ABSTRACT

Corporate governance has emerged as an issue of worldwide importance. Corporate Governance is about the way corporate entities are governed. The structure, the membership and the process of the governing body are central to corporate governance. It promotes equality, ethics and accountability. Transparency is a way to show and prove the accountability. Present paper examines the initiatives taken by Ministry of Corporate Affairs through incorporating the provisions w.r.t. E-governance of companies in Companies Act 2013. The term electronic corporate governance signifies the application of Information Technology & Modern Communication Tools in the exercising of corporate governance. The 2013 Act heightens the significance of e-governance for an Indian corporate to ensure better corporate governance and harmonize diverse stakeholders’ interests. The article tries to explore the paperless initiatives taken through the act and answer how these new changes are going to support companies to comply with their obligations in a timely and organized manner. If the information is available at a click of the button it will definitely increase accessibility to a company’s information and increase transparency in the management of its affairs while ensuring adequate accountability for default. In view of the large number of corporate scams and scandals shocking the nation, e-governance tools have to be employed at a large scale to improve corporate governance. Implementation of the e-governance measures will bring forward better corporate governance for companies.

Keywords: Corporate Governance; E-governance; Globalisation; MCA-21

INTRODUCTION

Corporate governance requirements in India were wholly in the legislative domain until the early nineties when an independent capital markets regulator, Securities and Exchange Board of India (SEBI) was set up by an Act of Parliament. Gradually with the advent of opening of the economy followed by pressure from the international competitors forced Indian corporates to devise a self-governing mechanism. Government also tried through SEBI and by amending the existing Companies Act 1956 to harmonise the practices & procedures followed by different corporates. The Companies Act 2013 incorporates various provisions which are going to bring a revolution in the field of corporate governance. The Act clearly and strongly accepts and adopts the use of technology for corporate governance. Technology is the keystone of our economic system and it adds value in the pursuit of transparency and disclosure.

Strong and transparent disclosure regime is pivotal for market-based monitoring of companies and central to shareholder ability to exercise ownership rights. A transparent system always protects the investors, attracts capital and maintains confidence in the markets. Weak disclosure norms and
insufficient information can contribute to unethical behaviour and loss of market integrity, costing not only company but economy as a whole. The basic objective of corporate governance is to enhance shareholders’ wealth and protect the interests of other stakeholders by improving the corporate performance and accountability. Disclosure and transparency, serve as a deterrent to fraud and corruption, allowing firms to compete on the basis of their best offerings and to differentiate themselves from firms who do not practice good governance.

OBJECTIVES OF STUDY

There are close to one million registered companies in the country today which are increasingly looking beyond domestic boundaries to access pools of finance, technology and human capital and forge alliances with foreign companies. On the other hand foreign investors are also looking towards India as an attractive investment destination. In such a situation, it becomes the responsibility of the government to provide an effective and efficient legal structure which matches with best international practices. The recently enacted Companies Act, 2013 is landmark legislation with far-reaching consequences on all companies incorporated in India. The new act makes comprehensive provisions for strong investor protection and good governance of all listed and unlisted companies in the country. The present research paper tries to analyse the specific green initiatives taken by Ministry of Corporate Affairs through provisions of Companies Act, 2013 which contributes for E-Governance.

