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Corporate Governance- Indian Perspective

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ABSTRACT

Corporate Governance is the set of policies that are shaped for deciding a company's performance. Corporate governance is a broad term is today's business environment. This paper will talk over corporate governance from India's viewpoint. It will examine the need of corporate governance in India. Furthermore, it will explain why it is important for any country to follow good corporate governance practices. It will look at how corporate governance became an inseparable part of Indian economy. In the conclusion, the paper gives a summary of how corporate governance is influencing the present economic condition of India.

KEYWORDS Corporate Governance, Companies Act 2013, Independent Directors, Corporate Social Responsibility.

1. Introduction

In recent years, corporate governance has achieved significance all over the world. The two most important aspects that have led to speedy progresses in this field, namely the amalgamation and globalization of financial markets and a flow of corporate scandals such as Enron, World Com and others. Recently, Brazil, Russia, India and China (BRIC) countries have also appeared as a significant economic power in the global economy. It is expected that the collective GDP of the BRIC countries is expected to be higher than the developed countries. Undoubtedly, Corporate Governance is a hot topic across the globe. Not a day seems to go without press comment, conference or a launch of a new code, all on the subject of Corporate Governance. The growing number of these corporate scandals in the recent past have affected the reputation of Corporate Governance and questioned the efficiency of its current structure.

2. Need for Corporate Governance in India

India is changing into one of the fastest rising economies. Indian companies today are ranked amongst the best in the developing world. A number of Indian companies are restructuring to become the multinational by investing abroad and opening up their branches or subsidiaries. A corporation is a flock of various stakeholders, specifically customers, employees, investors, government and society. In this altered scenario an Indian corporation, must be fair and crystal clear to its stakeholders in all its transactions. This has become commanding in today's business world over where corporations need to be access in global pools of capital, need to invite and preserve the finest human capital from several parts of the world, need to be partner with merchants on mega associations and also required to live in coherence with the community.

3. Research Objectives

The object of this research undertaken can be briefly summed up as one aiming at:

To surveying the emerging trends of corporate governance and its influence in corporate decision- making.

To study the growth and potential of corporate governance system in India.

4. Scope and Limitations

As corporate governance is a vast topic, with its new dimensions emerging from time to time, the present work has been mainly restricted to the jurisprudential aspects of the concept. There are numerous restrictions of this study. Present study has been conducted by depending upon the secondary sources of information and is purely doctrinal study.

5. Review of Literature

The researcher refers a number of books, reports, research papers and articles which deals with the subject of corporate governance.

P.P. Arya, B.B. Tandon and A.K. Vashisht (eds.) in their book deal different aspects of corporate governance, namely, conceptual framework of corporate governance, financial disclosures, business ethics and corporate governance, board characteristics, performance and shareholder activism and also bank, financial institutions and corporate governance.

Harsh Srivastva and Shankar Venkateswaran in their book "The business of social responsibility: the why, what, and how of corporate social responsibility in India" have thoroughly dealt with the concept of corporate social responsibility of corporation.

Parveen B Malla in his book "Corporate Governance: Concept, evolution and India Story" covers the basics of the concept of corporate governance. Throughout the book, connect to 'conflict of interest' arising out of separation of ownership and control is constantly made through the different sections and chapters.

Jayati Sarkar and Subrata Sarkar in their book "Corporate Governance in India" discuss the corporate governance framework in India in which they discussed the detail Historical Antecedents and Evolution of corporate governance and also the corporate governance reforms which are Initiatives since 1990s.

Kshama V Kaushik and Kaushik Dutta in their book "Corporate Governance Myth To Reality" covers a wide spectrum of issues such as the perils and uses of regulations, position of independent directors, trends in global reporting and sustainable development. This book also seeks to give an Indian and wider Asian perspective to evolving global thinking.

Vasudha Joshi in her book "Corporate Governance: The Indian Scenario" brings a critical, social science perspective to bear upon corporate governance. It discusses Indian developments along with some major global events and tries to place them in a theoretical framework to facilitate better understanding.

6. Role of Committees

The development of the notion of corporate governance in India was with the compliance of the 'Desirable Code on Corporate Governance' by CII. The first formal attempt at formalizing a governance code for corporates came from the CII which in 1998 published the Desirable Code of Corporate Governance (FII, 1998). The CII document recommended several policies that could be adopted by Indian companies in line with international best practices. The entire gamut of corporate governance as it stands today in the commercial and legal world is an outcome of these various reports.

