



# Infosys Ltd. Smoke without fire?

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## EXECUTIVE SUMMARY

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- Business is dynamic and cannot be run on static principles set by the founders. [Read More](#)
- SES does not find any **issue with CEO remuneration except unfettered power in the hands of Board to alter the remuneration package.** [Read More](#)
- On Severance pay, while SES has no issue on the quantum, **SES does question logic of paying severance pay for not revealing price sensitive information.** SES believes that any employee is bound by law not to use or disclose price sensitive information. While on all other factors severance pay may be justified, **it is certainly not acceptable on account of price sensitive information.** [Read More](#) There was no benchmark of disclosure in past on this issue. As stated by Mrs Roopa Kudva in [her interview](#) that they realised their mistake and corrected it. One cannot hold on to a mistake and castigate specially when it is acknowledged and corrected.
- SES is of the opinion that Mr. Murthy has lot many questions to answer on issue of E mails being received by him. [Read More](#)
- **The company should have disclosed that Mrs. Sinha is a Politically exposed person.** [Read More](#)
- Are the Founders trying to have their say in Company matters by appointing relative of founders on the Board? [Read More](#)
- If one believes Mr. Pai, and there is no reason not to believe; **Mr. Murthy and other founders failed to develop leaders as they focussed only on founders becoming leaders.** In opinion of SES, ignoring non-founders and not nurturing them for leadership role is not an example of exemplary governance. [Read More](#)
- It is claimed that gold standards of corporate governance set by Founders, have not been followed. While SES on its independent observation has pointed out shortcomings in disclosure, it cannot agree with observation of Founders, as one does not know what they would have done in case they faced the same situation. They never paid severance pay, so no disclosure made hence no past benchmark. But the founders are bit economical with truth on this issue. They also never admitted or disclosed that they were nurturing only promoters for leadership role.
- Finally, as majority of shareholders are aware of these issues and have not raised any concern, voice of founders at best is a minority voice and must be given same treatment as any other shareholder would deserve.
- If Founders feel that they need to come back to the Board, they must offer themselves for board position. Board must work along with all shareholders to maximise value.
- It reflects rather poorly on investor relations of the Company, as either these founder investors were taken for granted and ignored or these founder investors acting in block wants to have a say in affairs of the Company. In nut shell, it is poor investor relations.
- Demand for resignation of chairman, without any substantive reason is not justified. How can a group of shareholder evaluate performance of chairman? If the group is so serious in allegation, they have the power to move a resolution for removal of chairman. In essence allegations amount to chairman giving wrong and misleading information, especially if transcripts of AGM of 2016 is kept in mind, where chairman clearly stated that severance pay was not hush money. **If founders still continue with the allegation, it becomes a serious issue and the chairman must either accept that he lied or institute a defamation suit against allegers.**
- In nutshell, SES does not find any serious issues in governance, which should attract attention and cause unnecessary damage to reputation. Therefore, it appears to be a case of smoke without any fire.



## BACKGROUND

Things do not appear to be good at the India's second biggest IT Company, Infosys Ltd. Many analysts are hinting that we could be at the verge of another Boardroom battle like the TATA-Mistry. However, SES does not subscribe to such a view. There are basic differences in the two events/episodes.

- In case of Tata-Mistry, it was removal of executive chairman of holding company by majority shareholders and further removal from group companies. The ousted chairman had alleged failure of governance and almost put the blame on himself as he was part of the system.
- In the present case founder shareholders, have raised issues, they have explicitly stated that they are not against CEO, they are not on the Board, they are also not majority shareholders. They have raised governance issues based on their opinion and not based on factual knowledge. They have not alleged any legal wrongdoings but have found fault with certain payments.
- Can difference of opinion on an issue be called governance failure? Are issues relating to remuneration cast in stone by the founders so that future Boards and Committees must adhere to same? Should decision making be based on current issues at hand or based on history? Should the Company be run on auto pilot mode set by founders? The simple answer is NO. Business is dynamic and can never be successfully run by static policies.

SES in this report has examined statements given by Board members and founders of Infosys Ltd. At this juncture one does not know what is the intent of founders and erstwhile board members. There is a talk that founders are battling to put Mr. NR Murthy back on the driving seat. SES cannot comment on the same as it is an unconfirmed view. However, SES would state that SES is not in favour of any backseat driving or remote controlled operation. If the founders do have any intent to come back in saddle, they are welcome and they must approach shareholders for re-electing them to board in a transparent manner.

SES acknowledge the stellar role and efforts of founders and former directors of Infosys in creating Company and making it this big. They deserve all the respect. However, the businesses no longer can be run by emotions and feelings. One has to face reality of everchanging technology, dynamics of business and competitive pressures. Therefore, there is bound to be some departure from past practices, whether one likes it or not. Therefore, notwithstanding role played by founders and respect for them, the business decisions must be ruthless and in line with the need of hour. Of course, paramount is shareholders interest and governance.

