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CORPORATE GOVERNANCE

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Abstract-- Corporate governance is a key element in enhancing investor confidence, promoting competitiveness and ultimately improving economic growth. Corporate governance is set of processes, customs, policies, law and institutions affecting the way a corporation is directed, administered or controlled. corporate governance can be consider as an environment of trust, ethics, moral value and confidence as a synergic efforts of all the constituent parts that is the stake holders including government, general public etc professional, service providers and corporate sector. Corporate governance is a current buzzword the world over. It has gained tremendous importance in recent years. There is a considerable body of literature which considers the components of a good system of governance and a Varity of frameworks exits or have been proposed.

Key Words-- Corporate Governance**,** Accountability **,** Directors, Management

"Excellence is going a little beyond: beyond what is expected from others and beyond what we expect from ourselves"

INTRODUCTION

In the 21st century, corporate governance has become significant for all the medium and large organization. Corporation work with in a governance framework which is set first by the law and then by regulations emanating from the regulatory bodies to which they are subject. Corporate governance is concerned with both with internal aspects of company, such as internal control and board structure and external aspects, such as the company's relationship with its shareholders. Corporate governance is fundamental to well managed companies and to ensuring that they operate at optimum efficiency. Corporate Governance has been a central matter in developing countries long before the recent spate of corporate scandals in advanced countries. Corporate Governance gained importance due to economic liberalization and deregulation of industry and business, as well as the demand for a new corporate ethos and stricter compliance with the law of the land. Another important factor that has been responsible for the sudden exposure of the corporate sector to a new paradigm for corporate governance in tune with the changing times is the need and demand for greater accountability of companies to their shareholders and customers.

MEANING & OBJECT

The essence of corporate governance is that it is of the shareholders, by the shareholders and for the shareholders. It is a system of structuring, operating and controlling a company with a view to achieving long-term strategic goals to the benefits of shareholders, creditors, employee's customers and suppliers complying with legal and regulatory requirements. The concept of corporate governance is closely related to ISO standards guaranteeing quality practices. This would also include defining the powers of directors, particularly the non-executive, making available information on the company's current state of affairs to all the directors and system control to ensure the authenticity, timeliness and effectiveness of information[2]. Corporate governance has wider implications and is critical to economic and social well being, firstly in providing the incentives and performance measures to achieve business success, and secondly in providing the accountability and transparency to ensure the equitable distribution of the resulting wealth. Corporate governance is concerned with holding the balance between economic and

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social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.

CORPORATE FRAUDS

Every Year There is new Fraud emanating in corporate world. More importantly India is in top list of Frauds. These Frauds expose the loopholes in regulatory system and need to impose stringent penalty on defaulters. The Fraud in Market affects not only the company‘s reputation, the investor‘s interest but also the development of country. As if there will be fraud then the common people would not invest in a company and hence there will be shortage of finance which in turn will affect development of the country. Like other countries India has also enacted various legislations and established various authorities to regulate the market and protect the interest of investors. These legislation will ensure the accountability of Board of Directors, bring transparency i.e. Good corporate governance which is necessary as the corporate owes responsibility toward owners, shareholder that their money shall not be misused and they will get interest or profit at the rate on which they are entitled. Management of the company also undertakes to comply with laws, rules and regulations which may be made time to time by legislation. The existence of sound and healthy financial system is a pre requisite for the economic development of a nation. Capital market facilities mobilization of saving of individuals and pool them into reservoir of capital which can be used for the economic development of country unless the interest of investors are protected, the smooth flow of capital in corporate is not possible. An efficient and healthy capital market provides for mechanism for rising of capital and also for protecting the interest of investors. In the last two decade, far reaching development have taken place in the working of capital market.

EVALUATION OF CORPORATE GOVERNANCE

Although relatively, it a new concept which was noticed all over the world after Sir Adrin Cadbury submitted its recommendations in 1992, but the concept of Corporate Governance is becoming popular very fast not only in the developed countries but also in the developing countries for variety of reasons. Developments in the field of information technology is creating seamless countries where businesses are gradually going out of the control of their respective Governments but is being controlled more through international norms and ethics. Corporations have to bother about compliance of good Corporate Governance practices to build up their positive and favorable image which is not only becoming desirable but has become essential for its future growth, expansion and diversification plans. Be it market expansion or deeper market penetration or raising of funds through foreign markets or listing of its shares on the stock exchanges of different countries to win over the confidence of the overseas investor, compliance with good Corporate Governance practices by it are the pre-condition for the same. The country’s economy depends on the drive and efficiency of its companies. Thus, the effectiveness with which the Boards discharge their responsibilities determines Britain’s competitive position. They must be free to drive their companies forward but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance. Corporate Governance is the system by which companies are directed and controlled. Boards of Directors are responsible for the governance of their companies. The shareholders role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s aims, providing the leadership, supervising the management of the business and reporting to shareholders. The board’s action is subject to laws, regulations and the shareholders in general meetings. The management becomes self perpetuating and the composition of the

Board itself is largely influenced by the likes and dislikes of the CEO. Many companies have set up a Nominations Committee of the board to recruit independent and talented members. There is now increased recognition of the role that the Board could play in providing a strategic vision to the company. The Compensation Committee of the Board has been strengthened to exercise greater control over CEO compensation following widespread complaints that top management pay is disproportionate to performance. Most powerful and well established of the Board Committees is the Audit Committee. Apart from acting as a deterrent against financial improprieties and frauds, the Audit Committee also enables the Board to keep a pulse on the financial health of the company. As far as audit is concerned, again the dominant role is that of the Comptroller and Auditor General (CAG). The whole concept and system of corporate governance depends upon the ethics, values and morals of a company as well as directors. Corporate Governance is fundamental to well managed companies and to ensuring that they operate at optimum efficiency.

