LEGAL METRY LAW JOURNAL

ISSN: 2582-9963

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WORKING OF THE INDIAN CORPORATE ENTITIES WITH COMPLIANCE TO COMPANIES ACT, 2013

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ABSTRACT

This article investigates how Indian corporate entities operate in compliance with the 2013 Companies Act. The establishment, operation, and dissolution of businesses in India are governed by the comprehensive businesses Act, 2013, which was passed in 2013. The legal framework and compliance standards are established for business entities, providing accountability, transparency, and the protection of stakeholders' interests. The incorporation procedure, keeping statutory registers and records, corporate governance standards, transparency and reporting obligations, and penalties for non-compliance are only a few of the important components of the Act covered in this article. The research looks at how Indian business organisations comply with the Act's rules and manage the regulatory environment in order to fulfil their legal duties. The results underline the importance of sound corporate governance practises in establishing a favourable business climate and shed light on the difficulties businesses have complying with the 2013 Companies Act.

Keywords: Indian corporate entities, Companies Act, compliance, corporate governance, legal obligations.

INTRODUCTION

India is already one of the world's greatest economies, yet many new businesses continue to grumble, and rightly so, about the enormous difficulty of doing business here. Small business compliance requirements are severe and time-consuming in comparison to many other big economies. Companies founded in India are mainly administered by the CA, 2013. In addition to other provisions, the 2013 Act specifies a number of provisions relating to director qualifications,

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appointment, retirement, compensation, and removal, holding "board and shareholder meetings, passing resolutions, related party transactions, maintaining books of accounts, preparing and presenting annual accounts (matters to be reported upon in the annual reports of the companies), and periodic filing of reports"[1]. The business is "recognised as a separate legal entity from its founding members once all legal conditions for incorporation have been satisfied and a certificate of incorporation has been issued". Whether a company is private or public, there are certain things that need to be done when it is founded.

The new act of 2013 superseded the 1956 Act with the primary goal of addressing current difficulties and keeping up with quick advances, "integrations, globalisation of financial markets, and the world's" developing economy. The new act focused on "improvements and changes to governance structures, business-friendly corporate regulations, changes to e-management, enforcement, shareholder protection, enhanced accountability, improved institutional structure, enhanced disclosure norms, effective merger and acquisition, introduction of the role of whistle-blowers, one Person Company, and changes to CSR"[2]. In addition to streamlining "mergers, acquisitions, and restructuring, the 2013 Act" alters current restrictions, regulatory organisations like the NCLT, and promotes a powerful global impact.

The success of every corporation these days depends heavily on its corporate governance. Companies are putting a lot of effort into implementing the corporate governance guidelines set out by the overseeing bodies. Companies in India are primarily concerned with adhering to "clause 49 of the listing agreement" and properly disclosing it in their annual reports in order to attract the attention of stakeholders. The dissertation aims to evaluate the stakeholders' level of knowledge and comprehension of the clause 49 listing agreement terms as set out by the SEBI. Additionally, an effort has been made to identify the variables influencing the standard of corporate governance. It has been noted that respondents' knowledge and comprehension of the contents of clause 49 as they currently exist is still quite low.

PURPOSES OF CG

A company's entire survival depends on good governance. Given that it guarantees the firm's dedication to a higher degree of development and profitability, it encourages and develops investor trust. It aims to accomplish the following goals:

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[1] Dr. K.R. Chandratre, *CimplyFive's Text of Model Resolutions under the Companies Act, 2013* (Vishwakala Printers 2016).

[2] Paul L Davies, 'The Board of Directors: Composition, Structure, Duties and Powers' (2000) OECD <https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf> accessed 24 May 2023.

- "A well-organized Board, which is competent to make decisions independently and impartially, is in charge of the affairs;
- The Board uses open procedures and processes and based its decisions on adequate information;
- The board effectively and regularly assesses the management team's performance;
- The Board's effective mechanisms for handling stakeholder problems are in place;
- The number of independent and non-executive directors, who will watch out for the interests and welfare of all stakeholders, is split equally among the Board members;
- The Board notifies the shareholders of key business-impacting events;
- The Board consistently exercises effective oversight over the activities of the organization".

