Government to adopt artificial intelligence for strengthening corporate governance

Praggya Guptaa

The last decade has seen various corporate meltdowns due to governance failure, which has affected the trust of the investors, market, and economy. *Governance Now* organised a panel discussion and interaction with stakeholders on 'Strengthening Corporate Governance for Sustainable Economic Growth'. The challenges and issues that good corporate governance practices are facing and how regulations can reassure the effective implementation of policies and laws were discussed in the conclave.

Addressing the professionals, PP Chaudhary, union minister of state for corporate affairs, said that corporate governance is a prerequisite for the sustainable growth of the country. "If we divide entire things of the corporate governance, we can't make it limited only to the Companies Act and in relation to the government. The Companies Act provides corporate governance not only by the government but it also provides all the prerequisites and mandatory condition precedent for all stakeholders which may be shareholders, or a director or board or promoter or government, so all are involved in corporate governance."

Apart from the shareholders, directors and promoters, the role of auditors, CA, CS, and cost accountants is also paramount in corporate governance, he emphasized. We see only a few people who are unethical can create havoc in corporate governance. He also highlighted the need to strengthen the system at all levels, from government to professionals and promoters' level. He informed the audience that the government is seriously considering and working on it. "Certainly at the relevant time, we will take into consideration all the valuable inputs of all the stakeholders," he said. Highlighting the various initiatives taken by the government, he said, "We have also established the SFIO, but governing the large number of companies (as of now 11,74,000 companies) is a herculean task." He highlighted how the government is keen to adopt latest technologies to improve the situation. "With the advent of technology, the government is seriously considering how to use Artificial Intelligence. The government is also working on the ease of documentation," he said. "I was discussing with the ministry officers how we can change the forms, so that the information required in the physical form should also be available in the e-form. How we can develop the system that can flag and identify the infirmity in the form with respect to what type of information and whether it is referable to particular provision or not? Certainly, government will use all the available technologies," he added.

PP Chaudhary, union minister of state for corporate affairs addressing the stakeholders

Further to improve corporate governance, the government is working on how to strengthen all the stakeholders including professional bodies by giving more teeth to them. "We have also constituted the high-power committee, which will work on how to strengthen the professional bodies, how we can acquire the auditing standard competitive to international standards. Also how to improve the MCA-21 to make it compatible with artificial intelligence to change some of the forms and how we can merge so many forms together for ease of doing business," he said.

Recently, for the very first time a drive was taken up by the government with respect to shell companies. "Although the expression 'shell companies' has not been defined anywhere but we keep that some of the companies which we have struck off may be shell companies and most of the companies are non-compliant companies, but the data mining is going on. So 2,26,000 companies have already been struck off. Some more companies are in the pipeline and government will certainly take strict action against those who have committed illegality," he said.

Recently various provisions have been amended and new provisions were added in the Companies Act 2013 to Companies Act 2017, and it provided the ease of doing business. Most of the provisions were added after receiving inputs from various stakeholders. "So far the protection of minority shareholders' interest is concerned and we stand at number four in the world but as far as other parameters are concerned we are far below. No doubt we are improving but still, the scope is there, and the government is seriously working towards that," he said. Recently, the insolvency bankruptcy code was amended. Earlier, the benefits were taken by the promoters, so necessary amendments have been made. How the person who has ruined the company can be allowed to participate in the bid proceedings? It should be a lesson if they do this job then they are not permitted to participate in purchasing that company. It has been welcomed by the businesses. We need radical redesigning with respect to the strengthening of various types of professionals, stakeholders, and we would like to make complete checks and balances in the system. ■

Panel Discussion

Improving corporate governance for sustainable economic growth

CS Makarand Lele, President, The Institute of Company Secretaries of India

Corporate Governance is a kind of attitude. It is about values, following the ethics, and caring for all stakeholders around you. At ICSI we have a lot of studies and research going on to comply various provision of Companies Act 2013. In last two-three years, we have been thinking beyond the corporate world in the governance. We feel that governance can be brought in anything. We have introduced a panchayat governance code, and we are talking to 50,000 panchayats in India. They are carrying a large stakeholder so why should not we adopt and follow the large principle of Corporate Governance here also? We have also identified an anti-bribery code and are urging the companies to follow this code. We have recently modified our syllabus in which the focus area is governance, risk management and compliances.

