

Session 2:

Best Practices for Dealing with Non-controlling Shareholders – An Institutional Investor’s Perspective:

Mr. Nimesh N Kampani, CMD, J M Morgan Stanley

Distinguished guests, my esteemed panelists. Welcome to all of you this afternoon on this session on policy dialogue on corporate governance in India and this is specially from the Institutional Investor perspective.

I am going to chair this session so I have a very limited role to play. I would like to first introduce the Panelists.

We have Mr. M. K. Chouhan. Mr. Chouhan is the Chairman of Mahindra and Young Knowledge Foundation and Vice Chairman of Global Advisory Board of Asia Centre for Corporate Governance. He is also a member of the corporate governance committee of Securities and Exchange Board of India.

We have Mr. Vinod Rai. Mr. Rai is the Additional Secretary, Banking, Ministry of Finance, Government of India.

We have Mr. Christian Strenger. He is the Chairman of the International Corporate Governance Network, Germany. He is also the member of the private sector, Advisory Group, World Bank, OECD, Global corporate governance forum. Mr. Strenger has also been in the Corporate Finance, Investment Banking, Asset Management, tremendous experience of what is happening internationally.

Today’s session is about non-controlling shareholders. What is the role they play? What is expected of these shareholders? Are they going to be a force in reckoning? Will they play a positive role or can they also be involved in a takeover of companies. How will they decide their voting patterns? What are their expectations on disclosures, on instrument of influence and on excise of the control? As I was talking to the SEBI Chairman, Mr. Damodaran, in our discussion, he had mentioned once that corporate governance lies between disclosure and disclaimer so there is a very thin line between what you disclose and what you disclaim and we as investment banker, we always come across in the offer document, disclosures, risk factor and disclaimer. Now, what are the objectives of those offer documents. Is it to give more information or to really protect the management and the shareholders or the boards and I know for a fact that when you finalize this kind of a document, the investment banker is to play a very important intermediary role, keeping in mind, between the company, its management and the investor and the lawyers play a very critical role on what to disclose, what should be disclosed and what management says, we cannot disclose and this tussle goes on every now and then.

But looking at Indian situation, what has happened. Let us go back to last five years where we were and where we are today. I always give this as one of the examples that a comparison between China and India is very important and critical. China started liberalization in 1978 and went through the pain of liberalization for about twelve years. The real growth of China started in nineties where they started growing about over 10% per annum. India started liberalization process in 1991. They also went through the pain of liberalization because our industrialists did not know what liberalization means. And when they realized and when consolidation started, survival of the fittest, better disclosures to investor and shareholders and those companies which changed with the time, became the leading companies of India. And this all has happened along with the corporate governance and now, India's time is starting because from 2004, I am seeing a growth for the next ten years like what happened to China and we are growing at 8% per annum now and hopefully will grow faster than that.

But within this, who is this Institutional Investor and what role do they play in supporting the growth of the industry, companies and the capital markets. These investors are bifurcated into domestic financial institution like Life Insurance Corporation (LIC) and other insurance companies and mutual funds and banks, foreign institutional investors including hedge-funds and other investors, the private equity investors who wants to come in, first in the company and then take the public so that he get an exit. What are their expectations? As I have understood that SEBI did a grand job. It did it with, straightaway securities market reform and I think, this is the most important and core things before you start corporate governance in a very big manner because your securities market is not reformed, there is no next step. So what did SEBI do? The dematerialization of the stocks started, so all the paper work was over, otherwise, which investor would like to come and invest in India and I know, one of the person, sitting in the hall here was responsible for helping us in dematerialization. Mr. Bansal. He was at that time in Government of India, Ministry of Company Affairs and we had lot of discussion with him and he supported it and that dematerialization is a major thing for foreign investors to come into India.

Second thing, dematerialization of the stock exchanges, which also the SEBI has started. Infact, that helps ownership, trading rights and management to be separated in the stock exchange otherwise we had a scam in the Kolkata stock exchange, we had a problem in the Bombay stock exchange, we had problem in other stock exchanges. We grew from 1980 in having 21 stock exchanges in this country because there was no technology and local transactions were taking place with paper trading. With the technology upgradation which took place with the liberalization policy, mobile telephony, IT services, I think, that has really helped, you know the growth of the capital markets.

