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Significance of Corporate Governance in the Present Context

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ABSTRACT

Today's corporate sector around the world is blamed for several unfair trade and practices and these trade and practices are curse for the corporate sector. These are not good for the civilized security There are measures and mechanisms to curb unfair trader and practices of corporate entities .Corporate Governance is one of the effective tool and mechanism for the corporate entities to free themselves from the mechanism of unfair trade and practices In this paper an attempt has been made to discuss the role played by SEBI through clause 49 of the listing agreement in making companies to companies to comply with the corporate governance norms in India. This article is divided into conceptual clarification, corporate governance in the present context with clause 49 and conclusion. SEBI through the norms and provisions contained in clause 49 to listing in making corporate to comply with the standards of corporate governance

Keywords: *Corporate, Securities, Governance, Whistle Blow Policy*

I. INTRODUCTION TO THE CORPORATE GOVERNANCE

Corporate Governance is the key element in enhancing investors' confidence, promoting competitiveness and ultimately improving economic growth. Corporate Governance is the set of processes, customs, policies, laws, and institutions affecting the way in which corporation is directed, administered and controlled. Corporate Governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed². It is a system of structuring, operating and controlling a company with an objective to achieve long term strategic goals to satisfy shareholders, creditors, employees, customers and suppliers, and complying with the legal and regulatory requirements, apart from meeting environmental and local community needs.

In other words it is ranging from managing and maintaining operational transparency to

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² *Corporate Governance Comparative Study of select Public Sector and Private Sector Companies in India*, ARTICLE BASE (Jan. 26, 2021, 10:04 AM) <http://www.articlesbase.com/ethics-articles/corporate-governance-comparative-study-of-select-public-sector-and-private-sector-companies-in-india-868495.html>.

something as simple as following legal mandatory disclosure norms. A good corporate governance mechanism improves the health of the corporate sector, thus enhances national competitiveness.

II. CORPORATE GOVERNANCE IN THE PRESENT CONTEXT

According to Milton Friedam, “corporate governance is the key to conduct the business in accordance with owner’s or shareholders desires, which generally indicates to make much money as possible” but in this context it is based on marked maximization that underpins shareholder capitalism. Further this concept was expanded by J. Wolfensohn, Ex-president, World Bank, he said that “corporate governance is about promoting corporate fairness, transparency and accountability”³.

Even the Experts at Organization of Economic Co-Operation and Development (OECD) have defined “corporate governance” as the system by which business corporations are directed and controlled. According to them it means that it is a structure which specifies the distribution of rights and responsibilities among different participants in the corporation⁴.

But in the present scenario, the concept of corporate governance has taken a new dimension and it states that, “Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders”⁵.

III. CORPORATE GOVERNANCE IN INDIA

Since the beginning of 1980s, the scenarios have changed in India. There has been wide-ranging changes that has taken place in both the laws and the regulations in the field of corporate law and the capital market. As a result of several scams in India⁶, a need has arisen to bring reforms. In response to that, reforms began to establish in India in 1991. The most important event in the field of investor protection in India was the establishment of Securities and Exchange Board of India (SEBI) in 1992.

In India, the Confederation of Indian Industry (CII) took the lead in framing a desirable code of corporate governance in April 1998. This was followed by the recommendation of the Kumar Mangalam Birla Committee on corporate governance appointed by the SEBI in the

³ Vol-90,2009, Atul Mehrotra, CORPORATE LAWS/CORPORATE GOVERNANCE, SEBI, SCL-Magazine, 152.

⁴ Ibid.

⁵ Vol-90, 2009, SEBI, SCL-Magazine, 152 & The Institute of company Secretaries of India.

⁶ Harshad Mehta scam 1992 & Ketan Parekh scam 2001.

year 1997. The introduction of “Clause 49⁷” in Listing Agreements in the year 2000 by SEBI was a major turning point in the history of corporate governance in India.

In the Report of SEBI committee (India) on Corporate Governance, it defines corporate governance as the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders⁸. The recommendations of the committee were mentioned in the clause 49 of the Listing Agreement of every Indian Stock Exchange⁹. Every Company which has opted to list its shares in the recognized Stock Exchanges should enter into a listing agreement and non-compliance of the terms and conditions of the agreement, otherwise it can lead to a stringent action by the Securities and Exchange Board of India (SEBI).

Clause 49 of the Listing Agreement

Clause 49 of the listing agreement to be entered into by the listed companies with the Stock Exchanges refers to certain conditions under the heading “Corporate Governance”. The said clause 49 mandates various conditions to be complied with by the Companies under the head “Corporate Governance”. Thus, it is specific to the Listed Public Companies though the word “Corporate Governance” which is used in general and as a synonymous to “Good Governance”. An important decision was taken in this regard in India that all the listed companies should have 50% independent directors in their board.

