Journal of IMS Group
Vol. 14, No. 1, January-June 2017, pp. 10-25

Corporate Governance Failure of Five-Star Accredited "Kingfisher Airlines"

J P Sharma & Ruchi Goyal

Abstract

With the spree in the reported cases of mis-governance leading to erosion of stakeholders' wealth and splurge in governance deficit, this paper seeks to highlight the problems that plagued five-star accredited Kingfisher Airlines and to critically evaluate its governance strategies leading to its demise. The paper details the probe by investigating agencies against the airline and desired policy actions taken so that such situation is not repeated in the country again. Using extensive literature-based information from various secondary sources, a case study approach has been adopted in this paper and the same has been critically evaluated using stakeholders' theory. The study supports that apart from external threat and lack of governance, laxity on the part of the management board led to the collapse of the carrier. The outcome of this paper provides connotations for the academicians, practitioners and companies engaged in aviation sector and might help them avoid such failures in future thereby creating sustainable business that work in the long-run interests of all stakeholders of the company.

Keywords: *Board of Directors, Governance, Stakeholders, Sustainable*

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INTRODUCTION

The rise in information asymmetry, reported scams and destruction of public wealth in some high profile companies in India, has revamped the need of robust corporate governance. It has triggered reforms in corporate governance, accounting practices and disclosures (Sharma, 2015) and calls for effective mechanisms for Indian companies to deal with the issues of transparency and accountability for the overall economic growth and development of the country (McRitchie, 2015). The two functions of management i.e. the way of directing and controlling a corporation have been regarded as soul of corporate governance in the academic literature. Many research scholars have affirmed the essence of good corporate governance in augmenting firm performance (Jensen, 1976; Brickley & Terry 1994; Fama and Jensen, 1983; Klapper and Love, 2004; Gompers et al. 2003).The role of dominant shareholder regardless of being major or small have been considered as a major contributor in corporate governance issues in India (Varma, 1997). One of the glaring examples true to the above statement is that of Bengaluru based Kingfisher Airlines (KFA) owned by United Breweries (UB) Group and promoted by flamboyant liquor baron & former Rajya Sabha member Dr. Vijay Mallya. In the last few years of its operations the credibility of the company came under the scanner. It seems as if lack of governance controls by its board of directors and complete dominance of company promoter Mallya led to the collapse of the carrier (Ravi, 2016). Besides the lack of good governance and poor decision making by the board of directors of KFA, a number of external threats too were responsible for its failure. The performance of the carriers is not solely dependent on governance factors but also affected by external factors (Wang et al. 2011) and so was KFA. The series of company events has been analyzed using stakeholders theory which helps us to define the causes for Kingfisher failure. Using KFA debacle as a model, this paper attempts to highlight the relevance of ethical social behaviour and accountability of board of directors towards its stakeholders and sound decision making entailed in the sustainable business. This study has been organized into five sections wherein the first one presents the theoretical background that impels the investigation of the case. Second segment provides an overview of historical background of Kingfisher and the next segment covers the various probable causes of collapse of the carrier. Thereafter, the actions taken by various Investigating agencies have been detailed in the fourth section and in conclusion, implications of such cases on stakeholders and recommendations to avoid such instances have been discussed.

Stakeholders' Theory

A series of affairs that led to the demise of Kingfisher has been critically analyzed with the support of stakeholders' theory. The notion of stakeholders' theory was originally proposed by Freeman (1984) and the modern stakeholders' theory focuses on the functioning of companies in the interest of all its stakeholders rather than just confined to shareholders only (Tirole, 2001). These stakeholders are shareholders, boards, employees, customers, banks, suppliers, creditors, government. Stakeholders' theory provides us a strong foundation towards taking entrepreneurial risks (Venkataraman, 2002). Legally, shareholders are supreme and they appoint board to act on their behalf and there exists a principal-agent relationship between the two. In practice mostly directors are supreme as boards are family managed with unchallenged control, shareholders are scattered and ill-organized and employees do not have any say in the decision making process of the boards (Sharma, 2015).This paper critically evaluates governance strategies of Kingfisher and tries to unfold the actual reasons of the carrier demise with the help of stakeholders theory.

Background of Kingfisher Airlines (KFA)

Kingfisher amplified the glamour quotient of the withered airline industry in India with its entry in 2003 and promised to consistently deliver a value for money, sound, safe and pleasurable travel experience to all the passengers. In the first year of its operations in 2005, it became the first Indian carrier to bag the "The Centre for Asia Pacific Aviation" (CAPA) award for its significant innovation and outstanding customer experience and won the prestigious five-star Airline Status "Skytrax Award" (Rangarajan & Prasad, 2014) for providing airline excellence and implementing higher level of customer service across India's global airline industry in 2006.When KFA began its domestic operations in 2005 it became the first and the only Indian private full-service airline which commenced its operations with a brand new fleet of aircraft, setting the expectation sky high of the consumer. Dr. Mallya offered world-class in-flight entertainment with a choice of audio and video channels for every seat, extra wide seats, spacious legroom, delicious gourmet meals, international-class cabin crew, doorstep delivery of tickets and all sorts of comforts and delights (Kingfisher website, 2014). Most of this even today doesn't get offered by premium airlines let alone low cost carriers in India.