KEY COMPONENTS OF GOOD CG

The indicators of personal ideas and values that shape an organization's beliefs, values, and board of director activities are, without a doubt, good governance. The Board, a key functionary, is principally accountable for ensuring the development of value for its stakeholders. The accountability mechanism is weakened in the absence of clarity on the Board's authorized role and powers, endangering the accomplishment of organizational objectives[3]. The "Board, the Chairman of the Board, and the CEO" are examples of top position holders whose tasks, responsibilities, and accountability must be clearly defined. This is a crucial element of effective governance. In these situations, the Board's function should be spelled out "in a Board Charter that may be followed throughout. To further clarify the aforementioned debate, the following are the key components of sound corporate governance[4]":

- Answerability with a goal of serving the stakeholders through effective and ongoing communication methods on a regular basis.

[3] OECD, *G20/OECD Principles of Corporate Governance*, (OECD Publishing, 2015) <http://dx.doi.org/10.1787/9789264236882-en > accessed 24 May 2023.
[4] DL Arnwine, 'Effective governance: the roles and responsibilities of board members. Proc' [2002] 15(1) Bayl Univ Med Cent 19-22.

- Another component is a strong whistleblower policy, which allows staff members to inform upper management of any suspected fraud, unethical behaviour, or code of conduct violations. It is important to have the proper safeguards in place for these personnel.

- The need of a healthy management environment is emphasized, which involves creating proper processes, setting clear objectives, defining responsibility and accountability, doing solid business planning, and developing performance assessment metrics.

- Laws and rules that are fair and clear.

- Equity for all parties involved.

- Accentuate social, legal, and environmental issues.

- Risk analysis and identification are crucial components of how businesses operate and are governed, and they should be adequately considered when developing corrective actions. By creating a process for routine evaluations of internal and external risks, this issue may be effectively resolved.

- Be precise about the codes of behaviour and ethical standards that must be conveyed to all parties involved.

INDIAN SCENARIO OF CG

In the third century B.C., the renowned teacher, philosopher, and royal counsellor Chanakya mentioned four important responsibilities of a monarch: "Yogakshema (Safeguard), Palana (Maintenance), Vriddhi (Enhancement), and Raksha (Protection)". These four responsibilities are comparable when compared to the responsibilities of senior executives in businesses in the current environment. In this context, protecting the interests of the shareholders is referred to as Yogakshema, increasing wealth via wise asset use is referred to as Vridhi, maintaining wealth is referred to as Palana, and protecting shareholder wealth is referred to as Raksha. If we continue with the current scenario, "CG was not a priority for Indian corporations until the early 1990s", and as a result, it was also not frequently discussed. "However, due to some significant gaps and flaws in the current legal system, such as boards of directors lacking sufficient fiduciary duties, poor disclosure practices, unfavourable stock market practices, chronic capitalism, and a lack of transparency, it was felt that governance could be improved through thorough reforms"[5].

[5] UNCTAD, *Corporate Governance in the Wake of the Financial Crisis* (UN, 2010).

Indian government was forced to pursue reformative measures for economic stability as a result of the budget crisis in 1991. The macro approach of enhancing industrial capacity included these policies. These changes also encompassed a variety of institutional and business-level measures, which in the years thereafter have shown a positive indication of corporate responsiveness and transparency. The Companies Act of 1956 was altered many times by the government as a liberalization move, notably in 1999, 2000, 2002, and 2003. "The government has implemented a number of steps, including" strengthening particular regulations for greater disclosures and more transparency, as well as giving the stock market regulator, SEBI, additional authority.

