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ISSUES AND CHALLENGES OF CORPORATE GOVERNANCE

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ABSTRACT

Good governance includes all actions pointed toward giving its residents, good personal satisfaction. With the quick change in the business climate and the development of new guidelines by world bodies like EEC, WTO, OECD, World Bank and so on the idea of Corporate Governance (CG) is presented and has additionally been the stimulus. Corporate governance offers the crucial benefit structure for the way of life of an association, which guarantees productive working of big business on strong moral qualities and standards. It centers around the suitable administration and control design of a company. It characterizes and limits the rights and responsibilities of the constituents of the corporate like sheets, administrators, investors and different partners. Corporate governance fundamentally (a) Long-term connections, which needs to manage governing rules, motivating forces of chiefs and interchanges among the executives and financial backers (b) Transactional connections including matters identifying with divulgence and authority. A large portion of the meanings of Corporate Governance referred to above around setting down least principles and characterizing the job of the different players associated with Corporate Governance.

Keywords*—corporate governance, corporate legal system, corporations, issues, Challenges*

INTRODUCTION

The favourable features of Indian industry notwithstanding, there are considerable scope for Indian companies attaining significant share in different industrial and services sectors. For instance, India represents only one per cent of the worldwide IT market. The portion of the help area in Indian GDP is expanding due to reevaluating and two-thirds of India's human resources are as yet occupied with farming, however, the vast majority of them stay under-utilized.

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Also, the pace of development in this area is much slower compared to manufacturing and services. Also, the country has no coordination system or legal framework for its skill-development and improvement, so as to react to the changing necessities of industry and self-employed people in more small countries like Malawi, Philippines and Tanzania adopted such frameworks almost 10 years prior in order to adjust to the realities of globalization. The country is thus in a situation of “little done, much yet to be done.” Taking into account these real factors, there ought to be nothing to feel suddenly amped up for the above acknowledge. The worldwide economy is evolving quickly; increasingly more Indian organizations are required to march towards attaining global standards. Except if they incorporate themselves with all-around acknowledged brands, it is hard to think about their practicality in the worldwide market despite remarkable ample, the Usha Martin group has world-class skills in producing wire ropes; in any case, worldwide purchasers don't hazard their application in territories, for example, connect building.

Similarly, Sundaram Fasteners may sell General Motors (GM) just the least complex of its items (radiator caps), and that too for models that GM was gradually phasing out. Despite phenomenal success of IT companies, they despite everything think that it is hard to sell their products for some of the most complex jobs in IT at the global level.

Taking a gander at the presentation of Indian corporate pioneers of the pre-reform era, it is significant that their performance in the post-reform time has been falling quickly. As uncovered in an ongoing report, out of a sum of 2151 companies, 1696 (i.e., 79 per cent) were making profit in the year 1991 but in the year 2001, only 1000 (46 per cent) were making profit. And, the presentation of more than 50% of the pre-change corporate pioneers has gone down both as far as their business rank and benefit position. It is quite evident that Indian corporates have not had the option to withstand the undeniable trends caused by the globalization syndrome.

Again, the scenario of performance of Indian industry in terms of its share in exports and acceptability of its items by worldwide players show that senior corporate pioneers in India, all in all, have not built up the essential confidence in themselves that they can succeed in the worldwide market. While Indian industrialists know about the significance of revolutionary reaction to the difficulties presented by globalization, they are by one way or another caught in a steady mentality. They have not shown the essential feeling of activism that warrants worldwide change elements. Obviously, there are numerous instances of eminent accomplishment by Indian organizations. However, the majority of these are untold stories, in which the principle heroes are unheard.

First of all, Indian companies and managers need to learn to discard their so-called tried and tested solutions and old perspectives in understanding the scope of today's business problems. They are still associated with strategy-structure-theory, which hypothesizes that the structure follows the strategy. This model is viewed by Indian managers as the primary level to direct the performance of their organization. He has reconciled to see this model is the most significant. They are occupied with guiding themselves towards strategizing and shaping. Most have not yet completely figured it out to what extent the world is changing in various areas of economic operations. In the new era, the strategy building model has little precedence in view of the uncertainties arising due to chaotic competition. It is therefore not high on the agenda of global organizations.

Rather, they are concentrating on their ability constructing to stand up to the flighty floods of rivalry more competently. Researchers have revealed that the front-running organizations are putting vigorously in building their intangibles to improve their long stretch market esteem; probably the most significant intangibles in this relationship include: shared mindset, talent, speed, education, accountability, collaboration and leadership quality.

