

Achieving Corporate Excellence through Good Corporate Governance Practices

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Abstract: Over the 15 years there has been a sea change in Indian Corporate governance. The needs of India's expanding economy, including access to foreign direct investment, the increased presence of institutional investors (both domestic and foreign), and the growing desire of Indian Companies to access global capital markets by being listed on stock exchanges outside of India, have spurred corporate governance laws. The legal and administrative environment in India provides greater scope for corrupt practices in business. For more than five decades since Independence, lack of transparency and financial disclosures, corruption and mismanagement have been accepted as a way of life and taken in a stride in an insulated and non competitive economic environment, as a result, unless a management is committed to be honest and observes the principles of propriety, the atmosphere is too tempting not to observe good corporate governance in practice. So, there is a need to approach the issue of corporate governance in India not merely from the point of view of the companies Act or the SEBI guidelines or the codes evolved out of the recommendations of the Indian Committees but to look at the entire network of various rules and regulations impinging on business so that there is an integrated holistic system, created for ensuring that transparency and good corporate governance.

Key Words: Corporate, Governance, SEBI, Agencies.

Corporate Excellence through Good Governance:

Achieving corporate and professional excellence is what we all aim at in our life. This is what will make us different from other and this is what we can achieve as ultimate. Business must be led by example. That example is set by good governance practices. Good governance implies managing the business responsibly, commitment to ethics and adequate and timely disclosure on all material matters so as to increase overall stakeholder confidence which will in turn lead to efficient allocation of capital and sustained economic growth. Governance is about running the company, but good governance is about ensuring that it is running fairly and openly.

In today's world "Corporate Governance" is not just another fashionable word but it is a more important concept of lasting value. The essence of Corporate Governance is transparency, accountability, investor protections, better compliance with statutory laws and regulations, value creation for shareholders (as also for other stakeholders) and societal value.

So, truly Corporate Governance is the most appropriate tool for achieving Corporate Excellence. There is a strong need for Companies to identify, assess and establish core values, core capability and core purpose to achieve Corporate Excellence. Since today's technology is yesterday's magic, it is imperative that all corporates be innovative, creative and responsible citizens to bring excellence in their vision, mission and action.

We need to realize that tomorrow does not belong to mere machinery, computers, software or internet. At best they are mere tools. If there is one single element that has the power to harness these, it is the prudent principles of good governance. We must focus on end result, own it and be accountable for our actions and their results. For long run sustainability, it is imperative that businesses create and maintain a relationship of trust which is an essential part of good corporate governance. A company's most valuable asset is goodwill it enjoys with its stakeholders, which can only be earned by actions, not demanded. So, Good governance is a source of competitive advantage and critical to economic progress.

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. What does corporate excellence or success really mean would depend on one's vision. It can be said that Corporate Excellence and Governance are so closely connected concepts and it is felt that in the long run, it is difficult to achieve excellence without good governance.

Role of Various Agencies (Regulators) in India ensuring Good Corporate Governance:

To ensure good corporate governance practices to be followed by the companies, the onus does not lie on the shoulders of one person alone. There are many vital agencies involved, whose collective efforts make governance practices successful within the organizations. Let's discuss them one by one.

Role of Board of Directors Ensuring Good Governance in Corporations:

The Responsibilities cast upon Directors are quite onerous and multifarious. The duties of directors are partly statutory, partly regulatory and partly fiduciary. Directors are in fiduciary position and must exercise their powers for the benefit of the company. Board is responsible for direction, control, conduct management and supervision of the company's affairs. They have to establish effective corporate governance procedures and best practices within the organizations.¹ So, for better governance, the board should function as follows:

- **Directors should exhibit total commitment to the company:**

An efficient and independent board should be conscious of protecting the interests of all stakeholders and not concerned too much with the current price of the stock.

- **Directors should steer discussions properly:**

Another important function of the director is to set priorities and to ensure that these are acted upon. The directors should see that all important issues concerning the company's business are discussed and decisions are taken timely and nothing trivial dominates and bogs them down. A good director rarely dominates or hijacks the discussion to his line of thinking, but steps in when the discussion needs to be directed.

- **Directors should make clear their stand on various vulnerable and important issues:**

A director is also expected to have the courage of conviction to disagree. A good responsible and duty bound director should be willing to register dissent, when and where needed.

- **Directors have a crucial responsibility to ensure efficient CEOs are appointed:**

Directors have great responsibility in the matter of employment and dismissal of the CEO. The board has a whole, should recruit the best CEO they can probably hire, based on antecedents and market reports, evaluate objectively on a continuing basis the effectiveness of the strategies devised by the board.