Third, SEBI introduced T plus two settlement cycles, straight processed through so that any investor feels very comfortable, that if he has to invest money and if he wants to realize this money, within two or three days, he can realize this

money. Markets are open all the time, whether crises 9/11 took place, Indian markets were still open. So I think, that is the great challenge that SEBI had faced and I think, they have successfully completed that. Now with this view in mind, what FII did. If you really look at those investors, they have invested about 45 billion US dollars in about five years in the Indian markets and last year, that is 2005 December, they have invested about 11 billion US dollars and today, this group owns 20% of Indian market cap, so we have a six hundred billion dollar cap and FII owns today about 20%, which means, their wealth is 120 billion US dollars. I think, now we will look from this parameter that where do we go from here. How does a foreign investment comes into the country? It only comes when there is transparency. The FII feels very comfortable when the laws of the land on corporate governance are changed.

The next step which SEBI did with effect from 01st January 2006 was clause 49 of the listing agreement, partly based on stocks but it is not yet that standard and I think, the Indian corporate does not want also to be that standard because already American companies are complaining about it. But yes, that clause 49, the role of independent directors, the role of audit committees, the role of whole board on how do we go about challenging the management all the time, asking questions to them, helping them, motivating them so that they can move forward and grow the company and create a greater shareholder's value.

I think, that is where the challenges are coming in and in that context, what does this institutional investor expect. How will they behave? Will they start acting in **concert**? Will they support the controlling shareholder, they will work with them. Take example of two good companies in India. ICICI Bank and HDFC. ICICI Bank today is owned by FIIs to the extent of 73% to 74%. Same way, HDFC is also owned 73% to 74% and therefore, maybe it is widespread investors but all these are foreign institutional investors and they own this major companies, which are very well, professionally run, one of the best corporate governance followed by these companies and therefore, what is their expectation. With the same type of corporate governance will come in a mid-size company, small size company, will they follow the rules of the game, will they be transparent. I think, today we have on this panel, speakers who are going to talk about this.

With this basic, brief introduction background, I would like to invite Mr. Vinod Rai to give his perspective. He is from the Government ...

Presentation by:

Mr. Vinod Rai, Additional Secretary, Banking, Ministry of Finance, Government of India.

Thank you Mr. Chairman. It is a privilege to be amongst such a distinguished gathering and to hopefully be able to articulate the Government's perspective in our attempts to try and make the ivory tower in which we used to be sitting, more of a glass tower, which permits looking in and looking out.

As Mr. Kampani has just said, the Indian financial sector was opened up and the reform process started very early in the nineties. Now, in the process of doing that, the perspective that I propose to discuss with you today is largely of banks and financial institutions and just to give you a magnitude of the size. We have 265 scheduled commercial banks in the country. Out of these, the public sector banks are 28, 29 are private banks and 31 are foreign banks, then we have a 177, what we call the regional rural banks. Now all these banks put together have 68,000 branches and 48,000 of these branches are in the rural areas. That is the size of the network and that is the size and depth of penetration because it is the rural and semi-urban areas that the Government was targeting what Government was interested in when we went in for the nationalization of the banks in 1970 and later in 1980.

Now, the issues before us, when we went in for the reforms were the banks, public sector banks, in particular able to compete globally? They should be on a firm footing, they should be able to provide a certain credibility, a certain confidence to the investor and to the client and also that in the process, there should be a certain element of transparency, in the sense that, the investor, the depositor, the creditor, the lender, the borrower, whoever may be, is in a position to come and ascertain the tenants of the foundations of the bank and the way it conducts business.

