

ROLE OF SEBI IN CORPORATE GOVERNANCE

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ABSTRACT :

Today's corporate sector around the world is blamed for several illegal tactics and practices and these illegal and practices are curse for the corporate sector .these are not good for the civilized security .there are measures and mechanisms to curb illegal tactics.and practices of corporate entities .corporate governance is one f the effective tool and mechanism for the corporate entities to free themselves from the corporate entities to free themselves fromthese and for their success and long term survival. In this paper an attempt has been made to discuss the role played by sebi through clause 35B and clause 49 of the listing agreement in making companies to companies to comply with the corporate governance norms in india.this artice is divided into conceptual clarification, corporate governance with secion clause 35B and clause 49 and conclusion with recommendations. SEBI through the norms and provisions contained in clause 35B and clause 49 to listing in making corporate to comply with the standards of corporate governance

Keywords: corporate , illegal tactics, directives, securities, financial

Introduction

Securities and Exchange Board of India was formed after the Indian parliament passed Securities and Exchange Board of India Act, 1992 in response to financial Services Assessment program, a program developed by the World Bank and International Monetary Fund that

observes and reports on global financial systems. The Indian government wanted to establish a strong financial atmosphere and securities market with a regulator promoting the latest in corporate governance standards. SEBI sets standards in which the securities market must operate, protecting the rights of issuers and investors. SEBI has power to investigate circumstances where market or its players have been harmed and can enforce govern standards with directives. An appeal process in place ensures accountability and transparency. SEBI may terminate from the securities list any company that does not comply with its governance standards and regulation. Main aim of its origin was to curb the malpractices such as Lack of transparency in the trading operations and prices charged to clients, Poor services due to delay in passing contract notes or not passing contract notes, Delay in making payments to clients or in giving delivery of shares, Persistence of odd lots and refusal of companies to stop this practice of allotting shares in odd lots, Insider trading by agents of companies or brokers rigging and manipulating prices, unofficial premium on new issue, violation of rules and regulations of stock exchange and listing requirements. Due to these malpractices the customers started losing confidence and faith in stock exchange. Many high profile corporate governance failure scams like the stock market scam, the UTI scam, Ketan Parikh scam, Satyam scam, which was severely criticized by the shareholders, called for a need to make corporate governance in India transparent as it greatly affects the development of the country. Effective corporate governance is only key to regain the trust of investors and safeguard their interest. This paper aims to study the role of SEBI in corporate governance and maintenance.

OBJECTIVES

- 1 - To study about the role of SEBI in corporate governance
- 2 - To analyse about the role of SEBI in corporate governance and maintenance

HYPOTHESIS

Null hypothesis: Role of SEBI in corporate governance is not effective

Alternative hypothesis : Role of sebi in corporate governance is effective

METHODOLOGY

The research methodology adopted in this paper is based upon doctrinal research with in depth study of the subject exploring the relevant legislative enactments, law books and it is based on an abundance of courts decision to study the medical negligence under the consumer protection act.

Governance

Corporate governance is the manner in which companies or market systems operate, including the rules, regulations, policies and standards for accountability, transparency and general corporate integrity.

Origins

SEBI was formed after the Indian Parliament passed the Securities and Exchange Board of India Act, 1992 in response to the Financial Services Assessment Programme, a program developed by the World Bank and International Monetary Fund that observes and reports on global financial systems. The Indian government wanted to establish a strong financial atmosphere and securities market with a regulator promoting the latest in corporate governance standards.

Functions

SEBI sets governance standards in which the securities market must operate, protecting the rights of issuers and investors. SEBI has power to investigate circumstances where the market or its players have been harmed and can enforce governance standards with directives. An appeal process in place ensures accountability and transparency. SEBI may terminate from the securities list any company that does not comply with its governance standards and regulations.

Pillars of Effective Corporate Governance

The important elements of good Corporate Governance are:

- Transparency
- Accountability
- Disclosure
- Equity
- Fairness
- Rule of Law
- Participatory

SEBI Role in Corporate governance

To make corporate governance more effective the SEBI since its setup in 1992 has taken up number of initiatives, appointed various committees and has brought amendments to the Clause 35B and the Clause 49 of listing agreement. Here the SEBI's role in corporate governance is illustrated through norms and provisions as stated these two clauses; the Clause 35B and the Clause 49 of listing agreement. SEBI norms and guidelines under Clause 35B and 49 of the listing agreement for effective Corporate Governance: Since its establishment, SEBI has taken initiatives to align Indian corporate governance practices with the global standards adopted in advanced economies. The recent amendments to Clause 35B and 49 of the listing agreement make Governance more effective and rigorous in protecting the interest of all stakeholders. The amended Clause 49 of listing agreement is in alignment with the new Companies Act, 2013. This clause is applicable to listed companies but as per SEBI clarification, in future this clause will be applicable to non-listing companies also.

