INTERNATIONAL JOURNAL OF RESEARCH IN COMMERCE & MANAGEMENT

IJRCM

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   RESEARCH METHODOLOGY

   RESULTS & DISCUSSION

   FINDINGS

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A REFLECTION ON THE NATURE OF CORPORATE GOVERNANCE IN INDIA

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ABSTRACT

Wholesome corporate governance doings are a prerequisite for environmentally sustainable business. It marks for producing long-term significance to all its shareholders and other stakeholders. Corporate governance (CG) is not a new or recent spectacle. It is in existence for a number of years. The abrupt and unexpected breakdown of recognized and reputed corporations like World Com and Enron created quivers and waves of disbelief around the globe. These incidents therefore have paved the path for the need of corporate governance in directing or controlling a company. Corporate Governance is needed to create a corporate culture of consciousness, transparency and openness. It enables a company to maximize the long-term value of the company's performance. Corporate governance is a term that refers broadly to the rules, processes, or laws by which businesses are operated, regulated and controlled. In India, various suggestions have been received from committees and boards which were set up to assess the appropriateness of prevailing corporate governance practices with a vision to improvise. It is a given that if upright and suitable corporate government is adopted, it may provide stability and growth to the enterprises. It aids in building conviction and confidence among the stakeholders. In this perspective, an attempt has been made in this paper to discuss about 'Corporate Governance' embracing the concept, definition, importance, ingredients, doctrines, assistances and regulatory framework (in Indian context).

KEYWORDS

corporate governance, stakeholders, committees, boards.

INTRODUCTION

Virtuous and upright corporate governance practices are a sine qua non for viable business. It marks for creating long-term significance to all its shareholders and other stakeholders. Regulators such as the Ministry of Corporate Affairs and SEBI govern and administer some facets of corporate governance that is protected in the law. A transparent, ethical and responsible corporate governance framework is very much needed for good governance. These generally radiate from the fundamental will and appetite that is embedded in the business entity. It is the global financial crisis during the recent past and corporate failures etc. that have accelerated the adoption of basics of corporate governance that help in building trust and increasing confidence among the stakeholders. The introduction of corporate governance strengthens reputation and goodwill, develops an image built on reliability, accountability and transparency.

DEFINING CORPORATE GOVERNANCE

Business Directory defines Corporate Governance as the framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in a company's relationship with its all stakeholders (financiers, customers, management, employees, government, and the community). It stipulates a set of procedures that can direct or control the company so as to meet its goals and objectives. It enhances value of the company and is also advantageous for all stakeholders in the long term. It encompasses and lays down procedures and processes according to which an organization is directed and controlled. According to Cadbury Committee (UK), 1992, corporate governance is the system by which companies are directed and controlled. According to the Institute of Company Secretaries of India, corporate governance is "the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders". It encompasses the entire mechanics of the functioning of a company and attempts to put in place a system of checks and balances between the shareholders, directors, employees, auditors and the management. India's SEBI Committee on Corporate Governance defines corporate governance as the "acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct, and about making a distinction between personal and corporate funds in the management of a company."

NEED FOR CORPORATE GOVERNANCE

With increased global competitiveness, the growing market in India is faced with the task of attracting and preserving investment in order to contribute more fully in the global economy and address growing demographic concerns. Growing awareness and employment of good corporate governance practices can improve the investment climate and promote the development of an energetic private sector and capital market. Briefly, Corporate Governance can be summarized by FAT principle, that is, Fairness, Accountability and Transparency in the operations and management of corporate entities.(Narang,Malhotra,Seth (2013). In addition, good governance is portrayed by a firm promise and assumption of ethical practices by an organization across its complete value chain, in all of its trades and dealings with a wide group of stakeholders, including employees, customers, vendors, regulators and shareholders (including minority shareholders). To manage this, certain checks and exercises need to be whole-heartedly incorporated. Trust and integrity play an important role in economic life and it is the duty of boards and management to ensure that these attributes are adequately recognized for the sake of future prosperity. Businesses are becoming aware of the benefits corporate governance and responsibility provides their company and their nation. However, in order to advance corporate governance, stakeholders must find and coordinate ways to implement principles that produce internationally acceptable standards and reflect local business realities. It is imperative to ensure that good corporate governance practices are aimed at achieving

- Inclusive growth which ends up in producing corporate growth
- Achieve sustained productivity so as to maximize the operational efficiency and protect the shareholders interests.
- High ethical standards are in the long term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also with respect to longer term commitments.
- Corporate governance is intended to increase the accountability of your company and to avoid massive disasters before they occur.
- Highest level of transparency, accountability and integrity.
- Following good corporate governance practices can satisfy the ambitions and aspirations of all stakeholders.
- It is observed that, the presence of an active and robust group of independent directors on the board provides for ensuring confidence in the market.
- If the company or companies has/have clean image/s on the corporate governance, they can accumulate/raise capital easily at more reasonable costs.

