
GAUGING THE NEED FOR A CORPORATE GOVERNANCE FRAMEWORK FOR INDIAN STARTUPS VIA THE PRISM OF BHARATPE CASE

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ABSTRACT

Poor governance kills potential startups. The recent tussle between BharatPe and its founder Ashneer Grover has brought to the forefront the plight of Indian startups wound up in controversies. Also similar to BharatPe, Akriti Bose, the founder of Zilingo, also highlighted this issue of disconnect between founder and investors. In this article we attempt to address the inadequacies in the corporate governance framework in Indian startups. To do this, we look over BharatPe's legal problems, their effect on the financial startup market, and also governance-related problems with other startups. Though possible attempts have been made in comparative jurisdictions to depict the importance of venture capitalist governance to handle the decision- and strategy-driven conflict between VCs and Founders to addresses the current catastrophe of governance complexity. However, the viability of such measures in an Indian context requires careful consideration

Keywords: BharatPe, Corporate Governance, Ashneer Grover, Venture Capitalist, Founders, Start-ups

2022 - A TUMULTUOUS YEAR FOR INDIAN STARTUPS

For start-ups, 2022 was a year of unrest and controversy. Problems emerged not only with **BharatPe** but also with other well-known businesses including **Byju**, **Trell's** financial audit, and consternation surrounding **Zomato-Blinkit**. Even while these businesses' troubles have a variety of secondary reasons, their primary root cause—poor corporate governance—is the same for all.

INTRODUCTION TO BHARATPE

The rapid pace with which digitalization has taken over almost all facets of society even the manner of payments has changed. Fintech products gained traction in the 20th century hence fintech companies like **Paytm** and **BharatPe** have cashed on this popularity to pander to the needs and requirements of small merchants¹.

BHARATPE is a full-stack service app for merchants across small and medium businesses, offering loans, investments, insurance, and other financial services. Despite its rapid success, BharatPe has had its fair share of controversies and legal issues. It is worth noting that legal conflicts are not uncommon in the *Start-up Ecosystem*², and BharatPe is not unique in this regard and has stated that it is committed to resolving them in a *timely* and *transparent manner*.

THE CURRENT PROBLEM IS THE ABSENCE OF START-UP GOVERNANCE

The interlude between Governance and Startup in terms of the appropriate framework, particularly with regard to strategic decisions and financial management, is a glaring weakness in the Indian startup ecosystem that continues to afflict the big players.³ Some have been able to address the crisis, but the majority continue to continue to struggle, much as BharatPe, and remain clueless of the changes required. The lack of proper and effective corporate governance

¹ Rasmi Dabbeeru, Neelakanteswak and Neeraj K., A Study of Emerging Fintech Startups and Disruptive Solutions (September 14, 2022). Available at SSRN: <https://ssrn.com/abstract=4218646>

² Mehul Khandelwal, BHARATPE DISPUTE AND ROLE OF SIAC, Journal of Legal Research and Juridical Sciences, VOL. 1 ISSUE 3, <https://jlrs.com/wp-content/uploads/2022/04/40.-Mehul-Khandelwal.pdf>
Mishra, A.K., Raturi, R. and Nag, R.M. (no date) Compliance Toolkit for Start-ups, Alliance for Integrity. Available at: <https://www.allianceforintegrity.org/> (Accessed: May 4, 2023).

³ Malpani, R., & Ghosh, A. (2022). Corporate Social Responsibility Practices: A Strategy for Indian Startups to Sustain. Business Perspectives and Research, 0(0). <https://doi.org/10.1177/22785337211070357>

norms for startups leads to dismal decision making by founders.⁴ Thus, the practice and implementation of ethical corporate governance would pave the way of success for the startup.⁵ A workable solution could be a more evolved governance that aims to foster balanced decision-making at the Cap Table.

