ABSTRACT

As per the proviso of the Companies Act, 2013 Whistle Blower Policy, often called as, Vigil Mechanism provides an adequate safeguard against victimization of employees of a Company which accept deposits from the general public or companies which have taken funds from Banks and Public Financial Institutions of more than Rs.500 millions u/s 177(9) of Companies Rules, 2014. Also, whistle blowing has become a mandatory process to draw attention of top management on any wrongdoing happening within an organization. Under Clause 49 of Corporate Governance Norms, the whistle blowing policy is applicable to all listed companies which are being considered by the Indian Capital Market Regulator i.e. SEBI (Securities and Exchange Board of India) to take curative action against any illicit, licentious or illegal practice, corruption, violation of any law or rule, therefore, providing protection to employees or any member of the company.

Earlier in India, most of the companies followed this policy as a perfect corporate governance practice. Nowadays, adding to the list, some other companies like Tata Motors, Mahindra Group, Ernst and Young (LLP) etc. are following the same practice to conform to the sec 177 of the Companies Act, 2013 and Corresponding Rules.

Keywords: Whistle Blowing Policy; Protection of Employees from Victimization

INTRODUCTION

“Whistle Blowing Can Be Effective Only When It Is Followed Seriously And Sincerely.”

Whistle blowing policy is a policy with which anyone can account for any alleged, dishonest or illegal actions or misconduct in the company directly to any person having authority or to the director or the CEO. The alleged misconduct can be parted in many ways like fraud, violation of law, threat to the interest of the stakeholders of the company, violation of rule or regulation and gross mismanagement or waste of funds etc.

The term “whistle blowing” originates from the act of the British policemen who blew their whistles on every occasion they observe commission of crime. It can be defined as an act of disclosure of information by people within or outside an organization and that which is not open to public, generally activities of an organization that are in opposition to public interest. It’s a channel of unveiling information about illegal or unethical tasks which help the employee to take a positive step towards reduction of corruption.

Whistle Blowing means calling the attention of the top management to some wrongdoing occurring within the organization.

As for each activity in an organization a specific person is appointed who carries out the assigned task with diligence and utmost care. So, for the purpose of whistle blowing, a person is appointed to raise a concern about malpractice, financial mismanagement being played in the company, who is called as
“WHISTLE BLOWER”. A whistle blower may be an employee, group of employee, formal employee or member of an organization, a government agency who have willingness to take a corrective action on the misconduct. They should also establish an accessible procedure for doing so.

OBJECTIVE OF STUDY

Each and every work in our life is governed by some aims or objectives. Any work without any objective is like a ship in the mid sea without a compass. So for every work objective should be specific and focused. This project is not an exception. So, the objective of the study is to aware the people about the compulsory applicability of the Whistle Blowing Policy w.r.t. revised Companies Act, 2013.

This article will fling some light on importance of whistleblower policy and the article broadly will speak the whistle blower policy in India.

RESEARCH METHODOLOGY

The paper is based on the secondary data. The data is collected from the published corporate reports, journals, websites etc.

Objectives of the Policy

The main objective of the policy is to know that what opportunities does the whistleblower policy provides to employees or group of employees, for reporting to the top management about any unethical behavior, actual or suspected, fraud or violation of the company’s code of conduct, happening within the organization. Further, to provide necessary safeguards for the protection of employees from any reprisals or victimization.

Steps to Create an Effective Whistle Blowing Policy

Rules- Companies Act, 2013 and Rules, 2014 With Reference To Whistle Blowing Mechanism

Application of the whistle blowing mechanism is mandatory for:

- All the listed companies and;
- Companies which accept deposits from the public;
- Companies which have borrowed money from Banks and PFI in excess of Rs.50 crores under section 177(9) read with Companies Rules, 2014.