SIGNIFICANCE OF CORPORATE GOVERNANCE

The following points may help in understanding the significance of corporate governance:

- Corporate governance is not an end in itself rather it is an important element in building up international competitiveness. Each nation needs strong boards, strong corporate managements and strong investors, all working under a deliberately created environment of creative tension so as to ensure good corporate governance.
- The purpose of corporate governance is to achieve a responsible value-oriented management and control of a corporation. this will help promote and reinforce the confidence of current and future shareholders, lenders, employees. Business associate and general public.
- Corporate governance is only a part of the large economic context in which business firms operate. It also depends on the legal regulators and institutional environment. In addition factors, such as business ethics and corporations awareness of the environment and social interests of the communities in which it operates can also have an impact on the regulation and long term success of the concerned corporation[3]
- Corporate governance is affected by the relationship among participants in the governance system. The controlling shareholders which may comprise of individuals, family holdings, business alliance and other corporations acting through a holding company can significantly influence corporate behavior. Creditiors play an important role in some governance systems and have the potential to monitor Corporate performance. Employees and other stakeholders also contribute to the long-term success and performance of the corporation. The government may establish institution and legal framework for corporate governance.
- Corporate governance is not a “one size fits all” proposition. there may be a wide diversity of approaches to corporate governance and it is quite appropriate .A corporation’s practice evolves as it adapts so changing situations[4]. The “one-size fits all” approach must be rejected in favour of pluralism, flexibility and adaptability in corporate governance[5].
- Corporate governance is concerned with formalizing clarifying and making consistent the decision in taking process within the organization[6].

CORPORATE GOVERNANCE IN INDIA

The Securities and Exchange Board of India (SEBI) was constituted on 12 April 1988 as a non statutory body through an administrative Resolution of the Government for dealing with all matters relating to development and regulation of the Securities market and investor . SEBI was established as a statutory

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body on 21 February 1992. The ordinance was replaced by an Act of Parliament as 4th April 1992. The Preamble of SEBI Act, 1992 enshrines the objectives of SEBI - to protect the interest of investor in securities market and to promote the development of and to regulate the securities market. The SEBI has issued various regulations in respect of each of the intermediaries such as stock brokers and sub broker, share transfer agents and registrars to an issue, banker to an issue, debenture trustees, merchants bankers, underwriters portfolio manager, depositories , participants, custodian of securities, foreign institutional investors, credit rating agencies, venture capital funds, collective investment schemes including mutual funds, etc to regulate and ensure fair play by these intermediaries. SEBI has also issued regulations to prohibit insider trading and to regulate substantial acquisition of shares and take over of companies. All these rules and regulations, circulars and guidelines serve the objective of affording necessary protection to the investors. Over and above this, various penalties and adjudications which could be imposed on persons including the various intermediaries who are held to have contravened provisions of the enactment and committed defaults. The Act thus provides sufficient deterrents to those who may indulge in defaults and illegalities and malpractices on the market to the detriment of the investors.

In India, Corporate governance standards for listed companies are regulated by the Securities and Exchange Board of India (SEBI) through clause 49 of the listing agreement of stock exchanges. SEBI issued circulars from time to time since 21st February, 2000 to ensure compliance of various requirements in terms of corporate governance. Companies which come under the purview of clause 49 of the listing agreement are attempting to comply with the conditions strictly as per the provisions of the said clause. Companies which are publishing corporate governance reports in their annual reports have been broadly following the format as per clause 49. A very few companies go beyond requirements of clause 49 in order to follow the principles on which corporate governance is based namely accountability, transparency, fairness, equity, efficiency, flexibility and above all legality and integrity. Since corporate governance principles and practices have acceptance internationally, listed progressive companies in India have not only followed the required pattern as per clause 49 but have now made their Annual Reports fairly comprehensive to make it attractive enough for various stakeholders like shareholders, customers, bankers, prospective investors, business partners, creditors etc.

All modern economies, therefore, recognize the need for sound regulation of securities markets. This is needed not just for proper functioning of these markets, but also for their very survival. It will ensure that markets are safe and perceived to be safe by the public at large and necessary information is available to the public so that they can take informed decisions about investments. It will further ensure that while engines of growth are allowed to move at full speed, there is no space for manipulators in the system. Today securities market regulation has evolved to include three principal objectives: (a) Fair, efficient and transparent markets; (b) Investor protection; (c) Reduction of systemic risk. SEBI is shouldering the responsibility in all these three areas with great deal of efficiency and commitment.