Intangibles mirror the positive or negative estimation of a company that isn't clarified by its present profit. The 'intangibles' thesis has become more popular since the publication of research findings of Baruch Lev, a Professor of Finance at New York University. He has scrutinized the customary perspective on the ascent in stock costs. The customary postulation accepted that when a firm procures more cash, its offer worth goes up in the market. Lev's research has contended that before, 75–90 per cent worth of a company's market could be anticipated by its monetary exhibition; nonetheless, since 1990 this figure has boiled down to simply around 50 per cent. Rather, it is attached to the estimation of intangibles in a company as the deciding element.

Consequently, the defenders of the 'intangibles' proposal claims that companies that have high intangible value have higher price/value of their stock. Jack Welch, the previous CEO of General Electric, has been credited as an ace in the impalpable worth structure. The offer costs of GE could zoom because of the trust in the company that he made through his guarantees. He imparted to the investors, workers and clients precisely what he arranged. He additionally endeavoured to see that his guarantees were conveyed.

CHALLENGES WHICH DWELL FOR GOOD CORPORATE GOVERNANCE BY INDIAN GOVERNMENT

Corporate governance is tied in with guaranteeing that a business performs well through the appropriation of reasonable and moral standards and those investors get sensible returns. The governance structure gives generally speaking bearing to the executives and guarantees accountability to investors and different partners. Corporate governance exists at a complex crossroads of law, ethics and economic efficiency. Corporate governance is expected to follow the principles of fairness, transparency, accountability, responsibility, maximize business performance and global competitiveness. Corporate governance is concerned with the effective strengthening of the rights of investors and creditors. According to the elite Milton Freedman, "Corporate governance is to conduct business according to the will of the owner or shareholders." This would normally be to get whatever amount of income could be anticipated, while finding a place with the fundamental standards of society exemplified in law and close by traditions. Corporate governance is worried about the concordance among money related and social destinations and the objectives of people and the company. There is a corporate governance system to energize the productive utilization of resources and responsibility for working these assets. Its motivation is to adjust whatever amount as could be anticipated in light of a legitimate concern for individuals, corporations and society.

i) Regulations for Corporate Governance in India

Many financial scandals have forced the establishment of corporate governance in India. The concentrated ownership of money shares, pyramiding and tunneling among the group companies has marked the Indian corporate landscape. Unethical and illegal actions during 1990–2000 forced business sectors to adopt corporate governance. Corporate governance and financial advancement are inherently connected. Successful corporate governance frameworks advance the turn of events of a strong financial system, regardless of whether they are to a great extent bank-based or market-based, which positively impact economic growth and poverty reduction. Good corporate governance is portrayed by the solid duty and appropriation of moral practices by associations over its whole worth chain with a wide set of stakeholders comprising employees and clients, sellers, controllers and shareholders. Ministry of Corporate Affairs proposes new companies bill 2008, the reason for which is to improve corporate governance by the forces vested in the shareholders. These powers have been balanced by greater emphasis on self-regulation, reducing regulatory approvals and increasing financial matters and

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more transparent disclosures. In 1996, a committee headed by Rahul Bajaj developed the Confederation of Indian Industry Code for desirable corporate governance. The 2001 Standing Committee on International Financial Standards and Codes, RBI's advisory group, submitted its report influence on changing the state of corporate governance in India. The Birla Committee recommendations were executed through the order of statement 49 of the posting understandings. These suggestions were implemented: (1) Companies in BSE 200 and S&P, C&X Nifty indices and newly listed companies as on 31 March 2001. (2) Companies with paid up capital of Rs 25 crores or net worth of Rs 25 crores whenever in the last 5 years. (3) Other listed companies with paid-up capital in excess of Rs 3 crore as on March 2003. (4) More attention to the subject of share transfer. Since 1994, the Board of Financial Supervision has been monitoring and monitoring banks using the Camels (Capital Adequacy, Asset Quality Management, Income, Liquidity and System Control) approach. In 1995, audit committees were set up in banks. Important laws to regulate the whole corporate construction and manage different parts of governance in corporations are the Companies Act, 1956 and the Companies Bill, 2004. The Securities Contracts (Regulations) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depository Act, 1996 was presented by the Board of Securities and Exchange with the target of ensuring the charges of analysts in the securities market of India is to stay aware of the standards of corporate governance in the country. The Securities Contracts (Regulation) Amendment Act, 2002 has been enacted to change the Securities Contracts (Regulation) Act, 1956 so as to incorporate securitization instruments under the definition of securities and to provide disclosure-based rules for the issuance of securities. The Security and Exchange Board of India has specified matters identifying with abuse of capital, the move of securities and different matters, for example, such makes a difference to be unveiled companies. The Depository Act, 1996 provides for the introduction of dividend less trading systems and settlements, which is considered essential for effective functioning.