Companies for which constitution of an audit committee is obligatory, they shall exercise the vigil mechanism through the audit committee, so formed. If any of the members of the committee have a clash of interest in a given case, they should liberate themselves and the others and committee would deal with the matter on hand.
Who Will Blow the Whistle (Types of Whistle Blowers)

Whistle Blowing Policy is implemented by whistle blower who may be:

**Internal** – An internal whistle blower is concerned within internal working of an organization who report misconduct on a fellow employee or superior within their company. He/she may be

i) Employee
ii) Superior officer
iii) Any designated officer

**External** - An external whistle blower reports misconduct or any immoral, licentious or illegitimate practices to outside persons and entities. He/she may be

i) Lawyers
ii) Media
iii) Law Enforcement
iv) Watchdog Agencies
v) Any Other Local, State or Federal Agencies

**Hidden identity whistle blower** - This involves utilizing an external agencies to inform the individuals at the top of the organization pyramid of misconduct, without disclosing identity of whistle blower. E.g.- international whistle blower of an organization involved in delivering a third party service to whistle blowers.

Why Employees Are Considered To Be The Best Whistle Blowers?

Fraud within companies has increased to a great extent be it the Citibank employee hurling the cash or the Satyam founder misleading the industry, every incident has been a knock to corporate image. In such a circumstance it would have been favorable if someone would have disclosed the mishandlings at the initial stage and here the role of the employee becomes important. Employees are usually the first to come to know about any sort of illegal or improper business practices within the company. Employees working in the same department are more aware about the fact that who is corrupt and is involved in malpractice but they often feel frightened about expressing their concern or blowing the whistle as they are afraid of the result that will follow thereafter .As an employee, a person has to keep certain information confidential as it’s a duty towards the employer. This is what usually restricts the acts of the employee to bring into the forefront any form of wrongdoing. They also have a duty not to destroy the “mutual trust and confidence” of the employer on which employment relationship exists.

When To Blow Whistle???

The whistle blower must choose between the various alternatives available to blow the whistle, like to blow in a group, by presenting the evidence, disclosure through internal channels, through external
channels. Whistle blowing through external channels have gigantic threat as it bring about big exposure in public which may be detrimental. A whistle is blown in circumstance like:

- Knowledge of inappropriateness – Making proprietary software available to public, Embezzlement or redirection of funds.
- Bad claims – Unrealistic date projection, advertising hype, etc.
- Knowledge of future doom - When you know the project is doomed for failure and can prove it, yet no one else realizes it yet.

How to Report?????

**MANNER OF REPORTING FOR WHISTLE BLOWING:**

| DATE: |
| NAME OF THE EMPLOYEE/DIRECTOR: |
| E-MAIL ID OF THE EMPLOYEE/DIRECTOR: |
| COMMUNICATION ADDRESS: |
| CONTACT NUMBER: |
| SUBJECT MATTER WHICH IS REPORTED: |
| (NAME OF THE PERSON/EVENT FOCUSED AT): |
| BRIEF ABOUT THE CONCERN: |
| EVIDENCE (ENCLOSE, IF ANY): |
| SIGNATURE |

**Illustrating with Indian Examples**

Various companies are establishing Whistle Blower Policy in the company.

**Maruti Suzuki India Ltd** in its preamble of their Whistle Blowing Policy mentions that Clause 49 Of The Listing Agreement provides, a binding requirement, to establish a mechanism called “Vigil Mechanism” for all the employees to report unethical behavior actual or suspected fraud or violation of the company’s code of conduct or ethics policy to the management of the company.

**HCL** adopted a Whistle Blower Policy to afford appropriate avenues to the employees, contractors, clients, vendors, internal or external auditors, law enforcement / regulatory agencies or other third parties to bring to the kindness of the management any issue which is recognized to be in breach or in quarrel with the essential business principles of the company. The employees are encouraged to raise any of their concerns by way of whistle blowing.

**Requisites of a Perfect Whistle Blowing Policy**

A good whistle blowing policy should:

- Be simple and easy to understand;
- Cover as much as the workforce possible;
- Should set a measuring line of behavior expected of the human resource;
- Present a clear view of list of malpractice covered under the policy;
- Should clear ‘to whom’ and ‘by whom’ the report should be submitted;
- To let the employee circumvent the person to which the concern relates and developing employee friendly environment;
Distributing the highlights of the procedural steps involved in the policy to each and every employee;

To make clear that the employee who blow the whistle about any wrongdoing is not detrimental to the interest of any other employee;

Warn that the victimization of genuine whistle blowers, including malicious allegations and other abuses of the whistle blowing policy, are disciplinary offences.

