CORPORATE GOVERNANCE: PROTECTION OF SHAREHOLDERS' RIGHTS IN INDIA

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ABSTRACT

"The organization through which corporations are directed and controlled", according to the definition of corporate governance. Due to friction between agents i.e. managers and proprietors, the separation of proprietorship and control in productions with detached ownership structures underlines the agency issue (investors). In such a circumstance, the corporate governance mechanism's goal line is to keep a check on administration and guarantee that it is working to enhance shareholder value. Howsoever, in India corporate governance complications are caused by a distinct agency problem that develops from a disagreement between dominant and minority owners. As a outcome, India's corporate governance system should prioritize protecting minority shareholders from expropriation by dominant owners. There are rules protecting minority shareholders but they are either unproductive or poorly implemented. Correspondingly there is a substantial vacuum in the Indian corporate governance legislative system that dictates the strictest protections for minority shareholders' interest. Policymakers may be able to do this by establishing a favorable climate and enacting legislation to safeguard their rights.

KEYWORDS

Corporate Governance, Shareholders, Companies, Shareholders' protection.

INTRODUCTION

Corporate scams have become a worldwide phenomenon with large and far-reaching consequences. The confidence of investors has been lost. The corporate profit in large amount is payable to the mangers and poor investors. Company is not getting any return on his investment and it is wholly working on stocks. On the other side the managers of the corporation not only get huge amount of shares in the profit of the company but they also use price sensitivity information for their personal benefit.[2]
Company's activities are regulated by Stakeholders, Investors, Institutional, Investors Managers, Legislative body, Executive and also by the courts. So, these are the various regulators but all are failed to give value to the investors or shareholders. Corporate failures are not because of the one but all are equally responsible. Like Board of Directors, Auditors, Shareholders, and Regulating Authorities.
Especially Legislature because unable to make proper laws and to control the Directors (Governors) and to protect the interest of the investors.
Reliance, M.S. Shoes Company, Mr. Harshad Mehta, and the Global Trust Bank in these cases the brokers, managers of the company reveal the failure in our laws. The Stock Exchange Board of India was established in 1992, was not successful in restraining corporate scandals in India. Corporate Governance is the system of rules, practices and processes which are used to direct or manage or control company. Boards of Directors are responsible for the governance of their company. The investor appoints Directors and auditors and satisfies themselves.
Corporate Governance is voluntary moral code of corporation or company. Corporate Governance is more needed when the directors of the company misuse their power and position as trustee through questionable practices, and the stakeholder or shareholder of the company suffer severe loss and they also abuse the company for their personal gain. The corporate Governance is not defined anywhere in a precise manner.

Howsoever, it defines the control and powers of the company. The major role of Corporate Governance is to guarantee that the director's power, duties, obligation and responsibilities must be best for their company and they must give direction to the members of the company and be accountable with the stakeholder and shareholder and other beneficiaries.

THE CONCEPT OF CORPORATE GOVERNANCE

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[2] John Farrar, *Corporate Governance in Australia and New Zealand,* London: Oxford Publication 44 (2001).

Corporate Governance is all about relationship between Board of Directors, its management, shareholder or Investors. The structure and objectives of the company is defined and set up by the corporate governance and to achieve those objectives and to keep check on those actions are determined. The regulation of corporation is designed by corporate governance, it is a method by which companies are managed and directed in a proper manner. It is managed in such a way that the stakeholder wishes. To increase the value of stakeholder or investor and to do things for the benefit of stakeholder it lies under the directors and concerned committees of the company. It is actually concerned with economic growth and societal goal.

Corporate governance is all about management of the company and Board of Director and their relationship with each other and the relation with them must be healthy and no conflict should exist between them. The owner must keep an eye on individual and see their performance it is of standard performance. These aspects related to corporate governance should not be neglected. The corporate governance works in such a way that the contributor of finance gives assurance that the investment made by them there must be good profit out of it.

