NEW CHALLENGES IN CORPORATE GOVERNANCE

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ABSTRACT

Corporate governance is seen as control mechanism dependent on the legal, regulatory, institutional and ethical environment of the community. Thus, authors emphasize that without considering the social aspects of business, leaders cannot lead the business in the right direction, but vice versa. Mergers and acquisitions (M&A's), as one option for the company's development could bring both positive, but as well as negative consequences for the target and the acquirer company. Corporate governance mechanisms, social responsibility and the importance of their adequate combination in the processes of merging and acquiring new company pervades in this paper. The paper brings insights on corporate social responsibility and the way its effective implementation supported by governance mechanisms can create a "snowball effect" of positive social changes. A special focus was put on M&A and its incremental value for the company's development and growth. Important figures in the field of M&A are provided. A deep theoretical background is provided in the field arisen out of detailed literature review and practical experiences.

Keywords: Corporate social responsibility, corporate governance, mergers and Acquisitions

INTRODUCTION

Corporate social responsibility is an opportunity to resolve real and challenging issues businesses have been facing today, even when selecting their growth strategies. It has been recognized as the proper model bringing many advantages to the businesses themselves (in terms of financial gains), to the local community where they operate, and after all to the global community. Good and effective, well designed corporate governance is a critical element for achieving excellence in terms of socially responsible business practice, as well as overall business success[i]. When searching for new business models and new business strategies, different strategies should be taken into consideration. The growth strategy (i.e. mergers and acquisitions) is the one, which could bring benefits to the company. Authors find important to note that technological developments, primarily in the fields of computerization, communication and information, along with the process of globalization, processes of privatization of governmental companies, the liberalization in the transfer of merchandise and services between countries, and the trend of unification between fields and industries and companies and regions – all accelerate the popularity of the use of mergers and acquisitions.

Corporate Governance:

Corporate governance is theme, which is in focus of the business world. Governance on top level is faced with challenging decision-making processes, timely actions, settings of corporate cultures and norms, stakeholders' expectation etc. The way in which affairs of corporate enterprises are governed is of considerable importance[ii]. One way of approaching the question of governance is to think in terms of how the interests of various stakeholders are balanced. Corporate governance should be a control mechanism that ensures the optimum use of the human, physical and financial resources of an enterprise. The corporate governance framework depends on the legal, regulatory, institutional and ethical environment of the community. From global perspective, six themes of importance are apparent:

(1) rapid extension of governance codes worldwide;
(2) increased focus on board professionalism;
(3) selective redesign of corporate leadership roles;
(4) re-assessment of corporate reporting needs;
(5) more intensive external scrutiny of corporate governance and
(6) increased attention to corporations´ impact on society.

From new perspective of corporate governance, all activities and pressures represent the fundamental challenge of coherently articulating and defining purpose of the corporation. This requires corporation's leaders to develop a carefully articulated set of core values and to ensure that these values are translated in entirely consistent ways, not just to investors, but to all the different constituencies with which a corporation especially regarding legal norms and norms set by society. The good corporate governance is not a simple issue. Corporate governance is closely connected with managerial structures often in terms of power, responsibility, and duties as well as in establishing strategy to achieve main corporation goals. One of the most important goals of corporate governance is to maintain the confidence of stakeholders in corporation management / corporations. On other hand, to protect shareholders interests (profits).

Mergers and Acquisitions:

Companies search incessantly for new business models and business strategies that will improve qualities, as fast as possible, so that they can respond in the best possible way to the changing demand of the clients and to the changes in the map of competition in the domain.

When corporate governance considers types of strategies appropriate for company – one option is the growth strategy. After choosing growth strategy, it must be implemented. The options are:

1. Mergers and Acquisitions
2. Internal development;
3. strategic partnering.

Some of the firms lack time, management expertise, and operations knowledge to take advantage of environmental opportunities for growth by engaging in internal innovation and development. So, the acquisition of, or merger with another organization produces a rapid or incremental growth in revenue, profits, assets, etc. In external growth, the company is aided by the resources and abilities of other companies and this synergy can significantly improve the company` s competitive ability[iii]. Thus, the strategy of Mergers and Acquisitions is one of the main strategies adopted by companies and corporations so as to expand into new markets, diversify products and services, and increase the competition in the field (Morag & Barakonyi, 2009) Growth through M&A include

- Vertical integration – growing through greater ownership of sources of input or channels of distributions;
- Horizontal integration – acquisition or merger with competitors;
- Horizontal diversification – acquisition of new products lines for existing customers;
- Concentric diversification – acquiring new but related product lines for new customers;
- Conglomerate diversification – acquiring new and unrelated product lines for new customers.

