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REVISITING THE CONCEPT OF CORPORATE GOVERNANCE IN INDIA: A DISCIPLINARY TOOL FOR ANY CORPORATE ORGANISATION

- Ms. Diwanshi Rohatgi[1] & Mr. Keshav Madhav[2]

ABSTRACT

Corporate governance relates to the fundamental processes whereby ultimate corporate authority and responsibility are shared and exercised by shareholders, directors, and management to ensure that corporate assets provided by investors are being put to appropriate and profitable use. In today's world, no one will oppose that the need for a sound corporate governance system would attract long-term value for the company and capital for companies. Regulators of the Companies & Banks, which have the onus to protect the interest of shareholders, continuously endeavor to improve the standard of corporate governance. Good corporate governance helps to ensure that corporations consider the interests of a wide range of constituencies and the communities within which they operate. Furthermore, it vehemently provides Boards of Directors becomes accountable to the shareholders. This, in turn, helps ensure that corporations operate for the benefit of society. While large profits can be made by taking advantage of the asymmetry between stakeholders in the short run, balancing the interests of all stakeholders alone will ensure survival and growth in the long run. This article will briefly discuss corporate governance's definition, evolution, objectives, how companies provide corporate governance through various provisions in the Companies Act and SEBI, a few examples of corporate governance models & practices followed by the Companies and Banks, particularly HDFC bank, and the conclusion.

KEYWORDS: Corporate Governance, Accountability, Stakeholders, Boards of Directors, Companies Act, 2013, SEBI

[1]Faculty of Law at Amity University, Jharkhand, Ranchi
[2]Faculty of Law at Amity University, Jharkhand, Ranchi

INTRODUCTION

A corporation is an amalgamation of various internal and external stakeholders such as shareholders, customers, creditors, employees, society, and government. In today's time, the corporation needs to be very transparent and fair in its transactions and dealings and must utilize its funds only for those objectives for which a corporation has been formed. It is utmost necessary for a corporation to observe ethical conduct in its functioning so that all its stakeholders benefit and for its growth. The corporation needs to understand that for its growth and profits in the long run, a corporation needs to adopt best management practices, ensure that it complies with all legal formalities and laws, also, adhere to the ethical code of conduct, meet stakeholder expectations, and lastly, abide by the corporate social responsibility.[3]

WHAT IS CORPORATE GOVERNANCE?

Corporate governance means the processes, customs, policies, laws, and institutions that direct the organization and corporation in how they direct, act, administer, and control their operations. It works to achieve the corporation's goal and manages the relationship among the stakeholders. It is well known to us that good corporate governance would ultimately lead to shaping India's future, which depends on the corporate's health and growth. Corporate governance is all about balancing the interests of a company's stakeholders, such as shareholders, senior management executives, customers, suppliers, financiers, the government, and the community.

In India 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 their role as trustees on behalf of the shareholders. It is about commitment to values, ethical business conduct, and distinguishing between personal & corporate funds in a company's management[4]."***

NEED FOR EVOLUTION OF CORPORATE GOVERNANCE

[3]Kingsley O. Mrabure and Alfred Abhulimhen-Iyoha, "Corporate Governance and Protection of Stakeholders Rights and Interests" 11 *Beijing Law Review* 297 (2020).
[4] Principles of Corporate Governance, *available at:* https://www.niilmuniversity.in/coursepack/Management/PRINCIPLES_OF_CORPORATE_GOVERNANCE.pdf (visited on 24.07.2023)

In short, corporate governance emerged in India after the second half of 1996 due to economic liberalization and deregulation of industry and business. There was also a need for greater accountability of companies to their shareholders and customers. The report of the Cadbury Committee on the financial aspects of corporate Governance in the U.K. has given rise to the debate on Corporate Governance in India.The need for corporate governance arises due to the separation of management from ownership. To be successful, a corporation needs to concentrate on both economic and social aspects. Further, it must be fair to producers, shareholders, customers, etc. It should accomplish various responsibilities towards its employees, customers, communities, and at last, towards governance, and it needs to serve its duties at best in all aspects.[5]

OBJECTIVES OF CORPORATE GOVERNANCE

The first and foremost objective is to ensure higher transparency in the corporation; there should be full disclosure of transactions, including compliance with regulations and disclosing any information necessary to the shareholders. There should be accountability of the management to its shareholders. A corporation aims to create good corporate governance by hiring an independent director. The practical and efficient board of directors exercises independent judgment in their responsibilities. Secondly, it also ensures equitable treatment of all company shareholders. Corporations with strong corporate governance can limit their exposure to regulatory risk and fines.