The Companies Bill, 2004 contains significant arrangements identifying with corporate governance like free reviewers with the administration of the company, autonomous directors to further develop corporate governance rehearses in the corporate area. It is dependent upon more perceptible adaptability and self-rule by companies, better cash related and non-monetary disclosure and more efficient enforcement of the law.

ii) Effective Corporate Governance

There are few features of effective corporate governance:

1. Access to outside financing that will prompt more prominent venture, growth and employment
2. Reduce the cost of capital to reduce the risk of financial crisis.
3. Better asset allotment to win the trust of stack holders, to improve social and labor relations and to conserve the environment.
4. Transparency in all financial and non-financial matters.

iii) Current Position of India in World Scenario

As indicated by the CLSA Corporate Governance Watch 2012 rundown, India's corporate governance score has improved, worked in a joint effort with the Asian Corporate Governance Association by 3 percentage points, but the ranking remains the same. "This isn't because of an absence of mindfulness by controllers, yet rather a piecemeal way to deal with change and an intermediary government incapable to do anything important given its cutoff among its partners," ACGA look into executive Sharmila Gopinath said in the report. In the market rankings, Singapore topped 2012 and was followed by Hong Kong and Thailand in second and third place respectively. There is a tie between Japan and Malaysia in fourth place, the report said. Among others at the top, Taiwan is ranked 6th, followed by India (7th), Korea (8th), China (9th), Philippines (10th) and Indonesia (11th). In addition, there were only five Indian companies that made it to the top 50 league table. Apart from this, the other four Infosys include HUL, Wipro, Titan Industries and Yes Bank. "Despite efforts by the corporate part and individual controllers to increase corporate governance expectations, these generally neglect to address key governance issues, for example, bookkeeping measures, Gopinath said, regulating auditors and voting barriers for investor's incapable to-go-to company meetings. The report, titled "Tremors and Cracks", noted that cracks in Asian corporate governance have become more pronounced since the release of the previous CG Watch report in 2010, with a drop in corporate scores. Investors have confronted issues going from moderately minor corporate changes to developing worries about the unwavering quality of fiscal summaries and outright fraud at the extreme. "Corporate governance is to a great extent about checks and balances," CLSA Head of Asia Research Amar Gill said in a statement "To deal with the rift in administration and the setbacks in Asian investment, investors will need to make a tight grip and get a grip."

CHALLENGES TO EFFECTIVE CORPORATE GOVERNANCE

There are certain practices prevalent in the market and in our society that are becoming a challenge for corporate governance in our country. (1) Weak and underdeveloped to manipulate the illiquid equity market, with traditional analyst activity. (2) Domination and monopoly of family firms. (3) High level of corruption is visible only after revelations of major financial scam. (4) Weak and non-transparent monitoring system. (5) Lack of respect for shareholders and less financial disclosure. The notion of poor corporate governance in public sector enterprises may be a conduit to the government's divestment program. The government is hoping to raise Rs 30,000 crore by selling stakes in companies like Steel Authority of India Limited, Bharat Heavy Electricals Limited, NMDC Limited, National Aluminum Company Limited, Oil India Limited, Rashtriya Ispat Nigam Limited and MMTC Limited. In a new low, recently released government data showed that many state-owned companies are not eager to self-assess their governance standards. According to data released on Monday by the Department of Public Enterprises (DPE), out of the 249 central public area endeavours in the nation, 109 substances didn't give self-evaluation reports on their corporate governance rehearses for 2010–11. As indicated by an ongoing overview conducted by the Confederation of Indian Industry and Institutional Investor Advisory Service, investors ruled 1.75 on a scale of four among state-owned companies, well below 3.67 for multinational corporations and for professionally-run companies 3.17. As a result of this low impression of governance, a poor return was expected. Public sector undertakings (PSUs) are one of the four categories of companies in terms of alleged shareholder returns. At a score of 1.36, PSU lagged behind promoter-run companies, whose governance level was low.

