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CORPORATE GOVERNANCE IN INFRASTRUCTURE INDUSTRY

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Abstract

Our paper investigates the influence of corporate governance on the performance of the organizations in the infrastructure industry. Corporate governance is the set of policies processes and laws affecting the way a company is administered or controlled. It aims to allocate resources in a way that maximizes value for the company's stakeholders (shareholder, investor, employees, customers, supplier and community at large) and evaluates their decisions on transparency, inclusivity, equity, and responsibility. Different countries around the world follow different models of corporate governance. The difference in these models of corporate governance lies in the variety of capitalism in which they are embedded. India practices both Anglo-American model and business house models in the governance and hence this has led to a change in the Indian companies from family-owned and controlled structures to professionalize companies. Corporate governance on the internal structure and rules of board of directors, rules for information disclosure to its shareholder, compensation to the marketing person and control the management. An organization's performance is directly correlated to the effectiveness of the governance applied by the corporation. This relationship between governance and performance is affected by numerous factors. The study is an attempt to understand and analyze the challenges faced by infrastructure organizations such as vulnerability to corruption frauds and mismanagement, political dynamics, lack of transparency and unstable regulatory frameworks in corporate governance.

Key Words: Corporate Governance, Infrastructure, Organization, Corruption, Transparency

Introduction

High-quality infrastructure is a prerequisite to support the development process and delivery of efficient public services. The growth of an economy is judged by its infrastructural presence in transport, education, health, and culture respectively. In a developing country infrastructure supporting the development process is of paramount importance. The infrastructure projects are highly capital intensive. Raising money for the same is challenging tasks. The provision of raising money by using the national levers to access international markets is at risk due to a lack of public governance mechanisms. The budgetary governance should be systematic and follow a standard framework. Poor governance leads to failure due to the timeframe, budget, and delivery objective.

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Today there is an enormous desire in Indian companies to get listed on the International Stock Exchanges which is creating a desperate need for more focused corporate governance. It is described as a set of rules, practices and processes, principles of behaviours through which a company is directed. It refers to the accountability of the Board of Directors to all of the company's stakeholders i.e. shareholders, employees, suppliers, customers and society in general (OECD, 2015).

The Cadbury Committee (U.K) quote "Corporate governance is the system by which companies are directed and controlled". Claessens in 2006 defines corporate governance as the rules by which the companies are operating, deriving from such sources as the legal system, the judicial system, financial markets, and factor (labour) markets. It is defined by Young and Thyil in 2014 as the strategic plans and decisions established by the Board of Directors with the primary goal to increase the organisation's goal and performance and more specifically the financial results.Filatotchav, Toms & Wright (2006) describe it as organisational managerial engagements in strategic decisions' and governance that have a significant impact on marketing performance. Therefore, an adjustment in the organisation's marketing performance is directly interrelated to the effective governance applied by organisations and corporations.

There are many factors that create the need for corporate governance like the large and increasing number of shareholders, changing ownership structure, increased number and chances of corporate scams, increasing expectations of the society, hostile takeovers which imply the need for efficient code of conduct and globalization.

The fundamental principles of corporate governance are transparency, accountability, and independence. Transparency implies an accurate, adequate and timely disclosure of important information about the operating and financial results of the company to the stakeholders. The Board of Directors, the Chairman and the Chief Executive of the company hold accountability towards the best interest of the company and its stakeholders for the use of company's resources. The top management of the corporation holds independence so that it can take all corporate decisions based on business prudence. In case the top management does not withhold independent decision making, good corporate governance will merely be a dream.

Different models of Corporate Governance

Anglo SaxonModel

The shareholder plays an important role in this model. They have a key role in decision making. The members of the board and the director are elected by them. Britain, Canada, America, Australia, and Commonwealthcountries follow the above-given model. India also follows this model. The ownership and management are different in the companies governed by this model. Professionals are hired to run the companies. The directors elected are rarely independent. The banks and other institutional investors are of prime importance because they are the portfolio investors. The disclosure norms are strictly followed. And insider trading is considered a gross offence.

