Shwetank Jain. The report also found that BharatPe inflated certain transaction values in addition to some of these vendors being a fiction of imagination.

In addition to these corporate governance lapses, through this paper we also intend to pursue the duties of a director being violated under The Companies Act, 2013. Furthermore, we also seek to elaborate on the agency problems which were violated when these frauds were committed.

When the personal agenda of the stockholder, in this case who is also the MD and Co-founder of the organization, is in contrast to the agenda of other groups, then agency problems are likely to occur. In the current scenario two types of agency problems could be identified, one is the problem wherein there is a conflict between the Stockholders and Management and the other one being where the Stockholders are at conflict with other Stakeholders mainly the creditors. The paper will also cover certain legal strategies which the authors feel would help in mitigating these agency problems. The reason behind this research, however is due to the fact that such fraud or scandal is not a first of its kind and have occurred a few times before as well. To name a few, would be the Tata-Mistry fallout, ICICI Bank - Videocon Bribery Case, the Satyam scandal and many more. Despite having faced these lapses the question that arises is that why the Indian Laws mainly the Companies Act, 2013 and the SEBI regulations have not been amended accordingly to prevent such mishaps. Coming to the case at hand, it is also worth noting that when companies are managed by an individual shareholder, with the power to perform actions to his own vested interests, they are likely to abuse the corporate governance rules which could result in mismanagement of the company and drive the stakeholders and the stockholders into a grave.

For an easier understanding, an effort has been made to divide the research paper into 3 parts, firstly the paper will talk about the scenario at hand and discuss the violation of corporate governance rules which landed the responsible people into trouble, while also mentioning that such a scenario is not a new one in our country. Secondly, the paper will further cover the agency problems which the behaviour of the promoter, i.e., Ashneer Grover has brought about. Lastly, the paper will be concluded suggesting the different methods in which the company can protect itself from abuse by its promoters and prevent such mishaps.

PART- I

BharatPe is a Fintech and digital payments application that provides small businesses with a variety of fintech solutions as well as the ability to accept digital payments. Ashneer Grover who was the company's Co-Founder and MD, has prior experience in investment banking and helped BharatPe raise more than \$600 million in equity funding from top funds such as Sequoia Capital India, Coatue Management, Insight Partners, Dragoneer Investment Group, Steadfast Capital, and Tiger Global within four years of its launch. It also intends to acquire the Punjab and Maharashtra Cooperative Bank and reopen a small financing bank.¹ After missing out on the IPO allotment for Nykaa's initial public offering despite being promised one, Ashneer Grover was accused of yelling nasty words at a Kotak Mahindra bank staffer in an audio clip that went viral. Grover, as the company's face, decided to take a voluntary departure, which was followed by his wife, as a result of the dispute involving a person of such high profile. To show that no wrong has been committed, the company voluntarily hired Alvarez and Marsal to conduct an independent audit, which is an examination of the financial records, accounts, business transactions, accounting practices, and internal controls of a company. A preliminary report released by the auditor revealed that the company was involved in a series of corporate frauds revolving mainly around *misappropriation of assets*. According to Kassem, asset misappropriation is an act of stealing a company's asset, or misuses a company's resources for personal use and gaining benefit from the expense of the company.² It is a type of theft

¹ Bharatpe: Ashneer Grover and the BHARATPE Tussle explained - Times of India, THE TIMES OF INDIA (2022), <https://timesofindia.indiatimes.com/business/india-business/ashneer-grover-and-the-bharatpe-tussle-explained/articleshow/89425048.cms> (last visited Apr 7, 2022).