There are lots of theoretical contributions to the field of M&As. Formerly, the term merger applied to the consolidation of two companies about equal in size, where an acquisition involved a larger firm taking over a smaller one. However, this distinction in practice was not significant on country- level governance.

ISSUES AND CHALLENGES IN CORPORATE GOVERNANCE

1. *Selection procedure and term of Board:*

The selection procedure adopted in Indian corporations is the biggest challenge for good corporate governance. Law requires a healthy mix of executive and non-executive directors, independent directors, and woman directors. Most companies in India tend to only comply on paper; board appointments are still by way of word of mouth or fellow board member recommendations. It is common for friends and family of promoters and management to be appointed as board members.

Life-term board members can pose many problems to business say fixed beliefs, power gaining etc. so no business prefers to appoint board members for life-term. And if the board is very short then they will not take long term decisions with full of their efficiency because in long run they will be changed or relieved from their duties. So the term of board must be fixed with due attention. Typically in a board of directors, directors sit for a brief term say 2 to 5 years and it is good practice to switch some of directors at a fixed time interval instead of changing whole board at a single time.

2. Performance Evaluation of Directors:

SEBI, India's capital markets regulator, has released a 'Guidance Note on Board Evaluation' in January 2017. Which cover all major aspects of Board Evaluation including the Subject & Process of Evaluation, Feedback to the persons being evaluated, Action Plan based on the results of the evaluation process, Disclosure to stakeholders, Frequency & Responsibility of Board Evaluation. But for achieving the desired objectives from performance evaluation, they need to make the evaluation result public and these disclosures may put the corporate in big trouble.

Missing Independence of Directors:

Independent directors' appointment was supposed to be the biggest corporate governance reform by Kumar Mangalam committee on corporate governance in 1999. However in reality independent directors have hardly been able to make the desired impact. Till now the appointment of directors in most of companies is made at the discretion of promoters, so it is still questionable. For providing the true success it is necessary to limit the promoter's powers in matters relating to independent directors.

Removal of Independent Directors:

Under law, an independent director can be easily removed by promoters or majority shareholders. When an independent director doesn't take the side with promoter's decisions, they are removed from their position by promoters. So to save their post directors have to work for the interest of promoters. To resolve this issue SEBl's International Advisory Board had proposed an increase in transparency for the appointment and removal of directors.

Liability toward Stakeholders:

Indian company act 2013 mandates that directors owe duties not only towards the company and shareholders but also towards the other stakeholders and for the protection of the environment. But generally, board tries to limit and escape from these kinds of accountability good idea to require the entire board to be present at general meetings to give stakeholders an opportunity to pose questions to the board.

Founder/Promoter's extensive Role:

In India, instead of separate entity of businesses, promoters or founders continuously influence the business decisions Family owned Indian companies suffer an inherent inhibition to let go of control. They affect the decisions by influencing the board and management. This is done because they had the significant portion of company's share. So to remove this issue it will be good idea to amplify the shareholder base and reduce the shareholding of founders.

Transparency and Data Protection:

Corporate governance is based on the principle of transparency but it cannot be defined what information is to be disclosed or not. In today's cut throat environment of competition it can be very dangerous if wrong information be disclosed. In digitalization Privacy and data protection is a central governance issue. For this the board must be capable of handling data and to ensure the protection of such data from potential misuse. And by looking at the importance of data and the potential cost if data be misused, we can say that organization must invest a reasonable amount of resources to protect the data.

Business Structure and internal conflicts:

Business structures also put hindrance on the way to good governance as they require many layers of management, executives and other officers. This makes it very difficult for the company leaders to receive accurate, important data from the lower levels and to command orders to lower level of the company as the data may be distorted at any point of chain. Board of executives can make much good decisions and policies. But if the internal relationship in the organization says between board and managers is not good then the implementation of decisions and policies also get affected. Rebellious managers can sabotage corporate decisions and policies at many levels of the business.