ENSURING CORPORATE GOVERNANCE THROUGH PROVISIONS IN COMPANIES ACT, 2013

Various provisions in the Companies Act 2013 have been introduced to bring good corporate governance to corporations. For example, Section 149 "***Listed companies should have at least one-third of directors as an independent director whereas, for unlimited companies, two directors should be independent directors subject to certain conditions stated in the provision.***"[6]

Moreover, a company can have only fifteen directors on its board. If a company wishes to have more than fifteen directors, shareholders' approval is required in the general meeting.

[5]Evolution of Corporate Governance in India, *available at:* https://www.scconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/ (visited on 24.07.2023)

[6]The Companies Act,2013 (Act 18 of 2013), s. 149

Apart from this, there should be one female director on the board of directors for whatever class or company it is recommended for. The Companies Act also requires the company to have one director who has lived in India for at least a year.

According to section 134 of the Companies Act, "***the director must give a detailed financial report which includes the director's responsibility statement. This provision has been enacted to make directors accountable for their actions.***"[7]

The directors must disclose their interest in any company or companies, body corporate, firms, or other association of Individuals.

Section 178(6) of the Companies Act 2013 "***If a company has more than one thousand shareholders, debenture-holders, deposit-holders, or any other security holders in a financial year, it is mandatory to constitute a stakeholder relationship committee. The main of the committee is to resolve the conflicts between the shareholders and the board of directors and address their grievances. The chairperson of the board shall be a non-executive director***."[8]

Forman Audit committee, which will look after financial reports and company disclosure. It boosts confidence in the integrity of the Company's financial reporting, the internal control process, and the risk management systems. It reviews and monitors the auditor's independence, performance, and effectiveness of the audit process. It examines the financial statement and the auditor's report thereon. Even the internal audit is made mandatory for specific classes of companies.

Section 211 (1) of the Companies Act -

"Companies shall establish an office called the Serious Fraud Investigation Office to investigate fraud relating to Company. The powers are given so that they can investigate the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government."[9]

Then there is also a formation nomination and remuneration committee that decides the selection criteria for the key managerial personnel and determines the remuneration of the KMPs and directors.

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[7]The Companies Act,2013 (Act 18 of 2013), s. 134
[8] The Companies Act,2013 (Act 18 of 2013), s. 178(6)
[9] The Companies Act,2013 (Act 18 of 2013), s. 211(1)

Section 135 of the Companies Act, 2013

"Corporate Social Responsibility as per the Act is every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or a net profit of rupees five crores or more during the immediately preceding financial year] shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent directorProvided that where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.The Board's report shall disclose the composition of the Corporate Social Responsibility Committee. The corporate social committee shall formulate and recommend to the board a corporate social responsibility policy which shall indicate the activities to be undertaken by the company in areas or subjects specified in Schedule VII and also recommend the amount of expenditure to be incurred on the activities, to monitor the corporate social responsibility policy of the company time to time. The Board of every company referred shall ensure that the company spends, in every financial year, at least two percent of the average net profits made during the three immediately preceding financial years as per CSR policy. If a company has not completed three financial years since its incorporation, the average net profits shall be calculated for the financial year since its incorporation; the computation of net profits of a company is as per section 198 of the Companies Act, 2013."[10]

India is the first country globally to make CSR mandatory since it was realized that increasing profits is no longer the sole business performance indicator for corporations. The unspent CSR amount on the ongoing project is to be transferred to a separate bank account titled "*Unspent CSR Account*" within thirty days of the closing of the financial year, and if the unspent amount does not relate to an ongoing project, then such amount to be transferred to fund specified in Schedule VII within a period of thirty days from the date of completion of the financial year.

Moreover, in the Companies Act, the business transaction with relatives of directors or KMP is considered "*Related Party Transactions*" These kinds of transaction are not banned in India, and a company can enter it. Still, certain conditions must be fulfilled before entering a

[10]The Companies Act,2013 (Act 18 of 2013), s. 135

related party transaction as per *Section 188* of the Companies Act.Whenever a Company enters any related party transaction above a specific limit, prior approval by way of resolution from the Company's Board of Directors will be required. If a director is interested in any contract or arrangement with a related party, such director shall not be present during discussions on such resolution at the meeting.[11]

Section 245 of the Companies Act, 2013 -

The Company's Act has introduced a concept of class action suits which can be exercised by shareholders and depositors against the company. It provides an alternate remedy to the members and depositors of a company or any class of them by way of a class action before the Tribunal. The main objective behind enacting such provisions of class action suits is to safeguard the interests of shareholders or depositors. So, these class action suits are presumed to be essential in addressing the unlawful acts by the Board of Directors, officers, and other managerial personnel because it has been granted statutory recognition under the Companies Act 2013.

Insider trading by any executive or critical administrative member of a company is punishable by imprisonment for up to 5 years and a fine of up to 25 crores or three times the profit from insider trading.

