International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 11 Issue 06, June- 2021
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

ROLE AND PERFORMANCE OF COMPANY LAW BOARD ON CORPORATE GOVERNANCE IN INDIA

Kumar Devendra, Research Scholar, Dept of Law, Himalayan Garhwal University

Dr. Rakesh Goel, Professor, Dept of Law, Himalayan Garhwal University

ABSTRACT

A few decades ago, businessmen hardly ever used the word "governance." Nearly all firms now follow governance, placing a strong emphasis on its responsibility, integrity, and risk management. First and foremost, it is commonly known that corporate governance includes regular interactions between a company's board of directors, its stockholders, and other stakeholders. Additionally, corporate governance "provides the framework through which the company's goals are established, as well as the methods for achieving those goals and assessing performance." The promotion of corporate fairness, openness, and accountability is the focus of corporate governance, to put it another way. In essence, two elements were responsible for supporting corporate governance globally.

1. INTRODUCTION

In today's corporate and business environment, the term "Corporate Governance" is gaining popularity. It can be dated back to Berle and Means's outstanding work in The Modern Corporation and The Private Property, which for the first time highlighted the key characteristics of corporate structure evolution. The complete network of formal and informal relationships and interactions between the board, management, shareholders, auditors, and other interested parties is also a part of the corporate governance system.

Meaning of corporate governance

The complete management and oversight process for corporations is referred to as "corporate governance." A company is directed, administered, and controlled by a set of procedures, practises, laws, and institutions. Also, it offers the framework for establishing the company's goals, determining how they will be achieved, and assessing the company's performance. It involves market and regulatory mechanisms, as well as the functions and interactions of a company's management, board, shareholders, and other stakeholders.

Objectives of corporate governance

1. A properly constituted Board in a corporation should be equipped with the tools necessary to address stakeholder concerns in a timely manner and independently and objectively.
2. The Board should be evenly distributed with respect to the representation of a sufficient number of independent and non-executive directors who will look out for the interests and wellbeing of all the stakeholders The Board should advise the shareholders of significant events that have an impact on the business.
3. The Board should consistently and effectively oversee how the management team is carrying out its duties, and it should exercise effective control over all corporate affairs.

Needforcorporategovernancein India

Although implementing corporate governance is undoubtedly highly advantageous for businesses and nations, the pace of globalisation has made the requirement more urgent, necessitating some fundamental reforms on the part of businesses and national governments. Businesses must alter the way they conduct business, and national governments must create and uphold the necessary institutional structure. In a broader sense, corporate governance is about creating a system that permits a significant amount of freedom while upholding the rule of law.

Mechanismsandcontrolsofcorporategovernance

In actuality, moral hazard and adverse selection-related inefficiencies are lessened by corporate governance rules and systems. For instance, an impartial third party (the external auditor) certifies the veracity of the information presented by the management to investors in order to monitor the manager's behaviour. Both motivation and aptitude should be controlled by the ideal control system.

2. CORPORATE GOVERNANCE AT NATIONAL AND INTERNATIONAL LEVEL

An huge amount of literature in the field of company law has been produced as a result of the intense debate around corporate governance. It is debatable if the phrase "corporate governance" is merely a metaphor or an analogy. It should be discussed in the annals of etymology rather than corporate legalese whether it might be referred to as discipline on its own or as a component of business ethics. WT Gossett, a vice president in the general council at Ford Motor Company, once said:

The modern corporation is a social and economic institution that touches every aspect of our lives. During the pastfiftyyearsindustryincorporateformhasmovedfromtheperiphery to the very centre of our social and economic existence.Indeeditisnotinaccuratetosaythatweliveincorporatesociety.

Corporate impact on an individual's life is unavoidable for the purposes of wealth management or wealth enhancement. Additionally, shareholder authority over the administration of the company's business, finances, and social responsibility is fully eliminated. In this sense, management has total control over the future of millions of people both inside and outside the sovereign boundary.

A few current business frauds

Examples of how boards, senior management, or even auditors may have failed to give sufficient consideration to good corporate governance processes include the failure of HIH Insurance Limited, Harris Scarfe Limited, Enron Inc., Xerox Corporation, and WorldCom Inc. To the disadvantage of the corporation, the shareholders, and other interested stakeholders, conflicts of interest appear to have taken precedence over the proper and impartial evaluation of pertinent problems. These corporate failures include, among others:

- Tagrusgroupinternationalscam
- Tycoscam
- Computer associate international scam
- Enron fraud

India's evolution of corporate governance

The 1980s and 1990s saw the most significant scholarly debate on corporate governance. The popularity of this subject is not likely to decline in the upcoming years either. The two main reasons for the interest in corporate governance are the business world's curious happiness and the world's mobile money. India has a distinct and epoch-spanning history of administration; the king was always seen as the people's representative.