For a company to succeed it is important to pay attention to both economical and social aspects. It needs to be fair to all its stakeholders and serve its responsibilities with sheer diligence and utmost sincerity.

BENEFICIARIES OF CORPORATE GOVERNANCE

- Managers
- Board of Directors
- Shareholders
- Customers
- Employees
- Workers
- Banks and
- Lenders
- Environment and the Community at large
- Suppliers
- Vendors
- Dealers
- Regulators

PREREQUISITES AND CONSTITUENTS OF CORPORATE GOVERNANCE

Today assumption of good Corporate Governance practices has evolved as an essential component for conducting business. It is not only a pre-requisite for facing strong competition for viable growth in the emergent global market situation but is also an personification of the considerations of fairness, accountability, disclosures and transparency to boost significance for the stakeholders.

Studies of corporate governance practices across several countries conducted by the Asian Development Bank, International Monetary Fund, Organization for Economic Cooperation and Development and the World Bank reveal that there is no single model of good corporate governance.

Range of different approaches to corporate governance have been developed which are recognized by the OECD Code that acknowledges different legal systems, institutional frameworks and traditions across countries. However, a high degree of importance has been assigned to the shareholders interest who place their trust in corporations to use their investment funds wisely and effectively which is mutually followed by all good corporate governance administrations.

In the light of the underlying principles of corporate governance, business knowledge resource online mentions three basic inter-related segments, which are

1) Integrity and Fairness
2) Transparency and Disclosures
3) Accountability and Responsibility

These segments lay down the premise for the Board of Directors, the Shareholders and the Management whose job is to ensure that there exists

1) A clear, explicit, understandable and unmistakable jurisdictive and regulatory framework for effective corporate governance.
2) It is important that the codes of conduct of an organization are communicated to all stakeholders.
3) The objective of the company must be clearly documented in a long-term corporate strategy.
4) There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives.
5) An independent board is essential for sound corporate governance. It means that the board is capable of assessing the performance of managers with an objective perspective.
6) Board appointments ensure that the most competent people are appointed in the board and all the board positions must be filled following all rules.
7) It is essential to ensure that directors remain abreast of all development, which are or may impact corporate governance and other related issues.
8) The board requires comprehensive, regular, reliable, timely, correct, and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance.

Corporate Governance guidelines should enumerate and lay down the rules to be followed by all stakeholders be it:

- The **board of directors** who perform the pivotal role in any system of corporate governance. They are accountable to the stakeholders and administer directing and controlling the management. They steward the company, set its strategic aim and financial goals and oversees their implementation, puts in place adequate internal controls and periodically reports the activities and progress of the company in the company in a transparent manner to all the stakeholders.
- The **shareholders**' role in corporate governance is to appoint the directors and the auditors and to hold the board accountable for the proper governance of the company by requiring the board to provide them periodically with the requisite information in a transparent fashion, of the activities and progress of the company.
- The responsibility of the **management** is to undertake the management of the company in terms of the direction provided by the board, to put in place adequate control systems and to ensure their operation and to provide information to the board on a timely basis and in a transparent manner to enable the board to monitor the accountability of management to it.