Advantages of Whistle Blowing Policy

The culture and the process of whistle blowing is extremely beneficial to the organization, its employees, stakeholders and society and the general public at large. Violations, misconduct and malpractices which would cost stakeholders, can be minimized and the offenders are duly punished. Employees, whose integrity and dedication towards the organization are flawless, work as watchdogs of the company's values. Such individuals can be assumed perfect for the role of whistleblowers. Whistle blowing is an important aspect that has the intrinsic power to alleviate a crisis-like situation. The whistleblower's revelation should to be handled correctly and promptly for sustained value creation in the organization.

It provides legal protection as well, as the federal government's Whistleblower Protection Policy protects whistle blowers interest.

Barriers to Whistle Blowing

- Lack of reliance in the organizational internal structure by showing disloyalty or indiscreet manners for not keeping company secrets and industry practices under wraps.
- Reluctance of the employees to be under observation all the time.
- Fear of the employees regarding the biased approach of the top management for different level of employees.
- Fear of revenge from former supervisors and co-workers
- Fear of disaffection from peers.
- Diminished Career Prospects
- Personal Complications

“Blowing the Facts” – Whistle Blowing In India

The Government of India has been considering adopting a Whistle Blower Protection Law from the past many years. On 9th May, 2014 the Whistle Blower Protection Act, 2011 received the presidential assent and the same got published subsequently in the official gazette of the Government of India by the Ministry Of Law And Justice, Government of India.

India had weak whistleblower protection laws. The companies Act, 1956 provided various provisions through which mismanagement can be ventilate does not expressly provide for the protection of whistleblower as such. However after coming into force of the Companies Act, 2014 there is a provision to protect the Whistle Blower. Every listed company which is prescribed shall establish a Vigil Mechanism specifically for the directors and employees. It also seeks to provide adequate protection to the employees from victimization as a result of disclosure made using the mechanism.

There are a diversity of theories as to why Whistle Blowing hasn't being used as extensively in India as it is internationally Says Bharat K, Chartered Accountant, JR Desai & Co, "An organizational culture which encourages honesty, transparency and a sense of moral obligation or responsibility is most likely to give rise to individuals who would not hesitate to blow the whistle in case they spot any wrongdoing. It is important for the whistleblower to have access to communication channels and reach
the people that matter. Hence, a very hierarchical organizational set-up with a single nucleus of power, as we commonly see in India, can prove to be a major roadblock to Whistle Blowing."

Laws which are related to whistle blowing policy and the protection of whistleblowers are also indefinite and inadequate. Framing a Whistle Blower Policy is not mandatory in India under Clause 49 of the Companies Act even though it states that every company should unveil in its annual report whether a Whistle Blower Policy is in place or not and on whom it is applicable to. Bharat K. says "What we need is concrete, holistic law which protects the whistleblower and his/ her interests. This will ensure that the whistleblower is not harmed by the miscreants he/she is targeting and would give more individuals the courage to report the ills they see."

With Employee education about Whistle Blowing, the policies of the company will help remove the ambiguity associated with any act being undertaken by the employees. Further, opening of two-way communication channels, which surpass organizational hierarchies, will help employees to report any wrongdoings to the higher authorities of the company.

In A Statement Given By Assocham – Ernst & Young, the report said, “Most frauds result in some form of business disruption as well as reputational and financial losses. Whistle blowing is still at a nascent stage in India, and most Indian companies do not use it as an effective tool against fraud.

CONCLUSION

Now the Corporate(s) will have to institute rigorous policy to allow employees to bring unethical and illegal practices to the forefront and also train managers and executives on how to encourage openness. Some of the companies already have a Whistle-Blower policy as a good corporate governance practice and now most of the companies are started to frame this policy to comply with section 177 of the Companies Act 2013 &Corresponding Rules.

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