The Genesis of Crisis

The airline was running into losses ever since it got listed in 2006 but the major problem started when in the year 2007 UB Group merged with crisis-ridden, low market segment, Air Deccan which was later rebranded as Kingfisher Red in 2008. By this time, Aviation Turbine Fuel (ATF) average prices also increased 60 percent in 6 months from April to September 2008 making fundamentals in airline industry worse. Lenders & government authorities started taking notice of the ill health of the airlines & wanted to recover their investments & dues. These developments added to the negative sentiment already gathering momentum against the airline and reduced its capacity to go for further debt financing. Subsequently airline faced disruptions in fuel supply and frequent flight delays due to its inability of pay its dues. This went against its founding principle of luxury and comfort of the airline further tarnishing its image. Cancellations started becoming common place with accumulated losses of over Rs. 7000 crore. Employees too felt the heat because of non-payment of salaries for months (The Economic Times). Half of its fleet was grounded on account of inability to pay airport fees. The cascading effect meant that the fixed recurring cost kept piling on and revenue streams dried out. The repeated warnings from revenue department for legal proceedings over alleged service tax evasion and subsequent strike by employees for unpaid salaries plunging Kingfisher into a bigger mess. Mallya offered guarantees value Rs 5,904 crore for the airline's debts post that, some salary dues were cleared (The Indian Express). This mini-confidence building steps were short lived as KFA declared partial lock-out post employees went on strike for non-payment of salaries again, income tax department froze its accounts and non- bail able arrest warrant was issued against Mallya and four other directors. Notably the warrant was issued against KFA on account of failure to appear in the legal proceedings of bouncing of cheques which was earlier issued in favor of GMR Hyderabad International Airport towards user charges airline grounds flights and DGCA suspended flying license (Indian Express, 2016).

In parallel there was crisis in the board with most directors losing confidence in the airlines and interest in serving it. In less than seven months starting five independent directors resigned from the company. Thereafter, the company lost 180 days deadline to appoint new independent directors (Economic Times, 2012). At the end of year 2012, the company was left with only one director, two non-independent non-executive directors and one executive director. Thus, the requirement of listing agreement got violated by the company through the non-compliance of adequate number of independent directors on board. The listing agreement required at least 50% independent members on board since the Chairman of the board was also the promoter of the company but the airline managed to have only 25% of board as independent (Economic Times, 2012).

KFA owes Indian banks and various government departments over Rs.9000 crore in unpaid loans and interest. Mallya has been accused of money laundering charges in the IDBI bank alleged loan fraud case on March 15, 2016 (Pioneer, 2016). IDBI declared him a "wilful defaulter" (Narayan, Indian Express, 2016). Subsequently Dr. Mallya, who was ranked the 45^{th} richest Indian with a net worth of $1 billion by Forbes in March 2012 (Mint, 2016), fled the country for London on March 2, 2016 in the wake of probe by different agencies related to bad debts he accrued (Pioneer, 2016). Recently, Securities Exchange Board of India (SEBI) prohibited him from assuming directorship in any listed company and accused him for violating listing agreements, diversion of funds and fraud. Consequently, Mallya was made to step down as UB's non-executive Chairman. On January 24, 2017, CBI arrested ex-Chairman and top officials of IDBI bank on account of sanctioning of loans to KFA despite company's low credit ratings. Table 1 shows how the journey of king of bad times "KFA" got unfolded.

Table 1: Timeline of Kingfisher Airlines

Year	Events
2005	KFA started maiden flight Alex Wilcox, the CEO resigned Kingfisher
2007	Mallya buys Capt. Gopinath Air Deccan
2008	Rebranded Air Deccan as Kingfisher Red and began international operations
2009	Suspension of around 100 pilots Board approved debt recast package
2010	Appointed Sanjay Aggarwal as CEO
2011	Mumbai international airport private ltd. demanded to compensate Rs. 90 crore On September 15th 2011, Diwan Arun Nanda resigned
2012	Piyush Mankadonon resigned on January 9th, Ghyanendra Bajpai and Vijay Amritraj on March 14th and Anil Ganguly on March 17th IT department froze KFA bank accounts for non-payment of TDS Banks classified KFA loans as NPA Thirty four aircrafts repossessed due to non-payment of lease rentals. Revenue department warned for legal proceedings over alleged service tax evasion. Employees went on strike due to unpaid salaries
2013	DGCA deregistered 15 Kingfisher aircrafts IT department filed a criminal case on account of non-remittance to government TDS.
2014	CBI instituted a preliminary inquiry against IDBI & KFA for sanctioned loan UBI declared Mallya as 'wilful defaulter'
2015	17-bank consortium took over possession of Kingfisher house SBI declared kingfisher airlines and its promoter as "wilful defaulters"
2016	PNB declared UB Holdings as 'wilful defaulter' SBI-led consortium of lenders moved DRT to fix Mallya's passportMallya fled the country for London in the wake of probe by the different investigating agencies ED registered money laundering case against Mallya
2017	India demanded UK for speedy extradition of MallyaSupreme Court directed Mallya to appear before it on July 10.