Clause 35B

Under the revised clause 35B, the issuer has agreed to provide e-voting facility in respect of all shareholders' resolutions, to be passed at General Meetings or postal ballot facilities to

share holders. The company has to send notices of meeting to all members, auditors of the company and directors by POST or Registered e-mail or Courier and the same be placed on the official website of the company. The notice of meeting should also mention that the company is providing facility for voting by electronic means and postal ballot facilities to members. Through this provision large number of shareholders can participate in the selection of board members.

Board Composition:

This sub-clause specifies optimum composition of BOD where at least 50% of board members are non-executive directors and there must be one women director in the board. Again it states that if the Chairman is an executive director, half the Board must comprise of Independent directors. However if the Chairman is a nonexecutive director then 1/3rd board members be independent directors.

Restrictions on independent directorship:

Under the Revised Clause, no person can be an independent director of more than seven listed companies. If any person is serving as a whole time director in any listed company, then he/she shall not be the independent director of more than three listed companies The tenure of independent director will be five years which is in accordance with provisions of new Companies Act, 2013. The proposed amendment to clause 49 of listing agreement also contains drastic modifications regarding the nonexecutive directors' compensation and disclosures

Stock Exchanges:

Economic Functions and Growth The history of the development of Indian Corporate Law has been marked by interesting contrasts. At independence, India inherited one of the world's poorest economy but which had a manufacturing sector accounting for a tenth of the national product, four functioning stock markets with clearly defined rules governing listing, trading and settlement, a well developed equity culture among urban rich; a banking system replete with well developed lending norms and recovery procedures. In terms of corporate laws and financial system, therefore, India emerged for better endowed than most other colonies. The Companies Act, 1956 as well as laws governing the functioning of joint stock companies and

protecting the investor rights built on this foundation.⁵ Good Corporate Governance practices enhance company's value and stakeholders trust resulting into robust development of capital market, the economy and also help in the evolution of a vibrant and constructive shareholder's activism. The ministry of corporate affair has examined committee reports as well as suggestions received from the various stakeholders on the issue related to corporate governance. Keeping in mind that the subject of corporate governance may go well beyond the law and that there are inherent limitations in enforcing many aspects of corporate governance through legislative and regulatory means, it has been considered necessary that set of voluntary guidelines called Corporate Governance Voluntary 2009 which are relevant in the present context are prepared and disseminated for consideration and adoption by corporate.⁶ In today's corporate world, few individuals are getting ridiculously rich from nothing and nowhere. Greed and aplenty opportunities around paves way for undesired action from miscreants, despite the social responsibility and corporate governance mechanism vogue. CSR, corporate governance, social responsibility, whatsoever they are christened as, are all just on the paper for sake of compliance. A legal or illegal loophole is ever sought after to quench the never ending thirst for abnormal gains. Many investor have faith in the ability of code of ethics to meaningfully influence corporate behaviour and prevent corporate mishaps code of ethics alone are unable to influence corporate behaviour and prevent corporate misdemeanors. If the code of ethics are supported by everyone in an organization and are continually updated and monitored, they can set a sound framework for division making and risk management. The complexity of corporate governance means that no one theory or model of society is likely to be sufficient for understanding, evaluating or designing governance structure. Another aspect to have in mind is that corporate governance is not the panacea for the resolution of group or individual problem within the firm.⁸ In the aftermath of economic liberalization and the subsequent establishment of the Securities and Exchange Board of India an upsurge in enthusiasm for protection of interest of shareholder rights was gaining ground and corporate governance was one of the system in corporate management decided by central government and the SEBI. No specific definition of what is Corporate Governance is available in any reports of committee which examined the feasibility of introducing this system in corporate sector. The objectives of the companies in the corporate sector established and financed by the promoters at large, is to offer products and services to the society and after meeting the obligations to the govt, in the form of taxes and socially desirable

regulations, distribute the profits to the financial stakeholders. In view of the Regulatory Provision brought by SEBI in the listing agreement, which requires the companies to have a majority of the independent director many companies said to have raised objections as to how management control of the company should be vested in hands of majority of independent director who have no financial state in the ventures.⁹ The Stock Exchange are the exclusive centres for trading of securities. The regulatory framework favours them heavily by almost banning trading of securities outside exchange.

History of Stock Exchange Stock

Exchange is a market place where industrial securities like equity shares, preference shares, debentures and bonds of listed public limited companies and the govt, securities are traded. The members of the exchange trade in listed securities on the floor of stock exchange on their own behalf of their client. The stock exchange is a prime institution in the security market and is a specialist market place. Its main function is to provide the mechanism for the exchange of securities which already existed at that fair and equitable price. The stock exchange not only helps the business undertaking in private sector, but also the govt, for raising and management of public debt. It is to the government not only in times of peace but also in times of war. It is also indispensable for the proper functioning of the private corporate enterprises. It provides mobility to capital and direct flow of capital into profitable and successful enterprises. It is a performance index or a barometer of general economic development or economic growth of a country. In 1955, the then Finance Minister in the Lok Sabha made following observation. The economic services which are well constituted and efficiently run securities market can render to a country with large private sector, operating under the normal incentives and impulses of private enterprises are considerable. In the first place it is only an organized securities market which can provide sufficient marketability and price continuity for shares, so necessary for the needs of the investor. Secondly, it is only such a market that can provide a reasonable measure of safety and fair dealing to the buying and selling of securities.¹⁸ Thirdly, through interplay of demand for the supply of securities a properly organized stock exchange assists in a reasonably correct evaluation of securities in term of their real worth. Lastly through such evaluation of securities, the stock exchange helps in the ordered flow and distribution of saving as between different types of competitive investment.¹⁹ Stock Market is the backbone of capital market. India has

