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### **Practical Problems, Suggestions and Relaxation with respect to Corporate governance of IT companies in India during COVID-19**

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#### **Abstract:**

Although the degree and effect may differ with the size and nature of a business, the main objective of this study is to investigate the risks and practical problems confronted by Indian IT companies and its effects and relaxations introduced in relation to Corporate Governance (India) during COVID-19 outbreak. Exploratory research is utilized to examine the above mentioned issues and risks.

#### **Findings:**

Both people and huge businesses have been affected globally by the coronavirus Pandemic. The intrinsic commercial risks have been accompanied with the Pandemic, affecting business activities because of interruptions to Internal Control, Meetings, Capital Allocation, Liquidity, Dividend, Disclosure and Risk Management. Hybrid AGMs should be permitted by the controllers thereby, compelling companies to venture up on building their technology infrastructure. Share buyback programs during such monetary emergencies need to be reviewed by the management. Executive Pay affairs should be taken care by the compensation council. Under Companies Act, 2013 and LLP Act, 2008 the government provided relief measures and with provisions of the SEBI (LODR) Regulations, 2015 relaxations from compliance were given. Introduction of schemes of Companies Fresh Start and revised LLP Settlement and contribution for COVID-19 being considered as qualified CSR activity is a significant initiative, to give a chance to make good any filing related defaults and make a new beginning on fresh start.

#### **1. Introduction**

India is having an extensive effect for companies across various sectors due to the spread of COVID-19 and the following countrywide lockdown. The 'tech' companies, while managing employees and business continuity face some common problems; in this case, I want to address those problems. Different nations, including India are trying hard to contain the spread of the virus since 11 March 2020, when the World Health Organization pronounced (COVID-19) as a pandemic. It's likely that the Covid danger will at last blur, as the Ebola, Zika, and Severe Acute Respiratory Syndrome (SARS) infections have as of late. The significant effect of the actions being taken across the globe to contain the spread of the COVID-19 is making various issues for organizations. In consistence of Order of The National Disaster Management Authority (NDMA) led by Hon'ble Prime Minister Shri Narendra Modi, Ministry of Home Affairs (MHA) has given an Order dated 24.03.2020 under Section 10(2)(1) of the Disaster Management Act, pronounced lockdown for a time of

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21 days with effect from 25.03.2020 to take compelling measures for assuring social distancing to control the spread of the virus. Presently in India we need to think long term - to get the soundness of the economy, the feasibility of organizations, and the livelihoods of individuals. The Indian Governments and Regulators have passed enactment presenting a series of measures including those applicable to keeping up the good corporate governance of organizations.

The setting of goals of the organization and controlling the methods for accomplishing those goals and performance monitoring is done through the structure given by corporate governance. Gottfried and Donahue (2020) expressed that as the worldwide COVID-19 health crisis proceeds, the financial outcome is rising too and it would prompt operational obstacles and movements in planning and procedure at the same time significantly, setting out open doors for keen financial backers.

Board of directors are answerable for the governance of their companies. Jensen, M.C. (2001) expected that there ought to be a system of implementing services that support the linkages between institutions and their stakeholders through effective communication. Similarly, Davies, M. A. (2012) in his exploration determined that it is the obligation of the board to affirm a better quality of performance and responsibility by participating in practices that encourage great governance.

Consequently, political and administrative reforms in numerous nations could directly shape what is to be known as good governance, particularly in developing nations. Adherence to governance norms brings easiness and reduce risk in such institutions through the help of standard procedures, stakeholders and government.

They are likewise to guarantee that foundations convey their obligations in a socially dependable manner, on the whole territories of their business activity (Grayson, D. furthermore, Hodges, A., 2017). As we realize that the core of corporate governance is transparency, revelation, responsibility and honesty. Great corporate governance practice is a significant component in attracting investors, and investors are willing to pay a premium of up to 25% for a very much governed firm (Barton, D. furthermore, Wong, S.C., 2004). Todorovic (2013) has derived that execution of CG practices like revelation, protection of investors rights and equivalent treatment of investors can guarantee safeguard investments. Drobetz, W. (2004) investigated that Good CG leads to enhanced valuation, higher profit, higher sales growth and decreased capital expenditure.

