

## **BOOK REVIEWS**

### **CORPORATE FRAUDS & THEIR REGULATIONS IN INDIA**

**Author:** Dr. Sanjeev Gupta, **Year of Publication:** 2016, **Publisher:** Bharat Law House Pvt. Ltd., New Delhi, India, **Pages:** 400, Hard Bound, **Price:** 650

**Abhay Jain\***

Corporate fraud, whether big or small has become a persisting phenomenon now these days. If someone delves down the surface of the corporate world, he will come across a continuous stream of crucial corporate scams which are approximately unbelievable in the sheer scale of their subterfuge. The perpetrators of such frauds intricate their web of deceit, entice the stakeholders initially to invest their hard earned money and become fugitives someday by allegedly duping these stakeholders leaving them behind for terrible consequences. It becomes imperative to spread awareness by engaging the readers to enlighten them about the major causes of such frauds, enable them to analyse fraud risk and accordingly legal remedies available under different regulatory frameworks for effective fraud preventions, in turn minimizing financial catastrophes.

The manuscript in hand eloquently examines the nature of various corporate frauds in India and abroad by providing the practical exploration of the obscurer aspects of corporate frauds. It discusses the relevant provisions of different legislations along with their regulatory bodies associated to curb and diminish such frauds. While no one contends that the proximal failure of big corporate houses is the outcome exclusively or for that matter substantially, from fraudulent and corrupt dealing, it is apparent that abuse/misuse played a role. Dr. Sanjeev Gupta, elaborating in particular causes of different corporate frauds and the role of regulatory bodies for dealing with such abuse, presents a thought-provoking discussion of the issues, particularly for those who are the stakeholders of such corporate houses. The concerns raised so well in this highly significant work shouldn't be ignored by those who are focused on upholding the integrity of the corporate practices to enhance the stakeholders' confidence.

The present manuscript is intended to serve as a handbook to practitioners and has been organised into ten chapters starting from scratch the meaning of fraud, its *modus operandi*, corporate frauds in domestic market and abroad, various regulatory provisions and incidental legislations for curbing such menace, statutory bodies for enforcement, legal system for punishment and finally, policy implications of corporate frauds. These chapters provide insight needed to understand this complex phenomenon as well as the legal strategies that exist and are required to unravel it.

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\* Assistant Professor, Department of Commerce, Shri Ram College of Commerce, Delhi. E-mail: abhay.jain@srcc.du.ac.in

The book starts with the nature and scope of corporate frauds where the authors has justified the fraud taxonomy and logically described the ingredients of corporate fraud. The relevant provisions of Companies Act, 2013 relating to fraud such as Section 447 to curb corporate frauds has been elaborated with graphical presentation (p.21) followed by full description that helps the reader to understand the various dimensions of corporate frauds, its intent and stringent penalty incorporated for the offenders who indulge in such scandals (Chapter 1).

The author then proceeds to discuss the *modus operandi* of various types of corporate frauds. The intent of bribery, misappropriation of assets, manipulations in financial statements, procedural lapses and corporate espionage have been elaborated separately with the support of authors' own research

work. It can be extracted from chapter 2 that the delinquent directors tend to indulge in frauds with the help of unscrupulous professionals. The author raised well and criticized the clause 49 of listing agreement of a stock exchange in India that require mandatorily the appointment of independent director without mentioning any qualification therein may lead to fraud and corruption. The authors' own research work conforms to the KPMG survey report where it has been observed that the cash bribery was having the highest rate amongst different corporate frauds (p.37). Moreover, the author describes the asset misappropriation that includes cash and non-cash frauds has affected investors, banks and financial institutions as a result of manipulated market valuation of securities and stocks. The procedural lapse has been observed at many instances such as carrying of business *ultra vires* the object, siphoning off of funds received through FDI where there is no careful examination by the authorities about the sender credibility, whether the money for which it has been raised has been utilised for the same purpose and whether the financial position of the company presents true and fair picture (p.53). The author opined that even some of the corporate houses having weak financial positions commit the frauds by fudging their account to show their rosy pictures of good financial position, thereby duping the investors. The last type of corporate fraud i.e. corporate espionage has been discussed in a lucid manner. It has been observed that main motive of corporate espionage is the information theft, infringement upon the intellectual property or secret information theft of rival business organisation for vested interests. The author then concluded that proper mechanism should be implemented effectively to scrutinize each transaction to reduce such corporate frauds.