- **A board should anticipate business events timely:**

An efficient board should be able to anticipate business events that should spell success or lead to disaster if proper measures are not adopted in time. The directors should be alert to such ensuing situations and be ready with the strategy to meet them so that either way the company stands to gain.

- **Directors should have long term focus and care for stakeholders interests:**

Directors have a duty to act bona fide for the company as a whole. This duty is owed to the company, that is, the separate legal person that incorporation brings into existence, and not to any individual or group of individuals. They ought to help build productive relationships between the company and its employees, customers and suppliers, or any other kind of investment that would serve the long term interests of its shareholders.²

Role of SEBI in Promoting Corporate Governance:

In the changed environment of the Indian economy, when after more than four decades of heavy regulation and anemic growth, with the government slowly opening the economy to market forces, and promoting

¹ Directors and Corporate Governance, R. Rajagopalan, Company Law Institute of India Pvt. Ltd. Chennai (2003).

²Ibid.

modification of financial institutions, SEBI has to play a proactive role as a capital market regulator. The overall objective of SEBI as enshrined in the preamble is to protect the interests of investors in securities and to promote development of the securities market and to regulate it for matters connected therewith. The scams of early 1990 have made the government realise that the Companies Act of 1956 was not sufficient to bring order to the chaotic scenario at the securities market. So, a need was felt strongly to bring a semblance of corporate discipline in the flourishing Indian corporate world. With more than 25 recognised stock exchanges and around 10000 companies listed on them, the primary task of the regulator is to see to it that the market is operated on the basis of well laid principles and conventions; essentially to control the activities of the stock exchanges and to build a framework that will preserve the rights of even the smallest shareholder.³ To carry out these objectives, SEBI provides

- A Conducive environment for money from the capital market safeguarding the trust of investors.
- Educate Investors and making the investors aware of their rights in clear and specific terms by providing them with the information thereby maintaining liquidity, safety and profitability of the securities market.
- Create a framework to bring about necessary enactments for regulating the business of intermediaries such as mutual funds, non banking financial companies, chit funds, etc.⁴

Some Stern Actions Recently Taken By SEBI against Indian Corporations for Corporate Mis-governance

- **SEBI slaps Rs. 13 cr fine on RIL for non-disclosure of earnings ratio**

SEBI imposed a penalty of Rs.13 crore on Reliance Industries Ltd (RIL) for non-disclosure of a key earnings ratio. In terms of Clause 41 of the listing agreement, the companies are required to disclose both basic and diluted EPS in the quarterly financial statements filed with Stock Exchanges. However, on scrutiny of the quarterly financial statements of RIL filed with NSE, during the quarter ended June 2007 to September 2008, it was observed that RIL did not disclose separately DEPS in the quarterly financial statements.⁵

- **DLF shares slump 28%, Banned from securities market by SEBI**

DLF Ltd shares fell to a record low, wiping out \$1.2 billion in market value, after the Securities and Exchange Board of India banned the property giant from capital markets and raised investor concerns about how it will service its debt. In a major blow to DLF, SEBI has barred its six top executives, including Chairman and main promoter K.P Singh, from the securities market for three years for “active and deliberate suppression” of material information at the time of its IPO.⁶

Nifty crash case: SEBI censures NSE; orders independent review:

Regulator Sebi censured the bourse and ordered an independent comprehensive review of its processes and systems to ensure overall market stability. In a strong-worded order, SEBI also asked National Stock Exchange (NSE) to be “careful and cautious in its dealings in the securities market and comply with all the legal requirements that govern its functions as a stock exchange”. This incident, which took place nearly two years ago on October 5, 2012, shows that wrong action on the part of one individual, could result in bringing the entire system to a halt.⁷

Norms violation: SEBI slaps ₹1-cr fine on Apollo Tyres:

Market regulator Sebi imposed a fine of Rs. 1.03 crore on Apollo Tyres for allegedly failing to comply with buyback regulations. The regulator has imposed “a consolidated penalty of Rs. 1.03 crore on Apollo Tyres Ltd.

³ Speech on “Corporate Governance and Development: Why it Matters?” by G.N.Bajpai, Chairman, SEBI.