Source: Compiled from various sources

Probe Begins

The investigations against KFA and Mallya are still underway and investigating agencies are at various stages in their individual investigations. Serious Fraud Investigation Office (SFIO), which is a multidisciplinary organisation that investigates cases of frauds referred by the Ministry of Corporate Affairs is probing. KFA is being probed by SFIO for diversion of funds and irregularities in finances.

The Central Bureau of Investigation (CBI)

CBI suo moto initiated probe against Mallya. They investigated loans given by various banks to Kingfisher group companies and secured a non-bailable warrant against Mallya in a case related to alleged money laundering and wilful default of loans taken from IDBI (Mint, 2017). In July 2015 the CBI bank securities and fraud cell lodged a case of conspiracy and criminal misconduct against unknown IDBI officials who offered unjustified favours to KFA in disbursement of advances of Rs. 900 crore (Narayan, Indian Express, 2017). In January 2017, CBI raided over eleven places in major Indian cities including Mallya's residence, three floors of UB towers and residence of senior executives involved in this case (Mint, 2017).

Subsequently they arrested 9 people including 5 former senior IDBI officials, including former

IDBI bank chairman (The Economic Times, 2017) and four executives of now defunct KFA in connection with the allegedly swindling loan transaction between the bank and the company. Charge sheet was filed in a special CBI court in Mumbai against eleven people including-Mallya, KFA, former IDBI bank chairman and others in a loan default case. The charge sheet filed invokes section 120 B (criminal conspiracy), 420 (cheating) of IPC and section 13(1)(D) and 13 (2) of the prevention of corruption act which deal with the abuse of official position as a public servant for capital advantage and delinquent misconduct. The charge sheet seeks to make out a case of 'omissions and commissions' caused by the bank officials and KFA executives. The charge sheet purported that KFA submitted misleading information to induce the bank for loan sanction. The attempts of lower level official to seek collateral securities through pledge of shares of company were not heeded and the loan was sanctioned without requisite securities, further the report of M/s grant Thornton which placed the brand value of KFA (The Indian Express) at Rs 3400 crore and was used as a basis to sanction loan explicitly mentioned that this valuation was not any venture suggestion but was done for internal purpose.

The CBI, in its charge sheet also mentioned that an amount of Rs. 263 crore of the total loan sanctioned was diverted by KFA for "purposes other than those for which the loan was sanctioned" such as payments for lease rental, engineering expenses, oil marketing companies, airport authorities, ground handling, catering and in-flight expenses. In fact CBI has listed a total of 59 instances of diversion of the loan amount sanctioned to Mallya. These instances include salaries paid to employees of KFA, unpaid taxes and interest paid to other banks which as per CBI claims was not the stated purpose of the loans. Allegedly Mallya was on his own managing the utilisation of funds released by various banks (The Indian Express). CBI has claimed loans were approved within a day of receiving proposal which shows no due-diligence was done. Furthermore, CBI claims that the loans were wrongly used by Mallya and were diverted abroad on bogus statements. They point out that Mallya furnished false declaration of his annual assets and liabilities before the House and thus he faced expulsion from Rajya Sabha (Hindustan Times, 2016) before resigning in May 2016. (Refer Table 2)

Table 2: Funds Diverted by Mallya as per CBI

PROBE CLAIMS
Rs 263.48 crore misused by Mallya: Transferred to Axis bank (Rs 169.62 crore), ICICI bank (about Rs 39 crore) and Bank of Baroda (Rs 54 crore)
MORE MOVEMENT
Rs 116 crore given to companies/Vendors through Axis bank
Rs 3.45 crore transferred to Kingfisher Airlines' Axis Bank account in London
Rs 42 crore to other Kingfisher accounts
Rs 54.86 crore transferred to Bank of Baroda
Rs 15,37 crore for debt servicing

Source: Business Standard, "Return with Passport: SC to Vijay Mallya", 10th March, 2016, p1.

CBI approached law enforcement authorities in seven countries to which it suspects funds were diverted. They have requested these countries including US, UK, Ireland, Mauritius and Switzerland to conduct investigations in their respective jurisdictions and provide documentary evidence.

