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Role of SEBI as regulator in maintaining corporate governance standards in India

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Abstract

Today corporate sector around the world is blamed for several illegal tactics and practices and these illegal tactics and practices are curse for the corporate sector. These are not good for the civilized society. There are measures and mechanisms to curb illegal tactics and practices of corporate entities. Corporate governance is one of the effective tool and mechanism for the corporate entities to free themselves from these and for their success and long term survival. In this paper an attempt has been made to discuss the role played by SEBI through clause 35B and clause 49 of the listing agreement in making companies to comply with the corporate governance norms in India. This article is divided into conceptual clarification, corporate governance legal Frame work in India, pillars of effective corporate governance, SEBI role in corporate governance with section clause 35B and clause 49 and conclusion with recommendations. SEBI through the norms and provisions contained in clause 35B and clause 49 to listing agreement is instrumental in making corporates to comply with the standards of corporate governance

Keywords: Corporate governance, SEBI, clause 35B, clause 49

Introduction

In the aftermath of corporate scandals and scams leading to collapse of corporate entities in turn financial system of the nation due to bad governance, the need for good corporate governance was felt. Today there is greater need for the observance of standards of governance for protecting and safeguarding the interest of stakeholders across the world and India is not an exception. Corporate governance is felt as an important mechanism for sustainable business practices than ever before in the corporate management history.

All the stakeholders of company -shareholders, board of directors, Management, employees, investors, consumers, regulators and suppliers have rights as well as responsibilities in making the companies to comply with the corporate governance and thereby reducing the corporate scams, scandals, crimes in the economy. Corporate governance legal frame work plays a pivotal role in this endeavor. In India, SEBI established in 1992 as a regulator and watch dog has pivotal role and responsibility in enforcing corporate governance practices on corporate entities.

Conceptual clarity

Governance: "Governance is the manner in which power is exercised in the management of a country's social and economic resources for development. Governance means the way those with power use that power." (ADB)

Corporate Governance: Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed.

Corporate governance legal frame work in India

Corporate governance legal frame work in India covers Companies Act, 2013, SEBI, the RBI Act, 1934-prescribes guidelines for governance of banking companies, the IRDA --prescribes guidelines for governance of insurance companies and TRAI.

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Besides these the Confederation of Indian Industries (CII) has developed and issued corporate governance code for Indian companies.

The SEBI Act, 1992 has conferred upon SEBI wide a range of powers and authority to monitor the compliance of Governance Standards by Indian companies and also to punish such companies for non-compliance to standards of corporate Governance. In this direction SEBI has taken number of initiatives to ensure compliance of companies to the norms of Corporate Governance. This paper tries to analyze the pillars/elements of effective corporate governance, corporate governance legal frame work in India and the SEBI initiatives to align with the global standards on corporate governance adopted in advanced economies.

Pillars of Effective Corporate Governance

The important elements of good Corporate Governance are:

- Transparency
- Accountability
- Disclosure
- Equity
- Fairness
- Rule of Law
- Participatory

SEBI Role in Corporate governance

To make corporate governance more effective the SEBI since its setup in 1992 has taken up number of initiatives, appointed various committees and has brought amendments to the Clause 35B and the Clause 49 of listing agreement. Here the SEBI's role in corporate governance is illustrated through norms and provisions as stated these two clauses; the Clause 35B and the Clause 49 of listing agreement. SEBI norms and guidelines under Clause 35B and 49 of the listing agreement for effective Corporate Governance: Since its establishment, SEBI has taken initiatives to align Indian corporate governance practices with the global standards adopted in advanced economies. The recent amendments to Clause 35B and 49 of the listing agreement make Governance more effective and rigorous in protecting the interest of all stakeholders. The amended Clause 49 of listing agreement is in alignment with the new Companies Act, 2013. This clause is applicable to listed companies but as per SEBI clarification, in future this clause will be applicable to non-listing companies also.

