

CORPORATE GOVERNANCE AND GLOBALIZATION: ISSUES AND CHALLENGES

Sanjay*

Abstract:

The very fundamental nature of corporate governance is based upon standards of transparency, accountability, fairness and responsibility. Their applications are universal in nature. The notion may be coin pies but the principles are essentially clear-cut and straightforward motivating a fine blend of legislative and right frame work. This paper discusses the term Corporate Governance as distinct as the organization by which companies are directed and proscribed. The basic purpose of corporate governance is to augment and exploit shareholder value and guard the interest of additional stake holders.

* Research Scholar Singhania University, Jhunjhunu Rajsthan, INDIA.

Introduction:

The statement on corporate governance accepted by the Singapore Government for implementation, has elucidated that the term corporate governance submits to the processes and formation by which the business and affairs of the company are directed and controlled in order to augment term shareholder value all the way through enhancing corporate performance and accountability, while taking into account the welfare of other stakeholders.

The significance of good corporate governance lies in its involvement both to business prosperity and accountability. Good governance makes certain that stakeholders' Interests, while devising business policies, are fully taken into account. In addition, good governance can make a considerable contribution towards deterrence of malpractice and fraud, although it cannot thwart them enormously.

Corporate governance is an idealistic matter and it is all about sticking to the fundamental ideology of life viz. truthfulness, ethics, swiftness and usefulness in one's actions. It is a state of mind, a structure with which individuals, institutes and countries operate. It is improved depicted by actions than words or anything else.

Genesis of Corporate Governance

The real genesis of the corporate governance falls in the business cons and malfunctions in India and abroad. The junk fiasco in USA and the failure of Maxwell, BCCI and Polypeck in UK resulted the Treadway committee in USA and the Cadbury Committee in UK Corporate Governance. After 20 years of such incidences, we had witnessed comparable corporate collapses such as WorldCom, Xerox, Enron, etc. leading to Sarbanes Oxley Act, 2002, Higgs Report and Kumar Mangalam Birla and Naresh Chantha Reports in India, more as come to blows of overseas scams. The guiding philosophy being transparency and ethics should govern corporate world.

Corporate Governance and Directors

The role and responsibilities of a director of a company developed out of its very legal structure. A company is, by itself a legal person, having a continuous existence, independent of the existence of its members. However, it is an artificial person and can, of necessity, act only through the agency of natural persons. A company has no mind of its own and directors represent the directing mind and the will of the company.

In a remarkable piece of elucidation of directors /company relationship, Supreme Courtⁱ laid down as follows:

"A company is in some respects an institution like a state, functioning under its basic constitution, consisting of the Companies Act and the Memorandum of Association". The members in general meeting and the directorate are described as the two primary organs of a company, comparable with the legislative and the executive organs of a parliamentary democracy, where the legislative sovereignty rests with the parliament, which the administration is left to the executive government, subject to a measure of control by parliament through its power to force a change of government. Like the government the directors will be answerable to parliament constituted by the general meeting.

As per the Companies Act, it is mandatory for a company to have directors. No company is exempt from this requirement. A Public Ltd. Company must have at least three directors and A Pvt. Ltd. Company must have at least two directors.ⁱⁱ

Whatever may be the legal position, in most of the cases, the identities of directors and those of their companies are inseparable, for good or for bad.

With the business units growing in size, corporate affairs becoming more and more complex, at the same time the ownership getting more scattered and dispersed, the role of directors as fiduciaries of shareholders is paramount to investor protection and enhancement of shareholder value.

The Insider Trading Regulations issued by SEBI in 1992 have amended and the new regulations were notified during February 2002, viz., the SEBI (Insider Trading Amendment) Regulation, 2002, to remove the shortcomings found in the earlier regulations and also to make them more effective. This will protect investors' interest and ensure transparency in dealings of securities of companies by employees, directors, officers and other market intermediaries. SEBI has further amended these regulations during November, 2002 with the introduction of SEBI (Prohibiting of Insider Trading Second Amendment) Regulations, 2002.

Applicability

The Insider Trading Regulations shall be applicable to those persons who have temporary or permanent relationship with the company including its directors, officers, designated employees, professionals, businessmen and their dependent relatives, who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

The term designated employees shall include all employees comprising the top two tiers of the company management and those specifically designated by the company and who may be able to have access to any Price Sensitive Information as defined in the regulations.

Prohibiting of Insider Trading

As per the regulation 3, no insider shall—

1. Either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or
2. Communicate, counsel or procure, directly or indirectly, any unpublished price sensitive information to any person, who, while in possession of such unpublished price sensitive information, shall not deal in securities;

Provided that nothing contained above, shall be applicable to any communication required in the ordinary course of business of profession or employment or under any law.