While share prices have improved significantly over a series of government decisions and get cheap and easy money around the world, Government deficiencies are seen as a major risk by institutional investors for government issues, including the protection of minority investor rights. The administration is regularly blamed for dealing with PSUs listed as public sector undertakings, using its balance sheet to subsidize populist plans. In 2009, Goldman Sachs gave a slogan to the government for using the balance sheet of Oil and Natural Gas Corp to subsidize fuel prices. Currently, UK-based hedge fund TCI is allegedly messing with the government to follow pricing policies that are harmful to shareholder interests. The CII-IIAS survey showed that investors have low resilience levels for corporate governance issues in investment companies. "About 33 percent of investors expect corporate governance issues to be settled inside a month," While 42 per cent hope that the issues of corporate governance will be resolved within three months. In other words, institutional investors have little tolerance for poor corporate governance, and may respond to exit from the company. Although PSUs are rated very low in terms of perceived shareholder returns (rated 1.36), they have fared better when investors have been asked to rate their chances of investing (rated 2.33). The IIAS report states, "In the current environment this means that investors expect some favorable policy changes."

The effective Corporate Governance seeks to find ways of reducing conflict among minority shareholders and majority shareholders (including the promoter, founder etc. in a company, those who actually make decisions on behalf of all the shareholders). It is only through effective Corporate Governance that strategic aims and objectives are established and the proper management is set up to achieve those aims and objectives.

Though SEBI has been established as trustees of the shareholders, and in principles, India has the most stringent regulations in the world for corporate governance; shareholders are yet at the mercy of the promoters and receive nothing beyond the promoters will.

i) Problems in Corporate Governance in Private Organizations

The problem of Corporate Governance has arisen due to the rising need to separate ownership and management control and the increasing demand to make the organization more visible, accountable not only to founders, but also to every shareholder, groups and the community at large. The legal responsibility for the overall management and the control of the organization rests with the Board. Good Governance is the responsibility of the Board. Globalization has increased the interest in governance issues. There are following major issues in the Corporate Governance practices i.e.

ii) The Conflict between Promoters and Management

Since numerous companies are family-claimed ventures, Promoters are majority shareholders who continue to have an undue influence on business choices. This occasionally prompts a showdown between the advertisers and the administration, which is liable for every day working of the company. Recent examples of Tata Sons exiting the chairman of the Tata group, and the forced exit of Infosys CEO, both have exposed weaknesses in our corporate governance norms due to differences between management and promoters. The conflict has also reflected weaknesses in succession planning by founders / promoters, many of them leading to inherent barriers to take control of their companies.

iii) Stressed Balance Sheets

The awful obligation issue, which has influenced the corporate area, is as much a result of terrible Corporate Governance standards. Many expensive acquisitions were made in the last decade by companies without a proper approval from the shareholders and conducting due diligence. As a result, few of them paid off for the shareholders.

iv) The Composition of the Board

The Companies Act presented a few decent Corporate Governance arrangements, for example, 33% of the company board ought to include Independent Directors, the board ought to have in any event one-lady Director, the constitution of Audit Committee inside the board and so forth. Be that as it may, a few companies despite everything haven't delegated Woman Directors in their Board, while some of them have named the women family members or friends of promoters as Directors in order to fulfill the requirements on the paper.

v) Role of Independent Directors

The role of Independent Directors is to enhance the accountability of the Board towards shareholders. Top employees are paid in some cases excessive remuneration, where they allow promoters to have an important say as quid pro quo. Then again, many small companies fail to offer competitive remuneration to attract talented professionals. Sometimes, excessive remuneration of top employees can turn into a state of contention among advertisers and the executives, as on account of Infosys decisions if they find it against the interest of all stakeholders.

vi) Family Owned Business- Voting Majority

Family owned business is the business where voting majority is in the control of a family; and approx. 75 percent of Indian big firms are controlled by different family. It includes the founder also who always intend to transfer his establishment to his family descendants. It becomes difficult for pariahs to follow the business real factors of individual companies. These types of firms need proper monitoring and controlling mechanism in order to create proper governance. Family owned business has created problem for the proper implementation of the corporate governance norms, as the majority stakeholders run the business in light of a legitimate concern for the family and the interest of the company and furthermore, the interest of the minority investors have never been kept at par with the family interest. The family owned business in listed companies is critical because in case of listed company the shareholders are not allowed to participate in the day to day business activity.

vii) Executive Compensation

As per the new Companies Act, after the earlier endorsement of the shareholder, the nomination and remuneration committee of the Board is to decide on the compensation to key employees. Top employees are paid in some cases excessive remuneration, where they allow promoters to have an important say as quid pro quo. Then again, many small companies fail to offer competitive remuneration to attract talented professionals. Some of the time, excessive compensation to the top workers can turn into an issue of contention among advertisers and the board, similar to the instance of Infosys.