CII code of desirable corporate governance (1998)

UTI code of governance (1999)

SEBI norms based on Kumar Mangalam Birla Committee Report on Corporate Governance (2000)

Naresh Chandra Committee on corporate audit and governance (2002)

Narayanmurthy Committee on Corporate Governance(2003)

7. Clause 49 of the Listing Agreement

The growth of capital market activity is increasing importance of equity as a source of corporate finance was triggered in the early 1990s by the initiation of comprehensive capital market reforms. SEBI plays a pioneering role in ensuring a firm corporate governance structure through its guidelines on Clause 49 of Listing Agreement which every recognized stock exchange has to comply with.

On the recommendation of Kumar Mangalam Birla Committee, SEBI added clause 49 to the Listing agreement. Clause 49 requires the companies to comply with the condition regarding the right mix of executive and non-executive directors in the Board of directors, formation of Audit Committee and Investor Grievance Redressal committee, holding board meetings, inclusion of management discussion and analysis section in the annual report regarding compliance with various corporate governance provisions etc. these conditions have become binding on all companies since March 2003.

The SEBI, subsequently, vide its circular dated 15 September 2014, delivered more amendments to Clause 49 to discourse the concerns and practical problems raised by market participants and to facilitate the listed companies to ensure compliance with the provisions of revised Clause 49 by also more closely aligning to the requirements of the 2013 Act.

8. The Companies Act 2013 viz-a-viz Corporate Governance

The Companies Act 2013 is pro Corporate Governance and provides various provisions which will help in promoting better Corporate Governance in the Companies in days to come. The Act, amongst other things, focuses on good corporate governance practices by increasing the roles and Responsibilities of the Board, protecting shareholders' interest, bringing in a disclosure based regime and built in deterrence through self-regulation. The 2013 Act significantly changes the way companies are governed.

The Act stipulates that the Independent Directors may be selected from a data bank of persons eligible and willing, which would be maintained by any institute or association as may be prescribed by the Central Government. At the very inception of the concept in the Indian corporate regime, one could find a rather narrow approach accorded to the word 'independence'.

The recommendations of the Kumar Mangalam Birla Committee were further adopted in the clause 49 of the Listing Agreement which deals with corporate governance issues in listed companies. The definition of 'independence' was increased in this clause by excluding individuals who were related to promoters or the Board through familial ties. However, the clause still failed to take into account certain relations which would essentially affect a director's independence. An example of this loophole would be a situation in which a director although not directly related to the promoter or the board, has relations to them through his or her relatives.

The appointment of directors has to be approved by members in a general meeting and the explanatory statement to the notice should indicate justification of such appointment. Independent Directors will not retire by rotation and can hold office for up to 2 consecutive terms of 5 years each following which, there would be a 3 year "cooling off" period before the Director is reappointed. Independent Directors would be eligible for sitting fees, commission from profits and reimbursement of expenses. However, they would not be eligible for stock options which are currently allowed to be granted to them.

The Act has attempted to codify the duties of directors. This attempt of codification cannot be said to be an exhaustive enumeration of the directors duties as in the codification of the concepts of "acting in good faith", "exercise of due and responsible care", "skill and diligence", "exercise of independent judgment", avoiding of conflict of interest are included.

9. Corporate Social Responsibility

The 2013 Act makes an effort to introduce the culture of corporate social responsibility (CSR) in Indian corporates by requiring companies to formulate a corporate social responsibility policy and at least incur a given minimum expenditure on social activities. CSR also known as corporate responsibility, corporate citizenship, responsible business, sustainable responsible business or corporate social performance is an expression used to describe what some see as a company's obligation to be sensitive to the needs of all of its stakeholders in its business operations. The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time.

10. Conclusion

Despite the fact that a number of leading Indian companies ought to have credit for actively follow high standards of governance, together with producing examples of world-class corporate disclosure, the strong expansion of the economy and capital markets has advanced a fair degree of satisfaction towards corporate governance and the rights of minority shareholders. Only few listed are familiar to a major global trend of the past five years of the expansion of cross-border proxy voting. However, nor they seem concerned in willingly enhancing the transparency and fairness of their annual general meetings. This ease is also reflected in the ongoing difficulties that investors face in deciphering the financial statements of some listed companies, including even some large caps.

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