Running business amidst a pandemic is an extraordinary test for business pioneers around the world. The limitations forced by numerous legislatures everywhere in the world in dealing with the COVID-19 outburst raise critical difficulties in maintaining corporate governance. During COVID-19 outburst, the number of viable risks and problems that the corporate organizations faced and its implications and relaxations corresponding to Corporate Governance is covered by this exploratory study. With the nature and size of the business, although, their degree and effect will naturally differ, the methodology used in regard of these issues could be significant for the specific business to flourish or continue this new reality.

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### **2. Covid-19 and Corporate Governance of IT Companies in India**

#### **2.1 Practical Problems and Suggestions**

The speedy occurrence of the Covid presents a shocking health emergency that the world is struggling with. Notwithstanding the human effect, there is additionally a huge business sway being felt universally. As infections know no boundaries, the effects will keep on spreading. As a matter of fact, 94% of the Fortune 1000 is as of now seeing COVID-19 interruptions.

#### **2.2 Privacy and Data Protection**

As COVID-19 proceeds to quickly spread across nations, organizations are taking a look at settling on significant choices to guarantee the security of their employees and safety of the work environment. Information assumes an essential part in these choices; nonetheless, it is additionally critical to offset it with a person's entitlement to protection while discovering arrangements in the midst of this pandemic. For instance, we have seen organizations mentioning their workers, experts, guests and so forth to give their health related data which includes exposure to corona virus infected person or area, travel history, clinical reports, etc. I want to address a portion of the regular inquiries below, in this regard.

#### **2.3 Corporate Meetings**

Indian Government's mandate of a 21-day lockdown and social isolation to keep away from mass get-togethers are probably going to affect Quorum Provision mentioned under area 103 of Companies Act, 2013 (i.e. the base number of members needed for a valid meeting). Also, it would affect arrangement of Meetings to be specifically General Meeting, B.O.D or Manager Meetings, AGM and NCLT Convened meetings. As in-person organization meetings will to a great extent presently won't be possible. Henceforth, Small and Retail investors are probably going to be the most overstated when contrasted with Institutional investors as they have many options to engage with organization management. The disappointment of not holding investor meeting will probably prompt a postponement in dire deals and to the intermission or delaying of AGMs. That implies it would lead to important effect on business. However, the board of directors can take every important decision concerning with the working of an organization, a bunch of crucial decisions require investors' endorsement including appointment/re-appointment of directors, undertaking related party and intercompany transactions surpassing regulatory edges, issue of securities, schemes of arrangement, and so on. Not getting investor endorsement in time may lead non fulfillment with the provisions of law or possible even unsuccessful transactions. The lone choice for investor endorsement is through the postal ballot (for example Casting a ballot by post or through any Electronic mode).

The significant issue identified with Closing of Financial Year. The law state that AGMs are needed to be held in a half year of the end of the financial year subject to time between two successive AGMs can't surpass 15 months. Financial year for most organizations in India

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closes on March 31, except if the organizations have a different relaxation of the rules from the Ministry of Corporate Affairs to have one more year end keeping in attention that MNCs commonly close their monetary year on December 31 to line up with worldwide practices. As a significant number of organizations have effectively conveyed notices for investor meetings where the meetings were prior planned to be held during the lockdown stage, are being deferred. However most Indian organizations do exclude such a provision in their Articles of Association (AoA), during such unanticipated occasions, it is by and large feasible for a board to choose to delay a meeting. The AOAs normally permit meetings to be dismissed either by the chairperson with the assent of a quorate meeting or by the chairperson singularly if no minimum number of directors is available. Organizations can likewise go with deferring in holding their AGMs. The COVID-19 pandemic may fundamentally decrease openness, communication and tangible meetings to carry out statutory audits. It might postpone to Audit-related activities, including the inability to organize on-site audits and assessments, and practicing the applicable access rights.

### **2.4 Online or mixed AGMs**

Amid the procedures presented by the Government, certain principles present the opportunities for the meetings of organizations to be held only online without requiring the actual presence of their members and can consequently direct such meetings in a way that ensures the health and security of their investors and board members. It is recommended that organizations should permit investors to take an interest by means of a two-way teleconferencing or webex. Presently, the main 100 organizations by market capitalization are needed to have a webcast of their AGMs, yet this is a one-way transmission. However, the Ministry of Corporate Affairs has permitted board meetings and board committee meetings to be held through video conferencing, it has not continued this to investor meetings. The Companies Act, 2013, requires actual majority to comprise a legitimate meeting. The controllers (Mainly SEBI and Ministry of Corporate Affairs (MCA) need to permit organizations to do as such. The other alternative would be for organizations to organize a hybrid AGM.

