



Indian Corporate Governance and The Need for An Overarching Focus Shift of Policies; A Review Based on Sahara Group Scam

Prince.TC

Faculty, Centre For MBA, Dr.P K Rajan Memorial campus, Palathadam, Nileswaram .PO, Puthariyadukkam, Kasargod. Dist. PIN 671314

ABSTRACT

The term 'Corporate governance' is 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 the system of principles, policies, procedures, which clearly defined the responsibilities and accountabilities of different stakeholders of corporate-houses. The concept "corporate code of conduct" refers to companies' policy statements that define ethical standards for their conducts. According to the Association of Certified Fraud Examiners (ACFE), fraud is "a deception or misrepresentation that an individual or entity makes by knowing that it can result in some unauthorized benefits to the individual or to the entity or some other party. The chairman of Sahara India Pariwar, Mr.Subrata Roy has landed in a controversy in connection with Rs.24, 000-crore deposits, which his companies made from several millions of investors without following directives of SEBI. The bone of contention between Sahara and SEBI was that former has two additional firms under separate names and they are Sahara Housing Investment Corporation and Sahara India Real Estate Corporation. These two companies issued optionally fully-convertible debentures (OFCD) for collecting money from investors. As per SEBI rule, If OFCDs are issued, then the process "would be" instead of must be completed within 10 working days but these firms of Sahara continued to collect money from investors more than two years and therefore, it found a total violation of SEBI rule regarding issuing of optionally fully-convertible debentures. The vindications of Sahara in connection with aforesaid case at Supreme Court, as follows. These two companies not listed in any stock exchange of India and subsequently, their conducts are outside the jurisdiction of SEBI, which is regulator for listed firms only. It calls for necessary policy shift in the provisions of SEBI in dealing with business and protecting the interests of different share-holders, as well.

KEYWORDS : 1. The 'Corporate governance' 2. The corporate code of conduct 3. Securities and Exchange Board of India 4. Optionally Fully-Convertible Debentures 5. Para-banking institutions 6. Association of Certified Fraud Examiners 7. Corporate lobbying.

Introduction

The 'Corporate governance' is the system of principles, policies, procedures, which clearly defined the responsibilities and accountabilities of different stakeholders of corporate-houses. Corporations pool capital from a large investor base both in the domestic and in the international capital markets. It is in this context, investment is ultimately an act of faith based on the ability of a corporation's management. When an investor invests money in a corporation, he expects the board and the management to act as trustees and ensure a minimum rate of return that is higher than the cost of capital. Corporate governance is 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.

The concept "corporate code of conduct" refers to companies' policy statements that define ethical standards for their conducts. There is a great variance in the ways these statements are drafted. Corporate codes of conduct are completely voluntary. They can take a number of formats and address any issue - workplace issues and workers' rights being just one possible category. Also, their implementation depends totally on the company concerned. In essence, both corporate governance and corporate ethics are essential for the successful running of a business system and absence of both will result creeping of corporate fraud.

The corporatization and fraud; An overview

According to the Association of Certified Fraud Examiners (ACFE), fraud is "a deception or misrepresentation that an individual or entity makes by knowing that it can result in some unauthorized benefits to the individual or to the entity or some other party". In other words, mistakes are not fraud. Indeed, in fraud, groups of unscrupulous individuals manipulate, or influence the activities of a target business with the intention of making money, or obtaining goods through illegal or unfair means. Organizations of all types and sizes are subject to fraud. Fraud encompasses a wide-range of illicit practices and illegal acts involving intentional deception, or misrepresentation.

A brief history of Sahara scam and its legal highlights

The chairman of Sahara India Pariwar, Mr.Subrata Roy has landed in a controversy in connection with Rs.24, 000-crore deposits, which his companies made from several millions investors without following directives of SEBI. Subsequently, SEBI filed a petition at Supreme

Court of India regarding non compliance of formalities in collecting capital from investors through optionally fully-convertible debentures. February 2014, the Supreme Court of India issued an arrest warrant against Mr.Subrata Roy, as he failed to appear in court in connection with the aforementioned case and it was filed by Securities and Exchange Board of India (SEBI). He was finally arrested by Uttar Pradesh police following the arrest warrant of the Supreme Court.

The bone of contention between Sahara and SEBI was that former has two additional firms under separate names and they are Sahara Housing Investment Corporation and Sahara India Real Estate Corporation. These two companies issued optionally fully-convertible debentures (OFCD) for collecting money from investors. As per SEBI rule, If OFCDs are issued, then the whole process must be completed within 10 working days but these firms of Sahara continued to collect money from investors more than two years and therefore, it found a total violation of SEBI rule regarding issuing of optionally fully-convertible debentures. The supreme court of India ruled out arguments of Sahara and ordered for refunding the amount collected from investors through optionally fully-convertible debentures with interests. The vindications of Sahara in connection with aforesaid case at Supreme Court, as follows.

1. These two companies not listed in any stock exchange of India and subsequently, their conducts are outside the jurisdiction of SEBI, which is regulator for listed firms only.
2. Therefore, our matter falls under Union Corporate Affairs Ministry and not under SEBI.