TheSecurities and Exchange of India have announced that slew of corporate governance-related and pro-investor measures, ending the practice of individuals having permanent seats on boards of listed companies. A separate section on auditing and corporate governance shall be included in the Company's Annual Report. It shall consist of a comprehensive report on corporate governance.[12]

EXAMPLES OF CORPORATE GOVERNANCE MODEL & PRACTICES BY COMPANIES & BANKS

Corporate governance balances economic and social goals and individual and communal goals. It encourages the companies' efficient use of resources and equally requires accountability for the stewardship of those resources. The aim is to align the interests of

[11]The Companies Act,2013 (Act 18 of 2013), s. 188
[12] Sebi Announces Corporate Governance Norms and Investor Measures, *available at:*https://www.entrepreneur.com/en-in/news-and-trends/sebi-announces-corporate-governance-norms-and-investor/448679 (visited on 26.07.2023)

individuals, corporations, and society as nearly as possible. The foundation of any structure of corporate governance is '***disclosure.'*** Openness is the basis of bringing public confidence in corporate bodies, and funds always flow to the centers of economic activity that inspire trust. Hence,it helps attract investors to invest in domestic and international capital markets.

Corporate governance is essential to paying heed to investors' grievances. In India, Insider trading has been very rampant, and therefore, it was prohibited by SEBI. However, the experience shows that prohibiting insider trading by law is not an effective way of dealing with the problem of insider trading because the legal process of providing punishment is lengthy and the conviction rate is very low therefore, the effective way of tackling the problem is by encouraging the companies to practice self-regulation and taking prophylactic action.[13]

Moreover, the best and most noteworthy practices of corporate governance which Indian companies adopt are: the "*Tata model*," which is followed by the Tata Group, emphasizes the significance of ethics, integrity, and accountability. The commitment of Tata Group to ethical practices, social responsibility, and long-term sustainability has made it a role model for many aspiring companies. Next is the "*Mahindra model*" embraced by the Mahindra Group; this model strongly emphasizes the empowerment of their employees and stakeholders. The Mahindra Group's approach centers on "*nurturing and empowering its people leads to overall organizational success*."Promoting a culture of inclusivity, transparency, and innovation has established itself as a frontrunner in the Indian corporate governance system. The "*Infosys model*" adopted by the IT giant Infosys, is built on the pillars of "*transparency, integrity, and shareholder value*." Infosys believes in fostering a culture of meritocracy, where performance is recognized and rewarded. It is well known that "*the company's commitment to sound governance practices and its transparent disclosure policies have earned it a well-deserved reputation for trustworthiness and reliability.*"

Further, when we see the banking sector, they must follow the corporate governance principle, particularly disclosure & transparency. The HDFC bank is following the practice of

[13]Corporate Governance in India: Need, Importance and Conclusion, *available at:*https://www.economicsdiscussion.net/business-environment/corporate-governance/corporate-governance-in-india-need-importance-and-conclusion/10145 (visited on 27.07.2023)

corporate governance, and therefore, some of their good governance practices are quoted herein below: -

"***The Banking Regulation Act governs the composition of the bank's board of directors, Companies Act, 2013, the listing requirement of the concerned Indian stock exchange in which its stock is listed. The Board is responsible for the various stakeholders of the bank. Therefore, the board members are both executive and non-executive directors, including at least one female director, and not less than 50 percent of the board shall comprise a non-executive director. Moreover, a director must meet the criteria to qualify as an independent director, and the director's appointment, removal, or re-appointment is subject to the shareholders' approval by way of a special resolution. It must hold one meeting in each fiscal year. Apart from this, the bank has its own qualified and independent Audit committee. The CEO or CFO must provide an annual certification on the true and fair view of the company's financial statements and compliance with existing accounting statements and many other practices adopted by the bank for good governance."***[14]

CONCLUSION

"***When corporate governance is done properly, it allows the corporation to work smoothly due to the existence of a clear level of accountability and communication amongst the organization, as well as people understanding their roles and responsibilities.***"

All the authorities within an organization would keep the interest of stakeholders in their mind while doing their part of the work or making a decision; they will treat all stakeholders equally & would encourage shareholders to participate in the company's activities, such as company meetings. There will be transparency in a corporation; a corporation should always let it know the responsibilities and duties of those that work for the corporation and who management is to keep stakeholders accountable. Last, it can be said that "*Although good corporate governance practices are followed in India yet, it is far from its perfection; it has yet a long way to go before it can be considered as a best in the countries*."

[14] Prof. Kiran Kumar Agrawal and Dr. Manmeet Sing, "A Comparative Study of Corporate Governance Practice of Three Legends of Indian Banking Industry SBI, ICICI and HDFC" (2011).