Enforcement Directorate (ED)

Based on an FIR registered last year by CBI in Kingfisher case, the ED registered money laundering case against Mallya and others in connection with the alleged siphoning off Rs. 430 crore from an IDBI Bank (Hindustan Times, 2016) loan to his KFA to purchase properties overseas. In response to ED allegations, special court issued a non-bailable warrant for arrest of Mallya in money laundering case. ED made an attempt to bring Mallya back to India and separately used the CBI charge sheet against KFA, its officials and IDBI Bank officials to file a fresh extradition plea for Mallya with Ministry of External Affairs and simultaneously apply for Mutual Legal Assistance (MLAT). Moreover, ED is also probing whether bankers received any kickbacks in the IDBI case.

Debt Recovery Tribunal (DRT)

Debt Recovery Tribunal (DRT) also restrained Mallya from accessing Rs 515 crore on account of exit payment from Diageo till the debt evasion case with SBI is resolved (Hindustan Times, 2016).

Securities Exchange Board of India (SEBI)

Capital markets regulator SEBI restricted Mallya and six others members of KFA from having any kind of transaction with the stock market directly or indirectly and from holding position as directors or key managerial personnel of listed company for "fraudulently" diverting funds (about Rs 1,881 crore) from United Spirits Ltd (USL) to other entities within the UB Group, including KFA. SEBI has been looking into the matter pertaining to claimed fund diversions and inappropriate business deals in USL (Business Standard, 2017). In March 2016, Mallya resigned as director and chairman in USL. SEBI claimed that the funds were diverted during 2010 and 2013. PwC-UK report mentioned that" the amount is Rs 655.55 crore while E&Y report "estimated the money at Rs 1,225.24 crore" (Coastal Digest, 2017). The initial inquiry report claimed that between 2010 and 2013, funds involved in many transactions were diverted from the company and/or its subsidiaries to certain UB Group companies, including KFA (Coastal Digest, 2017) based on notes to the accounts of the company's 2014-15 annual report (Hindustan Times, 2017). The 2016 settlement agreement of Mallya with Diageo wherein it agreed to pay USD 75 million to him and consequently he resigned from USL as chairman and non–executive director of USL (Hindustan Times, 2017), is under examination by SEBI. S Raman, SEBI Whole time member mentioned that "the alleged prima facie violations observed in the case are serious. Many argue that action from SEBI was too late and if it had intervened in time such a debacle and fraud might not have happened.

Problems Noticed in the Collapse

The presence of both external as well as internal events led to the demise of the carrier, which have been discussed in the succeeding paragraphs.

External Factors

Rising fuel prices is always an uncontrollable risk factor in aviation sector as the prices of petrol are set internationally. During 2008, the sharp rise in global fuel prices impacted customs duty and sales tax and the outcome resulted in the most awful condition of Indian industry as a whole. As a result the airline still has unpaid ATF bills worth Rs 500 crore due to Hindustan Petroleum Corporation Ltd. The other airlines recovered this increased fuel cost by increasing the number of seats in the aircraft ensuring they get filled but KFA couldn't do so as it projected itself as a luxury airline and prided itself on the comfort it provided. Despite having an occupancy rate of 75-85%, the airline failed to meet out the expenses break-even. The other low fare airlines in the Indian industry which are as old as Kingfisher have been well- restructured with time and had given a tough competition. Moreover most have not introduced business class in their aircrafts in so many years of operations. Further, the major incentive of Air Deccan acquisition was to qualify the five year domestic operations criteria for overseas flights to overcome competition from Jet Airways. Besides, 2008 recession, sky rocket jet fuel prices and competition from other airlines in the industry, the other reasons might be blamed for lack of accountability mechanisms in Indian banks and financial institutions.

Despite the airline's default of over Rs 7000 crore, Indian banks did not file a complaint with Central Bureau of Investigation (CBI). The CBI chief, Mr Anil Sinha, mentioned that the banks advanced funds to KFA during 2004 and 2012 despite repeated requests, did not lodge any complaint against company's loan default and CBI had to act suo moto. He pointed out the accountability mechanisms of Indian banks and financial institutions as "weak and diffused", he further argued that there should be strong vigilance of end use of funds, especially where there is diversion of funds for non-sanctioned purpose (Narayan, Indian Express, 2016). CBI officials too observed that while the loan to Mallya was disbursed in 2009, both RBI and SEBI failed to intervene (Economic Times, 2016). According to Sinha, (2016), a military veteran points out in one of his articles in Pioneer that while Mr. Mallya is definitely on the wrong side of the law but there might be other bigger defaulters who are being kept under wraps by the people in power. The 5/20 policy of Indian government demanded that an Indian airline can flow overseas only if it has flown for five years domestically having at least 20 aircraft. The relaxation of this condition of flying abroad and move by the government to allow investment of 49% in domestic airlines from overseas and relaxation of five year domestic flying rule came too late to help KFA (The Guardian).Some would argue that other players in the same industry too faced similar external threats but they did something that made them not just survive instead become success stories as in case of Indigo that is talked about across the world.