Now, it was decided that the functioning of the banks would be monitored purely by the financial parameters. It is also been decided that banks, which were earlier, just about fully owned by the Government will draw down and dilute Government holdings to 51% and you will see a series of public offerings, which have been coming into the market in the last three years wherein, just about, all but four of the 28 public sector banks that I talked about have been joined down on the holdings by Government and diluting the equity stake of the Government. In doing so, though Government does retain 51% of the holdings, a large number of the directors sitting on the boards of these banks are being drawn, no longer from the Government sector but totally from the open market with the intention of trying to have independent directors who later on as we reformed in the process of reform fulfill the fit and proper criteria.

In doing so, let me just introduce to you the fact that Reserve Bank of India Act was passed in 1934. The Banking Regulation Act was passed in 1949 and since

then the markets have grown. The sector has become far more widespread, there has been depth in each of these and the Government has been involved in the task of updating each of these Acts and trying to bring them in sync. with the market. We have to introduce a large number of reforms and even as I stand here today, Parliament is in session and we have six Bills which we hope will be passed in this session of the Parliament, which will bring about very far reaching reforms and amendments in these two Acts that are of 1934 and 1949 and each of these amendments we propose has been discussed with public at large, have been put up on the website of different institutions, have been discussed with the Bankers Association, distinguished market personalities like Mr. Nimesh Kampani and others so that we get everybody's perspective, each of the stakeholders, each of the interested parties and try to build a reform process which takes care of each of the institutional other than institutional investors.

We also with the intention of trying to ensure that public sector banks are no longer shackled by Governmental control. In February of last year, we released a series of autonomy measures to ensure that public sector banks become totally Board driven. Just about every other power except for probably dilution of the equity stake of Government below 51% which is by legislation and probably setting up branches abroad, which again has to be discussed with the Reserve Bank. Just about every other power has been entrusted with the Board of the bank and they are free to go ahead in their day-to-day management as well as take the policy initiatives.

Government has also introduced two other Acts. One is to set up the Debt recovery tribunals in 1993 and to bring about the securitization bill, as we call it, by which the banks have been empowered to seize securitized assets and be able to recover the debt ownings. In addition to that, we have also passed another Bill by which credit information companies can now, they have been empowered to collect data and put in on their respective websites so that credit information regarding any borrower is available. A credit information bureau was in existence from 2001 itself but that did not have statutory backing and now statutory backing has been given to it such that all data is available and there is no scope for any creditor, any borrower, whoever it may be, to be able to hide anything from the banks or the institutions.

In addition to that, Government also, last February put out a road-map for foreign presence of banks in India and also for ownership and governance of private sector banks, with a result that the transparency as well as corporate governance aspects are taken care in each of these institutions.

Now, banks were also dealing with, over the counter dealings, over the counter exchanges, these also did not have and these were not being traded, obviously on the floor of the Securities Exchange Board of India. Now, even that is being now brought under statutory control, such that banks or the Reserve bank is not only in a position to do over the counter exchanges but will be able to regulate

the same also. We hope that in the RBI Amendment Bill, which is before Parliament now, these aspects will be approved by Parliament in about a month's time, we hope to have the amendment Act in position.

Now, the Indian Financial markets, which have the banks, the financial institutions and the mutual funds, special care has been taken to ensure that the fiduciary responsibility and trusted to them, the promoter shareholding including is taken care of by the directors, by the members on the board of directors and that a larger number of the directors on their boards are independent directors, as has been brought out by SEBI. The Reserve Bank of India set a large number of committees, which ultimately culminated in the Ganguly committee which came out in July 2002, which talked about the listing agreements, which you see now have been put into place. The idea was to ensure that non-controlling shareholders are not left to the mercy of the controlling groups and that they also have a say in the corporate governance of the Institution along with the other shareholders.

Another issue, I would like to draw your attention is that the RBI guidelines on governance of private sector banks, which I talked about earlier, ensure that nomination committees are set up in each of the banks. These nomination committees scrutinized the background of each of the directors and in certain cases, some directors had even to vacate their position from the board because they did not fulfill the 'fit in' proper criteria, which had been laid down. It is hoped that these regulations will be strengthened and the initiatives taken by Government in bringing about the changes in corporate governance of each of these institutions, whether owned by Government themselves or Government has a majority stake holding and also those which are private and are regulated by the Central Bank will continue to be strengthened over a period of time, will continue to follow the road map that we have set out for them and will broadly confirm to the global standards, which are being made available to each of these institutions.