Concept of Corporate Governance and E- Corporate Governance

Governance issues arise as a corporate entity acquires a life of its own, and the ownership of an enterprise is separated from its management. Corporate governance defines the way a corporate enterprise should be governed. It is concerned with structures and processes for decision making, accountability, control and behaviour at the top level of the company. It tries to promote fairness, transparency and accountability in running of the enterprise. Need of corporate governance can be understood through the quote of Adam Smith ‘The directors of companies, being managers of other people’s money than their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private co-partnership frequently watch over their own’ (Smith 1776). ‘Corporate governance refers to the private and public institutions, including laws, regulations and public institutions, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs, on the one hand, and those who invest resources in corporations on the other’ (OECD 2001). ‘Corporate governance is the relationship among various participants in determining the direction and performance of corporations. The primary participants are the shareholders, the management and the board of directors’ (Bob Monks and Nel Minow 2001). Corporate governance isn’t just one structure though, it consists of the various duties, obligations, and rights that control and direct a corporation. ‘Corporate governance is an umbrella term that covers many aspects related to concepts, theories and practices of board of directors and their executive and non-executive directors. It is field that concentrates on the relationship between boards, stockholders, top management, regulators, auditors and other stakeholders’ (Cochran and Wartick). E-governance or electronic governance implies technology driven governance. It does not involve any paper work and is also known as ‘green governance’. E-governance in the corporate sector would mean efficient, transparent and convenient services for the betterment of the Indian corporate and all stakeholders and ultimately for the maintenance of healthy Indian corporate scenario. E-governance secures efficiencies in regulations and stakeholders participation in corporate decision making.

What Constitutes Good Governance?

Governance is by itself a neutral and subjective concept which differs for each individual company according to its circumstances. If the company’s system of direction and control is such that the interests of all the stakeholders are taken care of, there is good governance. Good corporate governance is not just about compliance with the legal requirements. It is about the commitment on the part of management to ensure ‘fair play’ in decision making and ensuring that the broad objectives of the organisation are taken care of in a balanced and transparent manner.
Transparency and Good Governance

Transparency is letting the truth be available for others. Transparency requires not only letting the truth be available but impose to disclose it to every stakeholder. Transparency means making available the accurate, adequate and timely disclosure of relevant information to the stakeholders. Without transparency, it is impossible to make any progress towards good corporate governance. E-governance makes governance of companies with speed, accuracy, transparency and cost effective manner. All the required information w.r.t. companies are made available on the website of the companies. It requires compulsory uploading of required information and documents. E-governance makes the information available online eliminating all the possibilities of concealment of information. The corporate value of a company increases if it adopts good corporate governance practices. If two companies have comparable financial records, transactions and prospects; institutional investors prefer to invest in the one that has shown a proven record as a well (self) governed company.