viii) Conflict between Dominant Shareholders and Minority Shareholders

The main problem in implementing corporate governance in India is the conflict between the predominant shareholders and the minority shareholders. In United States and UK, the conflict has been observed specially between the management and the owner. The substance of this relationship of minority and majority shareholding is contractual in nature and every shareholder is qualified for an offer in the benefits in relation to their stake and the advantages of the company with respect to his shareholding. Shareholder also keeps certain other rights including the right to control and a few different rights in relation to their shareholding rights. Spilling out of this is the way that the Board and the organization of the company have a trustee obligation towards every single shareholder and not simply towards the greater part of predominant shareholder.

ix) Non-compliance to the Disclosure Norms

The provisions have been made for the compliance to the disclosure norms. But the above provisions have hardly been followed in India. Failure to submit the auditor's report attracts the nominal fines and no substantial action has been taken against any firm till date for non-submission of the auditor's report.

x) Irregularities in Updating Share Registers

The mandatory provision has also been made for updating the share registers, but the above provisions have also been defaulted by the small firm and the minority shareholders have often suffered from irregularities.

xi) Misleading Financial Statements

There are various ways to deal with present factually exact information on a careful spending plan rundown in a way that is deluding to monetary benefactors for

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example selling property from a parent company to an auxiliary to expand the parent company revenue e.g. Harshad Mehta scam followed by the companies assigning special offers to their advertisers at limited costs too those of companies essentially vanishing with speculators' cash.

xii) Clause 49 of the listing agreement provides that every listed company must have non-executive director. The provisions for the non-executive director have been made to challenge the unfair acts of the management, but in reality, the non-executive director has failed to perform the above duty. The reason behind the above failure is that the competent persons are hardly available and even if few competent persons are willing to join, they are not allowed the reasonable salary and remuneration. Further, the non-executive director was expected to act independently but the study shows that they have failed to act as per the expectation.

xiii) Now and then non-casting ballot particular offers are utilized by advertisers to channel reserves and deny minority shareholders of their contribution.

xiv) It is though noteworthy that regardless of how solid a regulatory system, it can't forestall cheats as the *terms* of the rules and regulation are not as important as the spirit of the rules and regulations. Despite of the gigantic increment of exposures and rigid danger the board systems tricks do occur. There are cutoff points to legislation as a great deal relies upon the honesty and moral estimations of different corporate players, for example, chiefs, advertisers, administrators and shareholders. One ought to perceive the responsibility of the company towards its stakeholders.

CONCLUSION

Corporate governance has been proving a very efficient and effective system for our economy and to save the premium of investors however some more productive observing and straightforward interior audit framework, proficient board and the executives can lead it to powerful corporate governance.

It is axiomatic that in the face of a dynamically changing - and even somewhat painful - change for certain economic functions the exhibition of the Indian economy in the post-globalization era is quite satisfactory in terms of growth in GDP. While many established Indian companies couldn't withstand the unavoidable trends and needed to leave the field, new business people have joined the worldwide band-wagon to establish themselves in emerging commercial realities. Inflows as a result of the entry of large numbers of multinationals and foreign direct investment have increased competition events and thus are the expected standard of corporate performance. And, given the increasing incidence of globalization and the convergence thesis in management across countries, Indian corporations have a huge scope to learn from the experience of multinationals and other professionally managed organizations. More than four decades of statistical philosophy and consequent protectionist policies of the Government of India have led to a mindset of decency, rule-domination and changing resistance in the public and private sectors, which hinders Indian companies from attaining world class status. A lot needs to be done in the area of change management and internalization.

The ability to lead organizational and cultural change will be maybe the main competency that pioneers would be required to exhibit in the new business time. Studies have shown that around the world, around 20 to 25 percent of corporates can support durable change the board methodologies. Given the outlook of tasks in shut frameworks, Indian organizations should be more proactive to deal with the elements of progress. For attaining lasting success, an organization's people-management strategy must find an important place in its top management philosophy. In this regard, there is a case for leadership advancement; teaching and sustaining of fundamental beliefs in authoritative governance; building up a culture of getting the hang of, benchmarking and development; and changing of mindsets of organizational members through the utilization of proactive, and not reactive, HRM methodology including the structure of ideal working environments.

As the Indian economy pushes forward in its development direction, the shift from reducing the expense to contributing in people will become more apparent. Human resources managers will be seen performing the roles of strategic partners and change agents in organizational transformation. But it is more imperative to execute this through the present change plan with the goal that this cycle can be sped up as social prudence of corporate India. Huge scope operationalization of the strengthening model of Human resources in India is an aspiring motivation as it requires a sort of social change separated from financial revamping. And, the Indian corporate sector has miles, miles to go to make it happen as a national work ethos. But given the speed with which Indian services industry is flourishing, for example, it is certainly not impossible to achieve.

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