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ROLE OF CORPORATE GOVERNANCE PRACTICES IN LEADING CORPORATE IN INDIA

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ABSTRACT

The scope and significance of corporate governance in India increased sizably in the recent period, particularly following the financial sector reforms. As Indian corporate are finding new space in domestic and global markets for business growth, their interaction with the financial markets and investing community too witnessed significant surge. In this process, corporate governance came as an effective instrument for companies to communicate with the various types of stakeholders in general and investors in particular. What began as an industry initiative of CII, corporate governance today became an essential part of the culture that defines better run companies and those held in esteem by the investors and stakeholders?
This paper examines India's initial **corporate governance** reform efforts as well as reforms adopted in the aftermath of the Satyam scandal. An evaluation of India's **corporate governance** reforms demonstrates that although extensive reforms have been instituted, there remain significant lapses in implementation and enforcement. Moreover, many of the reforms that have been adopted fail to address fundamental areas of concern such as the relationship between controlling and minority shareholders, the role of promoters, the limited activism of shareholders, including institutional investors, and issues with director independence. This Article expresses concerns that these challenges may prevail because they have been shaped by unique political and social forces. These forces include the traditional closed ownership structures of Indian firms, an ineffective institutional framework to support enforcement efforts, weaknesses in investor access to the courts, and political pressures related to government ownership of certain industries.

INTRODUCTION

Adrian Cadbury, whose report has become the Bible of Corporate Governance, defines Corporate Governance as 'a system or process by which companies are directed and controlled.' The bedrock of good corporate governance is conducting the affairs of a company in such a way as to ensure fairness to customers, employees, investors, vendors, the government and the society at large. It requires quality of leadership, values, transparent management, vision and goals, respect for law, and sense of social responsibility for which there are no rigid standards. The Confederation of Indian Industry's 1998 Code of Desirable Corporate Governance limits claimants in the first instance to shareholders and various types of creditors. Likewise, the

Securities and Exchange Boards of India's Kumar Mangalam Birla Committee on Corporate Governance stated that corporate governance should be "the enhancement of the long term shareholder value, while at the same time, protecting the interests of the other stakeholders."

Trucker (1984) identifies four crucial components of corporate governance:

- Setting corporate direction
- Involvement in executive action
- Supervision of management
- Accountability

Corporate Governance is a process or a set of systems and processes to ensure that a company is managed to suit the best interests of all. The systems, which can ensure this, may include structural and organizational matters. The stakeholders may be internal stakeholders (promoters, members, workmen and executives) or external stakeholders (shareholders, customers, lenders, dealers, vendors, bankers, community, government and regulators). Corporate Governance is concerned with the establishment of a system whereby the Directors are entrusted with the responsibilities and duties in relation to the direction of corporate affairs. It is concerned with accountability of persons who are managing it towards the stakeholders. It is concerned with the morals, ethics, values, parameters, conduct and behaviour of the company and its management.

Corporations that wish to adopt a Code of Corporate Governance can choose from several models that have already been available by institutions as diverse as the World Bank and the International Corporate Governance Net-work. These will help companies address issues that are related to the composition and role of the board, the preferred level of disclosures and transparency, the role of audit and compensation committee, accountability to shareholders, and corporate ethics. Some of these models include the finer aspects of Corporate Governance like defining the mission of the modern corporation and describing its societal imperatives. One crucial aspect of governance is investor-friendliness. Companies will have to focus on understanding the expectations of diverse groups of investors and constantly communicate with them.

MANAGEMENT OF CORPORATE GOVERNANCE

Managing Corporate Governance is a complicated task as all corporate may not be professionally managed. This position becomes further compounded when confronted with the manner of enforcement of code of good corporate practices. There is no scope for imposition of such code of the corporate from the above, but the need to evolve such a code by the corporate financial institutions themselves is nonetheless relevant and important for the future of corporate, major stock holders and lenders of finance, whose nominee directors are on the Boards of assisted concerns have a proactive role to play though Audit Committees in evolving a code for incorporate practices to suit our needs and economic development.

THE INDIAN EXPERIENCE

The predominant issue in India is the conflict between "dominant" shareholder-promoter groups and minority shareholders. There are around 250 big and small listed companies with promoter holding of over 75 per cent each. The prominent among them are Wipro, Tata Consultancy Services, Jet Airways, DLF, Puravankara Projects, AkrutiCity, Omaxe, Plethico Pharmaceuticals, Sobha Developers, Mundra Port, BGR Energy, Blue Dart, Parsvnath

Developers, and Bosch Chassis. The promoters, in most cases, currently hold over an 80 per cent stake in these companies. Unlike in Japan/Germany, where banks play a critical role, as creditors, in the corporate governance of companies, in India, though banks/ FIs had large debt exposures to the Indian corporate sector, (and with a conversion clause in the loan agreement the debt was often converted into an equity holding) several studies have shown that they did not exercise close monitoring of the corporate governance standards in these companies.