### **2.5 Work from Home**

At the starting phases of the COVID-19 outburst, the Central and State governments released few notices encouraging businesses to give permission for work from home to their employees as much as possible. All 'businesses and private establishments' compulsorily should be shut down during the lockdown from the time a 21-day cross country lockdown was ordered by the Ministry of Home Affairs(MHA) from 25 March 2020 to 14 April 2020, with the exception of foundations considered to carry on fundamental administrations or as advised by the legislatures. The obligation to give their employees a choice to work from home is on most of the organizations due to the above order.

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The Department of Telecommunication has released a notification dated 13<sup>th</sup> March 2020, providing relaxation in the Other Service Provider(OSP) Terms to facilitate WFH for OSP employees.

### **2.6 Business Continuity and Recovery:**

During the COVID19 outburst, a large portion of organizations are confronting challenges to keep up business continuity. Majority of organizations would be having problems from supplier's end. Thus, it would lead Business Distress/Financial Suffering of Companies. Mehran, H., Morrison, A.D. and Shapiro, J.D., (2011) inferred that If a corporate fizzle, the outcome can be limited to the stakeholders. In the event that a bank fizzles, the effect can spread quickly through to other banks with possibly severe penalties for the whole monetary system and the macroeconomy. Besides, in the event that a bank collapse then it doesn't collapse alone, it additionally removes the long lasting investment and reserve funds of its account holders as well. The disappointment of banks can make tremendous outcomes to financial system of the nation worried overall. In this way, Business continuity is a greatest issue that corporate is confronting.

### **2.7 Dividend and Liquidity Management:**

Presently, additional issue would be related to dividend, liquidity and working capital necessities during COVID19 flare-ups and lockdown. Directors need to consider not just the situation of the organization when a dividend is announced yet in addition when it is made. Where the organization is no more in a situation to pay a dividend, it is supported that directors should pause any dividend and convey as suitable to the market. Liquidity and working capital necessities may normally rooted in stress at such time and importance should be given to cashflow management, banking plans and refinancing along with accessible help/incentives including moratoria.

### **2.8 Capital Allocation and Maintenance:**

Deciding where to focus company's funding and capital distribution is one of the focal points of corporate governance. Instead of investing in their business or strengthening their balance sheets, in recent years we have seen organizations utilizing more cash to re-purchase stock. The amount being used to re-buy stocks is half of all the free cash flow, in the S&P 500. The utilization of backup capital being raised through deeply discounted rights issues or placing is going to be the most probable result for the troubled organizations, even though there is an assumption that specific sectors will get government help. In these conditions, We would like that the organizations, taking these conditions into consideration, to give the option to investors to buy offers before others on the market and honour their pre-emptive rights and thereby limiting the dilution of existing investors. India has seen that couple of corporates are investigating share repurchase. Fairfax sponsored Quesq Corp is

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investigating share buyback on 25th March, 2020. Sterlite Technologies supports buyback of offers up to Rs145 crores on dated 24th March, 2020.

### **2.9 Disclosure:**

Disclosure which is a fundamental element of CG is the establishment of any structure of CG Bhasin, M. (2012). organizations listed on a regulated market which are dependent upon different laws and guidelines expected to securing shareholders protection, sufficient revelation immediately of data which ought to be disclosed known to the public should remain a main priority. Proactive boards of such organizations should in this manner keep surveying the circumstance, speaking with controllers and giving public disclosure where it is required or justified as new data continually arises. Indeed, Ministry of Corporate Affairs (MCA) conveyed another basic online structure w.e.f. 23rd March, 2020 centring an absolutely certainty exposure and building measure to survey the status of the organizations to manage COVID-19 risk in India.

### **2.10 Executive Pay and Incentives**

- Shareholders won't by and large approve of executives getting pays and incentives following a year where investors have missed out, despite the fact that the effects of the infection are non-controllable from Corporate closures.
- Compensation boards (A fundamental act of CG) may make changes in accordance with plans to allow rewards to executives who display exceptional ability.
- As an outcome of the virus and of related government measures, some organizations are seeing a remarkable demand for their services like Pharma. Hence, considering this windfall effect remuneration committees should be prepared to change pay downwards if proper.