² Rasha Kassem, *Detecting asset misappropriation: A framework for external auditors*, 10 INTERNATIONAL JOURNAL OF ACCOUNTING, AUDITING AND PERFORMANCE EVALUATION 1–42 (2014).

which is mainly perpetrated by employees of the organization. However, it can be also be done by the management, as is the case at BharatPe, who is typically more capable and in a better position for concealing or disguising misappropriations in difficult-to-detect methods. The offender would usually fabricate fraudulent or misleading records or documents in order to conceal the crime of asset theft.³

As quoted by Priyanka Iyer and Priyanka Shah at Money Control, “the initial report by Alvarez and Marsal revealed that “BharatPe claims to pay recruitment fees to hiring consultants for the employees they recruit for the company. However, the said employees have revealed that they had no interaction with any consultants in the process and have no knowledge of their existence. In three instances of payments made to these consultants, the report finds that Madhuri Jain Grover, herself received invoices for payments and forwarded them to the accounts team. The vendors who received payments as recruitment expenses do not have any web pages or portals and the invoices provided by them to have similarities. The report clearly pointed out that all of the vendors, except one, have a Panipat connection. It was also mentioned that Madhuri Grover is originally from Panipat, thus showing a clear link between the fraud and Grover’s family members.”⁴ Not only that, but also as per the report, on October 21, 2021, the Directorate General of GST Intelligence (DGGI) launched a search operation at BharatPe's headquarters in which the investigation by DGGI revealed that some vendors with whom the company was dealing never existed and that a total of Rs 53.25 crore was spent on these 30 non-existent vendors. Furthermore, the company lost Rs 10.97 crore as a result of these dealings.⁵ It was also revealed that Madhuri Jain’s services were terminated over an alleged misappropriation of funds wherein company funds were being used to purchase beauty products and pay for family trips to the US and Dubai. The stock options vested with her were also cancelled in line with the employment contract.⁶ It is abundantly

³ACFE, *Report to the nation on occupational fraud and abuse.*, ASSOCIATION OF CERTIFIED FRAUD EXAMINERS (2010).

⁴ PRIYANKA IYER & PRIYANKA SAHAY, BHARATPE GOVERNANCE REVIEW: HERE ARE THE KEY TAKEAWAYS FROM ALVAREZ AND MARSAL'S PRELIMINARY REPORT MONEYCONTROL (2022), <https://www.moneycontrol.com/news/business/startup/bharatpe-governance-review-here-are-the-key-takeaways-from-the-preliminary-report-of-alvarez-and-marsal-8040581.html> (last visited Apr 7, 2022).

⁵ Ibid

⁶Soumyarendra Barik, BHARATPE SACKS ASHNEER GROVER'S WIFE MADHURI JAIN, CLOUD OVER USE OF FUNDS THE INDIAN EXPRESS (2022), <https://indianexpress.com/article/business/companies/bharatpe-sacks-ashneer-grover-wife-madhuri-jain-cancels-esops-7787303/> (last visited Apr 7, 2022).

clear from the preliminary results that members of the Grover family misused their advantageous position in the company to commit a series of frauds and thus be in complete violation of corporate governance rules.

DUTIES AND LIABILITIES OF DIRECTORS:

The above fraudulent activities clearly show us that the former MD was in complete violation of the duties of directors which were set forth in Section 166 of the Companies Act, 2013.⁷

The duties under this provision are mainly of two types duty of care, skill and diligence; and fiduciary duties. The duty of care, skill, and diligence compels directors to dedicate the appropriate time and attention to the business's activities and leads them to investigate concerns that develop as a result of "red flags," and make choices that do not put the company at needless risks and danger. Fiduciary duties, on the other hand, compel directors to put the company's interests ahead of their own. This set of responsibilities includes rules that avoid conflict of interest and self-dealing on the part of directors.⁸ While the duty of care and skill is immaterial to the current research, the fiduciary duty of directors is not. Being fiduciaries, directors are exposed to liabilities as a consequence of a breach of their duties. While liabilities may arise under various statutes, the focus here is on liabilities arising under company law. It is also worth noting that while the liability of the company cannot be transferred to the directors under ordinary circumstances, however when there is a breach of fiduciary duty directors can be held personally liable for their acts under the Companies Act 2013. While committing such fraudulent acts, Grover has fallen under the scope of Section 2(60) of the Companies Act, 2013⁹, which defines the 'officer who is in default' and mentions the officers such as whole-time director, key managerial personnel, directors, etc. who shall be liable to any penalty or punishment in case of default committed. Now, applying this provision to the present case, we find that the Grover, who was the Managerial Director, will fall under the purview of Key Managerial Director and thus will be liable to face punishment or penalty for his actions. Furthermore, a director has certain statutory duties, upon the breach of which the director can be held liable. While it is known to us that Grover