I would like to stop with these words and further discussion on any of these aspects will be only too welcome. Thank you.

Presentation:

**Mr. Christian Strenger, Chairman International Corporate Governance
Network, Germany:**

Presentation:
Mr. Mahendra K. Chouhan, Vice Chairman, Asia Centre for Corporate Governance:

Question & Answers:

Question:

Two questions about 'one share, one vote'. Recent debate in Europe now is in that direction but there is lot of trade-offs of 'one share one vote'. Young firms that want to go public need diversified voting structures in order to attract a wide and liquid variety of investors. We know that certain types of dual class have no impact or effect on blocking take-overs or degrading so-called value for firms and I think, the example we heard today is that they can be used strategically in a recurring fashion where there is bad corporate governance but if we look at the models, we know theoretically that there is probably no good models, at least on one share one vote for it being inefficient. Probably, efficient to create the market for corporate control so the question I ask on is the problem the use of the structures in strategic contexts where there is bad corporate governance and perhaps there is other techniques available, that is the first question and secondly, is the prohibition across the board for one share one vote or should we pick and choose. That is to say, perhaps pyramids are bad because we just know that bad private benefits of control, we have studies on that and maybe dual class are okay and perhaps voting packs are bad unless they are so called disclosed. I guess, I would like that answer to say, is it contexts dependant or is it across the board and what are the trade-offs?

Response (by Mr. Vinod Rai):

What will happen with non performing or under performing companies, anyway is that they will then be taken over at some price. What is not so good for shareholders was less voting rights is that the people who control the company don't have this pressure in the normal life of performance because they can always say, I can take it a little easier, so I think, the result could easily be under performance if companies management or its controlling shareholders feel that they are nicely entrenched in their way forward.

On the dual class approach, you could say, if someone buys the shares with lower votes like for example, Sweden, you have both share classes listed, then the shareholder knows, what he or she gets into so okay, if that's a sufficient discount that may be in order. What is not so good, if the share class with super voting power is not available in the market, which I referred to in my little example, which seems to be an important one for India so in the end, you cannot avoid being taken over but I think, in the interim, the risks of under performance is not even in the interest of the controlling people because market pressure provides the best solutions, that I am very concerned with. Short term, may be a problem, yes but we as large institutional investors and we are united in this and have found out that short term results are just an indicator, they are of the trend, don't think that short term is of any significant influence on the portfolio of long term investors, it doesn't count.

Response (by Mr. Chouhan):

I personally believe in the spirit of free enterprise and therefore I am going to make some statement, which may be a little controversial here is that, I think, we

have to move from rule-based society to principle-based society. All of us have certain principles of life, it is very easy to bend our rules but we don't like to bend our own principles therefore, I would say that, I think, it is contextual because we have a lot of mechanism, particular the board itself, the independent directors that we are having on the board to thwart any such issues where the majority shareholders try to do blatantly wrong things and go scott free but for example, the B class shares, if they have one is to ten kind of imbalance, then I think, it is too heavily skewed and probably questioning them is very important and this is a responsible activism. As a result, of which I am told, that in case of Mittals, it is one is to ten and the grey points is that they are willing to bring down to one is two so I am saying that the one trade-off and one good effect of such an activism of pressure is that such things happen, I will again go back to quote Nawshir. He said that when any shareholder buys a share in joint stock company, he knows that there are going to be majority shareholders who would want to do certain things, certain ways and why not, if they have majority investments, so that's my response.

Question:

My name is Pawan Kumar and this question is to Mr. Nimesh Kampani. My question is, how do the foreign institutional investors look at the issue of their own internal corporate governance track record vis-à-vis also, how do they look at their role in the corporate governance of their portfolio companies in which they make their investments and also specially with regard to the Indian Financial Institutions who are traditionally known for a very passive, not a very proactive role in the corporate governance of their portfolio companies vis-à-vis those Indian counterparts.