Corporate governance undoubtedly makes difference between managers and directors of the corporation. It is duty of the manager to give decisions in the corporation. Its present system of corporation the duties and rights of managers and directors is defined properly and the task and responsibility of owner is defined. Corporate governance takes effective decisions and gives measures for the same, the absolute power lies with Board of Directors.

SHAREHOLDERS' RIGHTS

The transfer and registration of the shares is the major rights of the shareholder, they take part in meeting of the shareholders and meeting for the voting, material data about the company. The shareholder has right to appoint the directors and auditors of the company and distribution of the remaining profit of the company. The committee is of the view that the rights of the shareholders are protected and if in case there is any changes they are informed about the changes.

Changes like sale of assets, seizures, separation of the company, and variations in financial institution which will take to change in control or may result in certain shareholders obtaining control over uneven to the equity ownership.[3] Later the committee is of the opinion that the company shall put quarterly material on corporation's site or may send to the stock exchange where the securities of the corporation are listed.

These all are mandatory recommendations, further, the committee is of the view that the semi-yearly financial information must be sent to each household shareholders and this is a non-mandatory recommendation. The committee is of the observation that under the chairmanship of the non-executive director the composition of the board may hear the complaints made by the shareholders for example, sale of assets, and change in capital structure.

These are the mandatory recommendations, the committee is of the view that for the even transfer of shares the shares must be transferred to any committee, officer or transfer agent and this power is delegated to them of the corporation. This is also mandatory recommendations.

In case of ***Derry v. Peek***[4] it was held that, directors, experts and other persons who are connected with the making of the prospectus are equally liable if there is any statement that is not true and they have signed and have given consent for the issuance of the prospectus and they did not trust it to be accurate.

In case of ***R.T. Perumal v. H. John Deavin & Anr.***[5], in this the Madras High court held that, no member is the owner of the company during its existence or at the time of winding up. It means the property of the corporation is nothing just the involvement of the members or shareholders or investors. The major thing is that the statutory provisions and common law rules relating to framing and issuing of prospectus they are enough to safeguard the investors. The present laws and rules are not enough to protect or safeguard the investors in accordance with the problems. The company members can misuse and exploit because there are so many problems in the statutory provisions.

MEASURES TAKEN FOR INVESTOR'S PROTECTION UNDER THE COMPANIES ACT, 2013

Investor's protection entails safeguarding and enforcing a person's rights and claims in his or her capacity as an investor. A company's capital can be classified into two broad categories, namely, equity capital and debt

[3] Recommendation 14.6.
[4] (1889) 14 App Cas 337.
[5] AIR 1960 Mad 43.

capital. Investors are the individuals contributing to company's equity capital. Investors have voting rights for every decision made by the company and are entitled to dividends. It completely differs from creditors who contribute to the company's debt capital and get a fixed rate of interest on the money lent. Furthermore, creditors have limited voting rights solely in matters that directly affect their interests, including capital reduction, company's winding up etc.

Investors are company's insiders. They are referred to as shareholders or company members as well. It should lay an emphasis on the statement that not all members are shareholders but all shareholders are members of the company. The term "member" includes "the subscribers of the memorandum of a company, every other person who agrees in writing to become a member of a company and whose name is registered as a member and every other person holding company's equity share capital and whose name is entered as beneficial owner in the records of depository."

- **Civil Liability for Misstatement in Prospectus**

The Civil liability for misstatement in prospectus has been enumerated under Section 35 of the Companies Act, 2013. If a person has subscribed for the securities of a company based on any misleading statement is Prospectus, or the inclusion or omission of any matter in Prospectus and there exist any loss or damage as a result, the company and the following persons will be liable to compensate each person who has suffered such loss or damage.