BHARATPE CASE: A PROMPT FOR EMPHASIZING THE NEED FOR STARTUP GOVERNANCE

Tabular History of Legal Disputes In BharatPe

Some of the notable legal disputes involving the company are:

SNo	Dispute	Year	Description
1	<i>Trademark Dispute</i> ⁶	2021	BharatPe and PhonePe engaged in a legal battle for usage of the suffix <i>Pe</i> in their names wherein PhonePe claimed trademark rights. The court observed that except for the common word “Pe”, marks are not confusingly or deceptively similar.
2	<i>Kotak Mahindra Action Against Ashneer Grover</i> ⁷	2021	Grover and his wife wished to buy the shares of Nykaa, worth Rs 250 crore each in IPO. However, Kotak declined to finance the IPO, to which Grover objected. The insulting language used by Grover towards their employee infuriated Kotak.

⁴ Corporate governance in India – practices, framework (2020) Deloitte India. Available at: <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html> (Accessed: May 4, 2023).

⁵ Kumar, P.S., Madhab, M.D. and Kumar, B.S. (no date) 'The Big Billion Days' vs. 'Great Indian Festival' e-shopping: A study on new consumer behavior paradigm, Pragati: Journal of Indian Economy. Journal Press India. Available at: <https://www.indianjournals.com/ijor.aspx?target=ijor%3Aapj&volume=8&issue=1&article=007> (Accessed: May 3, 2023).

⁶ Phonepe Private Limited vs Ezy Services & Anr., IA No. 8084 of 2019 in CS (COMM) No. 292 of 2019.

⁷ Sheersh Kapoor, Uday Kotak-BHARATPE founder Ashneer Grover Row: What's happening?, Economic Times BFSI (2022), <https://bfsi.economictimes.indiatimes.com/news/fintech/uday-kotak-bharatpe-founder-ashneer-grover-row-whats-happening/89410050> (last visited Mar 3, 2023).

3	<i>Payment Dispute</i>	2022	Razorpay alleged that BharatPe had withheld payments worth over Rs. 5 crore (approximately \$700,000) which were earlier denied then claimed settled.
4	<i>Suing MD over Fraud⁸</i>	2022	BharatPe accused ousted MD Ashneer Grover, and his family of embezzling company funds to pay for personal expenses, and funneling money to fake vendors and recruitment services.
5	<i>Rejected Plea for Arbitration</i>	2022	Mr. Grover ended up resigning over the plethora of allegations made against him. However before resignation, Mr. Grover's emergency plea against a " <i>allegedly biased</i> " governance review was rejected ⁹ by SIAC. ¹⁰
6	<i>Ongoing Case for Claw back of Grover's Shares</i>	2023	In a civil lawsuit filed in the Delhi HC BharatPe has sought ₹88.67 crore in damages from Grover, his wife Madhuri Jain Grover, and family members ¹¹ . It said Grover and his family created fictitious vendors in Panipat to provide services to BharatPe, raised fake invoices and overcharged the firm for recruitment.

⁸ Resilient Innovations Private Limited v. Madhuri Jain Grover & Ors., CS(OS) 771/2022 (Delhi HC)

⁹ SIAC quashes Ashneer Grover's emergency plea against BHARATPE's 'Governance Review' (2022), The Economic Times. Available at: <https://economictimes.indiatimes.com/tech/technology/siac-quashes-ashneer-grover-emergency-plea-against-bharatpes-governance-review/articleshow/89873343.cms> (Accessed: May 3, 2023).

¹⁰ Singapore International Arbitration Centre

¹¹ Bhavik Koladiya v. Ashneer Grover & Anr., CS(COMM) 28/2023 (Delhi HC)

BHARATPE DEBACLE AFFECTS the FUTURE OF DIGITAL BANK LICENSE

RBI's depicted resistance to grant exclusive digital bank licenses due to the gap in exceptional corporate governance. Also, with lessons from Singapore¹², Australia¹³, and Korea¹⁴, and RBI is right to assume that quick recourse to licensing is not in the best interests of the public.