⁷ Section 166 of The Companies Act, 2013

⁸Varottil, Umakanth and Naujoks, Richa, Corporate Governance in India: Law and Practice (2016). in Linda Spedding (ed.), India: The Business Opportunity (Lucknow: Eastern Book Company, 2016), pp. 289-342, Available at SSRN: <https://ssrn.com/abstract=2951705>

⁹ Section 2(60) of The Companies Act, 2013

was in breach of his fiduciary duties as he acted dishonestly to the interest of the companies, he could have also acted with a mala fide intention. It is a strong possibility that he acted in a mala fide manner and misused his powers and could be held liable for breach of trust and may also be required to make good any loss or damage suffered by the company due to such mala fide acts. He could also be held accountable for any secret profits that he might have made in course of his performance as managing director on behalf of the company.¹⁰ In the case of *P.K. Nedungadi v. Malayalee Bank Ltd.*¹¹ it was held that “where a director misapplies or misappropriates money or properties of the company or has been guilty of breach of trust or misfeasance, the Court may order him to repay the money or restore the property or to pay compensation.” In accordance with this judgement, Grover who was also responsible for misappropriation could also be asked to repay the money he stole or pay compensation. However, this is highly unlikely as this judgement is based on the 1956 version of the Companies Act, which has now been amended several times.

Another former case which triggered us to pursue this research is the Satyam scandal. This was a classic case of negligence of fiduciary duties, total collapse of ethical standards, and a lack of corporate social responsibility on behalf of the board members and also brought to light the importance of “ethics and corporate governance” in the contemporary world. Satyam won the “Golden Peacock Award” for the best governed company in 2007 and in 2009. From being India’s IT “crown jewel” and the country’s “fourth largest” company to becoming India’s most popular corporate governance disaster.¹² According to reports Ramalinga Raju (Chairman and Founder of Satyam) and his brother, B. Rama Raju, who was the Managing Director, “concealed the fraud from the company’s internal board, senior managers, and auditors”. Over the course of several years the corporation committed several frauds from inflated transaction values, fabricated bank accounts and even showing fake income statements. However, the key fraud was one wherein company funds were being diverted to other companies which were owned in a personal capacity by Ramalinga and his family

¹⁰ A. K. MAJUMDAR & G. K. KAPOOR, TAXMANN'S COMPANY LAW AND PRACTICE (2000).

¹¹ *P.K. Nedungadi v. Malayalee Bank Ltd.* AIR 1971 SC 829

¹² T. Ahmad & T. Malawat, *Satyam Scam in the Contemporary Corporate World: A Case Study in Indian Perspective*, IUP JOURNAL 1–48 (2010).