The persons who will be considered to be liable for any misstatement in Prospectus along with the company are:

1. At the time of issuance of Prospectus, the Director of the company;
2. Has authorized himself to be named as the director of the company and is named in the prospectus, or has agreed to become the director of the company, either immediately or after an interval of time;
3. Company's promoter;
4. Has authorized the issuance of prospectus; and
5. An expert who isn't or not has been involved or interested in the company's formation, promotion or management and has given his written consent to the issue of prospectus, which he has not withdrawn before the delivery of a copy of the prospectus to the Registrar for registration, and a statement to that effect shall be included in the prospectus.
6. The measure of damages or compensation for the loss that has arisen because of untrue statement or omission is exactly the difference between the value which the shares would have had but because of such untrue statement or omission and the true value of shares at that moment. The gap between the purchase price and the real value of shares is a crucial element in the determination of the exact number of damages to be awarded to compensate a person who has been fraudulently induced to purchase shares.

After the fraud has been exposed and the market has settled, it may be appropriate to utilize the later market price of the shares. In accordance with Article 113 of the Limitation Act, 1963, a complaint for shareholder damage must be filed within three years.

In the case **of *R. v. Lord Kylsant*[6]**, in the prospectus, a table showed that the company had paid dividends ranging from 8 per cent to 10 per cent in the previous years, with the exception of two years wherein no dividend was paid. The statement appeared to show that the company was in good financial shape, but the truth was that the company had suffered significant trading losses in the seven years leading up to the prospectus date, and the dividends had been paid from the funds earned during the unusual period of war, rather than the current earnings. The Prospectus was held to be false because there was an omission of the fact which was pertinent to appreciate the statements made in the prospectus.

- **Criminal Liability for Misrepresentation in Prospectus**

Misrepresentation in a prospectus is punishable under Section 63 of the Companies Act, 1956. Anyone who authorizes the distribution of a prospectus that contains an inaccurate statement faces a maximum sentence up to a term which may extend to two years imprisonment, or with fine which may extend up to INR 50,000/- or both.

According to Section 34 of the Companies Act, 2013, where a prospectus contains any statement which is untrue or is misleading in any form or way or context in which it is included or where exists any inclusion or omission of any matter which is likely to mislead, in such case, any person who authorizes the issue to such prospectus shall be punished under the above stated section with an imprisonment for a term which may not be less than 6 month and which may extend up to 10 years and the culprit shall also be liable to fine which shall not be less than the actual amount of fraud but which may further extend to triple the amount involved in fraud.

[6] (1932) 1 KB 442.

As a result, imposing liability on those involved in the prospectus preparation is a way to regulate the initial public offering. The regulation is necessary to assure the correctness, adequacy and timelines of all the material information pertaining to both the prospectus and the issuing corporation in question.

- **Advertisement of Prospectus**

In accordance with section 58A of the Companies Act, 1956, as amended by the Companies Act, 1974, deposit shall be not be solicited lacking first publishing an advertisement, there should be an advertisement with a statement reciting the company's financial situation and asserting that the company is not in default in repaying any payment or the interest imposed on such deposit.

The provision for prospectus advertisement is involved in Section 30 of the Companies Act of 2013. It is vital to state the contents of a company's memorandum as to the object in any advertisement of a prospectus that is published in any fashion, the members Liabilities and the company's share capital as well as the names of the memorandum signatories and the quantity of shares they subscribe for and the company's capital structure.

CONCLUDING REMARKS

During the latter decade of the twentieth century the notion of corporate governance obtained traction in India as it did in other nations across the world. It has also become a catchword, India like the rest of the globe was obligatory to embrace outstanding governance for the determination of practice and international accounting rules and disclosures protection to safety of investors. This state is not exceptional to India; it is a narrative that can be found in all corporate laws across the world. Likewise, despite the court's best efforts to oversee corporate governance and safety measure shareholders interest such efforts were unsatisfactory. Accepting the insufficiency of governing measures, the legislature attempted to supplement corporation law and to suggestion other means and ways of regulating and protecting stakeholders by appointing a number of committees in India and overseas.

In India as well as outside India the corporate scandals giving alarming signal to the stakeholder or shareholder and to the government. These scandals lead to the non-working of the directors and mangers of the company which the company suffers and noncompliance with the law of the land. There is no disclosure of information and transference and keeping the shareholder above all the personal interest is most common in almost all the countries nowadays.