

Report – Interactive session on ‘Corporate Decision Making and Liabilities’

The Governance Committee of the Bombay Chamber of Commerce & Industry organised workshop on Interactive session on ‘Corporate Decision Making and Liabilities’ on December 4, 2018. Ms. Usha Maheshwari, Additional Director, Bombay Chamber welcomed speakers and delegates. She briefed about history and the milestone achieved by Bombay Chamber. There were 17 delegates from different organisations participated in the Session.

Mr. Suhas Tuljapurkar, the Managing Partner of Legasis Partners and founder Director of Legasis Services Private Limited, started session with a case study of the devastating Bhopal Gas Tragedy which was further linked with corporate liabilities, both civil and criminal, that arose for the parent company UCC, the subsidiary UCIL, the Board and the Chairman. One of the principle reasons of the disaster was compliance oversight on part of the company, which could have been avoided. The Environment Protection Act 1986, EIA Notification of 1994, Hazardous Waste Rules 1989, Public Liability Insurance Act 1991, Factories Amendment Act 1987, the Bhopal Gas Disaster (Processing of Claims) Ordinance 1985 and the Civil Liability for Nuclear Damage Act 2010 came into effect in order to mitigate the after-effects of the disaster. He shed light on how the principle of Absolute Liability emerged, where no men area is required and due diligence is no defence for the company, owing to the case of *M. C. Mehta v Union of India*. He further stated the fundamental differences between Absolute liability and strict liability, which are often confused with one another. He explained the concept of vicarious liability and its effects on the directors, wherein the employer is liable for the acts of the employee; with an exception of criminal liability.

Mr. Tuljapurkar further elucidated corporate liabilities pertaining to the Board of Directors as an apex group, since organizational culpability is attributed to a group and not individuals. He explained the fiduciary duties of the directors. The first one being loyalty which entails the duty to act in the interest of the company with the consequential aspect of conflict of interest, business responsibility and corporate governance and the need for appointment of independent/woman director. The second one is the duty of due care and the consequential aspect of Oversight Duty, Financial Controls and Compliance (Sec 134 (5)(f)) and the ‘Best Judgement Rule’, which implies business decisions taken in good faith and in the best interest of the company can be used as a defence. The third is the duty of disclosure of all mandated material and material information along with prescribed filings to be done with the ROC and Stock Exchange and the consequential aspect of Information Asymmetry. Lastly, the duty of Extra Care, which indicates careful scrutiny of the decisions pertaining to corporate restructuring and preferential payments. Apart from these, the duties of the Board include ‘Governance Duty’ which implies to ensure that organizational activities

are aligned in a way that supports the organization's business goals and a common sense approach to corporate governance, 'Risk Duty'- to prevent the board's oversight and management of risk appetite and 'Compliance duty' including the Standard of Systems in which ISO 37001 (anti-bribery and anti-corruption) proves to be much more effective than ISO 19600. Lastly, Mr. Tuljapurkar shed light on what powers and duties of the Directors can and cannot be delegated and the effects of such delegation.

The floor was left open to questions wherein the practical problems arising at the management and executive level were discussed and the solutions thereon were proposed. Suggestions were given

To improve the system such as the 'Board Pack' which is received atleast two days prior to a meeting should include a draft resolution of what is expected to come out of the Board on the particular decisions and that the language used in the Agenda should be more inclined towards business language rather than compliance language to be better catered towards the understanding of the directors. Moreover, the CS should serve as a link between the Board and the Functional heads who push what items need to be discussed by the Board as they evaluate risk and decision making.

At the end Ms. Usha Maheshwari delivered vote of that to speakers and delegates. The session was very interactive and the participants got the opportunity to share their practices followed in their organizations and clarified the doubts.

