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CORPORATE GOVERNANCE: A CONCEPTUAL STUDY

KEY WORDS: Corporate Governance, Board of Directors, Audit Committee and Compliance.

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ABSTRACT

The goal of the current study is to review the different advancements made in corporate governance in India. Corporate governance is to ensure that a corporation is run in the best interest of all stakeholders through a set of rules, procedures, and principles. Corporate governance aims to advance corporate responsibility, fairness, and openness.

INTRODUCTION:

Corporate governance is the framework used to direct and regulate corporations. The governance structure outlines the division of duties and authority among various corporate constituents (including the board of directors, management, shareholders, creditors, auditors, regulators, and other stakeholders), as well as the policies and procedures for making corporate decisions. Corporate objectives are created and pursued through the framework of governance, which takes into account the social, regulatory, and economic framework. Monitoring corporate behaviour, policies, and decisions is done through the governance system. The alignment of interests among stakeholders is a requirement of governance.

"The set of guidelines and procedures by which a board of directors maintains responsibility, fairness, and openness in a company's interactions with all of its stakeholders, including financiers, consumers, management, employees, the government, and the community"

1. Agreements between the business and its stakeholders regarding the division of rights, responsibilities, and rewards.
2. Techniques for resolving stakeholders' occasionally competing interests in accordance with their responsibilities, rights, and functions.
3. Policies for effective information flows, control, and supervision that act as a system of checks and balances.

Conceptual framework:

Principles of corporate governance

1. There shall be fair and equal treatment for all shareholders. Making sure shareholders are aware of their rights and how to exercise them entails this.
2. Upholding legal, contractual, and social commitments to stakeholders who are not shareholders is essential. Additionally, it entails communicating pertinent information to group suppliers, consumers, and employees.
3. The Board of Directors must be committed to upholding diversity accountability, fairness, and openness in corporate governance. The board members will also be qualified to evaluate management actions according to their experience.
4. Organizations should establish a code of behaviour for their CEOs and board members and only appoint new members if they adhere to it.
5. Transparency should be a requirement for all corporate governance policies and practises.

Need of study :

This study was done since corporate governance is now a requirement for all stock market organisations in India. We can comprehend the significance of and effect that corporate governance has on the operation and development of businesses.

Review of literature:

The separation of management from ownership control in modern firms has increased the importance of corporate governance. Shareholder and manager interests are at odds with one another. Due to the disparate interests of the firm's stakeholders, the principle agent dilemma is mirrored in issues with management and direction. Corporate governance can be interpreted in a variety of ways and does not have a single definition. Smith, who was published even earlier, and Berle and Means (1932) (1776). Corporate governance is described by Zingales (1998) as "allocation of ownership, capital structure, managerial incentive schemes, takeovers, board of directors, pressure from institutional investors, product market competition, labour market competition, organisational structure, etc., can all be thought of as institutions that affect the process through which quasi-rents are distributed."Governance determines how the firm's top decision makers (executives) really administer such contracts," claim Garvey and Swan (1994) (p. 139). Corporate governance is described by Shleifer and Vishny (1997) as "the means by which lenders to firms ensure themselves of receiving a return on their investment" (p. 737). According to the OECD's definition from 1999, corporate governance is the framework used to direct and control business corporations. The corporate governance structure outlines the rules and methods for making decisions on company affairs as well as the distribution of rights and responsibilities among various stakeholders, including the board, managers, shareholders, and other stakeholders. Additionally, it gives the framework for setting organisational goals and the tools for achieving them and tracking performance by doing this. According to Oman (2001), the phrase "corporate governance" refers to both private and governmental organisations that contain rules, laws, and business practises that control how company management interact with stakeholders. Corporate governance is described as "the processes and structure by which the business and affairs of the company are directed and managed, in order to enhance long-term shareholder value through enhancing corporate performance and accountability, while taking into account the interests of other stakeholders" by the Ministry of Finance, Singapore (CORPORATE GOVERNANCEC 2001). Therefore, good corporate governance contains both accountability (conformance) and enterprise (performance). (Fin, 2004, pp1314).

According to La Porta, Silanes, and Shliefer (2000, 2002), corporate governance is a collection of safeguards that external investors (shareholders) use to defend themselves

against internal investors (managers). Another viewpoint is offered by the Organization for Economic Cooperation and Development, which defines corporate governance as "the structure by which business corporations are directed and governed.

The corporate governance structure outlines the rules and procedure for making decisions on company affairs as well as the distribution of rights and responsibilities among various stakeholders, including the Board, managers, shareholders, and other stakeholders.

By doing this, it also offers the frameworks for setting company goals and the tools for achieving them and keeping track of performance.

Research methodology:

Most information used in this article is secondary data. This information was extracted from variety of other articles, books and websites.

Corporate Governance (clause 49 Listing Agreement)

1. Board of Directors:-

(I) Composition of board of directors: The board of directors of a company should have an optimum combination of executive and non-executive directors with not less than 50% comprising non-executive directors .where the chairman of the board is a non-executive directors, at least 1/3 of the board should comprise independent directors and in case he is an executive directors, at least half of the board should comprise independent directors.

(ii) Non-executive directors compensation and disclosures: All fees/compensation, if any paid to non-executive directors including independent directors would be fixed by the board of directors and require previous approval of shareholders in general meeting. The shareholders resolution should specify the limits for the maximum number of stock options that can be granted to non-executive directors, including independent directors, in any financial year and in aggregate.