⁴ SEBI – from an era of closed shops to open governance, Available at -<http://www.thehindubusinessline.com> accessed on January, 2015

⁵ SEBI slaps Rs 13 cr fine on RIL for non-disclosure of earnings ratio, available <http://www.thehindubusinessline.com/markets/sebi-slaps-rs-13-cr-fine-on-ril-for-nondisclosure-of-earningsratio/article6295933.ece> ; (8 August 2014), accessed on 5 January, 2015

⁶ DLF shares slump 28% on SEBI ban order available at <http://www.thehindubusinessline.com/markets/dlf-shares-tank-25-on-sebi-ban-order/article6499301.ece> ; (Oct 14, 2014). accessed on 5 January, 2015

⁷ SEBI censures NSE in Nifty crash case available at <http://www.thehindu.com/business/markets/sebi-censures-nse-in-nifty-crash-case/article6489498.ece> accessed on 5 January, 2015

for the failure to comply with Sebi (Buy Back of Securities) Regulations.” The company also failed to issue a public notice within time limit about the extinguished shares. In the public notice, Apollo Tyres had failed to disclose the pre and post shareholding pattern.⁸

Some worthy suggestions to improve the working of SEBI:

- Sebi should monitor effectively the working of stock exchanges all over the country.
- If Sebi is to make progress in its designated function, there has to be a vast improvement in the quality of its manpower skills at its disposal.
- There is a need to simplify and trim the regulations, so that they are compact, easy to follow and comprehensible.
- Insist on companies for the supply of extensive information on a regular basis.
- Penalize members of stock exchanges who were found to violate securities laws.
- Debar wrong-doers from any activity in the stock market and impose on them civil penalties and initiate criminal proceedings.
- Make rules about the manipulative practices and keep a check on insider trading.
- Prosecute a company and its directors suo moto, even without receiving complaints by an aggrieved investor in respect of supplying inadequate and incorrect information.⁹

Corporate Governance through Legal Protection of Investors:

An appropriate definition of investor protection is very much needed to relate it to corporate governance and to establish the correlation between these two. Recent researches confirm that an essential feature of corporate governance is strong investor protection. It happens many times that when investors finance companies, they take a risk that could land them in a situation in which the returns on their investments would not be forthcoming because the managers or those whom they appointed to represent them on the board may keep them or expropriate them either covertly or overtly. This kind of betrayal of the investors by the insiders as the managers or the board of directors of the company may shake their confidence which in the long run would have a deleterious impact on the overall investment climate with serious repercussions on the economic development of the country.¹⁰ Therefore there is a very strong need and reason to maintain the investor's morale, protect their interests to lose confidence in the system or when their investments are at stake. If there is no investor protection, the insiders can easily steal the firm's profits, while when it is good; they will find it very difficult to do it. Therefore law and its enforcement are important means to protect investors and would help promote corporate governance.¹¹

- **Sahara Group: A Recent landmark case that brought focus on need for investor protection in India**

The case involving the Sahara group and the jailing of its owner is landmark since it shows that even powerful companies that defraud investors can be brought to book.

So, On 26 February 2014, the Supreme Court of India ordered the arrest of Subrata Roy, Chairman & Founder of Sahara India Pariwar, for failing to appear in connection with the Rs.24,000-crore deposits his company has not refunded to its investors. He was eventually arrested on 28 February 2014 by Uttar Pradesh police on a Supreme Court's warrant, in a dispute with Market Regulator - SEBI. The current Sahara case will go down in history as one that brought the focus on investor protection, not because the duped investors staged a protest, but

⁸ Available at <http://www.thehindubusinessline.com/markets/stock-markets/norms-violation-sebi-slaps-1cr-fine-on-apollo-tyres/article6193530.ece> (July 9, 2014). accessed on 5 January, 2015

⁹ Ensure compliance of corporate governance norms: SEBI to bourses; 1st August 2014 available at <http://www.thehindubusinessline.com> - compliance-of-corporate-governance-norms by SEBI, accessed on 22 January, 2015

¹⁰ A.C Fernando, "Corporate Governance - principles, policies and Practices, Pearson Publications, 4th Ed. 2013, pg.145

¹¹ Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, Robert Vishny (June 1999), "Investor protection and corporate Governance", www.worldbank.org. accessed on 22 January, 2015

because a vigilant regulator and the highest court of the land issued well-researched, landmark orders on the violation of its regulatory framework, mandated compliance, and jailed the offenders.¹²

- **SEBI Notifies New Norms for Investor Protection**

To ring-fence investors and markets from fraudulent activities, Sebi has tightened norms for money-pooling schemes and decided to keep serious offences out of its settlement mechanism. With regard to collective investment schemes, it would be compulsory for all transactions to be conducted through cheque, draft or other banking channels, and not in cash. Meanwhile, to help aggrieved investors, the market regulator has notified new rules that allow it to utilize Investor Protection and Education Fund to refund their money. Following the changes, these norms would be called **Securities and Exchange Board of India (Investor Protection and Education Fund) (Amendment) Regulations, 2014**.