members. In this scenario, Satyam Inc. decided to buy out two real estate sector companies at a valuation of \$1.6 billion, the valuation of which was a matter of extreme concern for the board of directors. The twist herein was that there was a conflict of interest in the transaction as the two companies being taken over were owned by Ramalinga Raju's family. When the frauds broke out in 2009, it was suspected by many that even the company's auditors i.e., PricewaterhouseCoopers (PwC), was also a part of the scam as they could have easily discovered the fraud. Quiet, ironically PwC is currently doing an audit at BharatPe as well, the reports of which are yet to be released. Once, the news about the fraud was in the air, immense stress was given to the corporate governance rules and many critiques demanded a new outlook and to update the rules. The Satyam scam had been the example for following "poor" corporate governance practices. It had failed to show good relation with the shareholders and employees. corporate governance issues at Satyam arose because of non-fulfilment of obligation of the company towards the various stakeholders.¹³ This case was just another example showing the need for stronger corporate governance. Following this instance, legislators quickly realised that the Companies Act of 1956 was ineffective in dealing with such situations. The introduction of Section 188¹⁴, which protects shareholders from abusive transactions by directors, was one of the modifications made in the newly enacted 2013 Act. This new rule offered three separate layers for protection against related party transactions. Firstly, it prohibited related party transactions without the shareholder's consent. If such a scenario was to occur, then a resolution must be passed by the board. Secondly, members of these related organizations are not permitted to vote on the issue at hand. The third and final layer stipulated that the Company's Board of Directors must include in its report given to shareholders, the number of such related party transactions entered into and giving a justification for the same.¹⁵ However, despite such changes being made to the Companies Act and with other new provisions being introduced, certain loopholes still exist due to which the current scenario exists.

¹³ Rajesh Chakrabarti, William Megginson & Pradeep K. Yadav, *Corporate governance in India*, 20 JOURNAL OF APPLIED CORPORATE FINANCE 59–72 (2008).

¹⁴ Section 188 of The Companies Act, 2013

¹⁵ Vanshaj Jain, "WHO WILL WATCH THE WATCHMEN- A STUDY OF THE LAW ON SELF-DEALING TRANSACTIONS BY COMPANY DIRECTORS NLS BUS L REV 49 53 (2016).

RELATED PARTY TRANSACTIONS:

The Companies Act, 2013 nowhere in its sections provide the actual definition of related-party transactions (RPT), but in this case the SEBI LODR [Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015] comes to our aid with the definition about RPT which says that, for the purpose of Regulation 2 (zc) of SEBI LODR. RPT means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract.¹⁶ Now the other and very important question is that what is a related party? Section 188 of the Companies Act does not do justice to the meaning of the term related party, for that cause, we dive into section 2 (76) of the companies act which gives us a 9-point detailed format concerning who the law considers as a related party.

The question would be posed as to why in this scenario the question of RPT is included. Moving to the fact scenario at hand, “Deepak Jagdishram Gupta, who is Madhuri Jain’s brother-in-law, worked as admin head and reported to head of controls Madhuri Jain, who, in turn, reported directly to Co-founder and Managing Director Ashneer Grover. They were allegedly involved in siphoning of funds via creating bogus vouchers and inflated vendor bills.”¹⁷ This was the report published by the Economic Times after PwC had completed their internal independent audit. After this disclosure and the findings that hinted towards the close relative of the head of operations of head being involved with the latter in misappropriation of funds. Deepak Gupta was also sacked by the board after this alleged report came out. Moreover, the Directorate General of GST intelligence (DGGI) had conducted a special search operation at the office of BharatPe on October 1st 2021. Its report when it got published with the media came as a shock to the creditors, as the report stated that RS. 53.25 crores worth of expenditure was made to 30 vendors who did not exist. During these dealings the office of BharatPe had incurred a loss of more than 30%. Reports also included that Madhuri Jain herself approved these bills and invoices and later on forwarded them to the

¹⁶ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

¹⁷ Mansoor, HERE IS HOW CLOSE RELATIVES HELPED GROVER SIPHON OFF BHARATPE FUNDS THE SIASAT DAILY (2022), <https://www.siasat.com/here-is-how-close-relatives-helped-grover-siphon-off-bharatpe-funds-2289528/> (last visited Apr 9, 2022).

