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Plenary Session I: Emerging Trends in Regulatory Framework.

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I find that the theme of the session ‘Emerging Trends in Regulatory Framework’, the subject does not easily come or is not easily focused upon when we are dealing with issues of corporate governance. When you talk of corporate governance, the mind takes a flight into a realm of idealism, the kind of possibilities that are available for corporate entities to take action on that. The manner in which they will convince all those stakeholders to go along with them, the kind of the beneficial and the benevolent regime hosted by the growth that would enable and in the middle of all this comes the theme of regulation. The theme of another actor in the whole exercise, the state and so on so forth. So there is always a little bit of ambivalence about the whole issue.

If you are looking at corporate operations, is it entirely voluntary, is it going to be entirely guided by an attitude or focus on ultraistic motive or is there necessity of a framework which ensures that certain basic commitments of governance are complied with. These are two different themes but it is a heartening development that these themes have been put together and it is always nice and important to deal with these issues as we go along.

Friends, what exactly would be the relevance of regulation? Really speaking for an entrepreneur who in full flight, he would say that why do you hold me back; then he would say if the flight that he is taking is a flight into a complete unknown place that really happens.

Entrepreneurship and its manifestation in terms of corporate action, in terms of economic action, always has to take place along certain well-organized systems which will enable cooperation, which will enable consensus, which will enable agreement; after all, if one person has to achieve something everybody else has to consent to that achievement being a legitimate and credible achievement. In the absence of this, there is likely to be an environment of conflict and I am sure conflict is something which is not really conducive to the growth of corporate operation or even good entrepreneurship. So in this kind of framework are we to say the absence of regulation is good, because when we look into debate on regulation, we come across a stated or unstated objective of things being extremely simple. How simple can things be, how simple can life be, how simple can entrepreneurship be, but in terms of the perspective, in terms of the flight, that thinking takes at that point of time, we imagine that it must be extremely simple so that everything is done at the speed of thought. Is that possible? Even if it is possible,

is it necessary? Is it desirable? Because absence of regulation does not make a framework effective. Really speaking, if we look at comparisons amongst BRIC countries, what is going strongly for India as compared to other countries who are doing well economically and in the BRIC group. Is that India has voluntarily and through its legacy opted for a system of law and regulation? It is internalized, it is accepted, it has its deficiencies, there are difficulties, there are delays but with all that it is still a system that works; it is a system that is evolving and developing – that I think is a crucial test. So, therefore, absence of regulations or a free play of whatever comes into the mind of anybody is very unlikely to lead to a sustainable system or a sustainable framework for growth. What is going to leave to sustainable framework of growth is an efficient regulation. We got to look at the efficiency of the governance by the state, not only efficiency, we also look at the efficacy of the governance by the state. So efficacy and efficiency put together gives a kind of regulatory system that enables everyone to move forward.

Today, in the morning we heard about changing environment. We are gradually moving into a system where there is greater dissemination of knowledge, after all, MCA – 21, the governance initiative of the ministry—it achieves a very important input for governance, not only corporate governance but governance per se, because that enables disclosures to be made in a form which is easily accessible. In the earlier days, when you made a disclosure, put into some kind of a physical document, locked away in some godown somewhere in the ROC's office, very difficult to access, costly to access, time, effort, energy but now everything is available. For the corporate every action is instantly disseminated. The minute that filing is done, the whole world knows, sunlight falls instantly on the action.

This is a time when you have information dissemination taking place at an immensely efficient and speedy level. So, whatever a corporate does, whatever in a corporate office is available, the whole world would see. So, therefore, along with stakeholder information, I think we have also got to get ready for stakeholder activism. Information in itself has an initial phase; it prepares people to get ready to a new kind of a situation, lot of people who have been investing in companies may not even be bothered to look at the Annual Reports or annual documents of the companies. Who is going to look at all that? But that may not be happening anymore. It is so easy today; you can look at a particular specific area that you are interested in and the kind of disclosures which are brought about, not only the balance sheet but also the annual return, the director's profile, other information, etc. This whole corporate functioning is in front of the stakeholder. So, therefore, the regulatory system has to accommodate both—it has to accommodate the imperatives of corporate functioning and the likely emerging scenario, where there is a large degree of stakeholder activity.

There have been a number of trends in regulations which have taken place. As you all are aware our system of law, the way our corporate law in particular has evolved, it has had its root in the British system—you had the Companies Act of 1913 and even prior to that when the Sterling company was operating here, it is the British company of the 19th century—which was operational. The companies Act, 1956, draw heavily from the British legislation. As a matter of fact, since the system of law are quite similar—a large number of concepts, a large number of legal requirements that have come into the 1956 Companies Act, have their basis in the Companies Act in the UK or the common law countries that practice the same kind of legal systems. But there was one difference; in 1956 the law-makers were

confronted with their choice. The UK system is heavily based on enforcement of law. Therefore, the assertion of rights takes place through the avenue of the courts, through the operation of the civil law, through the civil and punitive damages that may fall off from a particular action and assertion of those rights, privileges by any given group of stakeholders. So, therefore, if you are a stakeholder, aggrieved by the director, sue the director. You are a shareholder – you are aggrieved by something – sue that person. But the UK legal system delivers; I suppose they deal with civil action in a different way and that is how it has developed. In our country, we had a choice. What exactly is to be done there – are we to leave a section of individual stakeholders' rights to the capacity of that stakeholder to enforce it through the courts? Difficult, expensive, time-consuming and the corporate would even be spending a whole amount of time in litigation over everything—so the law-makers in 1956 chose the system of shareholders' democracy. As a young country, young democracy, democratic aspirations were everywhere and I think the founding fathers chose wisely so the decisions of a company are articulated through certain actions, through certain meetings, through certain management, stakeholders' and shareholders' action, which they have complied with. They are grounded in the law, and if they are complied with, it is taken as the finality of that matter. Decisions by the shareholders in a democratic set-up that has what was chosen. Interestingly, in the 90s, when the corporate governance debate took place all across the world, all across Europe, 90s this is 1956. interestingly, OECD, United States in particular, one of the most litigate country in the world, finally chose and asserted shareholders' democracy as the appropriate path, as the appropriate vehicle for shareholders' participation. The entire surveillance of the Act that came in 2002 was aimed at bringing everything to information and to the knowledge of the shareholders with heavy penalties on non-disclosure and so on so forth. But essentially, it has an association of shareholders' democracy and devising of a regulatory mechanism may enable that. It a different matter that Americans feel that they have gone a bit too far with that kind of a thing. The penalties and the requirement, compliance requirements which are required in surveillance are of a level which are difficult to comply with. But in our system, we had the shareholders' democracy in the Companies Act.