The Role of Government Agencies:

Government is absolutely essential in setting up of a market economy. Without rules and structures of a binding nature, anarchy will be the outcome. Under such conditions business becomes nothing but “casino capitalism” where investments are simply bets; bets that people will keep their word, bets that the firms are telling the truth, bets that employees will be paid, and bets that debts will be honored. What corporate governance is all about in larger terms is how a structure can be set up that allows for a considerable amount of freedom within the rule of law. Ultimately these arrangements provide for the establishment of trust, one of the most important ingredients of business. Since laissez faire has now been completely diluted. State intervention is now considered necessary to ensure economic stability and full employment of the productive resources.¹³

In recent times successive corporate frauds and scams have necessitated state intervention to protect the unwary investors and regulate corporations so as to make them accountable to their internal and external stakeholders that include the society at large.

In the India, we have Ministry of Company Affairs (MCA), the Ministry of finance, the Commerce and industry ministries that have powers to oversee corporate activities and take corrective action against corporate misdemeanors. Additionally there are Regulators such as Securities Exchange Board of India (SEBI), Reserve Bank of India (RBI), Telecom Regulatory Authority of India (TRAI) and Insurance Regulatory and Development Authority (IRDA) which as creatures of public authorities has the power and responsibility to monitor and supervise companies. Apart from these public agencies, stock exchanges play a crucial role in ensuring business ethics in corporations.¹⁴ All those companies that desire to trade stocks and shares through stock exchanges with a view to ensuring enhanced market capitalization and wider reach, have to enter into agreement with them. Among various other clauses, there is famous recently amended power packaged “clause 49” which binds corporations to follow ethical practices in their organizations. If they do not observe this clause, companies will be de-listed.

- **SEBI - Business Responsibility Report**

Securities Exchange Board of India (SEBI) inserted a new clause 55 in the listing agreement by mandating inclusion of Business Responsibility Reports as part of the Annual Reports for listed entities. The circular states that the adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance. This is more relevant for listed entities which, considering the fact that they have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis. The role of public governance, therefore as a watchdog of corporate governance and as an agency primarily responsible for laying down the rules of the game is therefore important and obvious.

¹² Available at http://articles.economicstimes.indiatimes.com/2014-03-10/news/48083867_1_sahara-companies-3-crore-investors-sahara-group accessed on 22 January, 2015

¹³ Role of Government in ensuring Corporate Governancem- A.C Fernando,” Corporate Governance- principles, policies and Practices, Pearson Publications 2013 p.461

¹⁴ Available at - <http://www.nfcgindia.org/> accessed on 19 January, 2015

Indian Judicial System ensuring better Public Governance:

The judicial system has an important role to play in ensuring better public governance and corporate governance. There may be so many regulations, rules, procedures; but ultimately, when disputes arise, they have to be settled in a court of law. There could be of course, alternate dispute resolution mechanism such as conciliation or arbitration, but in countries like India, it is the judiciary that has to step in and ensure that healthy practices prevail. One of the areas where judiciary has been very active is to find out whether any legislation that is passed or practiced are in tune with the basic structure of the constitution. This is an important characteristic of Indian judiciary and to that extent the judiciary is found to be effective. It can be guarantee not only for better public governance but also better corporate governance.

The Role of media in ensuring effective Corporate Governance:

The media can play a major role in implementing effective corporate governance by affecting reputation in various ways.

Firstly, media attention can drive politicians to introduce corporate law reforms or enforce corporate laws in the belief that inaction would hurt their future political careers or shame them in the eyes of public opinion, both at home and abroad.

Secondly, media attention could affect reputation through the standard channel that most economic models emphasize. Managers' wages in future depend on shareholders and future employers beliefs about whether managers will attend to their interests in those situations where they cannot be monitored.

Thirdly, media attention not only affects managers' and board members' reputations in the eyes of shareholders and future employers, but media attention affects their reputation in the eyes of society at large.¹⁵

Thus, the media do play a role in shaping the public image of corporate managers and directors, and in doing they pressure them to behave in accordance with societal norms. In a country like India, where there is a variety of newspapers in various languages in circulation, on an average there is a better environmental responsiveness. Media role can be seen as key to creating awareness of Corporate Governance in business houses. Communication between Media and Corporate bodies directly and through efficient public relations or mass communications can be vital to ensure good governance and human rights. Media must be on the front line in disseminating impartial news for ensuring transparency in the corporate sector. Media plays a watchdog role to ensure accountability and transparency of corporate sector.¹⁶

Wrapping up:

As rightly observed by **Martin Luther King Jr.** "We shall have to repent in this generation, not so much for the evil deeds of the wicked people but for the appalling silence of the good people". The message is loud and crystal clear. The corporates of ill afford have to proactively formulate a code and stick to it to survive as well as to excel Professionals have challenging period ahead keeping track of legislative reforms and technological developments, understanding their impact on his duties and responsibilities.

¹⁵ Dyck, Alexander and Luigi Zingales, The Corporate Governance and the role of Media (August 2002).

¹⁶ Rubak ,Josh(2000) Ethics in Advertising.