LITERATURE REVIEW

Corporate governance has always remained a topic of extensive research area in literature. Improvement in international trade relations; revolution in information technology along with government interventions in the form of new rules and legislations has always added new dimensions to the study. A.C. Fernando (2009) highlights need of corporate governance “Increasing revelations of deterioration in quality and transparency of corporate management have called for the adoption of internationally accepted ‘Best Practices.’ This acceptance of the concept gave rise to ‘corporate governance.’ Corporate governance encompasses commitment to values and to ethical business conduct to maximise shareholder value on a sustainable basis while ensuring fairness to all stakeholders including customers, employees, investors, vendors, the government and the society at large”. Markus Stiglbauer (2010) opines “Timely and accurate disclosure of information regarding the … governance of the company is an important part of corporate governance. This improves common understanding of the structure, activities and policies of the organization. Consequently, the organization is able to attract investors” Ronald J. Gilson (2000) concludes Effective corporate governance is a prerequisite to a vigorous equity market. In turn, transparency, with respect to both operating performance and ownership, is critical to effective corporate governance. Important industries, and especially high technology industries, require equity financing. Effective corporate governance and an obligation of transparency are therefore necessary conditions to economic development in precisely those industries that will shape growth in the next millennium. Shinu Vig (2012) concludes Companies that do not employ meaningful governance procedures will have to pay a significant risk premium when competing for scarce capital in today’s public markets. Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable the Board to discharge their legal responsibilities in an efficient manner and e-governance helps them establish and monitor such processes. E-governance is critical to foster good governance practices and to meet the industry compliance standards. It also helps ensure that the financial reporting exercises full disclosure and corporate governance is transacted with full transparency. E-governance also ensures compliant, transparent and accountable information infrastructure throughout the company. Rajanikanta Khuntia (2014) Asserts In order to ensure good governance and participation of all shareholders in voting matters, the 2013 Act specifically recognises electronic voting by members. Participation in Board meeting through video conferencing has been recognised. Maintenance and allowing inspection of documents by companies in electronic form Registration process has been made faster and compatible with e-governance. Neelam Bhardwaj and Batani Raghavendra (2014) emphasise the need of high level standards for corporate governance “The concept of corporate governance gained further momentum after the sudden crash of Enron, WorldCom, Xerox, Lehman Brothers and the crisis of Satyam. Lack of transparency and poor disclosures in the annual reports are blocking the stakeholders from ascertaining the well-being of the corporate houses. As a consequence, investor community urged for improvements in governance practices which lead to the implementation of corporate governance codes. In today’s world of
globalization, the concept of corporate governance has taken an important place. Today, companies are operating in the international arena. For attracting foreign investors and global fund raising, the corporate houses have to demonstrate high quality governance. The key principle for success is to ensure the growth which is sustainable and inclusive.” Sandhya Aggarwal and Anita Aswal (2013) examines related provisions of companies act 2013 and concludes - “Companies Act of 2013, comprehensively cover all areas of activities of a company, especially the public limited companies, and are really highly elegant for making all vital tasks of a company, such as the proper maintenance and inspection of documents, conduction of efficient business activities, and flawless corporate administration and management, rather easy and cost-effective, amply transparent, and fully accountable and trustworthy. Actually, such ingenious and bright provisions for highly efficient and transparent e-governance were imperative in the thriving corporate world of India, in order to equip it for prospering fast in today’s intensely competitive national and international businesses in all economic sectors. Naturally, the listed companies and the big public limited companies will be the very first to adopt these provisions for e-governance; as is mentioned above, the Government of India has given them broad and clear hints for the quickest possible [no time-limit yet fixed] conversion of their statutory books of accounts and records to the electronic mode from the physical mode.” Rohini S. Kumar (2014) finds that ‘paperless initiative measures will support companies to comply with their obligation in a timely and organized manner. It will enhance accessibility to a company’s information, increase transparency in the management of its affairs and ensure adequate accountability for default. Implementation of the e-governance measures will bring forward better corporate governance for companies. However, effectiveness of the e-governance mechanism is rationed out by the involvement of huge capital expenditure in case of private companies and smaller enterprises. The compliances under the 2013 Act for utilization of electronic facilities are rigorous and require establishing updated and secure ICT, which emerges as a major hurdle for smaller companies. Thus, the effective adoption of the E-governance measures and the technology required for it by Indian companies can be ascertained only in times to come. Nonetheless, steps towards implementation of e-governance would deliver the promise of a responsible and accountable corporation.’

MCA 21: The E-Governance Project

Ministry of Corporate Affairs ambitious project; MCA-21 project portal (www.mca21.gov.in) became functional in the year 2006. The MCA-21 project is designed to fully automate all processes related to enforcement and compliance of the legal requirements under the Companies Act, 1956 which is now being replaced by the Companies Act, 2013. This portal provides 21st century services to business, government and the citizens of India. This portal has been created as per the international standards and is the entry point for online registration, filing of returns, reporting financial results and requests and public access to corporate information online through a secure interactive portal. A number of innovations are incorporated in the project, it envisages electronic filing, and online payments through credit cards/debit cards permitting a near-paperless transaction. It will also be a tool for the public to report investor grievances. The project would benefit all companies and Limited Liability Partnerships registered in the country as well as citizens through its IEPF (Investor Education Protection Fund) sub-portal for investor awareness and disclosures. Most importantly it will help the government to exercise control on erring corporations who delay or deny information. The project has been launched with a view to introducing efficiency and transparency in delivery of services and focuses on a customer-centric approach as the principal driving factor and transform the manner in which working of the corporate sector is regulated.