SUMMARISED TABLE PORTRAYING CORPORATE GOVERNANCE ISSUES IN STARTUPS IN 2022

SNo.	Startup	Issue	Description
1.	BHARATPE	Embezzlement	Internal audit found the Grovers embezzling funds; defamatory comments being made; lawsuit filed by BharatPe.
2.	ZILINGO	Financial Irregularities	Financial irregularities found through investigation; creditor's recalling loans, flailing business; cases of sexual harassment.
3.	TRELL	Financial Irregularities	Shaky finances; \$100 million fundraising round falls through amidst news of layoffs.
4.	BYJU'S	Delayed financials	Delay in filing financial statements while signing Messi as brand ambassador; mass layoffs; NCPDR investigation over alleged selling malpractices.

¹² New digital banks in Singapore, Monetary Authority of Singapore. Available at: <https://www.mas.gov.sg/news/media-releases/2020/> (Accessed: May 3, 2023).

¹³ Auchterlonie, T. (2021) Australia tightens licensing process after neobank Xinja collapse, Insider Intelligence.. Available at: <https://www.insiderintelligence.com/content/new-neobanks-stricter-australia-licensing-process-xinja-collapse> (Accessed: May 3, 2023).

¹⁴ Digital Banks Lessons from Korea - World Bank Open Knowledge - World Bank. Available at: <https://openknowledge.worldbank.org/bitstream//34701/> (Accessed: May 3, 2023).

5.	OYO	Unfair business practices	CCI's investigation revealed anti-competitive practices being undertaken; losses and layoffs; tanked valuation.
6.	ZOMATO	Conflict of interest	Failure to disclose conflict of interest raised questions of corporate governance; employees laid off.
7.	OLA	Inability to take criticism	Aggressive responses by founder over constructive criticism; delays in delivery of EVs.
8.	RAZORPAY	Data Privacy issues	Data of Alt News donors shared with authorities without consent.
9.	SEQUOIA	Governance issues	Number of financial scandals, governance issues and legal battles at its portfolio startups, including BharatPe, Zilingo and Trell.

Reading through this data makes it quite evident that the absence of a strong corporate governance framework is to blame for startups' financial woes. Startups need to start giving governance priority in order to break out of this never-ending cycle of problems.

FOUNDER VIS A VIS INVESTOR IS A COMPLEX RELATIONSHIP

1. Venture Capitalist Governance

Conflict over strategy and aggressiveness at the Cap Table is beautifully highlighted by disagreement over the sale of Snapdeal, Ola's long-term goals, and the departure of Flipkart's

founders following the Walmart acquisition.¹⁵

Considering the recent problems involving Zilingo and BharatPe, both of which were tied to Sequoia Capital, it is clear that VCs could have a positive or negative impact on governance. There is no denying that VCs have a significant impact on firms' pre-IPO development in key areas like hiring a marketing vice president and human resource policy. The *later stages of expansion, development, new launches, or investments*, however, where there typically emerges a conflicting view amongst the occupants of the CAP table, *profit from relations gauged earlier*.¹⁶

VC governance may therefore be a viable option for Indian start-ups, or at the at least, act as a springboard for them to diffuse conflict and be open to professional advice received to further decide what is best for the company.

2. Fundamental issues in governance

One of the main conflicts that plague companies is the power dynamics between founders and investors. Given that VCs believe issues with the *CEO and management team* are a *major cause of business failure*, the *predominance of founder departures* makes logical. Additionally, such founders and executives could eventually gain private benefits from the startup's continuous operation¹⁷, or investment or from specific exit options.

This adds complexity and increases the likelihood that board members will have competing interests, which can only be avoided by carefully balancing the venture's diverse interests.