The king's personal riches was distinct from the wealth of the state. Moreover, the trusteeship premise was upheld. The oldest text on record in the world, the Rigveda, originally laid forth the rules of corporate governance in this nation thousands of years ago. Harmony was the watchword and symphony among all stakeholders was the operating method in that historical setting. That is to say, "prosperity for all" served as the organization's overarching aim, eliminating the risks of goal-difference and the potential for conflict.

3. THE CONCEPT OF CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY

The idea of corporate governance has been around since the beginning of social organisation and is constantly changing. A company's potential to produce value through entrepreneurship, innovation, development, and exploration is encouraged by effective corporate governance frameworks, which also offer responsibility and control systems that are proportionate to the risks involved. Corporate governance is the set of guidelines, customs, and procedures that regulate and control a business. It basically entails striking a balance between the interests of a company's various stakeholders, including its shareholders, management, consumers, suppliers, financiers, government, and community.

Corporate governance refers to the procedures used by organisations to determine and achieve their goals in relation to the social, regulatory, and commercial environments. The high-profile failures of several large firms in 2001-2002, the majority of which involved accounting fraud, boosted interest among modern corporations in corporate governance procedures, particularly in connection to accountability.

An key factor impacting a company's long-term success is the corporate governance framework. The corporate environment is dynamic and changing, therefore In this situation, it's crucial to update business marketing procedures to make sure they adapt to the changing climate. The corporate governance systems must adapt to this dynamic environment. When an investor puts money into a corporation, he anticipates that the board and management will function as trustees and safeguard the capital's safety, generating the investor regular increasing returns.

Convergenceofcorporategovernanceandcorporatesocialresponsibility

Both corporate governance and corporate social responsibility include economic and legal components, and their interactions are always changing. The most significant force affecting these is competition on the product market, which may be changed by socioeconomic processes. Corporate governance and corporate social responsibility are complimentary and closely related to market dynamics. Although their corporate frameworks are different, they may operate as instruments to help each other achieve their goals even though their aims are not mutually exclusive. A possible convergence between corporate

International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 11 Issue 06, June- 2021
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

governance and corporate social responsibility emerges as these two areas grow more and more influenced by moral standards and the demand for accountability. Whereas there were formerly two distinct sets of processes, one addressing "hard core" corporate decision-making and the other addressing "soft," people-friendly business tactics, today a more hybridised, synthesised corpus of laws and norms controlling corporate behaviour has arisen.

Corporate governance is a broad term. In its more specific sense, it refers to the formal system of accountability of corporate directors to the owners of companies.

Corporate social responsibility

Companies all over the world are getting more and more concerned about how their operations affect society. They also understand that the world in which they live is increasingly characterised by demands, pressures, and threats that are not communicated by markets or the conventional political systems on which they have traditionally relied. The purpose of business and industry is to advance social progress and welfare. To create money, they take from society's resources and add values. As a result, there is a mutual dependence between society and business, and the latter must fully consider societal expectations. Industrial activities and commercial investment both require a stable social context. So, industry must support such an atmosphere by attending to societal issues.

A consensus is developing that businesses and organisations have a social responsibility to conduct themselves in an ethical, socially responsible, and environmentally conscious manner. This concept of corporate social responsibility, also known as CSR, has received significant research attention over the past couple of decades.

CSR definition

Corporate social responsibility has been described in a variety of ways by different persons. The terms "corporate social responsibility" and "corporate social responsibility" are frequently used synonymously. These terms include corporate responsibility, corporate citizenship, "business in society," "social enterprise," "triple bottom line," "societal value added," "strategic philanthropy," "corporate ethics," and, in some cases, "corporate governance." These concepts clearly relate to those that refer to collaborative governance, social capital, community investing, and socially responsible investments.

Corporate Social Responsibility is a Business Imperative: Corporate Social Responsibility will only

International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 11 Issue 06, June- 2021
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

succeed if businesses really feel that it will benefit them, whether they pursue it as a voluntary corporate initiative or for regulatory compliance reasons.

International CSR

The following are examples of CSR initiatives in various nations:-

- The United States
- The United Kingdom
- Canada
- France
- Germany

The Companies Act of 2013

Clause 135 of the 2013 Companies Act, which was approved by both Houses of Parliament and obtained the President of India's assent on August 29, governs the idea of corporate social responsibility in India. Companies with an annual revenue of 1,000 crores INR or more, a net worth of 500 crores INR or more, or a net profit of 5 crores INR or more are subject to the corporate social responsibility provisions of the Act. The new regulations, which will be in effect starting with the fiscal year 2014–15, also mandate that businesses establish a corporate social responsibility committee made up of their board members, at least one of whom must be an independent director. The Act encourages businesses to devote at least 2% of their annual net earnings over the previous three years to CSR initiatives. According to the ministry's proposed rules, net profit is defined as the profit before tax as reported in the books of accounts, excluding profits from branches outside of India.