The listing agreement needs to be complied with by all the listed companies, though lists out many conditions, clause 49 occupies significance. Clause 49 of the listing agreement emphasizes on executive directors, composition of directors, independent directors, disclosures by non-executive directors and their compensation, provisions as to committees like Audit Committee, Code of Conduct, some additional disclosures, Chief Financial Officer /Chief Executive Officer¹⁰ certification and a report on Corporate Governance etc¹¹. The logic behind the further conditions on the listed companies under clause 49 of the listing agreement is just a further effort to eliminate the loopholes and for the protection of

⁷ Listing Agreement of SEBI, Clause 49. “Requires the companies who are listed to comply with certain provisions relating to board of Directors, Audit Committee, subsidiary companies, disclosures, report on corporate governance and compliance.”

⁸ *Corporate Governance Comparative Study of select Public Sector and Private Sector Companies in India*, ARTICLE BASE (Jan. 26, 2021, 10:04 AM) <http://www.articlesbase.com/ethics-articles/corporate-governance-comparative-study-of-select-public-sector-and-private-sector-companies-in-india-868495.html>.

⁹ SEBI, 2000.

¹⁰ Vol-90 The latest change in law is that CEO and CFO are responsible for establishing, evaluating and monitoring the effectiveness of internal control over financial reporting and disclosure. SEBI, SCL-Magazine, 161.

¹¹ *How to look at Corporate Governance in Indian Corporate Law*, ARTICLE BASE (Jan. 26, 2021, 10:04 AM) <http://www.articlesbase.com/corporate-articles/how-to-look-at-corporate-governance-indian-corporate-law-1684329.html>.

investors/shareholders¹².

In 2002, the Naresh Chandra Committee on Corporate audit and Governance submitted its Report. Subsequently, in order to review the existing Corporate Governance code, SEBI constituted the Narayana Murthy Committee based on whose recommendations made in 2003, far-reaching changes which were made in the Listing Agreement in 2004. The Ministry of Corporate Affairs also constituted an Expert Committee on Company Law under the chairmanship of Dr. J J Irani, which released its Report in May 2005.

As per the revised clause 49 of the listing agreement based on the Narayana Murthy Committee, the companies are required to submit a quarterly report to the stock exchange board within 15 days from the end of every quarter. The report should be signed by the compliance officer or CEO of the company. This revised clause is not applicable to mutual funds. The stock exchange should see whether the company has fulfilled all the provisions of the revised clause 49 lit has established its Board and constituted committees such as, audit committee, investor grievance committee etc before seeking in principle approval for listing.

Along with that, the Stock Exchanges shall also set up a separate monitoring cell with identified personnel to monitor the compliance with the provisions of the revised clause 49 on corporate governance. The cell, after receiving the quarterly compliance reports from the companies which are required to comply with the requirements of the revised clause 49, shall submit a consolidated compliance report to SEBI within 60 days from the end of each quarter. In the revised clause 49 it made mandatory that there should be a separate section on corporate governance in its annual report and its should obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance. The certificate along with the directors report to be sent annually to all the shareholders of the company.

IV. WHISTLE BLOWER POLICY

The SEBI has constituted a Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to further improve the standards of corporate governance in India. Basing on the committee report, SEBI vide its circular dated 26th August 2003, has introduced some major amendments to Clause 49 of the Listing Agreement. One of the important amendments is the Whistle Blower Policy¹³. The main object of the Whistle

¹²*Corporate Governance its Principles & Practice Values*, ARTICLE BASE (Jan. 26, 2021, 10:04 AM) <http://www.articlesbase.com/corporate-articles/corporate-governance-its-principles-practices-values-1045065.html>

¹³ *Whistle Blower Policy*, DOMAIN-B, (Jan. 26, 2021, 10:04 AM), <http://www.domain-b.com/investments/>

Blower Policy is to detect frauds, irregularities and encouraging employees to come forward to Audit Committee¹⁴. The following are the main features of the “Whistle Blower Policy” they are:

1. Personnel who observe an unethical or improper practice (not necessarily a violation of law) shall be able to approach the audit committee without necessarily informing their supervisors.
2. Companies shall take measures to ensure that this right of access is communicated to all employees through means of internal circulars, etc.
3. The employment and other personnel policies of the company shall contain provisions protecting "whistle blowers" from unfair termination and other unfair prejudicial employment practices.
4. Company shall annually affirm that it has not denied any personnel access to the audit committee of the company (in respect of matters involving alleged misconduct) and that it has provided protection to "whistle blowers" from unfair termination and other unfair or prejudicial employment practices.
5. Such affirmation shall form a part of the Board report on Corporate Governance that is required to be prepared and submitted together with the annual report.

V. CONCLUSION

We came to a conclusion that because of the pressures from different corporate sectors SEBI has now made the Whistle Blower Policy a non-mandatory requirement, before such revise of Clause 49 of the listing agreement it was a mandatory requirement. This shows how the SEBI is still under the impact and within the clutches of the corporate field sectors¹⁵.

markets/sebi/20031216_policy.html

¹⁴ *Whistle Blower Policy: A Mere Policy*, FINANCIAL EXPRESS, (Jan. 26, 2021, 10:04 AM), <http://www.financialexpress.com/news/whistle-blower-policy-a-mere-policy/59288/>

¹⁵ *SEBI Relaxes reporting norms for listed firms*, FINANCIAL EXPRESS, (Jan. 26, 2021, 10:04 AM) <http://www.financialexpress.com/news/sebi-relaxes-reporting-norms-for-listed-firms/117852/>