



The Kampani conundrum
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Institute are an unhappy lot these days, says its head Neville Dumasia. "They are worried about their responsibilities, for there is no law in India that defines their role." The worst case scenario for these individuals now seems to be facing action in courts in India and abroad. The immediate cause of worry is, of course, the rejection by the Supreme Court of the anticipatory bail plea of Nimesh Kampani, Founder-Chairman of JM Financial.

The Andhra Pradesh Police is hunting for Kampani in a case against Nagarjuna Finance. Kampani had resigned from the company in 1999. The company had defaulted on public deposits it had raised. Kampani is probably in Dubai now. There is conflicting information about when the company had encountered trouble— whether it was before Kampani quit, or after. However, the fact that someone of his stature could face arrest due to his role as an independent non-executive director is enough to spread panic in the ranks of independent directors. This comes in the wake of the Satyam Computer fraud, where the role played by independent directors was almost publicly vilified.

Would Kampani have fared better if he had surrendered in India and sought bail? Zia Mody, Senior Advocate and Senior Partner at AZB & Partners, asks: "You are asking someone to go to jail. It is a tough call and I do not know if that is the right course. But what do the police want to do here—basically ask him questions? Why cannot they do it in his office? If they want to find some documentation, why do they have to take him to jail?" A JM Financial spokesperson did not want to comment, preferring to point to a December 2008 press release that said that Kampani had answered questions of the policemen on telephone from Dubai when they had visited his Mumbai office on December 29 and had promised to cooperate on his return.

But should Kampani be in this tough spot in the first place? "I believe the FIR (first information report) was filed against the management of the company. How did that come to mean a retired director," asks Mody. She adds that the "high level of anxiety" created in the minds of independent directors in India is not conducive for them to be playing their role. Vyapak Desai, Head of Litigation Practice at law firm Nishith Desai Associates, points out that under the provisions of the Companies Act there is no specific difference between an independent director and an executive director.

"The distinction would be in the involvement of these directors in the day-to-day management of a company's affairs. There is enough judicial history to suggest that they may be treated separately on certain occasions." However, he adds that since independent directors make up the audit committee, they cannot claim to be unaware of a company's financial condition. "In fact, the courts can now ask the independent directors why they were not doing their duty," Desai adds. He feels that the law should be amended to create a finer balance. While the independent directors should be made to play a more pivotal role, they should not be penalised for faults of the management.

The question, then, playing in the minds of many independent directors must be: Is it worth

running the risk of going to jail for an extra Rs 5,000-20,000 that can be made from such directorships?

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