It is observed that in the Indian context, the external market exercises a limited force on corporate governance (since the floating stock in the secondary market is limited). Nor is the internal force of a strong Board (since management and Board members are, very often, from the same dominant promoter group) always effective in protecting the principles of sound corporate governance. Despite globalization, and an increase in foreign institutional investment in Indian companies, institutional activism is also weak and yet to emerge as a strong counter force. Institutional investors, both domestic and foreign, are more prone to vote with their feet, by exiting the stock, than to influence a change in management behavior.

But even during pre-independence period, Jamsetji Tata, G D Birla and Kasturibhai Lalbhai created ‘Business Empire’ more out of a spirit of entrepreneurship than any motive of accumulation of personal wealth. They set their own standards of good Corporate Governance. There is no better standard of Corporate Governance than the philosophy that owners are ‘trustees’.While the House of Tata has maintained its track record of good Corporate Governance, companies like Infosys, HLL, AVB group, Wipro, Bajaj Auto, , Dr.Reddy’s Lab, Maruti Udyog, ICICI, L&T, ONGC, HDFC, Amul and Ranbaxy are some of the companies well known for good Corporate Governance. The ‘Golden Peacock Award for Excellence in Corporate Governance 2005’ instituted by the Institute of Directors, New Delhi, in association with the London based World Council for Corporate Governance and Centre for Corporate Governance was conferred upon ITC. The company attempts to strike the right balance between freedom of management and accountability to shareholders by segregating strategic supervision from strategic and executive management. Thus we see that the Indian companies have a rich heritage of maintaining high standards of corporate governance.

CORPORATE GOVERNANCE – GLOBAL SCENARIO

Governance in relation to a business organization concerns with the intrinsic nature, purpose, integrity and identity of the organization and focuses primarily on the relevance, continuity and fiduciary aspects of the organization. It involves monitoring and overseeing strategic direction, socio-economic and cultural context, externalities and constituencies of the organization. Hence, Corporate Governance may be called as an umbrella term encompassing specific issues arising from interactions among senior management personnel, shareholders, and board of directors, other constituencies and the society at large. It deals with the exercise of power over the directions of enterprise, the supervision of executive actions, and acceptance of a duty to be accountable and regulations of the affairs of the corporation.

With the enactment of Joint Stock Companies Act, in 1844, the English Company Law became one of the most permissive in the world and the concept in subsequent years became the basis of the Corporate Governance and framework for company law in many jurisdictions including India, Hong Kong, New Zealand, Singapore, South Africa as well as the states in Australia and provinces in Canada. Company Law developments in United States, though not directly influenced by the English Model, evolved along similar lines reflecting similar ideological traditions. However, development in continental Europe followed a different path. The German Corporate Governance system is generally regarded as the standard example of an insider-controlled and stakeholder-oriented system. In many European countries, shareholders exercise lesser control than the workers and similarly, in Germany the representatives of Union serve on Supervisory Boards. Until recently in Japan, shareholders virtually played no role except to provide capital. In India too, the institutional investors and other shareholders were passive investors and the companies were governed as family business. However the situation is changing fast with perceptible change in the profile of corporate ownership and insinuative improvement in Corporate Governance.

OBJECTIVES OF CORPORATE GOVERNANCE

Officials of the board secretariats of several companies expressed the scope for further refinement and reforms in the information pertaining to related party transactions.

ANNUAL REPORTS

Annual Reports are important documents for assessing and analyzing the company performance in regard to corporate governance standards and compliance. There is vast improvement in the quality of content in the Annual Reports, but scope exists for presenting the data in a manner that is easy to locate and understand. Even in respect of the corporate governance reports, though the number of aspects on which information is required to be given is uniform, companies present information in different formats making it rather cumbersome for the readers who look at the documents of a number of companies.

CORPORATE GOVERNANCE REPORTS

Corporate Governance Reports are important part of the Annual Reports. Many companies in addition to giving the compliance on various parameters also some times discuss the philosophy and objectives of the corporate governance thus setting the background for the spirit and letter of governance that is reported

SAIL

The Corporate Governance philosophy of SAIL is to ensure transparency, disclosures and reporting that complies fully with laws, regulations and guidelines, and to promote ethical conduct throughout the organization, with the primary objective of enhancing shareholders value, while being a responsible corporate citizen. The Company is committed to conforming to the highest standards of corporate governance in the country. It recognizes that the Board is accountable to all shareholders and that each member of the Board owes his/her first duty for protecting and furthering the interest of the Company.