established various committees for development of security market. (1)Alley Stock Exchange Enquiry Committee, 1923, (2) Morrison Enquiry Committee, 1936, (3) Departmental Committee, 1948, (4)Gorwala Committee, 1951, (5) Patel Enquiry Committee in 1984, (6)Pherwan Committee in 1991, (7) Hussain Committee, 1993 were appointed to check speculation

Committee Reports and Capital Market

Atley Committee 1924 has observed that the native share and Stock Brokers Association of Bombay is voluntary association of those who deal in stocks and shares and securities of the like nature. The present members are more than 400. The object of this association appears to be the protection of the interests of members and the provision of a market place wherein the members of the association and through them the public may buy and sell stocks, shares and like securities. Rules and regulations have been drawn up from time to time for the guidance of the members of the association and a building has been acquired as a market place in Dalai street. The committee was constituted by Government Resolution No. 2628 in the Finance Department, dated 14th September 1923. The term of reference were to inquire into the constitution, government customs, practices, rules, regulations and methods of business of the Native Share and Stock Brokers Association of Bombay and to investigate any such complaints of the public and to make any inquiries with reference to any of the aforesaid matter or any matter pertaining to the aforesaid association as the committee may deem proper and thereafter with view to protect the investing public against the interest or irregular control of business, to formulate such committee as deem proper. Committee has also recommended that the stock and share market is a vital factor in the today's economic life of progressive nature, order and confidence are essential elements in its continued prosperity and growth. The aims and objectives of the association are set out in Article XV of the Article of Association and primary aims and objectives of the association are set out in the first clause. These are: 1. To support and protect the character, status and interest of brokers in dealing in stocks and shares and other like securities in Bombay. 2. To promote honourable practices. 3. To suppress the malpractices. 4. To settle dispute among brokers. 5. To decide the question of usage and courtesy in conducting brokerage business.²⁰ But we think that in the absence of undue protection, the realization of its

inherent risks will keep such business in some measure proportionate to the real needs of the market.

Securities Contracts (Regulation) Act, 1956

This Act was enacted to prevent undesirable transactions and to check speculation in the securities by regulating the business of dealing therein. Any stock exchange, which is desirous of being recognised, may make an application in the prescribed manner to the Central Government. Every application shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts as well as a copy of the rules relating in general to the constitution of the stock exchange, and in particular to; firstly, the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted; secondly, the powers and duties of the office bearers of the stock exchange; thirdly, the admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and re- admission of members there from or there into; fourthly, the procedure for the registration of partnerships as members of the stock exchange, in cases where the rules provide for such membership; and the nomination and appointment of authorised representatives and clerks. Every recognised stock exchange shall furnish the Central Government with a copy of the annual report, and such annual report shall contain such particulars as may be prescribed. It may make rules or amend any rules made by it to provide for all or any of the following matters, namely:- (i) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting; (ii) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange; (iii) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange; etc. If, in the opinion of the Central Government, an emergency has arisen and for the purpose of meeting the emergency, the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and, if, in the opinion of the Central Government, the interest of the trade or the public interest

requires that the period should be extended, it may, by like notification extend the given period from time to time.

Securities and Exchange Board of India Act, 1992

This Act was enacted to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. For this purpose, the SEBI (the Board), by regulation, specify:- (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and (b) the manner in which such matters shall be disclosed by the companies. No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act. No depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act. Further, no person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations. Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations. The Board may, by order, suspend or cancel a certificate of registration in a prescribed manner, as may be determined by regulations under this Act. However, no order shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CONCLUSION:

Today corporate governance is an essential tool and mechanism for the very survival and success of corporate in the new economic environment. No doubt at all, in this vibrant volatile

economic environment, the market Regulator SEBI has greater role and power to make companies to follow the corporate governance standards but it alone cannot enforce and monitor the compliance to corporate governance standards companies. It is the duty and responsibility of all the stakeholders to ensure that the corporate governance norms are followed by the companies in their operations. It is needed to create awareness among the shareholders and other stakeholders on corporate governance norms and practices. Then the corporate entities should adopt ethical business practices. The corporate practices in India emphasize the functions of audit and finances that have legal, moral and ethical implications for the business and its impact on the shareholders. Amendments introduced by SEBI in Clause 49 roved innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment. The rules and regulations are measures that increase the involvement of the shareholders in decision making and introduce transparency in corporate governance, which ultimately safeguards the interest of the society and shareholders. Corporate governance safeguards not only the management but the interests of the stakeholders as well and fosters the economic progress of India in the roaring economies of the world.

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