finance department. These invoices were drafted by Shwetank Jain, who is her brother. If this had to happen lawfully, either Madhuri Jain or Ashneer Grover should have asked the board to convene a board meeting, after disclosing their vested interest with the related parties under Section 184 of the Companies Act, 2013 later on after convening the board had to pass a resolution after gathering all the relevant information and the fulfilment of the conditions provided under Rule 15 of the Companies (Meetings of Board and its powers) Rules, 2014¹⁸. Since this never happened and the company incurred losses due to an illegal activity committed due to the white flag waved by the directors, the director's integrity was put under the scanner and all the alleged accusations were directed towards them. When the reports were published by the economic times, it revealed that the money siphoned from these RPT's were utilised by the couple to maintain their lavish lifestyle which involved vacationing abroad, highly priced fashion treatments and spending crores of money on condominium in Gurugram. After this the company released a press statement which said that, "As a result of his misdeeds, (Ashneer) Grover is no longer an employee, a founder, or a director of the company".¹⁹

Third-party readers or connoisseurs of Company law may question that why after so many amendments and upgradation of the law the directors are able to pull off stunts like this and cause the company heavy losses. Moreover, it is not like this related party transactions fraud has happened for the first time and the company law world is new to it, this practice has been age-old and has involved even bigger companies with even bigger amounts. One such landmark issue was of the Tata sons which involved a rift between, Ratan Tata and the erstwhile CEO Cyrus Mistry.

A very landmark judgement which came recently on 26th March 2021 by the hon'ble supreme court on the case of **Tata Consultancy Services Ltd. v. Cyrus Investment Pvt. Ltd.** Although this case talks about minority shareholders right, the build-up to this case was extremely similar to the fact scenario at hand. Cyrus Mistry after he was removed from every post from the Tata sons, he made allegations which had proper factual backing and was detrimental for the Tata group. One of the allegations which was that the Tata group's chairman emeritus Ratan Tata signed a joint venture with Jayem Auto where the former was compelled to give the latter additional business proposition and which caused as a value-

¹⁸ Rule 15(3) of The Companies Rules 2014

¹⁹ Ibid 19.

reducing deal for Tata Group. Moreover, Tata group was also bombarded with the alleged accusation of doing more inefficient deals with C. Sivasankaran's group of companies. Their dealings had benefitted the latter with a sum of 1000 crores. "It is pertinent to mention that Tata Sons invoked arbitration against Siva Group as late as 15 June 2017, i.e. 6 months after filing the company petition," according to the affidavit.²⁰

One more case of RPT which involved one of the most decorated and well-established companies was that of Infosys. Infosys was under the radar of SEBI after a whistle blower letter had reached the authorities for an alleged 'hush money' payment to CFO Rajiv Bansal as he held reservations for the acquisition of an Israeli firm, Panaya. Infosys received a show-cause notice for the non-disclosure of vested interest of related parties and if done, SEBI wanted to seek clarification for the due process. Infosys remained under the scanner because of the shareholders not having the proper information about the RPT that happened through the company. The shareholders were pushed down again when the US Securities and Exchange Commission released a report saying that the acquisition's price was way high than it should have been and that clearly hinted that some board members at Infosys had gravely benefitted out of the deal that happened. This made the controversy even more problematic. Following this, the erstwhile CEO Vishal Sikka resigned and this was the detrimental blow to the shareholders. In one trading session, the price of the share fell down by 10%, a day after the resignation and approximately 22,000 crores of net worth was vanished from investor's wealth. Infosys did what was possible and announced a buy-back proposal but that also could not help or support the share price as it again fell by 5% the following day.²¹

These cases tell us about the problems that have been persistent in the system and still after constant amendments to the law and the restrictions on the powers of the directors, there are still a lot of loopholes left to be filled to make the whole system full-proof.

²⁰ Jayshree P. Upadhyay, TATA FIRMS ENTERED INTO RELATED-PARTY DEALS, MISTRY TELLS SC LIVE MINT (2020), <https://www.livemint.com/companies/news/tata-firms-entered-into-related-party-deals-mistry-tells-sc-11592245976780.html> (last visited Apr 9, 2022).

²¹ SEBI issues show-cause notice to Infosys, THE HINDU BUSINESSLINE (2017), <https://www.thehindubusinessline.com/info-tech/sebi-issues-show-cause-notice-to-infosys/article64280948.ece> (last visited Apr 9, 2022).