Internal Factors: Tracking Lack of governance in Kingfisher Airlines

The following section details the factors which were more internally driven as the cause of demise of KFA.

Random decision making & untimed merger with Air Deccan

KFA was known for premium business class, luxury aircraft with food and entertainment systems and its vast networks. Keeping the target audience in mind (increasing middle class in India) that prefer air travel over rail, the brand "Kingfisher" was positioned as a lifestyle carrier where customers were treated less like mere passengers and more like guests but after about a year of its operations, the company decided to shift its initial brand image and positioning in the market by operating on two completely different business models and blindly acquired Air Deccan. The stated purpose of this merger was to achieve economies of scale through synergies in terms of operations, maintenance, ground handling, connectivity and customers, by catering to all segments of air travel from low fares to premium fares. The company expanded its business randomly and did not give enough time to stabilize (Business Today, 2011). Mallya failed to study his business model in the Indian aviation market and too many fluctuations in the business model and strategies resulted in strategic weakness of the airline. It trashed almost all marketing strategies of Air Deccan with a view to reduce the operational costs. Mallya thought that Deccan customers would shift to the premium kingfisher but a complete opposite of this happened. The customers shifted to other low cost carriers.

Unfortunately, when the airline launched its international operations, the overall market conditions also changed and the jet fuel prices began to sky- rocket and when finally recession came in 2008 the condition in the airline industry became worse (Sharma, 2011). Though Kingfisher, post-merger, became the largest domestic airline with a fleet of 71 aircrafts including 41 Airbus aircrafts and 30 ATR aircrafts which covered segments ranging from low fares to premium fares but following merger, the accumulated losses of Kingfisher went over Rs. 1000 crore for three consecutive years (Prasad, 2013). By then, the passengers also felt the pinch of soaring fares. Company's auditors proposed that the accumulated losses of kingfisher are more than 50% of its net worth in September 2011 (Mathur, Legal Aspects of Corporate Governance-Reflections from India., 2014). As the airline realized that they had committed a mistake in understanding low cost carrier model, they immediately hiked the prices of Kingfisher Red and brought it at par with other airlines. The management of the airline was not able to classify it as a low cost carrier or a full-line carrier and finally decided to shut down its operations in 2012 and this became a landmark failure in terms of mergers and acquisitions. KFA was a favorite amongst business travelers and even if the airline would have increased the price by 10% or so, they would have still travelled by it as they were sure of getting five star treatments and timely departures and arrivals. So, it should have been continued as a business-centric airline. Kingfisher believed that people in majority can become their target audience but forgot that there were other players in the industry who were catering to that majority of people and it was the only one serving the minority (luxury seeking segment). KFA failed to capitalize upon its own strength and unique selling point (USP).

Lack of Governance Controls by Board of Directors and Promoter's Iniquitous Intention and Dominance

The success of companies largely depends on the quality of decision making of its directors. As per Alex Wilcox, the first CEO of Kingfisher was appointed much after the entire planning of the airlines was done, at the time of launch and resigned the same year. The airlines never had another CEO until September 2010. Though Board of directors is the most important instrument of company's governance practices; it is clear that in the interim the airline was being run on Dr. Mallya's whims and fancies. Instead of trying to safeguard stakeholders' interests (Pathak, 2015), directors had lack of confidence and interest in serving the airline. Independent directors did very little to stem the problems and in fact resigned in quick successions (Economic Times, 2012) starting September 2011 quite analogous to rats leaving a sinking ship. These quick resignations may signal governance failure in such firms (Singh & Singla, 2016).

Unfortunately the whole selection process of Independent directors in India is also flawed where holding of meetings is confined to paper only, not in practice and the promoter dishes out what he wants and independent directors would just agree to it and get fees in millions and in some companies these positions are filled with relatives or friends (Economic Times, 2016).The lack of governance controls by directors leading a company to its demise was on display in case of KFA. Gupta (2016) reckons that Mr. Mallya's story is that of lack of significance of business prudence and more about powerful connects to help create an aura to sustain the unsustainable business models. Mr. Mallya was the darling of all lenders late last decade that too despite the growing losses. He had perfected the art of being sought after by lenders even after having a dismal balance sheet. One of his potent weapons for the same was his Rajya Sabha membership and closeness to all high profile politicians. In fact most of the lenders were in awe with Mr. Mallya's personality and that was one major reason for them to lend money to KFA and not the business potential of the airline. Many might have foregone the due diligence in KFA's case just to get it as a borrower.