Clause 35B

Under the revised clause 35B, the issuer has agreed to provide e-voting facility in respect of all shareholders' resolutions, to be passed at General Meetings or postal ballot facilities to share holders. The company has to send notices of meeting to all members, auditors of the company and directors by POST or Registered e-mail or Courier and the same be placed on the official website of the company. The notice of meeting should also mention that the company is providing facility for voting by electronic means and postal ballot facilities to members.

Through this provision large number of shareholders can participate in the selection of board members.

Clause 49 and sub-clauses

Corporate governance Norms as stated in the proposed amendment to Clause 49 of listing agreement are in

alignment with the corporate governance norms as required under the new companies Act, 2013. Again this clause also entails the details about the compliance of these norms by all listed companies. Further, the provisions of this proposed amended clause are also applicable to other listed entities which are not companies but are body corporate or subject to regulations under other statues (e.g. banks, financial institutions, insurance companies, etc.). The amended clause 49 has 11 sub clauses containing the provisions of compliances under Corporate Governance Norms.

The requirements under Clause 49 of listing agreement state the role of SEBI in maintaining the standards of corporate governance are

Corporate governance principles [clause 49 (i)]

Under this section SEBI specifies and explains the rights of shareholders and other stake holders, the duty of a corporate to protect stakeholders' interests, duty and responsibilities of the board. This specifies that the disclosures must be made regarding proper compliance of prescribed standards of accounting, financial and non- financial disclosure and be transparent

Board of Directors [clause 49 (ii)]

This sub-clause specifies the composition of board, inclusion of restrictions on independent directors, the tenure of independent directors, corporate code of conduct and whistle blowing policy.

Board Composition: This sub-clause specifies optimum composition of BOD where at least 50% of board members are non-executive directors and there must be one women director in the board. Again it states that if the Chairman is an executive director, half the Board must comprise of Independent directors. However if the Chairman is a non-executive director then 1/3rd board members be independent directors.

Restrictions on independent directorship: Under the Revised Clause, no person can be an independent director of more than seven listed companies. If any person is serving as a whole time director in any listed company, then he/she shall not be the independent director of more than three listed companies

The tenure of independent director will be five years which is in accordance with provisions of new Companies Act, 2013.

The proposed amendment to clause 49 of listing agreement also contains drastic modifications regarding the non-executive directors' compensation and disclosures

Code of conduct: As per the proposed revision to this clause the BOD are responsible to lay down a code of conduct for all the Board members and senior management of the company and this should be displayed in the official website of the company.

Whistle blowing: Whistle blowing policy will become mandatory under the revised clause 49 of listing agreement and will be a *drastic step in maintaining the standards of corporate governance*. This sub-clause gives protection to person who makes public the misconduct, frauds, illegal activity and misappropriations in the company.

Audit committee [clause 49 (iii)]

As per this, amended, clause the audit committee should have at least 3 members and out of which 2/3rd members be independent directors. All the members must be financially literate and one member must be an expert in accounting or related financial management. This committee has to sit at least 4 times in a year with a gap of not more than four months in between two meetings. Through this amendment, SEBI specifies the powers, role and responsibilities of audit committee members.

Nomination and Remuneration committee [clause 49 (iv)]

There should be minimum of 3 members in the nomination and remuneration committee and all members be non-executive directors and half of them be independent directors. This clause states the role of the Committee which includes formulation of criteria to evaluate Independent directors, policy devising on Board diversity, identifying prospective directors and senior management in accordance with the criteria laid down, recommendation to the Board policies relating to remuneration of directors and other employees including key managerial personnel.

Requirements W.R.T. subsidiary companies [Clause 49 (v)]

This sub-clause specifies the responsibilities of listed and unlisted subsidiaries of listed holding companies. Provisions as to unlisted subsidiary company: (a) at least one independent director of the holding company should be director on the board of Director of materially un-listed Indian subsidiary company, (b) the audit committee of the listed holding has to review the financial statements materially un-listed Indian subsidiary company.