PART II

AGENCY PROBLEM I:

The dispute between the firm's owners and its hired management is the agency problem that has been recognised here. In this principal-agent conflict, the principles are the owners, and the managers are the agents. The issue herein lies in ensuring that managers are responsive to the interests of the owners rather than their own personal whims and fancies.²² This problem is being identified in the current scenario as Ashneer Grover is the hired manager who was in conflict with the interest of the other shareholders. The majority of the board was also against Ashneer as he failed to align to the shareholder's interests and was driven by his self-interests and in the process, he committed certain fraudulent acts, which have already been explained above. According to the agency view of the corporation, the corporation's decision rights are entrusted to the management to act in the best possible interests of shareholders and other stakeholders. As part of this separation of interests, corporate governance measures include a set of controls intended to assist align manager's interests with those of shareholders and other stakeholders.²³ This separation of interest is one of the key reasons which causes the principal-agent conflict to arise and also may influence the established corporate governance mechanisms. Deviating from the principal's interest leads to some additional costs known as agency costs. These costs are primarily incurred as a result of contracting charges or because individual managers may only have partial influence over corporate behaviour. They can also happen when managers have personal objectives that are not aligned with the purpose of increasing shareholder profit.²⁴ In the present case, while hired manager i.e., Grover did end up resigning from his post of MD and Co-founder, he is still the largest individual shareholder in the company and demands that to get rid of him the company may buy him out

²² Armour, John and Hansmann, Henry and Kraakman, Reinier H., Agency Problems, Legal Strategies, and Enforcement (July 20, 2009). Oxford Legal Studies Research Paper No. 21/2009, Yale Law, Economics & Public Policy Research Paper No. 388, Harvard Law and Economics Research Paper Series No. 644, European Corporate Governance Institute (ECGI) - Law Working Paper No. 135/2009, Available at SSRN: <https://ssrn.com/abstract=1436555>

²³ Boundless, AGENCY AND CONFLICTS OF INTEREST LUMEN, <https://courses.lumenlearning.com/boundless-finance/chapter/agency-and-conflicts-of-interest/> (last visited Apr 8, 2022).

²⁴ Ibid

for the requisite amount of 4000 crores.²⁵ Thus, this could turn out to be rather an expensive agency cost for the company.

In order to prevent such agency costs there are certain legal strategies for reducing or rather controlling the agency costs. One strategy could be to draft out clear and concise articles of association with provisions which address shareholder and manager conflicts, and thus laying down the procedure if the situation ends up in a deadlock or regarding transfer of shares.²⁶ These things, however are easier said than done as no one can predict such conflicts. It is also worth mentioning that the AoA of BharatPe has a provision which states that if a founder terminates his employment without the consent of the board, the company will buy back the shares at lower than the fair market value.²⁷ Another key governance strategy could be that of selecting and removing directors of a company to solve the agency problem. Eliminating the agent will without any doubt will solve the problem and in turn will also set an example for other culprits involved. Another important strategy is to involve the principals in the day-to-day decisions of the management. This parenting method, however cumbersome it may be, will provide an extra step to the principals to ratify the decisions being taken by the management. However, this process is most likely to hinder the decision-making ability of the agent.²⁸

AGENCY PROBLEM III:

Before we delve into the relevance of agency problem iii into the fiasco that happened in BharatPe, let us first understand what and how does this problem so prominent in companies and how it affects the financials of the company. Agency problem iii particularly involves the conflict between the firm, which includes the firm owners against the people the firm contracts with, basically the creditors, employees, and customers. The basic problem that

²⁵ Tarush Bhalla & Digbijay Mishra, BHARATPE LOOKS TO CLAW BACK ASHNEER GROVER'S RESTRICTED SHARES THE ECONOMIC TIMES (2022), <https://economictimes.indiatimes.com/tech/startups/bharatpe-finds-ashneer-grover-and-family-guilty-presses-money-laundering-allegations/articleshow/89939718.cms?from=mdr> (last visited Apr 8, 2022).