The Main Constituents of Good Corporate Governance are:

- **Role and powers of Board:** the foremost requirement of good corporate governance is the clear identification of powers, roles, responsibilities and accountability of the Board, CEO and the Chairman of the board.
- **Legislation:** a clear and unambiguous legislative and regulatory framework is fundamental to effective corporate governance.
- **Code of Conduct:** it is essential that an organization's explicitly prescribed code of conduct is communicated to all stakeholders and is clearly understood by them. There should be some system in place to periodically measure and evaluate the adherence to such code of conduct by each member of the organization.
- **Board Independence:** an independent board is essential for sound corporate governance. It means that the board is capable of assessing the performance of managers with an objective perspective. Hence, the majority of board members should be independent of both the management team and any commercial dealings with the company. Such independence ensures the effectiveness of the board in supervising the activities of management as well as make sure that there are no actual or perceived conflicts of interests.
- **Board Skills:** in order to be able to undertake its functions effectively, the board must possess the necessary blend of qualities, skills, knowledge and experience so as to make quality contribution. It includes operational or technical expertise, financial skills, legal skills as well as knowledge of government and regulatory requirements.
- **Management Environment:** includes setting up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for jobs, establishing clear boundaries for acceptable behaviour, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution.
- **Board Appointments:** to ensure that the most competent people are appointed in the board, the board positions must be filled through the process of extensive search. A well defined and open procedure must be in place for reappointments as well as for appointment of new directors.
- **Board Induction and Training:** is essential to ensure that directors remain abreast of all development, which are or may impact corporate governance and other related issues.

- **Board Meetings:** are the forums for board decision making. These meetings enable directors to discharge their responsibilities. The effectiveness of board meetings is dependent on carefully planned agendas and providing relevant papers and materials to directors sufficiently prior to board meetings.
- **Strategy Setting:** the objective of the company must be clearly documented in a long term corporate strategy including an annual business plan together with achievable and measurable performance targets and milestones.
- **Business and Community Obligations:** though the basic activity of a business entity is inherently commercial yet it must also take care of community's obligations. The stakeholders must be informed about the approval by the proposed and on going initiatives taken to meet the community obligations.
- **Financial and Operational Reporting:** the board requires comprehensive, regular, reliable, timely, correct and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance.
- **Monitoring the Board Performance:** the board must monitor and evaluate its combined performance and also that of individual directors at periodic intervals, using key performance indicators besides peer review.
- **Audit Committee:** is inter alia responsible for liaison with management, internal and statutory auditors, reviewing the adequacy of internal control and compliance with significant policies and procedures, reporting to the board on the key issues.
- **Risk Management:** risk is an important element of corporate functioning and governance. There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. The board has the ultimate responsibility for identifying major risks to the organization, setting acceptable levels of risks and ensuring that senior management takes steps to detect, monitor and control these risks.

Good corporate governance recognizes the diverse interests of shareholders, lenders, employees, government, etc. The new concept of governance to bring about quality corporate governance is not only a necessity to serve the divergent corporate interests, but also is a key requirement in the best interests of the corporates themselves and the economy.

Since the period of Independence in 1947, public companies in India were only needed to fulfill with partial governance and admission standards detailed in the Companies Act of 1956, the Listing Agreement of the market regulator, and the accounting standards set out by the Institute of Chartered Accountants of India (ICAI). India’s corporate governance administration was predominantly fragile prior to 1991 and perpetually since the liberalization of the Indian economy in 1991, the prerequisite for improved corporate governance structure was all the more felt with a succession of corporate scandals occurring in a row such as Harshad Mehta scam, Ketan Parikh scam, UTI scam, the vanishing company scam, the Bhansali scam and so on.

ADMINISTRATIVE AND LEGAL MACHINERY OF CORPORATE GOVERNANCE IN INDIA

Corporate governance is beyond the realm of law. It cannot be regulated by legislation alone. Legislation can only lay down a common framework – the "form" to ensure standards. The "substance" will ultimately determine the credibility and integrity of the process. Substance is inexorably linked to the mindset and ethical standards of management.

However, the present structure works on the following parameters:

- It is the Indian Companies Act 1956, the Securities and Exchange Board of India (SEBI) and the professional body of auditors created by the Institute of Chartered Accountants of India (ICAI) which are the legal and institutional mechanisms in India to oversee and control the financial reporting by Indian companies.
- In India there is no specific corporate governance code for all companies. Clause 49 of the Listing Agreement for listed companies and voluntary guidelines for corporate governance issued by MCA are the codes followed.
- The structure of the board is unitary and as per Indian Companies Act, 1956, a private company must have a minimum of two directors whereas a public company must have at least three directors. There is no limit on the maximum number of directors.
- The law states that in case of number of independent directors of a listed company, at least 50% of the total number of directors must be non- executive directors. Further, if the chairman of a company is a non- executive director, at least one-third of the total number of the company's directors must be non-executive. On the other hand, if the chairman is an executive director, then at least one-half of the total members should be independent directors.
- Further regarding tenure of office of directors, In the case of public companies and private companies that are subsidiaries of public companies, one-third of the total number of directors are permanent directors and two-thirds of the directors are rotational directors. One-third of the rotational directors must retire by rotation at every annual general meeting. The term of any director required to retire by rotation cannot exceed three years and this term can be extended by re-appointment only. A director retiring by rotation can be re- appointed at the same annual general meeting.
- As regards frequency of Board Meetings, a minimum of 4 Board meetings must be held in each year. There should not be a time gap of more than 4 months between any 2 Board meetings. However, the Audit Committee must meet at least 4 times a year –once in every 4 months and once before the finalization of accounts. The quorum for the meetings of the Audit Committee will be 2 or one-third of the total number of members, whichever is higher At least 2 of the members constituting a quorum must be independent.
- There is no such provision for separation of positions of chairman and CEO. The same individual may perform both the roles.
- An audit committee is to be formed which shall have a minimum of 3 members, all being non-executive directors, majority of the members being independent. At least 1 member must have financial and accounting knowledge. The chairman, being an independent director, shall remain present at the company’s AGM to respond to the shareholders’ queries.
- Clause 49 of the Listing Agreement imposes a non mandatory requirement on listed companies to have a whistle blowing policy. A company may establish a mechanism for employees to report to the management concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide adequate safeguards against victimization of employees who use the mechanism and direct access to the chairman of the audit committee in exceptional cases. There is no other statute in force, which provides statutory protection for whistleblowers.
- Lastly, listed companies must comply with the mandatory provisions set out in Clause 49 of the Listing Agreement. The annual report of a listed company comprises the company's financial statements, the directors' report and such other disclosures as are required under Clause 49 of the Listing Agreement. In relation to unlisted public companies and private companies, the directors must disclose in the directors' report all the pertinent information.

One of the most noteworthy progress in the stream of corporate governance and investor protection was the formation of the securities market regulator, the Securities and Exchange Board of India in 1992. The Confederation of Indian Industry (CII) released a Desirable Code for Corporate Governance in 1998 followed by the codes of two sequential committees instituted by SEBI. The instant result was the origination of Clause 49 of the Listing Agreement which is the most meaningful and momentous development in Indian legal regime linking to corporate governance. This clause, announced in 2000 and revised later, specifies the standards of corporate governance that is a prerequisite for every listed company to be adopted and followed. Clause 49 of the listing agreement recommends numerous corporate governance means in the following subject areas:

a. Board of Directors and Independent Directors
b. Audit Committees
c. Subsidiary Companies
d. Disclosures
e. Report on Corporate Governance
f. Compliance Certifications

Similarly, the Government of India, through Ministry of Corporate Affairs (MCA) took many initiatives to boost the corporate governance framework in India. Some such measures are as follows:

a. Voluntary Guidelines on Corporate Governance released in 2009

b. Green Initiatives
c. Serious Fraud Investigation Office ("SFIO")
d. Investor Grievances Management Cell ("IGMC")
e. National Foundation for Corporate Governance ("NFCG")

Recently Companies Act 2013 has been enacted which is a step towards replacing the six decades old and outdated company legislation. The new Act has numerous procedures to strengthen the legal structure of corporate governance such as class action suits, whistleblower policy, corporate social responsibility, prohibition of insider trading, entrenchment provisions among others. However, it is too early to comment upon the implementation and working of these new measures.

CONCLUSION

Corporate governance is of supreme significance to a company and the economy as a whole. The lifeblood of corporate governance is in stimulating and sustaining integrity, transparency and accountability in the management of a company. Good corporate governance is a must in our corporate arrangement for today's complicated and vibrant business environment to ensure sustainability. If it is executed commendably, it can prevent and counteract corporate scandals, fraud and the civil and criminal liability of a company. A corporation without a system of corporate governance is repeatedly considered as a body without a soul or conscience. Weedy corporate governance leads to waste, mishandling and corruption. Strong and healthy corporate governance recognize the diverse interests of shareholders, lenders, employees, government etc. It enhances company's values and stakeholders' trust resulting into robust development of capital market, the economy and also helps in the evolution of a vibrant and constructive shareholders' activism.

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