Gupta brought forth the murky relations between the wealthy businessmen, powerful politicians, bureaucrats, bankers & media houses and blames this nexus to the rise and fall of not just Mr. Mallya & KFA but attribute this cozy group for repeated defaults at Indian public's cost now running into lakhs of crore Rupees cumulatively. People in India are still wondering about the unapologetic lifestyle of Dr. Mallya. When it came to paying dues to airports, oil companies, banks, employees etc. he had no money while regularly spending heavily when it came to Caribbean Premier League, Indian Premier League or luxury yachts (Economic Times, 2016). In fact even after KFA crisis he kept splurging on Formulae 1 racing and even threw an expensive birthday bash. Mallya even today is not apologetic about anything and that was visible in his statements given to media outside UK Court at London. Mallya is not at any loss and leading life large in the face of adversity and not bogged down by 'minor' things like loan repayment, passport seizure or hapless employees. Ex-RBI governor, Raghuram Rajan also mentioned that Dr. Mallya is sending a wrong message globally by spending heavily on his lifestyle at the cost of the public (Hindustan Times, 2016). Mallya misused his position of being a member of Rajya Sabha and fled the country on diplomatic passport. Mallya failed to discharge his fiduciary duties (Mathur, 2014) and bargained from banks despite his ability to repay the banks. He offered to pay Rs 4,000 crore (mix of currency and pledged shares of his companies)(Hindustan Times, 2016) to lender banks by September 30, 2016.

Table 3: Mallya's Treasures

In UB Group				Shares Pledged to Banks	
Company	**Stake (in %)**	**As in**	**Current Value (Rs cr)**	**(in nos)**	**Current Value (Rs cr)**
Mangalore Chem.	21.98	Dec'15	102.25	4,753,881	18.66
UB Holdings	52.34	Sep'15	72.39	5,186,190	10.74
UB Engg.*	40.74	Sep'15	5.52	--	--
United Spirits	3.99	Dec'15	1,473.41	3,063,820	778.50
United Breweries	32.45	Dec'15	7,081.32	40,710,574	3,360.05
McDowell Hold.	17.99	Dec'15	6.03	3,17,030	0.76
KF Airlines*	--	Jun'15	--	--	--
Total			8,740.92		4,168.70
OTHER ASSETS/ Estimated value (Rs crore)					
Kingfisher Towers (Bengaluru) 900	Kingfisher Airlines brand, Kingfisher House (Mumbai), Kingfisher Villa (Goa) 600				

Source: Business Standard, Mar 31, 2016, p1

* Share trading has been suspended since Jun 22, 2015

Despite the company's inability to pay salaries to over 3000 employees till date (who left in 2015 and the ones who are still on paper), the company added many senior officials and unnecessary officials and top executives were paid handsome pay hikes even after downsizing (Hindustan Times, 2016), also contributed to losses to the company (Kuchhal et al. 2016). CEO pay package was the second highest amongst all his fellow colleagues at UB Group in 2011-12 (Refer Table 4).

Table 4: KFA CEO Amongst top Earners at UB Group

Name	Designation	Annual Salary
Kalyan Ganguly	MD, United Breweries	Rs 7 crore
Sanjay Agarwal	CEO, Kingfisher	Rs 4 crore
Ashok Capoor	MD, United Spirits	Rs 3 crore
JK Sardana	MD, UB Engineering	Rs 66 lakh

Source: Hindustan Times, October 8th, 2012

Lack of Decision Making Skills

Choosing and inducting Aircrafts, being an important asset of any airline requires major decision making skills. Highly successful Southwest Airlines teaches us that using one or two models of planes keeps maintenance and operations costs low. The business model of Kingfisher was such that it did not have any aircrafts of its own and all the aircrafts of kingfisher were dry leased. It inherited additional models from Air Deccan takeover. The other problem faced by the airline was duplicity of tasks since it operated aircrafts of two different makes, both Airbus and ATRs which requires double personnel and thereby increased operational costs instead of bringing cost synergies post-merger.

Stakeholders Condition

The examination of the case in light of Stakeholders theory stresses upon a number of problems in the functioning of KFA. Stakeholders' theory states that the company must function in the interests of all its stakeholders composed of shareholders, boards, employees, customers, banks, suppliers, creditors, government. In the case of Kingfisher, it could be well said that the company failed to protect the interests of all its stakeholders. Corporate governance failure had a disastrous effect on company's stakeholders.

Beleaguered Kingfisher owes more than \$2 billion to its stakeholders including a consortium of 14 banks, leasing companies, suppliers, lenders, employees, oil firms, airport operators, tax department, customers and other business associates(Economic Times, 2016).This theory allows us to study, how the company veered & could not protect the interests of its stakeholders. With the above provided evidence it can be affirmed that both lack of governance and external threats had a disastrous effect on the stakeholders of the company and thus the company failed to protect the interests of its stakeholders. The long grounded defunct Kingfisher, once India's leading airline, ceased operations almost five years ago after a series of mounting losses, absconding its stakeholders with dues (Hindustan Times, 2016). Figure 1 illustrates the model that how the governance failure and external threats in Kingfisher affected its stakeholders which subsequently resulted in its demise.