Regulation 3A provides that no company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

Regulation 3B provides that Regulation 3A shall not apply in certain cases:

1. in a proceeding against a company in respect of regulation 3A, it shall be a defence to prove that it entered into a transaction in the securities of a listed company when the unpublished price sensitive information was in the possession of an officer or employee of the company, if —
 - a) The decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and such company has put in place such systems and procedures which demarcate the activities of the company in such a way that the person who enters into transaction in securities on behalf of the company cannot have access to information which is in possession of officer or employee of the company and
 - c) It had in operation at that time, arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transactions or agreement was given to that person or any of those persons by that officer or employee; and

- d) The information was not so communicated and no such advice was so given.
- 2) In a proceeding against a company in respect of regulation 3A which is in possession of unpublished price sensitive information, it shall be defence to prove that acquisition of shares of a listed company was as per the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

PRICE SENSITIVE INFORMATION

Any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of the company is referred to as Price Sensitive information.

The following information shall be deemed to be Price Sensitive

Information:

1. *periodical financial results of the company;*
2. *intended declaration of dividends (both interim and final);*
3. *issue of securities or buy-back of securities;*
4. *any major expansion plans or execution of new projects;*
5. *amalgamation or major or takeovers;*
6. *disposal of the whole or substantial part of the undertakings;*
7. *Any significant changes in policies, plans or operations of the company.*

Unpublished- means information which is not published by the company or its agents and is not specific in nature.

Explanation-Speculative reports in print or electronic media shall not be considered as published information.

PRESERVATION OF PRICE SENSITIVE INFORMATION

All directors/officers/designated employees are required to maintain the confidentiality of all price sensitive information. They must not pass on such information directly or indirectly by way of making the recommendation for the purchase or sale of any security of the company/client company.

Price sensitive information is to be handled on a need to know basis. It should be disclosed only to those within the company who may need the same to discharge their duty and whose

possession of such, information will not give rise to a conflict of interest or appearance of mis-use of the information.

The amended regulations require that all files containing confidential information shall be kept in a secure place. All computer files must have adequate security of login and secret password, which can be used only by authorized persons.

PREVENTION OP MISUSE OP PRICE SENSITIVE INFORMATION

All directors/officers/designated employees of the company shall be subject to following trading restrictions.

- 1.They shall trade in the company's securities only when the trading window is open. Trading window means a trading period for trailing in company's securities as specified by the company, from time to time.
2. When the trading window is closed, during that period, the employees and directors shall not trade in the company's securities.
3. The trading window shall be, inter alia, closed at the time of:
 - a. *Declaration of financial results (quarterly, half-yearly and annual)*
 - b. *Declaration of dividends (interim and final)*
 - c. *Issue of securities by way of public rights/bonus, etc.*
 - d. *Any major expansion plan or execution of new project*
 - e. *Amalgamation, mergers, takeovers and buy back.*
 - f. *Disposal of the whole or substantially whole of the undertaking*
 - g. *Any change in policies, plans or operations of the company.*
4. The time for commencement of closing of trading window shall be decided by the company.
5. All directors, officers and designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transactions involving the purchase or sale of the company's securities during the period when trading window is closed.

CONCLUSION

Achieving corporate and professional excellence is what we all aim at in our life. This is what will make us different from others and this is what we can achieve as ultimate. Business must be lead by example. That example is set by good governance practices.

Corporate governance is not just another fashionable word but it is a more important concept and a means to an end-that of achieving corporate excellence. Corporate governance is the most appropriate tool for achieving corporate excellence. Companies should identify, assess and establish core values, core capability and core purpose to achieve corporate excellence.

Corporate governance brings about equilibrium between the expectations of owners, employees, customers and other stakeholders to achieve corporate excellence.

Corporate governance is the one and only route to achieve corporate excellence. Every corporate has become alive to the reality of having to stay lean and fit in order to deliver its best strictly in consonance with the principles of corporate governance. Any attempt on the part of corporates to circumvent this reality and resort to shortcuts to achieve excellence will only result in short-circuiting their ill- conceived efforts.

One can see significance being given to corporate governance issues, as we comprehend them today. Look at the importance being given to satisfied stakeholders, closeness to customers, productivity through people and value driven organizations. Corporate excellence and governance are directly connected concepts and it is felt that in the long run, it is difficult to accomplish excellence exclusive of good governance.

As we move towards the knowledge society and witness center of authority shifting away from owners/shareholders and towards the consumers and the knowledge worker, we will see the procedure of democratization of enterprises. Thus, links between brilliance governance arc likely to be much stronger in the future.

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