TATA STEEL

Tata Steel believes in adopting the best practices in the areas of Corporate Governance. Even in a fiercely competitive business environment, the Management and Employees of the Company are committed to uphold the core values of transparency, integrity, honesty and accountability which are fundamental to the Tata Group. The Company retains focus on its resources, strengths and strategies for creation and safeguarding of shareholders' wealth and at the same time protects the interests of all its shareholders.

HINDALCO

The Aditya Birla Group is committed to the adoption of best governance practices and its adherence in the true spirit, at all times. Its governance practices stems from an inherent desire to improve and innovate and reflects the culture of trusteeship that is deeply ingrained in value system and forms part of the strategic thought process. The governance philosophy rests on the following five basic tenets;

- Board accountability to the Company and shareholders,
- strategic guidance and effective monitoring by the Board,
- protection of minority interests and rights,
- equitable treatment of all shareholders and
- Superior transparency and timely disclosure.

JINDAL STEEL

Corporate Governance in Jindal Steel is adopted as a value system for ensuring efficient working and proper conduct of the business and affairs of the Company with a view to put the available resources at optimum use, increase operational efficiency and enhance shareholders' wealth. Company's Corporate Governance Philosophy is equity, fairplay, judicious utilization of resources, responsiveness towards stakeholders such as shareholders, lenders, customers, vendors, employees, society's needs, empowerment of human resource, preserving natural heritage, strengthening administrative structure, its systems, policies and procedures. This is continuous process which evolves over a period of time and undergoes changes to suit the changing times and needs of the business, society and the state.

ESSAR STEEL

Essar Steel Limited believes that good Corporate Governance is essential to achieve long term corporate goals and to enhance stakeholders' value. The Company's philosophy on Corporate Governance envisages attainment of high level transparency, accountability and integrity in the functioning of the Company and the conduct of its business, its relationship with employees, stakeholders, creditors, customers and institutional and other lenders. The company places due emphasis on regulatory compliance.

STERLITE

The company believes in conducting its affairs in a fair and transparent manner and in maintaining the highest ethical standards in its dealings with all its constituents. It is committed to following good corporate governance practices. The company's mission is to constantly review its systems and procedures to achieve the highest level of corporate governance in the overall interest of all the stakeholders.

HLL

At Hindustan Unilever Limited, good governance is an ongoing process, thereby ensuring truth, transparency, accountability and responsibility in all dealings with employees, shareholders, consumers and the community at large. At Hindustan Unilever, corporate governance in its widest sense, almost like a trusteeship; it is a philosophy to be professed, a value to be imbibed and an ideology to be ingrained in corporate culture. Corporate governance goes much beyond mere compliance; it is not a simple matter of creating checks and balances (although we also engage in that!). It is in fact a continuous process of realizing the Company's objectives with a view to make
the most of every opportunity. It involves leveraging its resources and aligning its activities to consumer need, shareholder benefit and employee growth. Thereby the company succeeds in delighting its stakeholders while minimizing risks. The primary objective is to create and adhere to a corporate culture of conscientiousness and consciousness, transparency and openness. The Company aims to develop capabilities and identify opportunities that best serve the goal of value creation, thereby creating an outstanding organization.

NESTLE

Nestlé India Limited, as a part of Nestlé Group, Switzerland has over the years followed best practice of Corporate Governance by adhering to practices laid down by Nestlé Group. The two most significant documents from Nestlé Group, which define the standard of behaviour of Nestlé India, are "Nestlé Corporate Business Principles" and "The Nestlé Management and Leadership Principles". Nestlé India's business objective and that of its management and employees is to manufacture and market the Company's products in such a way as to create value that can be sustained over the long term for consumers, shareholders, employees, business partners and the national economy. Nestlé India is conscious of the fact that the success of a corporation is a reflection of the professionalism, conduct and ethical values of its management and employees. In addition to compliance with regulatory requirements, Nestlé India endeavors to ensure that highest standards of ethical and responsible conduct are met throughout the organization.

BRITANNIA

Company considers good corporate governance a pre-requisite for meeting the needs and
aspirations of its holders and other stakeholders in the company and firmly believes it can be achieved by maintaining transparency in its dealings, integrity and strict regulatory compliance. And with this view the corporate governance report contains relevant disclosure about the Board, Board committees as also on the financial and stock performance.

WHIRLPOOL

Whirlpool's philosophy on Corporate Governance is based on the foundation of enduring Values. Over the years, the core Values of the company have not changed. These Values are the guidelines in all transactions and relations. That is the Spirit of Whirlpool and they call it the Spirit of Winning…. On to Leadership…. Sustainable and profitable. It tries to stretch and achieve that which seems beyond our grasp. It envisages attainment of the highest levels of transparency, accountability and equity in all facets of its operations and its interaction with its stakeholders including Shareholders, Employees, Lenders and the Government.