(iii) Other provision as to board of directors and committees: The board should meet at least four times a year, with a maximum time gap of four months between any two meeting.

(iv) Code of conduct: The board should lay down a code of conduct for all board members and senior management of two companies. The code of conduct should be posted on the website of the company. All board members and senior management personnel of firm compliance with the code on an annual basis. The annual report of company should contain a declaration to this effect signed by the CEO.

2. Audit Committee:-

A qualified and independent audit committee should be set up giving the terms of reference subject to following :

(I) The audit committee should have minimum three directors as member. Two third of the member of audit committee should be independent.

(ii) All members of the audit committee should be financially literate and at least one member should have accounting or related financial management expertise.

3. Subsidiary Companies:

At least one independent director of the board of directors of the holding company should be a director on the board of directors of a material non-listed Indian subsidiary company. The audit committee of the listed holding company should also re-view the financial statement; in particular the investment made by the unlisted subsidiary company. The minutes of the board meeting of the unlisted subsidiary company should be placed at the board meeting of the listed holding company. The management should periodically bring to the attention of the board of directors of the listed holding company, a statement of all significant transaction and agreement entered into by the unlisted subsidiary company.

"Material non- listed company Indian subsidiary":-should mean an unlisted subsidiary, in corporate in India, whose turnover on net worth (i.e. paid up capital and free reserve) exceed 20% of the consolidated turnover or net worth respectively of listed holding company and its subsidiaries in the immediately preceding accounting year.

"Significant transaction or arrangement":-Means any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenue or total expenses or total liabilities as the case may be of the material unlisted subsidiary for the immediately preceding accounting year.

4. Disclosures:-

A statement of all transactions with related party including their basis shall be placed before the audit committee for formal approvel.If any transaction is not on an arm's length basis ,management shall provide an explanation to the audit committee justifying the same

(i) Basis of related party transaction
(ii) Disclosure of accounting treatment
(iii) Board disclosure-risk management
(iv) Proceeds from public issues, rights issues, preferential issues etc.
(v) Remuneration of directors
(vi) Management
(vii)Shareholders.

5.CEO/CFO Certification:-

The CEO that is the managing director or manager appointed in in terms of the companies act,1956 an the CFO that is, the whole time finance director or any other person heading the finance function discharging that function shall certify to the board that:-

a.They have reviewed the financial statement and cash flow statement for the year and that to the best of their knowledge and belief.

b.There are to the best of their knowledge and belief, no transaction entered to by the company during the year which are fraudulent, illegal or violative of the "code of conduct" etc.

6.Report On Corporate Goverance:-

There should be a separate section on corporate governance in the annual reports of company with a detailed compliance report on corporate governance non-compliance of any mandatory requirement of this clause with reason thereof and the extent to which the non mandatory requirement have been adopted given in annexure 29. 1-C and the list non mandatory requirements is given in annexure 29.1-D.Companies should submit a quarterly compliance report to the stock exchange within 15 days from the close of quarter as per formet give in annexure 29.1-B .The report should be signed either by the compliance officer or the chief executive officer of the company.

7.Compliance :-

The company should obtained a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the director's reports, which is sent annually to all the shareholders of the company. The same certificate should also to be sent to the stock exchange along with annual report filled by the company.

Advantages of corporate governance:

- Market performance and economic growth are ensured by sound company governance.
- Sound corporate governance upholds investor

confidence, enabling an organisation to obtain capital successfully and efficiently.
- It reduces the cost of energy.
- The value of the stock has a favourable impact.
- This gives the business's owners and managers a good chance to accomplish objectives that are in the best interests of the company's shareholders.
- Additionally, good corporate governance lowers risk, waste, corruption, and poor management.
- It aids in brand development and building.
- It guarantees that the business is managed in a way that serves the interests of all parties.

Disadvantages of corporate governance:

Separation of management from ownership:

The majority of a company's policies are typically made by the administrators and executives, who are not always stockholders. This could cause issues for large, publicly listed firms. The assets of the firm shall be administered by the board of directors and the officials in the absence of a controlling shareholder and when the majority of shareholders vote by proxy. The distinction between ownership and management will result in a conflict between management's duty to maximise shareholder value and enhance its income.

Unauthorized insider trading:

Corporate executives, managers, and staff are referred to as "corporate insiders" because they may have access to confidential information about the company that could affect the value of their shares. Although trading in corporate securities by company insiders is not expressly prohibited, they are required to report such transactions to the Securities and Exchange Board of India. When a shareholder sells a stock while in possession of sensitive knowledge about the prospective worth of his shares but is unable to access the information, this is known as illegal insider trading. Unlawful insider trading may also be carried out by a party that is not a direct employee of the firm, such as an external auditor, a government regulator, or a close family of a corporate insider. Given that many people have access to sensitive organisational information.

Misleading Reports

There are many ways of presenting factually, accurate financial statements in a way that misleads investors.

Regulation Costs

The misuse of corporate governance has led to the adoption of a broader range of federal and state laws to discourage such abuses from repeating. Compliance with this legislation can be burdensome and costly for companies.

CONCLUSION:

By this study we can conclude that Corporate Governance is beneficial to organisations in various aspects of finance, cost control, ethics, marketing, economics etc.

In India, corporate governance is made mandatory considering the benefits it has to the company and people. Corporate governance ensures smooth functioning of organisation at higher efficiency.

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