STAR
Research Journal

Available online at www.starresearchjournal.com (Star International Journal)
JUDICIARY

CORPORATE RESPONSIBILITY FOR BHOPAL: HOW UNION CARBIDE EXPLOITED A GOVERNMENT LOOPHOLE

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ABSTRACT

Twenty years after the incident, the Supreme Court's order of July 19, 2004, granting relief for Bhopal gas victims is an example of the long arm of justice at work. Methyl Isocynate (MIC), a deadly gas that leaked from Union Carbide India Ltd.'s pesticide plant in Bhopal on December 3, 1984, caused the deaths of 10,000 people and the permanent disability of close to 50,000 more. Manufacturing companies need to address some important CSR concerns brought up by this catastrophe in order to fulfil their obligations to the community and environment. The Bhopal Gas Tragedy is examined in this case, and it is explained what happened and why: The bigger challenges that the stakeholders and participants must contend with are covered by the economic, legal, and environmental aspects.

KEYWORDS: Bhopal gas tragedy, Methyl Isocynate, Corporate Social Responsibility, Union Carbide India Ltd. (UCIL)

INTRODUCTION

It has been thirty years since the dreadful night of December 2, 1984, when the Bhopal gas spill took place. Words cannot express the scope of the catastrophe. The scale of the catastrophe is not entirely obvious from the official estimates of those who perished or those who survived but are in a vegetative state with physical deformities and injuries.

One would have anticipated investigations or attempts to determine who was responsible for the crime for a catastrophe of this scale. In fact, litigation has been ongoing for many years in both India and the United States. Researchers and social activists have authored scholarly monographs in an effort to fix responsibility. Sadly, the complete truth has proven to be elusive. We make an effort to compile information that sheds light on corporate responsibility-related topics in this article.

Subsidiary status of UCIL

The Bhopal factory was run by Union Carbide India Ltd. (UCIL), a division of Union Carbide Corporation of US (UCC), on the tragic date, 2 December 1984. In UCIL, UCC owned a 50.9% stock stake and operated it as a subsidiary. As it is necessary for centralized management and direction, US corporations insist on having 100% ownership or, at the very least, subsidiary status for enterprises under their control. Consolidating their global accounts is also beneficial. It is axiomatic among multinational firms, particularly those based in the US, that total control is required to safeguard the exclusive nature of highly valuable technology that they transfer.

Every firm has a different level of control. In the instance of UCC, it was described in a 1,300-page policy document. Subsidiaries could ill afford to break the rules in the manual because it was the corporate bible. The Government of India (GoI) highlighted this connection and the extent to which UCIL was under the total control of UCC in its affidavit submitted to the US district court. The need for a parent to possess more than 50% of the stock is essential to parent/subsidiary relationships. As will be discussed further in this article, UCC battled the GoI and the Reserve Bank of India (RBI) for years to secure its right to own more than 50% of UCIL.

This conflict started because the Foreign Exchange Regulation Act of 1973 (FERA) requirements jeopardized UCIL's subsidiary status. UCIL was only permitted to own 40% of the non-resident (UCC) stock in accordance with the rules established for the application of Section 29 of the FERA. Based on an evaluation of the proportion of high-tech products in its manufacturing basket. Only businesses that produced more than 75% of their high-tech goods were permitted to hold up to 74% of the equity. All other parties had a deadline by which they had to reduce their non-resident equity to 40%. In the first phase of the FERA conflict, UCIL received this treatment.

The implication was that UCC, the Indian subsidiary of the US parent business, was not accountable for its actions. This was a lie from the corporation. UCC made UCIL the victim in an effort to absolve itself of blame for the tragic gas spill. This is where our story starts. As the years passed, the connection between UCC and UCIL underwent additional changes.

How the FERA Was Violated?

When the GoI decided to allow only 40% equity, the original letter from the RBI expressing this decision sent shockwaves through the UCC boardrooms. The US major increased its pressure on the GoI relentlessly. The US major was recognized for its political clout due to its connections to the White House, campaign donations, etc. The administration gave in to diplomatic pressure from the US despite always being welcoming to foreign investors. It looked for approaches to satisfy the UCC's request. With a lower criterion of 60% production in high-tech items and a longer time horizon to attain it, the FERA rules were modified (or amplified, as it was dubbed!). If the sevin project, which had been postponed since 1972, could be completed, UCIL would be qualified to keep its status as a UCC subsidiary and would no longer be responsible for paying the FERA. The MIC-based sevin project has to be started by UCC and UCIL as a result. Sadly, the sevin initiative that kept UCC out of the FERA ultimately resulted in the disaster.

The affidavits and other paperwork submitted by UCC and the GoI made it abundantly evident that the sevin project's progress had been anything but smooth. UCIL required UCC to provide guarantees about the project's design, safety, etc. It signed unique contracts with the parent corporation. There were concerns regarding the capacity anticipated as well as the plans for storing huge amounts of MIC. International standards deemed the intended storage to be excessive and extremely dangerous.