METHODS TO ACHIEVE STRONG GOVERNANCE THAT PROMOTES ACCOUNTABILITY, TRANSPARENCY, INTEGRITY, AND LONG-TERM SUCCESS

1. As disagreements in workplace decision-making processes are the main problem we have

¹⁵ Mihir Dalal, V.B. (2019) The Great Indian Startup Battle: Founders Vs Investors, mint. Available at: <https://www.livemint.com/companies/start-ups/the-great-indian-startup-battle-founders-vs-investors-1551229497681.html> (Accessed: May 3, 2023).

¹⁶ David Ahlstrom, Douglas J. Cumming, Silvio Vismara, Corporate governance implications of new methods of entrepreneurial firm formation, Corporate Governance - An International Review Vol 25 (2), <https://doi.org/10.1111/corg.12189> (2017)

¹⁷ Nagrath Gitika & Khanna Parul, Recent Developments in Corporate Governance: An Indian Context, International Journal of Research in Economics and Social Sciences. 5. 202-220, (2015).

seen so far, *startups should establish internal committees & advisories* to oversee responsibility without being overly fixated on progress at any costs.

*Situations like the Ola vs. Softbank debate might be resolved with the same effort.*¹⁸

2. Proper *financial transaction recording and reporting* in accordance with accounting standards

*Recent financial statement fraud cases involving BharatPe, GoMechanic¹⁹, Zilingo, and Trell could be resolved.*²⁰

3. *Evolutionary governance* is more effective than short-term or long-term thinking. The needs for governance change as an organisation grows, affected not only by its size but also by the expectations of all its stakeholders.
4. *Having measures like* the following could help handle any controversy involving companies, including BharatPe:-
 - *Board composed of experts and independent directors*
 - *Significant matters entrusted to expert committees* (audit, investment, and remuneration, stakeholders relationship etc.) later approved by the board.
 - *Decision-making and startup management in the hands of group of Experts* and not only either the founders or VCs.²¹

¹⁸ Softbank: Why Bhavish Aggarwal turned down a \$1.1 billion Softbank deal: Ola (no date) The Economic Times. Available at: <https://m.economictimes.com/small-biz/startups/features/why-bhavish-aggarwal-turned-down-a-1-1-billion-softbank-deal/articleshow/68788526.cms> (Accessed: May 4, 2023).

¹⁹ Soni, Y. (2023) Why start-ups grapple with corporate governance issues, Why start-ups grapple with corporate governance issues - The Hindu BusinessLine. Available at: <https://www.thehindubusinessline.com/specials/corporate-file/why-start-ups-grapple-with-corporate-governance-issues/article66499823.ece> (Accessed: May 4, 2023).

Indian startups need to plug gaps in corporate governance, BizzBuzz. Available at: <https://www.bizzbuzz.news/opinion/indian-startups-need-to-plug-gaps-in-corporate-governance-1193329?infinitescroll=1> (Accessed: May 4, 2023).

²¹ Guidelines On Integrity And Transparency In Governance And Responsible Code Of Conduct, Confederation of Indian Industry (CII), February 2020 Available at: https://www.cii.in/pdf/CII%20Guidelines%20on%20Integrity%20Transparency%20in%20Governance%20and%20Responsible%20Code%20of%20Conduct_Feb%202020_Final.pdf

5. **Thorough Monitoring** to diffuse conflicts or address misappropriation at the earliest stage

Allegations made by BharatPe clearly show that the company's financial audit and monitoring were plagued by flaws.

6. **Independent directors** where definition of *independence is expansive*, thus allowing the directors' the ability to exercise oversight through their previously established social or professional ties with VC, Founder or Investor.

CONCLUSION

The Bharat Pe fiasco makes it quite evident that the problem of corporate governance is not being properly handled. Hence, when considering recommendation for better governance, it is important to keep in mind that management is a crucial component of a startup plan and often the main source of problems. Therefore, a real effort must be made to reinforce the current governance principles. This can be achieved by establishing internal audit and investigation committees, monitoring properly, and maintaining the company's financial stability. A company would be helped to function in a way that makes it effective over the long term by embracing long-term governance with specified stage-wise progression.