We will also find the areas where we need to plug the gap. Recently, we identified the area LODR compliances vis-a-vis the secretarial audit, which applies to all listed entities. The kind of reporting happening is not satisfactory to the regulators. So we have formed a committee and drafted a report and presented to SEBI to share a sort of compliance audit on LODR where you can expect ICSI members to play a role and can ensure compliances and give comfort to the regulators. The report on bankers governance is also submitted to the Reserve Bank of India. If you have followed Corporate Governance and complied with the laws then present that properly and get it verified by the third party auditors and then you can proudly say you have achieved the governance entirely.

CMA Sanjay Gupta, President, The Institute of Cost Accountants of India

In one of the conferences, the deliberation openly said that after three years there would be no accounting because of the way automation, blockchain, and the systems are coming up.

Earlier, investments used to be made on the reliance on balance sheets and annual reports. However, today that reliance is limited to only 20-30%. So the world is already moving to integrated reporting where there are other parameters also that counts such as social capital, human capital and natural capital.

We could see in most of the scams entire reliance was on financial reporting only. We could see that on March 31 everything is true and fair, but within 3-6 months ₹500 crore-1,000 crore defaults happened. Something somewhere was wrong. What we do is focus more on quantity than quality driven analysis. Because financial numbers today will not give you anything it can be done by just the software also.

Forensics is going to be the future. But what is needed today is whatever we are doing in auditing we have to be very ethical, and when we are giving our reports (cost audit or management) to the promoters, it will not just talk about numbers but will also give you the core areas to look at. So these are the kinds of indicators with the professionals have to come up with. The moment these kinds of reports start giving this kind of results with this kind of data, compliance will not be a bad word. Today nobody likes auditors. Despite so many audits why is this happening?

When the board talks about the integrated reporting, they will start evaluating all six capitals; the governance definitely will become the much better word. In the recent cases, systems were not integrated into totality. There are gaps in between. Even if there is no reconciliation between RBI, PNB and other bankers so the moment it starts, the moment forensic audits, automation, come to totality, possibly things will be much better. We need to help the industry grow.

Hemant Sahai, Managing Director, HSA Legal

I realized corporate governance has two broad parts. One is objective and other is subjective. As far as the objective is concerned the regulator, SEBI or other regulators, try and reduce the whole process to objective criteria as possible and they keep modulating and modifying regulations trying to achieve that. There are some merits in that, but also balance needs to be drawn. Because sometimes cost of compliance and cost of meeting regulatory oversight can become deterrent to fresh investment depending on the sector. So in the US, we see the full swing at the other end of the spectrum. The cost of compliance including the cost of lawyers has become huge; as a result of that fresh investor will not put the fresh capital in the US.

There are specific provisions in the Companies Act which are laudatory, but they need to be enforced. Some of them are yet to be notified, for example, section 177, which talks about audit committees and constitution of audit committees. Fortunately, that applies even to deemed public companies. Now when you look closer, some amendments have been made recently, but they are yet to be notified. Some of these things need perhaps more alacrity rather than lethargy in terms of notifying those sections after amendment. From a governance perspective, as a general regulator of corporate affairs they need to be sensitive and dynamic. This is because some of these regulations will require constant modulation. Some regulators like SEBI have always been ahead of the curve. Some other regulators tend to follow rather than lead the changes. In a nutshell, I think regulations will become more sophisticated in India as we progress. There is an inflexion point we are going through right now where markets are getting open up to international investors, both debt and equity side and therefore while some of them can be mandated through fiat, a lot of the companies will realise the value of creating structures and systems which will attract the sophisticated international investor. I am quite bullish and optimistic about future. As far as the regulations are concerned they are emerging rapidly and in the right direction.

Shriram Subramanian, Founder and MD, InGovern

Trust is the basic element of corporate governance. We need investors to place trust in financial numbers, companies and promoters. As long as trust is there everything else (fairness and transparency) follows.

Last month, we consulted two companies in the Middle East. The Middle Eastern countries today have adopted Corporate Governance standards, which are almost equal to that of India. These Middle Eastern countries are run by Sultans, where the law of the land is the word of the king. But when oil prices dropped to 30 dollars, all the countries were spooked, and their entire dreamworld collapsed overnight. Then they realized and understood the need for a better code to sustain their economic growth and attract foreign capital. Overnight all of them changed. Of course, being an open economy, over the time has gone into transition. We have also had our situations, for example, the Harshad Mehta case led to the genesis of SEBI. So like this many moments of stress have come. The same way moments of stress lead us to have better governance standards and start adopting better governance practices.