THE COMPANIES ACT, 2013[6]

The CA 1956 has undergone several revisions over its roughly 55-year lifespan. The New CA 2013 was approved by the Parliament and went into effect on August 29, 2013, replacing the Company Act of 1956. The latest recent information about corporate governance in India is provided here. Following are some examples of significant corrective measures made under the New Companies Act that have been clearly highlighted and evaluated as a successful code of corporate governance:

- **TRANSPARENCY ENABLEMENT**

A new part that ensures that every document, record, register, or minute, etc., is maintained and inspected in electronic form has been added It is intended to promote corporate transparency and is guaranteed to be stored electronically or made accessible for inspection. This E-governance initiative makes it possible to maintain and inspect documents in electronic form, keep books of accounts electronically, post financial statements on the company website, hold board meetings via video conferencing or another electronic method, conduct voting electronically, and more.

- **APPOINTMENT OF AUDITORS**

It states that a business may name "an individual or a firm as an auditor at the annual general meeting with his or her written approval", and that person or firm will keep that position "until the end of the company's sixth annual general meeting". The auditors are prohibited from providing some "services directly or indirectly to the corporation, its parent company, or a subsidiary company under Section 144"[7]. These include management services, actuarial services, investment advice services, "outsourced financial services, internal audit, design and

[6] The Companies Act 2013.
[7] The Companies Act 2013, s 144.

implementation of any financial information system, accounting and bookkeeping services, investment banking services, design, and internal audit".

- **BOD**

According to this section, every firm must have a BOD with a set "minimum and maximum number of members". Companies in the specified class or classes must have at least one female director. The section also aims to stipulate that every firm must have "at least one director who spent a minimum of 182 days in India during the preceding calendar year". It mandated that ID make up "at least one-third of the Boards of all listed businesses". IDs may serve a maximum of two terms in a row. A term is up to five years in a row. Additionally, it ensures that a nominee director selected by a government to represent its holdings, by any institution, in accordance with any agreement, or by any other party "shall not be regarded to be an ID".

IMMORAL BUSINESS PRACTICES

The need for capital restructuring arises during business takeovers and mergers, a time when corruption is a major concern. Without an independent director, "there is a risk that board members won't strictly adhere to the law. The company's acquisition may be spearheaded by a board member having vested interests in the transaction". The aim of the entire exercise—maximizing value for the shareholders—would be defeated by such a move, and the profit would go to the person. There have been instances of firms falsifying accounting records to show earnings that have not yet been deposited into customer accounts. "This is misleading for auditors and other parties who are reviewing the organization's financial records."

CONCLUSION

Despite the fact that India's current position is far from perfect, there is still a long way to go before it can be declared that it has the highest degree of compliance with the CA and CG anywhere in the world. This is the case even though it is by no means even close to being flawless. Nevertheless, this is the situation. Despite the fact that India still has a very long way to go before it can make such a claim, this is the reality of the situation. In today's modern business environment, the vast majority of CEOs are of the opinion that their organizations require financial as well as human resources in order to satisfy the requirements that are necessary for involvement in worldwide competition. In order for their businesses to be able to satisfy the requirements that are necessary for participation in worldwide competition, it is vital for them to comply with these requirements. The overwhelming majority of CEOs working in the corporate

sector are of the view that this is the best course of action. This viewpoint is shared by a sizable majority of CEOs working in the business sector in the current era, making it one of the most prevalent perspectives in the field. "every aspect of a company in order to evaluate its CG" is becoming an increasing focus for a rising number of stakeholders as they acquire a more in-depth awareness of the market. This is because "every aspect of a company" refers to "every aspect of a company in order to evaluate its competitive advantage." This is due to the fact that "every aspect of a company" literally translates to "every aspect of a company in order to evaluate its competitive advantage." This is due to the fact that "every aspect of a company" is a shortened version of the phrase "every aspect of a company in order to evaluate its competitive advantage." This helps to understand why things are the way they are. "every aspect of a company in order to evaluate its CG" is taken into consideration, which is the reason why this is the case. This is the reason why this is the case. The chief executive officers and owners of the company, as a direct consequence of this, have a full awareness of the procedures for corporate governance, in addition to the requirements for compliance with the CA, 2013. They are also conscious of the fact that it will be difficult for them to gain access to such financial resources in an economic environment that does not match to the norms for international disclosure and accountability. This is something that they are aware of. This is something that is not lost on them in the least.