In order to ensure/enhance public dissemination of all basic information about the listed entity, listed entities are mandated to maintain a functional website that contains certain basic information about them, duly updated for all statutory filings, including agreements entered into with media companies, if any. Now in this digital era of transparency instead of visiting office of registrar (ROC), interested users may easily access important documents like Memorandum of Association and financial statements of lakhs of companies online. In fact MCA – 21 project has revolutionized the relations
between Ministry of Company Affairs and the corporate world. Under MCA 21 project, Ministry has floated a comprehensive database on compliances and related information for companies and established a paperless system for corporate compliances. 52 e-forms could be filed with ROC under the 1956 Act. The Companies Act 2013 has increased the number of e-forms by introducing new formats and has simplified the process.

Companies Act 2013 and E-governance

The legal system of a country plays a crucial role in creating an effective corporate governance mechanism and in protecting the rights of investors and creditors. India, hitherto a laggard in e-governance, has realized in recent times that principles of business ethics, corporate social responsibility, and governance can be effectively integrated within the arena of corporate law. In 2013 India replaced its 57 year old Companies Act with Companies Act 2013. The new Act makes comprehensive provisions to govern all listed and unlisted companies in the country. The new Act contains comprehensive provisions pertaining to Corporate Governance which will promote better governance in corporate arena, some landmark provisions are – Performance Evaluation of Independent Directors, Class Action Suits, Corporate Social Responsibility, Auditors Rotation, establishment of Serious Fraud Investigation Office etc. Apart from these provisions Companies Act 2013 contains various E-governance/green governance provisions for various processes pertaining to company’s activities like notice of board/general meeting electronically, meeting of board through video-conferencing, maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company’s website, etc.

The following points will elaborate E-governance initiative taken by the government time to time; special attention will be devoted towards green governance initiatives taken in companies Act 2013 –

Maintenance of Books in Electronic Form – As per Section 120 of the Companies Act 2013- “without prejudice to any other provisions of this Act, any document, record, register, minutes, etc., — required to be kept by a company; or allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.” Section 128 (1) of the Act further encourages company to keep, maintain and present the books in electronic form – “Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which gives a true and fair view of the state of the affairs of the company. Company may keep its books of account or other relevant papers in electronic mode in such manner as may be prescribed.”

By allowing maintenance and presentation of books and accounts in electronics form India is definitely moving towards harmonising Indian Accounting Standards with the global Financial Reporting Standards (IFRS).

Sending Annual Reports Electronically – Companies are permitted to send annual reports including statement of profit and loss, balance sheet etc. by electronic means to their members.

Notice of General and Board Meeting Electronically - The Ministry of Corporate Affairs, Government of India, has taken a “Green Initiative in Corporate Governance” by allowing paperless compliances by companies through electronic mode. Now companies can send various notices/documents (e.g. Notice of Annual General Meeting, Extra Ordinary General Meeting, Annual Reports, Auditors Report etc.) to their shareholders through electronic mode, at the registered e-mail addresses of the shareholders. [Circulars bearing no. 17/2011, dated 21.04.2011 and 18/2011 dated 29.04.2011]. This initiative will definitely facilitate faster communication, reduce paper consumption, avoid loss of document in postal transit and save costs on paper and postage to a great extent and allow shareholders to contribute towards the greener environment.
Section 171 permits a company to invite shareholders for the general meetings by sending notice through electronic mode; similarly Section 173 allows for sending notice to the directors for board meeting by using electronic means. As per Section 173 (3) of the act- “A meeting of the Board shall be called by giving not less than seven days’ notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.” Section 101 (1) repeats the same view it says- “A general meeting of a company may be called by giving not less than 21 days’ notice either in writing or through electronic mode in such manner as may be prescribed: Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

**Conduct of the Board meeting through video-conferencing**- Participation in the Board meeting/Committee meeting through prescribed video conferencing or other audio visual means is recognised provided such participation is recorded and recognised. However, the Central Government may prescribe matters to be discussed at a physically convened Board meeting. Participation of directors in these meetings through video-conferencing will be counted for purposes such as quorum, authority etc. The provision of conducting the Board meetings through electronic means would definitely bring in more speed, accuracy and ease to the Board's functioning.