Risk management [Clause 49 (vi)]

Under this clause SEBI makes it an obligation of BOD of the top 100 companies by market capitalization to constitute the risk management committee and has to determine its role and functions and delegate powers as it may deem fit. As per SEBI regulations this committee should consists of Board members. Senior Executives may become the member of the Committee but the Chairman of this Committee shall be a member of Board of Directors.

Related party transactions [Clause 49 (vii)]

This requires the companies to place periodically, in summary form, before the audit committee all the information on the related party transactions in the ordinary course of business.

Disclosure Norms [Clause 49 (viii)]

Disclosure norms will be more stringent than ever before under the proposed revision to clause 49 of the listing agreement.

Under the revised clause, quarterly report disclosing details on all material facts related party transactions along with compliance report on Corporate Governance be disclosed on its website and a web link stated in its annual reports.

Again details as to any change in the accounting treatment used in financial statements, all information on the remuneration of Directors, directors' relationship with the company are be disclosed along with the annual report.

Under This sub-section the corporate entities are required to provide information on appointment, reappointment of directors and their resume to shareholders.

Then material facts on proceeds from public issue, rights issue, and preferential issues must be disclosed

Certification from Chief Executive Officer (CEO) and Chief Finance Officer (CFO) [Clause 49 (ix)]

Under this sub-clause Board of Directors and Chief Executive Officer and Chief Finance Officer are made more accountable and responsible. They must certify that they have reviewed the financial statements and the cash flow statements to the best of their knowledge. Then they have to certify that the Company hasn't entered into any transaction which is a violation of Company's Code of Conduct, illegal or fraudulent to the best of their knowledge. Again it will be their duty to inform the Auditors and Audit committee on any significant changes made in internal control over financial reporting, changes in accounting policies, cases of significant fraud that they have come across.

Compliance Certificate on Corporate Governance [clause 49 (x) and (xi)]

SEBI, under the amended clause 49 of listing Agreement, requires corporate to obtain the Compliance Certificate on Corporate Governance from the Auditor of the Company or from a Practicing Company Secretary. Such certificate shall become separate part of Annual Report. Certificate is also to be submitted to Stock Exchange along with the Annual Report.

Conclusion

Today corporate governance is an essential tool and mechanism for the very survival and success of corporate in the new economic environment. No doubt at all, in this vibrant volatile economic environment, the market Regulator SEBI has greater role and power to make companies to follow the corporate governance standards but it alone cannot enforce and monitor the compliance to corporate governance standards companies. It is the duty and responsibility of all the stakeholders to ensure that the corporate governance norms are followed by the companies in their operations. It is needed to create awareness among the shareholders and other stakeholders on corporate governance norms and practices. Then the corporate entities should adopt ethical business practices.

References

1. Tarun Khanna, Krishna G Palepu. Convergence in corporate governance in Indian software: Evidence from Infosys and the Indian Software Industry, Journal of International Business Studies. 2004; 35(6):484-507.
2. Ghosh DN. Corporate Governance and Boardroom Politics, Economic and Political Weekly. 2000; 35(46):4010-4014.
3. Ruth V. Aguilera and Gregory Jackson. The Cross-National Diversity of Corporate Governance: Dimensions and Determinants, The Academy of Management Review. 2003; 28(3):447-465.
4. Madhav Godbole. Corporate Governance: Myth and Reality, Economic and Political Weekly. 2002; 37(30):3094-3102.

5. Atif Ghayas. Corporate Governance in India & SEBI Regulations, business, Economy and Finance, 2013.
6. Hetal Pandya, Vyas. Corporate Governance: Role of auditor and auditing committee, IPASJ International Journal of Management (IJM). 2013; 1:2.
7. Meenu, Shah Satnam Ji. Need of Effective Corporate Governance and Its Challenges in India, IJCEM. International Journal of Computational Engineering & Management. Sirsa, Haryana, India. 2012; 15:6.
8. www.mca.gov.in
9. www.sebi.gov.in
10. liba.edu/beacon/archives/beacon07/corporateindia.htm