²⁶ Thomas Biermeyer, 10 TIPS ON PREVENTING AND MANAGING SHAREHOLDER CONFLICTS (IN LUXEMBOURG) - CORPORATE/COMMERCIAL LAW - LUXEMBOURG WELCOME TO MONDAQ (2021), <https://www.mondaq.com/shareholders/1116850/10-tips-on-preventing-and-managing-shareholder-conflicts-in-luxembourg> (last visited Apr 8, 2022).

²⁷ Ibid 19.

²⁸ Ibid 16.

needs to be catered in this agency problem is that of the agent misleading the principal such as by expropriating the creditors, exploiting workers and so on and forth. In the aforementioned problem the main challenge or obstacle is always that of assuring agents' responsiveness is greater when there are multiple principals or more specifically when the principals have heterogenous preferences as many economists have pointed out. The other challenges that come up with this specific agency problem is that of difficulties in coordinating between multiple principals with different vested interests and then the same hindrance would be caused with the agents too.²⁹

While we move back to our issue at hand, BharatPe was plundered by these agency problems and it was basically caused by the principal, herein, Ashneer Grover, who is right now being questioned on his actions he took as the Managing Director and co-founder of the company. From the very beginning there were questions raised on the company being a man show and many economists had also commented that the company's downfall would be the result of arrogance overshadowing the talisman's talent and vision. Economic Times reporter once reported a spat between Ashneer and the MD of Sequoia Capital, Harshjit sethi. The latter has most percentage of holding i.e., of 19% in the company. This all suggests that there was always a rift between the principal and the agents as although there was a single man at top but he himself had so many preferences and whims that the agents always felt neglected and there was a toxic work-environment caused in the company. This rift which mentioned before was the background reason for the birth of agency problem iii in the company. The principal had his own foresight and vision for the company's growth which was not in coherence with the creditors of the company. The actions of Ashneer Grover represented the whole company, and the reputation and goodwill's flag bearer were the former. The creditors had to face the repercussions whether good or bad and they had minimal say in it because of the principal actions being driven by his own vested interest and not by a consensus opinion. When the news of Madhuri Jain (wife of Ashneer Grover, who was handling the operations and functionality department), being fired from BharatPe due to financial irregularities broke out, this caused a major hit to the creditors as this financial irregularity was just the tip of the iceberg in what would turn out to be a financial fraud and the amount was yet to be calculated. The creditors could overcome from this and have a board meeting but then the

²⁹ Ibid 16.

news of PwC doing an independent review on the activities of Ashneer Grover was done and the report came out a day before the meeting of the board and declared that the former also had hefty financial irregularities worth several crores along with his wife Madhuri. The initial probe and independent review culminated their report and submitted that there were many lacunas in the financial activities done under the signatories of Ashneer and his wife Madhuri. Moreover, Madhuri who was the then head of controls at BharatPe was also found to be misappropriating funds at the Fintech platform³⁰.

The goodwill loss and the tarnished reputation the creditors are currently facing is the result of the agency problem caused and the reasons are aforementioned. All the creditors be it Sequoia, Ribbit and so on were deeply affected by this disclosure and had to face losses both financial and goodwill wise. These sorts of incidents have been in the company set-up since time immemorial, a world-renowned incident of *Real Estate Bubble and Goldman Sachs*. In this incident also the principal was acting in his own vested interest directions and created an agency problem within the system. They created debt obligations and sold them short, with the thought that the mortgages would be foreclosed, which obviously did not happen and many home owners suffered huge losses.