One of the distinctive features of the manuscript is the brief description of various infamous corporate frauds in India reported during 1992 to 2015 and abroad. Each case has been described with its background of the parties involved, the motive of fraud and how the fraud took place, how it was enquired under different regulations and lastly the punishment imposed briefly. Some of the leading cases such as Satyam case, the National Spot Exchange Limited case and the PACL case; are the cases that took place despite having stringent provisions in law. This gives rise to a very substantial thought on the entire

problem and the best possible remedies have been suggested thereupon. The author extracted various common sources of different frauds such as the fraud perpetrators who are mostly the company management or its top executives; manipulation of financial statements followed by procedural lapses; unwillingness to take legal recourse against offender; lack of accountability; delay in disposal of cases and weak anti-fraud measures (pp. 109-110). The author emphasized that a clear-cut policy with respect to prevention and control of these corporate fraud is a *sine qua non* for any organisation.

Further, to restrict these scandals, the author specified the relevant provisions of major legislations for regulating the corporate frauds. The author has given full justification to the description of regulatory measures by providing the all the relevant provisions of corporate frauds under one head specified in different Acts such as The Companies Act, 2013; The SEBI Act, 1992 read with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003; The Benami Transactions (Prohibition) Act, 1988; The Money Laundering Act, 2002; The Conservation of Foreign and Prevention of Smuggling Activities Act, 1974 and The Indian Penal Code (IPC), 1860. The author has attempted in discussing the provisions of these Acts by relating it with the corporate frauds e.g. Satyam Case in Auditors context (p.137). Thus, it would be beneficial for the readers to relate the sections of various Acts simultaneously with the major corporate frauds to analyse the situation well.

However, the incidental legislations part lacks the above mentioned relations. This part of the book has a mixed reaction as the compilation of various provisions of incidental legislations under one head is appreciable for the efforts made to give benefit to the reader, however, the purpose of such compilation is defeated unless the provisions are explained with the help of major related corporate frauds. Similarly, lack of effort has been observed while elaborating the regulatory agencies. For example, while discussing the Serious Fraud Investigation Office (SFIO) at p.303, the author had the opportunity to relate it with major stock market scams. It could have been made more attractive and analytical. However, in the next part, the author has explained exceptionally well the motives, objectives and the way of working of different cells created under the Ministry of Corporate Affairs such as the National Financial Reporting Authority (NFRA), National Foundation for Corporate Governance (NFCG), Investor Protection and Grievance-Redressal Cell and Co-ordination, Monitoring Committee (CMC) for vanishing companies and E-governance and created under Ministry of Finance such as CDBT, DRI, ED etc. It has been observed that the enforcement of various provisions have been less effective due to the changing political interference, the delayed system of justice, lack of awareness, corruption tolerance, huge gap between policy and practice etc. These are the major drawbacks of the system that lead to corporate frauds (p.333). The next chapter describes the working of statutory bodies under Parliament enactment towards curbing corporate fraud practices. The clause 49 of SEBI guidelines on corporate governance describing its objectives and its impact on professionalization, transparency, better control and oversight mechanism has been defined. It has also been emphasized that SEBI has only powers of civil courts but needs to be given

more power like criminal court to enforce criminal sanctions. However, the special courts/Tribunals have been established for the speedy trial of certain fraud cases that need to be strengthened.

The last part of the manuscript brings out the consequences and policy implications of corporate frauds where the auditors need to be trained to make them well-equipped with changed regulatory measures (p.370); the applicability of corporate governance in small and medium enterprises (SMEs) for improved internal control system; due diligence by independent professional by banks and financial institutions; setting up of corporate offence wing with criminal powers to speed up the trials and justice; separate committee for approving the related-party transactions subject to approval of shareholders, publicising fraud prevention policy among employees and stakeholders to sensitize them and proper co-ordination among different regulatory authorities have been recommended by the author.

To conclude, this manuscript, highlighting the major scandals and regulatory provisos, provides a timely and insight examination of the causes of corporate collapses. Though the book requires a minor updation for relating the provisions of Acts with the major scandals, the stated purpose of the manuscript justifies well the readers to explore the corporate houses through a lens that magnifies the symbols that one may have otherwise overlooked, leaving one better equipped to deal with the detection of fraud and to better safeguard the organisation from fraud in future.