Sevin Project Delayed

When the project was halfway finished in the winter of 1978, there were concerns about cost overruns and a potential demand for pesticides in India. Even the feasibility of downsizing the facility was explored in New York before being abandoned because the project had already proceeded that far. These documents also revealed that there were disagreements and disputes amongst departments inside UCC. Since sevin had reached overcapacity in the US, its agriculture department was determined to retain exports of the substance to India. To resolve the issues, the UCC organized a task team for Bhopal. The exports could not be prohibited. Sadly, it was unable to come up with any additional commercially viable applications for MIC. In the end, it was agreed to proceed and finish the project only in order to maintain UCIL's subsidiary status. The RBI granted UCC permission to keep UCIL as a subsidiary. It was on July 5th, 1980. It turned out not to be a decisive triumph. Stocks of sevin started to accumulate as demand for it remained flat. The Indian market or the psychology of Indian farmers had not been explored by UCC. Thousands of hectare-sized US farms found Sevin to be effective. Not so in sparsely populated areas like India. Sevin-treated insects devastated the nearby untreated farms! Additionally, the nation experienced a severe drought, which significantly impacted agricultural. The market had just seen the entry of rival pesticides. The Bhopal plant was beyond repair because it had fallen ill.

To save the factory, UCC started to make drastic cost reduction in line with US corporate practice. These actions were foolish and imprudent, as numerous studies carried out later have demonstrated. The capacity reduction of the cold storage tanks was the most obvious error. Local journalists like Rajkumar Keswani warned about the safety violations, but no one listened. The complete condition of neglect in the plant is described by Dominique Lapierre and Javier Moro in their book It Was Five Past Midnight in Bhopal (Full Circle, 2001). The plant management was unable to even meet the bare minimal safety standards advised by UCC inspection teams.

All of this happened as a result of UCC losing interest in the project and starting to hunt for potential buyers for the facility in India. It was past the time of day. By October 1984, the idea of dismantling the facility and moving it to a different emerging nation, such Indonesia or Brazil, had also been considered but rejected. The MIC plant was so rusted that it could not be destroyed, which was a crucial point working against that theory. On December 2, 1984, the facility exploded, letting water into the MIC tanks and filling the whole city of Bhopal with deadly chemicals. It was immoral, unethical, and legally irresponsible on the part of UCC to imply that it was an Indian facility, owned and operated by UCIL, and also add "...the plant was designed, built, and managed by UCIL, using Indian consultants and workers." in light of these facts, which are documented and verifiable.

Legal failure

The GOI did not take up serious legal action in Indian courts once the litigation was moved from the US to India for its own reasons. There was a general desire to come to an agreement. Unfortunately, the Supreme Court did not see the case through to a just conclusion to ensure justice. It was true that India lacked a legal framework for dealing with industrial disasters of this nature. The Supreme Court tended to mediate a deal or settlement for unknown reasons. It was a miscarriage of justice in hindsight or in the rearview mirror. The Supreme Court handed down its decision on February 14, 1989. On payment of a pitiful $470 million, the business was released from all responsibility, and all open claims were likewise resolved.

The ruling made it possible for the UCC to end ECIL operations. UCC changed its name to Eveready Industries India in 1994 after selling all of its equity to McLeod Russel India. There was no "due diligence" performed prior to this transfer on the acquisition of contingent liabilities. The sale's earnings were put toward setting up a trust. (Interestingly, one of the Supreme Court judges was elected to lead that trust!) By selling all of its shares, UCIL also cleared its hands of any responsibility for the Bhopal disaster.

The following development happened in the US. UCC was acquired by Dow Chemical in 2001. Studies on the history of this merger between two firms with a reputation for being litigious may be found. For its part, Dow had a number of liability cases including asbestos, poisonous gas, etc.

The corporate game was ended once Dow had gained control. Dow published a disclaimer following the Bhopal district court's ruling in 2001. It claimed that in 1994, it completely sold its holding in UCIL, which went on to become Eveready Industries. "All the proper UCIL personnel have attended to answer to charges. Since the allegations were resolved into a different case a long time ago, Union Carbide and its officials were not involved in this case. "Furthermore," it continues, "Union Carbide and its officials are not subject to the jurisdiction of the Indian court as they did not have any involvement in the operation of the plant which was owned and operated by UCIL." Whenever fresh information on the Bhopal gas leak case appears in the media, Dow Chemicals has essentially always issued the same statement. Additionally, it is known that Dow Chemicals continued to press behind the scenes to be absolved of any liability and to expand into India through new projects and initiatives. This was shown in the correspondence between Montek Singh Ahluwalia and Lawrence Summers in their emails.

Conclusion

The lesson we can learn is that policymakers must exercise extraordinary caution when engaging with international firms for high-value investments or the cutting-edge "Make in India" projects. The whole image of ownership must be obtained and guarantees against project/industrial risks must also be obtained. It might not be simple. They should always be led by the ghost of Bhopal.

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