Response:

Very interesting question and a little bit controversial too. If you really recollect, before 1991-92, the Indian financial institutions played a very major role in most of the companies because their holdings was practically 35% to 40%, if you look at LIC, GIC and UTI put together. I was on takeover panel of Bhagwati Committee. When this institution came for discussion with the takeover panel, we asked them the question that do you act in concert and vote together. Company like ITC, company like Associated Cement Company in those days where Tata had to withdraw the resolution for increasing their shareholding in the company, for company like BSES, for company like Larsen and Turbo and if these institutional investors, if they were holding large number of shares and then sitting on the board and they were treated as independent directors and you own 40% of the company and you sit on the board but just because you are institution, are you independent or you should not be independent.

Now, this scenario was of the past. This scenario is going to happen in the future where lot of private equity investor wanted to come and sit on your board and these investors, will they be treated as independent director or non independent director if they are sitting on the board of the company. I think, that is a major issue, which is really coming up, There are very few institutions in the world,

which declare their voting policies. I don't think, there are lot of regulators where they tell the shareholders that if you own, say more than 5% or 10% of the company, are you an investor or ultimately you want the control of the company. I think, the distinction is not made by the regulators and I think, it is very important. Maybe we have a takeover code and say, upto 15% you can hold the shares as investor and if your intention is to go above 15%, then you make a tender offer and that's where only the intention comes in but by the time it may be too late. Only the disclosures are made but people don't know the intention behind acquisition of the shares.

So I think, the question is this, as I see it, from your question that yes, we must know the voting policy of the financial institutions or the investment institutions or the FII and maybe SEBI can play a role.

The second question, which was earlier asked, which is linked to your question is this that, this one share one vote is very important, very good. It should depend on investor. The whole of this issue is between the growth and the control. No company in the world is started by too many people. It is started by just one, two or three, four individuals put together and they are like a family, even if you look at the Fortune 500 companies, over 200 companies are still even today controlled by families. It is only very very big companies, very wide disbursed shareholding. I was talking to some of the top people in Bombay city where company like ICICI and HDFC, they are still worried, what will happen to them after Deepak Parekh and after Mr. Kamath, therefore, these are the issues which are really critical and very important that if the investor wants to have. Like Google or News Corps, they are having non voting shares, they have a differential voting share, I think, we should leave it to the investor, you offer something, give them the choice, market will determine, why should we determine, what the investor wants. If the investor wants to pick up a non voting share, it is up to them, if the investor wants to pick up a differential voting share, it is up to them. I think, that is where we should really draw a line, by creating our own rule, it may not work because in some companies, people say, I don't mind economic rights, I am not interested in voting rights, I trust the management. I want growth in this company. I want capital appreciation in this company and I believe that this promoter or this controlling shareholder is going to achieve this and therefore I want to do that and therefore, I think, we need a flexibility.

As a good corporate governance, yes, one share one vote is a good thing but then, there will be complacency. The promoter, shareholder or controlling shareholder will then not go beyond 51%, will not want to go down and then they will not give a growth to the shareholder. It will not create shareholder's value. He may still sit on 51%, nobody can takeover that company, investor will sell the shares, buy the shares, that will go on but the really value growth for society, for old stakeholders will not come in, so I think, there must be a fine line between the two, that's my personal view.

Response (by Mr. Christian)

... I am sympathetic to what you say but nevertheless, two comments. One, obviously, I think, if you are controlling shareholders then probably you have a problem of losing control but you lose control if you have a wide shareholdership, even if you give one vote to everyone, not at 51%, you lose it at 30. There are companies worldwide where the strong influence is exercised with 5% or 10%, so I don't think, it is much of a problem. I don't have a problem either that you have non voting shares. They will have a discount and if the company then wants to raise equity at a higher cost, let the shareholders decide, it is not that advantageous. What I am simply against is that you have the same shares, ordinary shares and they have different voting structure. I don't think, that is a very useful thing.