VIDEOCON

Videocon believes that sound corporate governance is critical to enhance and retain investor's trust. The Company's philosophy on Corporate Governance is based on:
1. Transparency & maintaining high disclosure levels.
2. Accountability.
3. Equity.
4. Compliance with the laws in all the Countries in which the Company operates.
5. Sustainability.

The objective is to institutionalize Corporate Governance practices that go beyond adherence to the extant regulatory framework. In fact, our corporate structure, business and disclosure practices are aligned to our Corporate Governance philosophy.

HPCL

HPCL lays special emphasis on conducting its affairs within the framework policies, internal and external regulations and in a transparent manner. Being a Government Company its activities are subject to review by several external authorities like the Comptroller & Auditor General of India (CAG), the Central Vigilance Commission (CVC), parliamentary Committees etc. At the apex level is the HPCL Board of Directors (The Board). The Board has constituted several sub-committees, such as the Committee of Functional Directors (CFD), the Audit Committee, the Investment Committee, the HR Committee, the Investor Grievance Committee, etc.

BPCL

Bharat Petroleum Corporation Ltd's corporate philosophy on Corporate Governance has been to ensure fairness to the stakeholders through transparency, full disclosures, empowerment of employees and collective decision making.

INDIAN OIL

Indian Oil believes that good Corporate Governance practices ensure efficient conduct of the affairs of the Company and also help in maximizing value for all its stakeholders. The Company endeavors to uphold the principles and practices of Corporate Governance to ensure transparency, integrity and accountability in its functioning, which are vital to achieve its Vision of becoming a major diversified, transnational, integrated energy company. With the adoption of the following policies, the Company has further enhanced its Governance structure:

(a) Code of Conduct for Directors and senior management personnel,
(b) Code of Conduct for prevention of insider trading and
(c) Policy on risk assessment and minimizing procedures.

RELIANCE OIL

Over the years, governance processes and systems have been strengthened at Reliance. In addition to complying with the statutory requirements, effective governance systems and practices inter alia towards transparency, disclosures, internal controls and promotion of ethics at work-place have been institutionalized. Reliance recognizes that good Corporate Governance is a continuing exercise and reiterates its commitment to pursue highest standards of Corporate Governance in the overall interest of all the stakeholders. For implementing the Corporate Governance practices, Reliance has a well defined policy framework consisting of the following:

SUGGESTIONS AND OPINIONS

The third pillar of the corporate governance is nomination committee. To have an appropriate mixture of skills, experience and objectivity on the board, nominations are required from various stakeholders for maintaining every one's interest. Corporate units establish nomination committee but do not make it as part of its Code of Best practice often. Corporate should develop transparency in the appointment of the nominee directors and their assistant to the board. Almost all the code recommends that a majority of nomination committee members should be nonexecutive directors. They are to look after the interest of their stakeholders. For this purpose they control and monitor the function of the corporate unit and evaluate the strategy of the business units in the viewpoint of their stakeholders. Looking into the Indian corporate, only 64 percent companies were disclosing the details of their nomination committee in their annual reports, in other word 36 percent of the units were not providing proper disclosures about their nomination committee in annual reports. It has been found that majority of the sample units were having 4 to 5 nominee directors on their nomination committee. It is respectfully submitted that to have better base for the nomination committee, Indian corporate units need to have proper system of appointment of nomination directors. To get reelected as a non-executive director on the board, one needs support of the management.
Corporations are the prominent players in the global markets. They are mainly responsible for generating majority of economic activities in the world, ranging from goods and services to capital and resources. The essence of corporate governance is in promoting and maintaining integrity, transparency and accountability in the management of the company as well as in manifestation of the values, principles and policies of a corporation.

Many efforts are being made, both at the Centre and the State level, to promote adoption of good corporate governance practices, which are the integral element for doing and managing business. However, the concepts and principles of good governance are still not clearly known to the Indian business set up.

Hence, there is a greater need to increase awareness among entrepreneurs about the various aspects of corporate governance. There are some of the areas that need special attention, namely:-

- Quality of audit, which is at the root of effective corporate governance;
- Role of Board of Directors as well as accountability of the CEOs and CFOs;
- Quality and effectiveness of the legal, administrative and regulatory framework; etcThat is, it is necessary to provide the corporates desired level of comfort in compliance with the code, principles and requirements of corporate governance; as well as provide relevant information to all stakeholders regarding the performance, policies and procedures of the company in a transparent manner. There should be proper financial and non-financial disclosures by the companies, such as, about remuneration package, financial reporting, auditing, internal controls, etc.

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