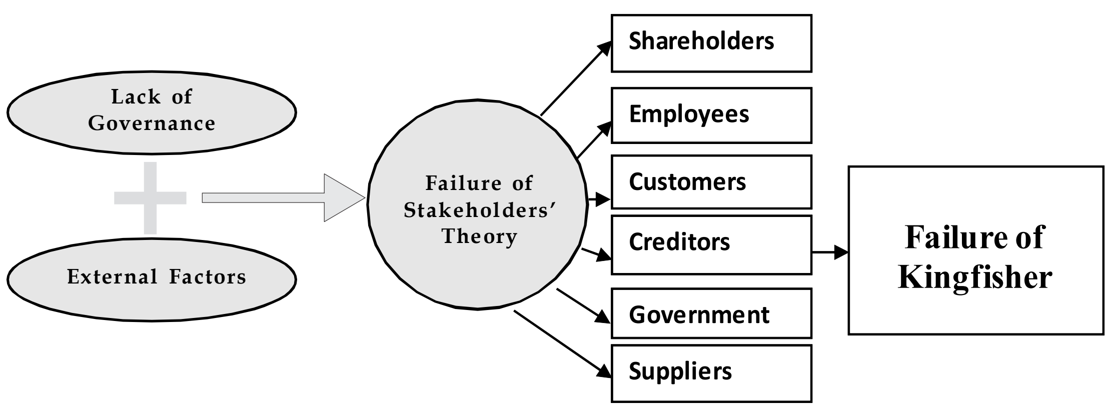

Figure 1: Kingfisher Failure Model

There was varied yet deep impact of KFA's demise on its stakeholders including shareholders, customers, employees, creditors and suppliers, as discussed below.

Shareholders: The most affected party in Kingfisher was its shareholders. The share price of the carrier declined sharply from a very high of Rs 307 during 2007 to a low of Rs 1.5 in 2012 and banks have also created large block shareholders by converting substantial debt part into equity (Ravi, 2016).

Customers: KFA was known for premium, luxury service and its vast networks. Keeping the target audience in mind (the rich & increasing luxury seeking middle class in India) that prefer air travel over rail, the brand "Kingfisher" was positioned as a lifestyle carrier where customers were treated more like guests. The company diluted its initial brand image and positioning in the market by operating on two completely different business models through takeover of crisis-ridden low frills Deccan rebranded as Kingfisher Red. Customers were confused with the model. Moreover, there were frequent delays and cancellations of Kingfisher flights and no refund money for cancelled flights till date.

Employees*:* It is still unbelievable that over 3000 of airline employees (who left in 2015 and existing ones) still haven't got their salaries and many of them especially staff, technicians and engineers remained unemployed till date (Hindustan Times, 2016). The salary arrears, mounting since 2012, work out to more than Rs 300 crore. Moreover, the company defaulted on paying TDS from employees' income to the tax department. One of the store managers' wife committed suicide on account of acute financial crisis due to airline's non-payment of salaries for the last six months in 2012. The company was also in default of the dues owed on behalf of its employees to regulatory authorities, which it didn't count as a debt and was funding itself at the expense of employees and Indian exchequer (Sharma, 2011). Moreover, company stopped paying provident fund to its employees since September 2015. As per labor ministry reports, KFA has been registered as employer with retirement fund body Employees' Provident Fund Organization (EPFO) since January 1, 2005 and paid EPF and other dues on salary payable for 6,185 employees in March 2012 and gradually reduced to 3,339 in December 2012 (Pioneer, 2016). Investigations are still going on to deal with this issue and the company has been issued notices for penal damages (Pioneer, 2016).

Creditors*:* KFA owes consortium of 17 banks led by SBI huge amount against loans to KFA. Dr. Mallya's refusal to disclose his overseas assets indicated a lack of his bonafides and willingness to pay the loans owed by KFA to financial institutions (Pioneer, 2016).

Suppliers: The beleaguered airline did not pay its debts to UK-based aircraft parts supplier Aerotron despite repeated reminders. Kingfisher signed an agreement with the said company in 2012 and promised to pay an outstanding of Rs. 35 crore in monthly installments between March and October, 2012 (Scroll, 2016). The carrier indebted an amount of Rs 341 crore in fuel to its largest supplier, Hindustan Petroleum Corporation Ltd. (HPCL) and the bank guarantee to HPCL was worth about 434 crore till September 2012 (Pathak K. , 2012). Aircraft leasing firms aircraft lease rentals GE commercial aviation services, DVB aviation finance Asia ltd, repossessed many of its aircrafts due to non-payment of lease rentals (The Hindu, 2016). It owed a lot to the airports and the Airport authority of India too due to which its premium slots got cancelled.