... This is between 'haves' and 'have nots'. All the developing economies have a different view and developed economies have a different view. The developing economy believes that the developed economy has too much money and therefore, they can buy the shares because they have money power and therefore the competition between a developed economy and developing economy is not fair competition and in that situation, and in that situation, when the competition is not fair and then, if you start diluting yourself too much as a promoter or a family and then if somebody takes you over, then you lose the company. I can believe that if you are not performing, you are not doing well, you have no right to be the management but if you are performing and then because of the money power, because the company which had 250 billion dollars market cap, outside of India and if they were to come over and buy over the Indian companies just because of sheer money power, I think, that is what the Indian controlling shareholders are not accepting it and that is what their worry is. He says, it is unfair competition between haves and have nots.

Question:

I am S. B. Mathur. My question is to Mr. Chouhan. The question is this that Indian corporate law is such, provides for one share one vote excepting when the company as a whole passes a resolution for issue with some preferential voting rights or non proportional voting rights and I do not know, I may be corrected, I have not seen any company offering the shares, which are without one share one vote.

Second question is to Mr. Kampani. We talk of fairness. When the persons having controlling interest allot themselves preferential shares at price, which is different than what they offer to pay investor, do you think it is a fair practice or should there be something by way of corporate governance on this because there has been hardly any intervention by any regulatory agency on this practice.

Response:

No, I think, guidelines has been given by the SEBI now with full disclosure, whether it is controlling shareholder promoter is taking or whether it is going to any financial institutions, guideline on pricing - the average price or the last 15

days price, whichever is higher and therefore its market related price now, maybe ten years back, people have mis-used that. They have taken the share at much lower prices than the market prices. Today if you do a FCCB issues, Foreign currency convertible bond issue and you can do a GDR issue and you get market related prices, so if the promoter or any other shareholder, if they don't want to go and do lot of work on offer document and other thing and just want to come in and give a preferential allotment to the price which is more than the market price, I don't think, shareholders object to it today, so there is a fair guideline and also there is a lock-in period for one year by SEBI, that means, you cannot just buy those shares and get rid of it in 15 days time or 20 days time, you have to hold it for a minimum of one year, so that guideline has already come in.

Any instance of intervention, in the past. I think, SEBI had intervened and not cleared some of the preferential allotment. Infact, that was not done by SEBI but it was done by the shareholders like LIC and by Unit Trust of India, as a shareholder holding more than 25% - 26% shareholding and they have told the management that you will not pass this resolution under Section 81(1a) of the Companies Act because it will be a special resolution, either you withdraw this resolution or we will allow this resolution not to pass, so such instances have taken place with the top class companies and thereafter this preferential allotment below the market price had stopped, so I must really give a compliment to LIC on this.

In addition to what you are saying, I would like to add. I think, even off late, the surveillance department of the Bombay and NSE, they scrutinize each and every single case of preferential allotment very minutely before the approval is granted for listing of shares on the stock exchange, so there is a second check at that stage also before the listing permission is granted.

Question:

I am from the World Bank. I just want to come back to this issue of one share one vote and related to control. The captains of industry that have created very successful companies come from an area where in order to make money and be successful, world number one was that you have to control. You control everything because you don't trust the contract law, you don't trust the enforcement of your contracts, the law system is somewhat inefficient and recipe for disaster is to trust contract law so in a weak legal environment when enforcement of contract law is weak, you want to succeed, make sure, you control everything and that we have seen throughout the developing world and we have also see in my own country, France and Germany, not long ago. We had majority shareholders and these captains of industry have created extremely successful companies, nothing what we seeing, right now at the moment was an Indian company making an offer for an European company, we have seen a captain of industry who has been immensely successful and why. Because he has controlled everything. So, of course, coming from a generational gap, I don't think, you can have your cake and eat it too. In today's world, if you want to

bring in long term patient capital into your companies and for these captains of industry, what it means really is that if they want to be able to diversify their wealth because so far, all their wealth is being concentrated in their own companies but if they want to diversify their wealth, if they want to open up their capital, if they want to bring in the long term patient capital, then they will have to go with one share one vote, there is no question about it, there is no discussion, there is nothing that can be avoided.