The impact of Sahara scam and its magnitude

It is important to analyse the social implication of Sahara scam based on the regulatory environment and of course, through investors' point of view. The two firms of Sahara collected a huge amount of money from local investors through OFCD mode and they did not even maintain the records of the investors. Mr.Subrata Roy could raise capital only because of his reputation among the people and he is having photographed with top politicians & top brass corporate leaders. Sahara conglomerate spreads across several portfolios of business including property, media entertainment, retail, and manufacturing, information technology, hospitality and sports. The lack of transparency in commercial dealing is one of the factors, which contributed for the successes of Sahara in a short period of time.

Mr.Subrata Roy therefore deliberately engaged in different business portfolios, which have weak corporate governance guidelines and regulatory environments, as well. The fact is that majority of investors of Sahara are villagers, who do not have a clear idea about the fraud associated with this model of business practice. It is imperative to mention that more than 23 million people have invested their cash in these two firms of Sahara and the amount of cash collected nearly Rs.24, 000 crores out of OFCD mode. There are reasons for rampant-ing such kinds of scams in India due to following reasons

1. According to Credit Rating Information Services of India Limited (CRISL), nearly 50 % of the Indian bottom line districts have just three banks per 100,000 of population and it thus paves the way for increasing Para-banking institutions in the country. The Para-banking institutions have more been exploiting people in several grounds ,since there is no clear provision or guideline.
2. Lack of the powers and jurisdictions among different enforcement agencies in regulating the conduct of business. For example, SEBI often has difficulty in dealing with scams of unlisted (in stock exchange) companies. SEBI has normally the powers to regulate the business of only listed companies in India and that was the vindication of Sahara at Supreme Court against SEBI.
3. Lag in court procedure regarding disposing cases, which normally take years and it promotes scams. Indian judicial system is overburdened by cases of corporate nature and it promotes more crimes in finical sector in particular and business in general.
4. Lack of clarity and transparency in the provisions, which regulate the conducts of business and for example, there is no clear cut provisions for regulating Para-banking institutions in India and therefore, it brings in to being financial irregularities in dealings.
5. Absence of necessary provisions for dealing with new issues in business and for example, Vodafone Vs union of India.
6. Corporate lobbying is another reason for mushrooming corporate scams in India and 2G spectrum scam is an example. In America, corporate lobbying is legal and companies spend millions of dollars every year to get a fair treatment at congress, as concomitant of capitalist economy.

The suggestions for improving the effectiveness of the corporate governance in India, as follows

1. Expand the jurisdiction of SEBI to control unlisted companies and their activities, since they constitute a large chunk of business in India. Normally SEBI has the power to control the behaviour of listed companies in India. It thus, needs to have more powers to control the nature of the business and protect the interest of share-holders, as well.
2. It is the responsibility of the government and its various nodal agencies to furnish every area of business with necessary provisions to ensure that it is working, according to the interest of the nation and different share-holders, at large.
3. Make necessary clarity and transparency in provisions dealing with regulating business towards the general objectives of the nation.
4. Establish necessary banking institutions in the rural parts of India and make awareness among the people about various banking products. In essence, a loin share of people in rural parts of India does not have bank accounts for want of sufficient number of "Banking" institutions.
5. Pre-emptive policies should put in place to keep away corporate-houses from political interventions, which enlarge the magnitude of corporate scams. It is clear that behind every corporate scam, there is an unscrupulous political nexus with corporate institutions. For example, both 2G spectrum scam and Saradha group financial scandal believed to have political patronage to an extent.
6. All the informal collective investment schemes must be brought under the jurisdiction of a centralised enforcement authority with necessary stipulations and moreover, discourage the unscrupulous investment schemes.

Conclusion

Sahara scam is indeed an eye-opener in several respects about the dubious dealings in the interior corridors of corporate-houses and it brings in to being the need for protecting the interest "of" several million of investors, who invested their hard earned money in such fraud corporate institutions. SEBI proved to be effective machinery in tackling the scam (Sahara scam) to an extent but still it has a limitation of regulating unlisted companies in India. It is a fact that majority of investors of two institutions of Sahara were local people. The reasons for such scandals are several including lack of transparency, weak provisions, political nexus and ignorance of investors. Besides these, delay in disposing cases at courts is another reason for thriving scams in India. In the light of Sahara scam, it is the responsibility of the government and "its" various agencies to protect the interests of share-holders and nation 'as well' through putting in place necessary provisions in accordance with the changing requirement of market.

REFERENCES

1. "SEBI Bars Subrata Roy from Raising Funds". Outlook (magazine). 24 November | 2. "Investor fraud case: Sahara Group chief Subrata Roy grilled by Sebi over assets". Indian Express. 27 March 2014. | 3. "SC gives Sahara 3 weeks to secure investments". Business Standard. 20 January 2012. | 4. "SAT upholds SEBI order on Sahara to refund money". The HinduBusiness Line. 18 October 2011. | 5. www.hindustantimes.com > India-News > India | 6. Corporate Accounting

Fraud: A Case Study of Satyam Computers Limited by Madan Lal Bhasin. |