**E-Voting in the general meetings** – E-Voting is an internet based system through which participation of shareholders in larger numbers in the decision making process of companies is made easy through login and registration of their votes on company resolutions. To encourage wider participation of shareholders in the general meeting; provision of e-voting has been made in the new act. As per Section 108 – “The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.” This provision will surely support e-management and e-governance.

Section 108, and the Rule 20 of the Companies (Management and Administration) Rules of 2014, emphasizes that every listed company or a moderately big company with at least 1000 shareholders, should utilise preferably the facility of voting electronically by the shareholders and members at the general meetings of the company, for passing any resolution (Ordinary/Special). Electronic Voting offers certain exclusive advantages to both the company and the shareholders, provided it is fully secured and unbiased. Some of the most significant and outstanding advantages of e-voting are -

1. It is Fast, accurate and Cost-Effective
2. It is fully authentic and reduces paperwork and eliminates the need of storing the physical ballot papers.
3. Quick and accurate voting and counting followed by declaration of results.
4. Increased efficiency and transparency
5. The system will enhance shareholders participation in the decision making process.

This is further facilitated by the fact that attendance at members’ meetings is usually very limited; individual or small investors may have neither the expertise nor the inclination to get involved. Geographical distances between their location and the meeting venue also proves to be a limitation. The online voting system will definitely enhance corporate governance and increase shareholders participation in the listed companies. E-voting towards e-governance is not only a move which will largely support green initiatives but will also increase transparency and enhance organizational effectiveness.

**Payment of Dividend** – Section 123(5) allows company to pay dividend by electronic transfer it states – ‘any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.’ Payment of dividend through electronic means will significantly reduce the cost and effort of paying dividend by way of issuing separate cheques or
warrants to individual shareholders, at the same time it will also ensure timely payment of dividend to investors.

**E-filing** - The Companies Act, 2013 contains provisions for e-filing and online payment of fees by companies. Section 20 (1) provides that – “A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed: Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode. Section 20 (2) further provides – “for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.”

E-filing will definitely curb corruption and red tape, automate the process of filings, reduce paperwork, and facilitate handling of documents in an organized and secure manner.

**CONCLUSION**

Corporations manage a nation’s human and financial capital. Good corporate governance is therefore synonymous with national prosperity. Good corporate governance is based on management integrity, shareholder democracy, and a legal system where just equitable laws are applied impartially. E-governance is definitely essential for Indian corporate especially in present-day world of cut-throat competition, and ever-increasing need for greater transparency and accountability. Considering these highly significant facts, the Government of India has rightly promulgated the provisions for e-governance in the corporate sector of the country, in its latest Companies Act of 2013. Rules, regulations, laws, concepts, structures, processes, best practices, and the most progressive use of technology will ensure transparency and accountability. The paperless initiative measures will support companies to comply with their obligation in a timely and organized manner. Good regulations will enable shareholders to exercise their rights and responsibilities without burdensome and impractical rules and procedures.

The Act definitely encourages shareholders as well as directors to participate in the activities in the company such as meetings. E-voting towards e-governance is not only a move which will largely support green initiatives but will increase transparency and enhance organizational effectiveness. This is a more efficient, convenient and cost effective method. By increasing transparency w.r.t. books & accounts and opening channels of communication by use of information technology; Act has definitely tried to create a bridge between shareholders, stakeholders, and board of directors. Provisions contained in companies Act 2013 w.r.t. corporate governance/E-governance will surely strengthen the structure of company law as a whole; and enable Indian corporates in attracting foreign investments which will help the country in attaining economic prosperity.

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