Government: The airlines had service tax arrears of over Rs 70 crore, half of which it had paid in last few months before closure but still Rs 35 crore was due from the company when it shut down. In 2011, the company was accused of fraud and cheating on account of default on payment of Rs 33 crore service tax in government treasury, which it collected from passengers on behalf of the government.

Questionable Role of Regulators

The regulatory authorities and the investing agencies, tribunal and Karnataka High Court failed to take immediate action against Dr. Mallya and failed in restraining him from leaving the country. The evasion of willful defaulter under the nose of the authorities demonstrates poor justice and law enforcement systems in India (Hindu, 2016).

Desired Policy Actions To Prevent Another Kingfisher

The failure of Kingfisher has given a number of lessons to the stakeholders on how such collapses could be averted and has connotations for academicians, practitioners and companies engaged in mergers and acquisitions. It also provides valuable learning for effective management and wise decision making by the corporate board. Corporate governance is the area which must be taken seriously by the airlines for the reinforcement of efficiency and competitiveness (Lu et al. 2012). Besides, low fares, on-time, hassle-free, consistent on-board and ground service, the best way to avoid such collapses may be to introduce an effective system in place that unveils the wrong doer and makes him shamefaced if employees remained unpaid for several months and to introduce stringent anti-corruption, anti-bribery and amendments to the existing recovery laws, policies, rules and regulations for managers, regulators and policy makers including government. So, more legislative changes should be incorporated in corporate governance requirements so as to have in aviation industry knowledgeable and experienced directors on board (Hermann & Rammal, 2010).

Conclusion and Recommendations

Enactment of a new law by the government to enable confiscation of assets of economic offenders who leave the country and acting strongly against the defaulters to recover the thousands of crores of money they owe to the banks should be in place; otherwise it would mean that the taxpayers' money is being used to bail out banks, looted by large borrowers (Hindu, 2016). The government needs to go deeper to fix bank responsibilities and imposing exemplarily punishment on those who aided the lending process to KFA (Hindu, 2016). There should be transparent decision making process to sanction a bank loan. Indian Banks must be vigilant into the business they are financing and should be active in stopping incremental loans if something goes wrong (Pioneer, 2016). The banks and financial institutions must establish a mechanism which can initiate present reliable and valid data for assessment of asset quality (Kumari, 2016).

If the defaulters such as Mallya are given concessions on the repayment of defaulted bank loans then there will be a similar demand from other defaulters as well (Indian Express, 2016). Sarkar mentioned that Joint Parliamentary Committee (JPC) must be formulated to find out how over 100 large companies have emerged as defaulters in these few years and must look into the functioning of the banks and expose corporate defaulters who are looting bank funds apparently with the connivance of bank officers and some political leaders (Pioneer, 2016). To curb corruption, the incentive structure of senior PSU bankers must be tweaked by linking remuneration to profitability in the medium and long term. Stock options can form a large slice, but compensation can also be clawed back if any deficiency is found later. SEBI should approve the proposal to bar willful defaulters from making public issue of equity, debt or hybrid securities while raising capital through rights issue or qualified institutional placements to protect the interests of minority shareholders from the wrongdoing of promoters (Business Standard, 2016).

The company should clearly define the roles and responsibilities of company board of directors, CEOs and executive management for successful and sustainable business (Nwabueze & Mileski, 2008). The promotion of employees must be based on their knowledge and skills so that they can continue to achieve the targets of the business. Furthermore, the role of CEO-Chairman should be separated, make audit committee strictly independent, penalize companies for non-compliance of CSR provision, authorize management to validate financial statements, present financial data transparently and accurately by the accountants and auditors. A whistle blower mechanism must be introduced by the government to safeguard the best interests of the employees. Auditors must provide true and fair view, reliability and validity of financial statements.

Though the government made several changes to the erstwhile Companies Act, 1956 and came out with the reformed version of Companies law in 2013. The new Act made it difficult for a promoter company to fund its special purpose vehicles (SPV) or joint ventures through loans which was allowed easily under companies Act, 1956. The new rules around corporate governance aimed at ending the malice and brought professionals such as company secretaries, CFOs, auditors and independent directors risk landing in jail if found involved in any financial fraud (Economic Times, 2015).

There is still a need for further legislative changes into the system to have good corporate governance in place. Important issues such as inter-corporate loans, managerial remuneration for non-executive directors, independent directors, auditors' opinion regarding company's financial control whether it's financial or operational control and insolvency framework that the government needs to look at (Economic Times, 2015). Furthermore, professionalism on the part of Public sector units (PSUs) with respect to composition of board of directors can ensure optimal performance. Most PSUs are in violation of corporate governance norms and do not fulfill the criteria of appointing independent director for more than couple of years.

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