

## **FINANCIAL EXPRESS 26 11 2013**

### **“Shelve Self-Regulation” by Service Providers” by S L Rao**

A recent newspaper report says that the Institute of Cost Accountants is outraged by the new draft rules from the Ministry of Corporate Affairs that will substantially reduce the number of companies that have to be compulsorily cost audited. Keeping adequate cost data, analyzing them, and looking at them in different ways, is an important tool for good management of enterprises. Cost (more appropriately called management) accountants play a key role in the better management of enterprises. Having seen many of these mandatory cost audit reports, I am satisfied that they serve no purpose in any enterprise that is managed for optimum efficiency or profit. For those that are not managed well, the cost audit report offers little to make them change. What the mandatory cost audit does is to give easy employment to many hundreds of cost accounting firms.

Such bodies recognized by government statutes, (chartered accountants, company secretaries, architects, medical practitioners, to name some), are supposed to be self-regulated. Self-regulation must identify malpractices, investigate complaints, and take tough action, including disbarment of the concerned member found guilty of malpractice. Indeed, there have been very few (if at all) instances of such investigations and actions by statutory bodies. In the case of corporate enterprises, there have been many instances when an audit report that gives a good hit, is followed by public disclosures of fraud or other acts that should have been found by one or the other statutory body.

Satyam, the National Spot Exchange, Deccan Chronicle, Kingfisher, are only a few companies that faced problems. Many companies have misled the banks and the public, and in most cases, had been given good reports by statutory bodies.

All statutory bodies have regulatory powers given to them by government over the practitioners that they have licensed after education, training and examinations. Self-regulation has not prevented scams caused by carelessness or fraud by the licensed practitioners. What is worse is that in India, the rules allow penalties only on individual members of statutory associations, not on the firm which employs them to give professional expertise.

American practitioners fear damage suits by patients and their relatives for malpractices and mistakes. If found guilty, damage payments and insurance premiums to pay them, are high. This makes medical care costs for instance, very high in the USA. Apart from the Courts, the professional medical

association hears such complaints and takes stern action. Lawyers are another self-regulated group. American lawyers are hauled up for malpractice and other lawyers give evidence against them, as they do in other professional practices. Similar is the case with other statutorily recognized associations like certified public accountants. American professionals are willing to testify against fellow-professionals.

This is not the case in India. There are practically no instances in India of professionals being hauled up and punished, or giving testimony in Courts against fellow professionals. The statutory bodies regulate entry into the profession, set the rules and standards for their profession, conduct the examinations that admit new members, lobby to expand their turf (as has the institute of cost accountants), and prevent foreign qualified professionals from practicing in India. Their standards and rules have legal sanction. No professional association severely punishes the individual and the firm he works for, for carelessness or involvement or abetment in a scam.

With the new Companies Act now having become law, and recognizing class action suits, this is bound to change. A recent Supreme Court judgment awarded crores of rupees of damages against a medical practitioner for negligence. Change is in the air. Statutory bodies must prepare themselves for a new regime. We must also ensure that the cost of these damages for malpractice or negligence, do not make the services of such professional too expensive.

The more difficult professions that show no signs of changing, are the bodies that are not at all regulated. In the corporate world these include credit rating agencies and management consulting. Other areas that are without statutory or self-regulation include sports associations controlling different sports. Credit rating agencies have a spotty record since there have been instances of good credit ratings being given, almost immediately followed by public disclosures of frauds by the rated enterprise. Sports associations jealously guard their independence to regulate their sport. Mostly led by top political leaders, bureaucrats, policemen and businessmen, they lack vision for the sport they control and are not accountable for consistently poor and deteriorating performance. They do not attempt to identify, train and nurture talent, but fully control the funds available for the sport. Self regulation has not improved our sports. We need legislation to ensure that all rating agencies and sports associations are transparent in their governance, finances, and their leaderships are accountable for their work.

While Indian professional associations never severely punish mis-behaviour by members and their companies, they are protective of the rights of their members. For example, when a Delhi lawyer was arrested and handcuffed on

a criminal charge, the lawyers agitated against their colleague being treated like one of their clients. Innumerable horror stories of wrong diagnosis, treatment and sheer carelessness of doctors and surgeons in public and private hospitals and nursing homes are told. Abused patients are unable to exercise legal remedies, though in the recent past consumer courts have sometimes corrected this. Many times, relatives of mistreated patients cannot even access their medical records. Medical experts will not publicly testify to what they might admit privately.

Self-regulation in the professions has been ineffective in India. Associations can set standards, conduct examinations, license practitioners, but misdemeanors should be covered by legislation, not self-regulation. Indeed, this should extend to all professions, for example, real estate agents, who have no minimum levels of qualification of service quality, nor a mechanism to deal with wrongdoers. Self-regulating professional associations favour their members over customers and community. Parliament must create a new independent regulatory body for chartered professionals that will be open, transparent and consultative, and over others that influence the market (like rating agencies), and sports associations. Disciplining professionals must not be left to ineffective self-regulation. The process must give confidence that complaints and wrongdoing will be heard and decided objectively. Professionals must follow a code whose violation triggers legal penalties. (1041)