Former Chief Justice S.H. Kapadia, Justice K.S.Radhakrishnan and Justice Swatanter Kumar held "Corporate Governance has been a subject of considerable interest in the corporate world. The Ministry of Corporate Affairs has issued several press notes to the Government of India for information of such global companies which will indicate that Indian corporate law has also accepted the corporate structure consisting of holding companies and several subsidiary companies. A holding company which owns enough voting stock in a subsidiary can control management and operation by influencing or electing its board of directors. The holding company can also maintain group accounts. Which is to give members of

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the holding company a picture of the financial position of the holding company and its subsidiaries? The form and content of the holding company or subsidiary company's own Balance Sheet and Profit & Loss A/c are the same as if they were independent companies except that a holding company's accounts an aggregated value of shares it holds in its subsidiaries and in related companies and aggregated amount of loss made by it to its subsidiaries and to related companies and their other indebtedness to it must be shown separately from other assets, etc.[7]

Implementation of corporate governance in India has depended upon laying down explicit codes which enterprise and the organizations are supposed to observe. India has Kumar Mangalam Birla code as a result the committee headed by him at the behest of the SEBI. The CII codes of corporate governance also provide fundamental guidelines. The Indian corporate governance scenario is still found to be deficient for various reasons, some of which are:

(a) SEBI do not have all-pervading powers to police all violations of regulations

(b) Takeovers continued to be difficult given the paucity of timely information and high transactions costs in the equity markets

(c) Competition among financial intermediaries and any of them state-run is limited

(d) Disclosure norms under the Companies Act are not very stringent.

The need for corporate governance has been highlighted because of the scams which are happening at regular intervals. India had the Harshad Mehta, Ketan Parikh, UTI and the most recent Satyam Scam. Creating proper public governance and making changes in the various regulations impinging on the working of an enterprise or a body like the capital market, is the need of the hour to establish better corporate governance in the country.Judicial delays in this area are well known. The Naresh Chandra Committee was not surprised to know that prosecutions are pending in courts for years together, it is, astonishing nevertheless, that DCA have perhaps been unable to secure a jail term in even a single case in the last five decades. The Committee noted that prosecutions once filed are followed up by an officer designated for the task. Often, this post remains vacant, with the result that this important aspect is looked after by another officer in addition to his regular work. The committee would like to make two recommendations in this regard. First, the prosecution wing in the DCA needs to be strengthened by increasing the strength of personnel in the wing and supplementing it by hiring better advocates, perhaps on a retainer basis, instead of relying only on the over-worked government advocates. Secondly, the Department should examine the possibility of introducing shortened procedures along with the lines of the recent amendment to the Code of Civil Procedure e.g. recording evidence through commissioners.

The OECD Code also recognizes that different legal systems, institutional frameworks and traditions across countries have led to the development of a range of different approaches to corporate governance. Common to all good corporate governance regimes, however, is a high degree of priority placed on the interests of shareholders who place their trust in corporations to use their investment funds wisely and effectively

ADVANTAGES

The advantages of good corporate governance are many. Good corporate governance provides a competitive edge in the global marketplace, enables companies to raise capital widely, easily and economically, improves employee morale and generates higher productivity. Well governed companies last longer, stand the test of time and changing environment. What remains to be done is that it does not continue to be reported only in letter but also in spirit. Corporate governance in any organization needs to be principle based not rule-based. This will go a long way in building the confidence levels of stakeholders. Good corporate governance will be achieved not by rhetoric or legislation but honest execution of what is just and fair. A journey of a thousand miles begins with a single step.

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CONCLUSIONS

Corporate governance is a key element in improving the economic efficiency of firm. Good corporate governance also helps ensure that corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate. Further, it ensures that their Boards are accountable to the shareholders. This, in turn, helps assure that corporations operate for the benefit of society as a whole. While large profits can be made taking advantage of the asymmetry between Stakeholders in the short run, balancing the interests of all stakeholders alone will ensure survival and growth in the long run. This includes, for instance, taking into account societal concerns about labor and the environment.

The failure to implement good governance can have a heavy cost beyond regulatory problems. Evidence suggests that companies that do not employ meaningful governance procedures can pay a significant risk premium when competing for scarce capital in the public markets. In fact, recently, stock market analysts have acquired an increased appreciation for the correlation between governance and returns. In this regard, an increasing number of reports not only discuss governance in general terms, but also have explicitly altered investment recommendations based on the strength or weakness of a company's corporate governance infrastructure.

The credibility offered by good corporate governance procedures also helps maintain the confidence of investors – both foreign and domestic – to attract more ―patient‖, long-term capital, and will reduce the cost of capital. This will ultimate induce more stable sources of financing. Finally, it may be concluded that corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities, among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company's objectives are set, and the means of attaining those objectives and monitoring performance. The concept of corporate governance depends on total transparency, integrity and accountability of the management and the board of directors. The importance of corporate governance lies in its contribution both to business prosperity and to accountability. Corporate Governance is the mechanism by which the values, principles, management policies and procedures of a corporation are inculcated and made manifest corporate governance aims to minimize chances of corruption, malpractices, financial frauds and misconduct of management.

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