### **2.11 Risk Management and Internal Control**

Corporate governance additionally includes risk management; thus, an important official order of the management is to guarantee that risk isn't diversified or spread to the hindrance of the institution. Movement of staff and the unavailability of some business areas may prompt risk management measures and inward controls getting unrealistic or in any case loose.

### **3. Relaxation given to the companies and Initiatives during COVID-19 relating to Corporate Governance:**

#### **3.1 Special Measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 with regard to COVID-19 eruption, dated 24th March, 2020**

- During a moratorium period, additional fees shall not be charged for late filing.



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- Till next two quarters, BOD meetings stands extended by a period of 60 days i.e. till 30th September, as per section 173 of Companies Act, 2013.
- The Companies (Auditor's Report) Order, 2020 instead of being appropriate from the financial year 2019-20, will be made pertinent from financial year 2020-21.
- An extra time of 180 additional days is permitted to file declaration for Commencement of Business for recently incorporate organizations.

### **3.2 Utilizing CSR funds for COVID-19**

It is explained by the Ministry of Corporate Affairs, that expenditure of CSR funds for COVID-19 is qualified CSR action. Funds might be spent for different exercises identified with COVID-19 under item nos. (I) and (XII) of Schedule VII identifying with promotion of medical services, including preventive health care and disinfection, and, disaster management. Furthermore, according to General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are wide based and might be interpreted generously for this reason. It is additionally explained that any commitment made to the PM CARES Fund will qualify as CSR expenditure under the Companies Act, 2013.

### **3.3 Relaxations from compliance with specific provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) because of the COVID - 19 infection pandemic**

- Relaxation of publication of advertisements in the newspapers under Regulation 47 gets exempted till 15th May, 2020.
- Compliance Certificate under Reg. 40(9) from Practicing Company Secretary on appropriate issue of share authentications gets extended till may 31st, 2020.
- Relaxation of holding AGM and meeting of Board/Committee(s) as prior mentioned.
- Extension of deadline for filings under Regulation 7(3) with one month, Regulation 13(3) connected with Statement of Investors Complaint for 3 weeks, Regulation 24A concerning with Secretarial Compliance report for 1 month, Regulation 27(2) identifying with Corporate Governance report for 1 month, Regulation 31 relating to Shareholding Pattern for 3 weeks, Regulation 33 concerning with Annual Financial Results for 1 month.
- Relaxation of publication of advertisements in the newspapers under Regulation 47 gets relieved till fifteenth May, 2020.

### **3.4 "Organizations Fresh Start Scheme, 2020" and "updated LLP Settlement Scheme, 2020"**

In compatibility of the Government of India's endeavour's to provide relief to honest organizations and Limited Liability Partnerships (LLPs) in the wake of COVID 19, the Ministry of Corporate Affairs, has presented the "Companies Fresh Start Scheme, 2020" and re-examined the "LLP Settlement Scheme, 2020" which is in vogue to give a first of its kind

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freedom to both organizations and LLPs to make great any filing related defaults, regardless of term of default, and make a new beginning as a completely compliant entity.

#### 4. Conclusion

The performance of IT companies during COVID is good as compared to other sector as there is an option of work from home. This research discloses that quick outburst of the Covid is primarily a human misfortune. As virus has no boundaries, the effects will continue spreading. Indeed, 94% of the Fortune 1000 is now seeing COVID-19 interruptions. Coronavirus pandemic come with intrinsic business risks affecting on business activities because of disturbances to Meetings (AGM, EGM, BOD Meeting and NCLT assembled gatherings), Administration, Business Continuity, Dividend and Liquidity management, Disclosure, Capital Allocation and Maintenance and in conclusion Risk Management and Internal Control. Among the measures presented by the Government, certain rules introduce the opportunities for the meetings of organizations to be held solely in computerized structure without requiring the actual presence of their members and will therefore be able to conduct meetings in a way that secures the health and safety of their investors and board members. Controllers ought to permit organizations to direct hybrid AGM (for example Virtual Meeting). Coronavirus has constrained Companies to venture up on building their technology infrastructure.

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