Environment of mistrust:

In recent years, many scams, frauds, misappropriation of public money, and corrupt practices have taken place and because of the doubtful practices of key executives and board members, confidence of investors and society has diminished. It is happening in the stock market, banks, financial institutions, companies and government offices. This has made the business environment distrustful

CHALLENGES & IMPERATIVES

A corporation should be fair and transparent to its stakeholders in all its transactions. This has turn imperative in present's globalized business world where corporations need to access global pools of capital need to attract and retain the good human capital from various parts of the world. Unless a corporation embraces and demonstrates ethical conduct, it'll not be capable to succeed.

What's Corporate Governance its known fact that vital necessities of success of any association lingers on its ability to mobilize and use all kinds of resources to meet the objects easily set as part of the planning process.[iv]

Corporate governance is about ethical conduct in business. Ethics is concerned with the law of values and principles that enables a person to choose between right and wrong. Further, ethical dilemmas arise from clashing interests of the parties involved. It's enough possible that in the effort at arriving the best possible financial results or business results there could be attempts at doing things which are verging on the illegal or indeed illegal. There's also the possibility of grey areas where an act isn't illegal but considered unethical. These raise moral issues.

The quick migration of four elements across national borders. These are:

- Physical capital in terms of plant and machinery;
- pecuniary capital;
- Technology; and
- Labour.

Strong corporate governance is essential to flexible and vibrant capital markets and is an important instrument of investor protection. Companies raise capital from market and investors suffered due to unscrupulous guidance that performed much worse than past reported figures. Numerous corporates didn't pay heed to investors' grievances.

The board of directors and the elderly position administration of an enterprise- walking their talk. It's by walking their talk that the top administration can earn credibility. This also has a direct bearing on the morale of an organization.

When it comes to the hardware aspect of corporate governance, we go into the issue of a law, which becomes a reference point for actions. But the sad fact in our country is that even though there's a lot of talk about corporate governance, when it comes to reality, nothing big happens.

In the Indian context lack of clarity that leads to corrupt or illegal actions. Maybe the most important challenge we face towards better corporate governance is the mindset of the people and the organizational culture. This change will have to come from within. Another important aspect is to realise that eventually the spirit of corporate governance is more important than the form. Substance is more important than style. Values are the substance of commercial governance and these will have to be definitely articulated and systems and procedures devised, so that these values are practiced. We then come to a common moral problem in running enterprises. One can have practices which are legal but which are unethical. In fact, numerous a time, tax planning exercises may border on the fine razor's edge between the rigorously legal and the patently unethical.

CONCLUSION

The concept of corporate governance hinges on total transparency, integrity and responsibility of the administration and the board of directors. Be it finance, taxation, banking or legal structure each and every place requires good corporate governance. Corporate Governance is a means not an end, Corporate Excellence should be the end. Once, the good Corporate Governance is achieved and the Indian Commercial Body will shine to outshine the whole world.

In the Indian context, the need for corporate governance has been pointed because of the frauds occurring constantly since the emergence of the concept of liberalisation from 1991. We had the Harshad Mehta fraud, Ketan Parikh Scam, UTI fraud, Vansishing Company Scam, Bhansali Scam and so on. In the Indian corporate scene, there's a need to induct global standards so that at least while the scope for frauds may still exist, it can be at least reduced to the minimum.

Corporate governance and ethical actions have a number of advantages. Primarily, they help to make good brand image for the company. Once there's a brand image, there's greater faithfulness, once there's greater loyalty, there's greater commitment to the employees, and when there's a commitment to workers, the workers will turn more creative. In the current competitive atmosphere, creativity is vital to get a competitive edge. Corporate Governance in the Public Sector cannot be avoided and for this reason it must be embraced. But Corporate Governance should be embraced because it has much to offer to the Public Sector. Good Corporate Governance, Good Government and Good Business go hand in hand.

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ENDNOTES

[i] Available at www.ijcrt.org/viewfull.php?&p_id=IJCRT1813018
[ii] Available at www.jetir.org/papers/JETIR1805245.pdf
[iii] Available at http://www.ijirmps.org/research-paper.php?id=151
[iv] Corporate Governance, 6(2), 175-187.