Dr Niraj Gupta, Head - School of Corporate Governance & Public Policy, Indian Institute of Corporate Affairs

Corporate governance is important not only for a particular company, but it is important for the entire nation. Three key points can help us in identifying the gaps and filling them; that are governance, compliance, and what is more important today that's how the sustainability factor of the economy comes in the picture is managing risks. So the biggest gap I see is that we look at all these aspects in a segregated manner, as an independent function. So an integrated view of the three issues – good corporate governance, a good strategy and framework for managing the risk and very stringent mechanism for ensuring the compliance. If we see compliance, we do not achieve 52 percent of the companies level whereas international benchmark goes up 97 percent. Now the question comes: are we doing even the tick-box approach properly? We need to train professionals and institutions in a manner so that a good level of compliance could be attained.

As far as governance aspect concerned, a board is considered the brain of the company. We interestingly do some research, like on how much time boards dedicate to engaging with strategic issues. For boards in India (depending on whether it is public sector or private sector), the time ranges upto 3-5 hours. Agenda items are 50-60 (routine and strategic) that we are engaging or participating in strategic agenda. Corporate governance is not a Companies Act 2013. We expect everything should come up from the regulators and they are coming fast and are responsive. But the question is, are companies equally responsive?

The Companies Act says companies need to have a risk management policy so in many companies risk function is attached to the legal function or compliance function but a very few companies (especially with international orientation) considers the risk function as an independent function which gets a feed from legal and compliance both.

Narayan Shankar, Senior Vice President and Compliance Officer, Mahindra & Mahindra Ltd

We have to shift from the ease of doing business to the ease of doing ethical business. Both of them can easily sync together. e-Voting has brought a major change in the corporate governance scenario. Before e-voting, you had a handful of people coming to the AGM voting, in a way the promoters want. Earlier, the voting was less than 1 percent (excluding promoters), but after e-voting, it has become 80 percent of the capital in top Sensex companies. Promoters never thought the resolutions could be defeated. In fact, Tata Motors was the first company which gave the shock to India Inc of showing resolution of even companies can be defeated. Today you have investors, and they are also getting information disseminated through the proxy advisors. What happened to Tata Motors can happen to any of our company. It is a wake-up call to all. AGMs are getting tame affairs nowadays. It all depends how you disclose the matter in your annual report, in your notice, in your explanatory statement. Investors across the world can see how have you disclosed and based on your disclosure they are going to seal the fate of your resolution.

However, in terms of gaps and expectations, there are two expectations from the investors. They expect as far as corporates are concerned are the topmost disclosure. Second is if the number you are churning out in your financial report are reliable? The third is if there is related party transaction let it not recourse at arm's length. If you have managerial remuneration, then have checks and balances. Broadly from the company's side what do we expect from the investors, let them have an objective voting policy and let them vote according to the policy, so the transparency is both from the investor as well as the company.

Gaps start happening when promotors or their family interest alignment with the company goes wrong, when the interest of the family becomes more important than the company, or if the remuneration is much beyond or if related party transaction is not in an ordinary course.

Dr Sandeep Goel, Professor - Finance, MDI Gurgaon (Forensic Accounting and Corporate Governance)

Corporate governance is not a onetime mandate; it is a process which needs to be defined, developed, fine-tuned keeping global changes in view. Forensic accounting has become more relevant post demonetization and post GST in India. It might be new in India but if you look at global reforms and land map, this has become the mandate for companies coming out of various economic growth systems. In 2015 McKinsey came out with a survey across the nation asking shareholders or investors if they would like to pay a premium for the companies which are better governed. To which 80-85 percent of respondents said that they do not want to invest in a profitable company rather they would invest in a company which would last. A company might be profitable for a short-term but the company which is sustainable profits would automatically follow. That's the reason when we are talking about corporate governance for sustainable economic growth we are looking for sustainability. We are looking for a value system which is based on quality that can be in terms of profit or value system or processes. We are not just looking for compliance but spirit. ■

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