STEPS TO MITIGATE AGENCY PROBLEMS:

Several authors and economists have come up with their own specific solutions for the removal of the three agency problems, two of which we have mentioned above. The few well-recognised methods which are utilised in company structure are:

1) Blockchain Technology: Blockchain offers answers for office issues by moving previous principal's assignments to a decentralized computer network that is not relied upon human slip-up or eagerness. Blockchain disposes of office expenses, for example, overseeing specialists by making a confiding in connection between the specialist and the head, herein the principal. It also lowers agency costs and works on the principal of building trust to counter the agency problem. By this methodology, the point of conflicting interest is

³⁰ Ians, HOW AN ABUSIVE PHONE CALL TRIGGERED THE FALL OF BHARATPE FOUNDER ASHNEER GROVER AND WIFE MADHURI ON MANORAMA (2022), <https://www.onmanorama.com/news/business/2022/03/06/ashneer-grover-madhuri-bharatpe-fall.html> (last visited Apr 9, 2022).

mitigated to the full extent and if the former is mitigated the point of agency problem is minimized.

2) Full Transparency: the point of agency problem maximizes when there is either lack of communication or a gap left to exploit for personal gain for the agents by the principal. This can be easily mitigated by keeping transparency in the company setup. The agent should be given an obligation to educate the principal about the matters that are going on in the company. By doing so, the agent keeps the principal in the loop about the proceedings of the company and this enhances the relations between the two which leaves minimal gap for agency problems to arise. Moreover, by the way of communicating the principal can easily make the agents delve into the plans the former has for the company and that makes the agents (herein the creditors) feel wanted in the company and gives them a feeling of responsibility which they would not like to budge from. If in the current scenario, Ashneer Grover was clear about his agendas and foresight about BharatPe to the creditors, it was more likely that the creditors would have partially agreed to his viewpoint, if not fully, and this would have helped them reach a middle ground of consensus on which both the principal and the creditor could have worked on and that in turn would have benefitted the company.

Lastly,

3) Commission and Bonus structures- one of the most age-old yet one of the most effective steps taken by company is to incentivise the agent to a level that he/she does not think about having either a conflicting opinion or conflicting interest. Companies also in some scenario remove financial incentives from points in which the agent could get a conflicting interest. More often than not, companies follow both the methodology as they increase the incentive ratio in non-conflicting regions which automatically decreases the incentives in conflicting regions. To link it with the current scenario, if Ashneer would have incentivised the creditors well and awarded bonuses for their work, they were most likely to be the ones who would have supported him and would not have posed questions against him.

CONCLUSION

Many theorists and authors have come up to defend the recent changes in the companies act by saying that it has made the system more advance but the dissenting view to that is what makes more sense when looked from a practical sense. Umakanth Varottil suggested and wrote this in a lot of publications that constant moulding of the concepts of corporate governance according to the working structure in India is of prime necessity as to remove loopholes and ambiguities from the system. Even after amendments, the appointment and removal of directors goes through the board which firstly takes a lot of time and reduces efficiency when it goes through election by a majority. Cases like that of Tata sons and this current example of BharatPe makes us reconsider that how independent, transparent and accountable the board should be in matters of abuse of corporate governance. There have been policies which cover some aspects, like the policies included by SEBI, namely of, Class action suits and the whistle blower policy have been made covering a lot of intricacies but the results of the same are yet to show substantial difference. Covering our opinion in this scenario would suggest the system of constant checks and balances and controlling the amount of powers vested in the hands of independent directors. In the contrary in the case at hand Ashneer Grover and his wife considered the business as their family heirloom and forgot their obligations and duties which came along with the post. They were although motivated as they considered BharatPe as their own but the motivation was driven by their vested interest and aspirations. This resulted in this fiasco turning out to be such a disaster for both the company and the independent directors. To conclude, it is clearly visible that even after the incorporation of the Companies Act,2013, there are a lot of ambiguities and loopholes which are being exploited and are causing a lot of problems like the one at hand to the companies. There are still gaps to fill in the system and till then the opportunities for abusive transactions, be it in the case of Related Party ones or causing Agency Problems. The gaps may have been cut down but the possibility still lingers on.