In an interview to [KR Balasubramanyam](#) of Economic Times, Mr. Murthy has pointed governance failures by the Company and asked for disclosures, induction of Marti Subrahmanya, high salary to Mr. Vishal Sikka, high severance pay, amongst various other steps to ensure good governance at the Company.

This is not the first time the founders have shown their discontent with the CEO, Mr. Vishal Sikka. In the resolution for re-appointment of Mr. Vishal Sikka in postal ballot 2016, 76.43% of promoter votes were ABSTAIN. SES had made various other observations based on the postal ballot results in its report '[Promoter Dissent at Infosys Ltd. – Pinch me hard please](#)'.

## COMPENSATION TO MR. VISHAL SIKKA

The founders have raised concerns over high remuneration to Mr. Vishal Sikka and as mentioned above, they even ABSTAINED from voting on the resolution for re-appointment of Mr. Sikka in the Postal Ballot 2016.

The performance of the Company has improved after Mr. Sikka took over as the CEO with revenue, profits, profit margins improving over the years.

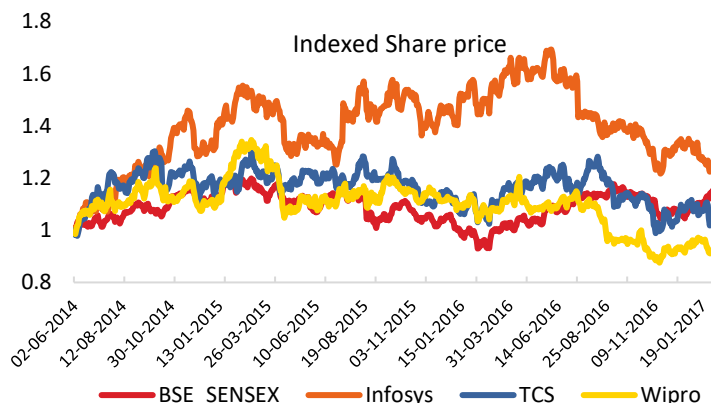
Infosys	2016	2015	2014
Revenue	56,992	50,637	46,917
EBITDA	22,923	18,624	16,204
Net Profit	15,786	12,164	10,194
OPM	40.22%	36.78%	34.54%
NPM	27.70%	24.02%	21.73%



SES does not find any issue as far as quantum of remuneration is concerned due to the fact that the remuneration consists of a low fixed components and large variable pay component, based on performance milestones. Such remuneration package which are deferred and performance based **are in fact good governance practice**. Further shareholders approved this with majority, therefore concerns raised by founders at this stage have no meaning in corporate democracy.

Although in absolute term and as % of net profit, remuneration of Mr. Sikka is higher compared to peers, performance of Infosys in terms of market price has been relatively better than peers post appointment of Mr. Sikka

(in ₹ Crores)	Infosys	TCS	Wipro
Remuneration of MD & CEO	48.73	25.66	13.67
Revenue	56,992	89,604	45,096
Net Profit	15,876	22,882	8,099



**SES however raises the concern that the Board has unfettered power to vary, alter the remuneration of the CEO. SES believes that such unfettered powers to the Board defeat the rationale behind taking shareholders’ approval.**

## SEVERANCE PAY TO FORMER CFO – RAJIV BANSAL AND CHIEF COMPLIANCE OFFICER – DAVID KENNEDY

The founders have raised concern regarding high severance packages to former CFO – Mr Rajiv Bansal and Chief Compliance Officer – Mr. David Kennedy. The Company paid 24 month severance pay (₹ 17.38 crore) to Mr. Rajiv Bansal and USD 868,250 plus reimbursements for COBRA (insurance) (about ₹ 6 crore) to Mr. David Kennedy.

Mr. Mohandas Pai, Former CFO has also raised concerns over high severance packages to both the officials. As reported in a [daily newspaper](#), he said that no CFO was paid as high severance pay as Mr. Rajiv Bansal. Also, he mentioned that no CFO of the Company was paid severance pay and hence a special treatment was given to Mr. Rajiv Bansal. Further, he mentioned that Mr. David Kennedy was a part of the Company for a very short period and paid high severance pay. However, as reported by a [daily newspaper](#) such severance pays are not a one off case in India.

There were allegations against the Company **that high severance pay to the officials were to buy their silence as they knew something about the wrong doings of the Company.** However, the Company in an announcement to the stock exchange has denied these allegations and maintained that the severance package to Mr. Rajiv Bansal was on the basis of non-compete agreement.