Response:

I am not aware of the details of the shareholding of the case, which you mentioned just now but in India, most of the company are one share one vote and we have a Company's Act, which permits upto 25% of the share capital to be issued for the differential voting right basis, I am not aware of a single company, which is listed on a stock exchange has used that mechanism so far, though this law was passed about four to five years back or even earlier than that but people have not used it.

The point, which I am making is that, if you are a private company and then if you create the differential voting right, that may not be fair but if you are already one vote one share company, then you transparently go to the investors and tell them that I want to give you a differential voting right, for whatever reason it may be and if they want to accept it and if they want to subscribe to those shares for the economic benefit, then it is up to them. I have said, market should determine this rather than we all decide and determine this. Who are we? Ultimately the investor has to take a decision, whether he wants transparently to acquire those shares through an offer document, which may have differential voting right. If he is willing to do that, fine, issue will succeed. If he is not willing to do that, the issue will fail, he will not get the capital. So I think, that is the way, the test comes in but we just cannot decide ourselves and say that one vote one share for everybody. Maybe, you have a point that from a private company to become a public company, you should not allow that but thereafter, if anybody wants to do it transparently, with openness, with full disclosure, I think, it should be permitted. That's the difference of view, I am having.

One last concluding response. Though majority of companies in India have one share one vote kind of thing in place, what FII's are expecting, in the spirit that is there, in the spirit you even have 50% of independent directors on the board but the definition and interpretation of the definition of independent directors on the board is, there is scope of improvement. So we are discussing the scope of improvement in the implementation aspect of one share one vote, is what we are discussing.

Question:

We understand that, companies enter into MoUs, and those MoUs make the Indian corporates to change their Articles in a manner, which are not in balance for the person controlling interest and small shareholders. There is very little transparency on this subject. I would venture, even in guessing that some of

them hit the provision of the law and the Union Laws, Company's Act says, that any agreement or MoU, which is contradictory to the provision of the Company's Act will not stand the test of the legality but this is done in a hush-hush manner. Is this a fair governance?

Response:

I think, this is another aspect, which I went through the World Bank's report 2004 that there is a scope because there is a virtual absence of shareholder activism in India. You had Unionism in India during the industrial era and you had the whole textile industry of Maharashtra in Bombay suffering so the word of caution here is, we do need activism, we do need institutional shareholder activism but we need responsible activism, that's my take on this.

I think, what I can understand from what you are saying is that, if the shareholder is controlling 30% - 40% of the company and he will say, I will appoint the majority of the Board of Directors of the company and pass and amend the Articles of Association and so long as he stays above 25% shareholding the Articles cannot get amended and therefore by doctrines of indoor management, he gets a control of the company by controlling majority of Board of Directors and he cannot be displaced even if somebody wants to take over that company and therefore it becomes very difficult for them to do that. I think, I fully agree on that because this is where the takeover issue really comes in. If somebody wants to make on that company and wants to acquire 51% but does not get majority of the Board, how will he get that company. If he is willing to pay the shares, he will own and somebody sitting with 25.1% share and it is not possible to do that so I think the real reason here is that the Company's Act has to look into this and whether such Articles Amendment should be allowed or not allowed, that point is to be debated, maybe in the amendment to the Company's Act, those issues should be discussed, debated and then decided.

Sir, infact, when these deals are finalized, I have personally had the occasion of attending more than ten such meetings with FII's, when they are trying to agree to the provision of the Company's Act, they say, we want this, whether it is against your law or no, we are not interested. We want this provision to be put in the agreement, we will see it later. This I am giving you a first hand information.

I am aware of this but I think there is some judgment of the High Court and the Supreme Court that these agreements cannot be considered. It is between the two private parties. If they don't follow those agreements, they can have that recourse against each other for damages but the company cannot become party to those agreement. They may agree to do something, act in concert, vote together, all those things, they can do it but I think, it is not accepted by the Courts.

Thank you.