4. ROLEOFDIRECTORSINCORPORATEGOVERNANCE

The new Companies Act, 2013, offers a commendable contribution to defining and clarifying the obligations and liabilities of board members, particularly for public limited corporations. The new Act not only improves corporate governance but also significantly contributes to the expansion and prosperity of India's business community, fixing the shortcomings of the previous Companies Act of 1956. The new Companies Act, 2013, which properly and explicitly specifies, redefines, and broadens the scope of the directors' duties and responsibilities, can be considered as offering a milestone piece of law in this regard.

International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 11 Issue 06, June- 2021
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

The revised corporate governance standards (Revised and New Clause 49 of the Listing Agreement) of SEBI (the Securities and Exchange Board of India), which are intended to bring the SEBI's corporate governance standards in connection with the listed companies into close harmony and consistency with the provisions of the Companies Act of 2013, strengthen and enhance the legislation of the Companies Act of 2013.

Legalposition ofdirector

- Directors as Agents
- Directors as employees
- Treatment of directors as officers

Board Appointment

While the general authority to nominate directors rests with the shareholders' general meeting, there are at least two circumstances in which the board may additionally name new directors. First, the articles may permit the appointment of additional directors, up to the limit set therein, by the board of directors.

Director's responsibilities

- An accounting statement.
- Register of directors and key management personnel and their shareholdings.
- Board meetings
- Inspection and inquiry procedures
- Proxies etc.

Measures taken by the stock exchange board of India

The SEBI Committee on Disclosure and Accounting Standards published a discussion paper in September 2009 that examined proposals for:

a. The audit committee's appointment of the chief financial officer (CFO) after considering the candidate's credentials, experience, and background;
b. The rotation of audit partners every five years;
c. The voluntary adoption of International Financial Reporting Standards (IFRS); and
d. Interim disclosure of balance sheets

International Journal of Research in Economics and Social Sciences(IJRESS)
Available online at: http://euroasiapub.org
Vol. 11 Issue 06, June- 2021
ISSN: 2249-7382 | Impact Factor: 8.018|
(An open access scholarly, peer-reviewed, interdisciplinary, monthly, and fully refereed journal.)

Early in 2010, SEBI modified the Listing Agreement to include clauses addressing the audit committee's appointment of the CFO as well as other issues pertaining to financial disclosures.

5. CONCLUSION

In Present corporate and business environment, the term "Corporate Governance" is gaining popularity. The modifications in the corporate structure resulted from a lack of management accountability to society as a whole as well as to shareholders. A company is now viewed as a social entity that interacts with society in various ways and has an impact on its members.

The complete network of formal and informal relationships and interactions between the board, management, shareholders, auditors, and other interested parties is also a part of the corporate governance system. How a corporation is managed and how risks and profits from corporate activities are assessed depends on these relationships and interactions.

Governments, regulators, and corporate boards have been pushed to carefully reevaluate core problems of corporate governance as necessary for the public economic interest as a result of high profile corporate scandals and failures. Additionally, the recent volatility and instability in developing markets has brought to light the effects of unethical behaviour and poor management on public spending as well as national and international financial institutions. Effective corporate governance procedures are now expected of all nations and businesses; they are no longer just applied to the operations of publicly traded companies in sophisticated industrial economies.

A corporation is an assembly of several stakeholders, including consumers, employees, investors, business partners, the government, and the general public. In such circumstances and in the altered business environment, Indian corporations, like corporations everywhere else, should treat their stakeholders fairly and transparently in all of their dealings. This has become crucial in today's globalised economic environment as companies must access global financial sources and recruit and retain the best talent from across the globe.

The Stock Exchange Board of India Act gives the board the authority to establish rules and guidelines controlling many facets of the operation of the securities market. By the Securities Contract Regulation Act of 1956, the Central Government also granted the Stock Exchange Board of India a broad range of authority. The Stock Exchange Board of India issues regulations both proactively and occasionally in response to events that can jeopardise the market's ability to function.

REFERENCES

- Amit K Kashyap andDr. Anjani Singh Tomar "Corporate Governance InIndianCapital Market:An Appraisal"2JBM&SSR6 (2013).
- AndreiShleiferandRobertW,Vishny,"ASurveyofCorporateGovernance"52 TJF 737, (1997)
- Geof P Stapledon, "Institutional Shareholders and Corporate Governance"9CP177-179 (1996).
- J. Varma, "Corporate Governance in India : Disciplining the DominantShareholder"IIMB MR 5-18(1997).
- Prabhash Dalei, Paridhi Tulsyan et.al, "Corporate Governance in India;ALegal Analysis", International Conference on Humanities ,Economics andGeography(ICHEG'2012)March17,18,2012Bangkok.