The Company had appointed Cyril Amarchand Mangaldas to investigate the matter and has stated as under:

*“Following certain insinuations/rumours and an anonymous letter received regarding Rajiv's separation, the Board/Audit Committee had proactively ordered two separate independent investigations over the last one year into this matter - the first in October, 2015 and the second in August 2016. The investigations were conducted by Cyril Amarchand Mangaldas, a reputed law firm. Both investigations were shadowed by KPMG, the company's auditors, and revealed no wrong doings or efforts to cover up any wrong doings.”*

The Company has made an [announcement](#) to the stock exchange citing that there was no substance to these allegations/rumours of silencing the ex-CFO Rajiv Bansal. The Company although has disclosed the conclusion of these reports but not provided the reports on the website.



In fact, the issue was raised by a shareholder in AGM of 2016 and the same was effectively answered. An extract from [AGM transcript](#) is worth mentioning at this juncture:

*“.....I want to take this opportunity to categorically state that there is absolutely nothing to hide and I want to assure all of you that the financial statements are certified by very qualified firm of chartered accountants, I am making this statement on **the basis that I personally and Roopa Kudva who chairs our Audit committee has applied ourselves to looking at every piece of very sensitive information, to very sensitive financial information that needs to be looked into for the purpose of assurance that we meet the highest standards of integrity in our financial statements.** And I assure you that any murmur from anywhere, whatever whistle-blower compliant, even if is anonymous, even if it is very-very trivial is looked at very seriously because we are conscious of the fact that this Company was built on the basis of some very high standards of ethics and probity and it is our responsibility as I said as your representatives to ensure that there is no dilution whatsoever on those principles.....*

*....Now if there had been an issue relating to any silencing, the agreement would not have this clause, and I want to disclose this clause to you. **The clause within the agreement says that he has got every right to report to the regulator whether it is SEC or SEBI,** that in itself must convince you that there is no issue relating to silencing and therefore I am taking this opportunity, although you have not raised this issue but I am using this opportunity to address some of the other, particularly some section of media which has somewhat unfortunately given this a twist. And I therefore hope that this could be put to rest with this detailed explanation that I have chosen to give you.”*

The transcript clarifies almost all the issues raised especially

- “There is something to hide” - **This is effectively countered** by the clause that the person concerned was free to disclose any or all info to a regulatory authority, therefore hiding any wrong is not the motive
- The payment was on account of non-compete fee as well
- And the person knew price sensitive information

While SES does not question the quantum of money paid and the right to decide, SES does raise following issue

- Why pay any one for Price sensitive information? Every employee will have some information or the other. If the employee uses price sensitive information, he can be and must be proceeded against legally, either for breach of trust or under SEBI insider trading regulations. This threat would be there in all cases of retirement in normal course or all resignations? Will company pay every one?
- While non-compete could be justified, but one must elaborate what are the areas prohibited and it must relate to loss of opportunities.
- If there was any lacuna in contract of CFO, his original appointment dates back to period when founders were in the saddle.
- The issue raised by founders that in past no other CFO of Company was paid severance pay is at best half-truth. In past, no such case had arisen. All the past CFOs were directors on the Board and Annual reports stated that no Director was entitled to Severance pay. Therefore, paying severance pay was not an option at all in past.

## ACQUISITION OF PANAYA

A [media report](#) points that Mr. Rajiv Bansal resigned because he was sidelined during the acquisition of Israeli Software Company – Panaya. The report mentions that Mr. Bansal used to ask uncomfortable questions as the acquisition has a potential conflict of interest. The conflict of interests as mentioned in the article is due to investment of Hasso Plattner, one of the founders of SAP whom Vishal Sikka used to report to at SAP.

- SES cannot comment on the consideration amount paid by the Company for acquisition. It is for valuers to decide
- SES is of the opinion that there does not appear to be any conflict of interest as Mr. Sikka does not have his personal interest in the acquisition. Merely his former superior is involved does not make Mr. Sikka conflicted. Further, the decision was taken by the Board and not by Mr. Sikka alone. Further, the valuations were checked by Bankers from Deutsche Bank and Independent group as mentioned by Mr. Sikka in one of the analysts calls:



*“Maybe, I can make a broad comment on the valuation, we looked at the valuation from multiple different perspectives, and in all perspectives, the valuations come within the correct band. **We had an independent group, bankers from Deutsche Bank, look at the valuation of Panaya, and we feel very comfortable with the valuation.**”*

## MAILS TO MR. MURTHY?

As reported by another daily, Mr. Murthy said:

*“What kind of signal does this send to employees? So many employees at senior, middle-level and junior levels at Infosys are unhappy. I have received over 1,800 emails from various employees expressing their unhappiness at this situation. The common question they have all asked me is, if it is fair that they got only 80% of the variable part of compensation while somebody who has left the company is given 100% variable for the next two years after leaving. These are a subset of the governance issues.”*

SES has following questions to Mr. Murthy

- Is it normal for founders to encourage employees to write to them on internal issues of Company, when founders have given up Board position?
- What action Mr. Murthy took after he got first mail? Did he talk to or write to Board or CEO? Did he ask the employee concerned to seek redressal of grievance through grievance committee? Does Mr. Murthy believe that grievance mechanism had failed?
- Should founders encourage disgruntled employees? Does it not amount to nurturing loyal soldiers, although no longer in leadership role?
- Does it not weaken the leadership of CEO, when ex directors, founders engage, actively or passively, in such acts of employees?
- Or is it a case that after failing to get any resolution these 1800 employees approach Mr. Murthy?

SES does not have answers to any of the question. Answers are known only to Mr. Murthy or to the Company. Hopefully M/s Amarchand Mangaldas in their report will address all the issues.

## APPOINTMENT OF MRS. PUNITA SINHA

Appointment of Mrs. Punita Sinha didn't go well with some of the founders and they ABSTAINED from voting on the resolution proposed in PB 2016. The Company has always maintained to not appoint politically influenced people on the Board. SES is in principle in agreement with founders that Politically Exposed Person (PEP) should not be appointed. However, the caveat is that unless they are qualified in their own right to be appointed.

Accordingly, SES had recommended in favour of the resolution for Appointment of Mrs. Punita Sinha based on her merits. However, raised concerns about her being “Politically Exposed Person (PEP)”.

Mrs. Punita Sinha was already a Director of JSW Steel Limited and SREI Infrastructure Finance Limited before her husband became a minister in Central Government. SES had opined that due to her experience and profile, she would have qualified on her own merits to be appointed regardless of position held by her husband.

SES had noted in its report that the Company failed to inform shareholders of her status as a Politically Exposed Person, which is, although not required by law, yet expected as good governance practice.

SES is of the view that questioning appointment of Mrs Sinha amounts to demeaning her and her capabilities. In present liberalised environment, such questions are no longer relevant.

## APPOINTMENT OF MR. D N PRAHLAD

Appointment of Mr. D N Prahlad, former executive of Infosys and nephew of Mr. N R Murthy, shows that there is a contention between the promoters and the Board. The Board appointed Mr. D N Prahlad as an Independent Director on the



Company w.e.f. 14<sup>th</sup> October 2016. Appointment of relative of the Founders raise questions whether the founders are trying to have their say in the Company matters? Or do they want to keep a check on the Company and the Board by appointing their relative on the Board?

## **DID MR. MURTHY FAIL TO CREATE LEADERS?**

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As per article in [FirstPost](#), Former CFO **Mr Pai has said that** “---- it was a "mistake" on the part of N R Narayana Murthy to "focus on only founders becoming leaders (CEOs)" which led many people to quit the company.” If this is true, it is far more serious governance lapse compared to issue of severance pay and CEO remuneration. This amounts to failure on part of Mr. Murthy and other founders to have succession planning as also indicates their bias towards founders and ignoring merit. SES does not know the facts, but would take words of Mr. Pai at face value.

## **COMPANY’S CLARIFICATION ON GOVERNANCE ISSUES RAISED BY FOUNDERS**

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The Company in its clarification to stock exchanges has denied any governance lapses. The Company has appointed Cyril Amarchand Mangaldas to receive inputs from promoters and make recommendations to the Board.

Questions have been raised that, If the Company has denied that there are no governance lapse then why there is a need to appoint governance experts? Why can’t the Board directly take inputs from the founders and answer them, after all they are the shareholders of the Company?

It appears to be a situation, if you do you are damned and if you don’t, you are damned.

If the matter is hushed up between board and founders, we analyst will cry hoarse that matter is buried and will keep on asking questions and raise suspicion, and demand a third party independent opinion. Now when the company is doing it questions are still raised.

SES is of the view that an Independent opinion is the best option to solve any conflict. Hopefully Independent opinion will not be biased and will be in the best interests of the Company and the shareholders.

Analysts have [raised concerns](#) about conflict of interest of Mr. N R Murthy being on the Board of Amarchand Mangaldas. SES is of the opinion that there might not be any potential conflict of interests as he is only a member of external strategic advisory board which may not have interests into dealings of the firm with the clients. Further, Mr. Murthy is the one who has raised issues on failure in corporate governance practices in the Company. Therefore, resolution of the issues will only be after third party report is in public domain and Mr. Murthy in order to safeguard his reputation would not compromise. SES does not expect that a man of stature of Mr. Murthy could be silenced just because he happened to be on board of a law firm.



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