German Model

This is a kind of European Model. Workers are considered as a key stakeholder and they are considered as participants in the decision making of the company. They follow a two-tier board model. The supervisory board and a board of management are the two tiers of the model. The supervisory board is elected by the shareholders. Employees elect their members for the supervisory board. This supervisory board is generally half or one-third of the board. The supervisory board furthers appoints the board of management and govern their performance. The supervisory board has every right to dismiss and reform the board.

Japanese model

In the Japanese Model, banks play an important role as the money is raised through banks and other financial institutions. So,the management of the company is also governed by them. The shareholders and banks appoint the board along with their president. Recognition of lenders in the decision-making process is one of the striking features of these models.

Overview of the Infrastructure sector

The infrastructure sector acts as a key driver for the Indian economy. This sector is highly responsible for India's overall development and enjoys intense focus from the Government of India for attracting both domestic and international players. The GOI is initiating policies to enjoy the time-bound creation of world-class infrastructure in the country. India's difficult business environment has resulted in the diminishing enthusiasm of many foreign investors. They complain about the unstable and unpredictable regulations, bureaucratic delays, corruption, and governments' stalled attempts at reform. Corruption forms a major deterrent for hesitation among investors to invest in India. India ranks 95th out of 182 countries in Transparency International Corruption Index. To prosper the Indian economy there is a need forthe enhancement of governance system, transparency, and accountability,there is a need to combat corruption and enhance infrastructure. In the coming years, sectors like power transmission, roads and highways, and renewable energy will drive huge investments. There has been a significant allocation towards the infrastructure sector in the 12th 5-year plan which expects to create a huge demand for construction equipment in India. A large number of private players are entering the business through Public-Private Partnership (PPP).

Challenges in Infrastructure operations in India

The infrastructure industry in India is witnessing great progress in recent years. Economic development in India has immense opportunities for growth in this enormous industry. For the next five years, a proposed investment of INR 56,00,000 crores is anticipated for future growth in several areas. There are great challenges that need to be tackled efficiently in order to turn the infrastructure dream into reality.

List of some of the major challenges which need immediate attention:

- Substantial shortfall in planned investments along with many announced but uncompleted projects: The Survey stressed the need to fill the infrastructure investment gap by financing from private investment, institutions dedicated for infrastructure financing like National Infrastructure Investment Bank (NIIB) and also global institutions like Asian Infrastructure Investment Bank (AIIB) and New Development Bank (erstwhileBRICS Bank).

- Delayed implementation and execution and difficult land-acquisition and environmental clearances along with coordination lag between various government agencies: The major steps are undertaken to ensure completion of central sector infrastructure projects without time and cost over-runs include: rigorous project appraisal, Online Computerised Monitoring System(OCMS) for better monitoring and setting up of revised cost committees in the ministries for fixation of responsibility for time and cost over-runs.

- Improper structuring of projects and the absence of a proper dispute redressal mechanism
- Implementation of a technically sound and well-equipped regulator and cautious lending approach by banks for infrastructure sectors as banks have restricted exposure in the sector there is difficulty in raising funds.

- There must be constant improvising in the current way of doing business along with the Technical and Financial Viability of the projects.

- Lack of a suitable avenue to invest for the funds from abroad:

- Need for improved transparency and proper assigning of roles to avoid unnecessary litigation.

Solving all such problems at an initial stage will be a unique and worthy way of emulation across the globe.

SEBI guidelines on corporate governance:

1. Board of Directors: The board of directors for any corporation must comprise of an optimum number of executive and non-executive directors. In the board of directors, the board must comprise of atleast one-third independent directors. In the case of non-executive chairman whereas in the case of executive chairman, the board must comprise atleast half of the board's strength as independent directors.

2. Audit Committee: Every corporation must have an independent audit committee, the chairman of which will be an independent director. The presence of the chairman is mandated in all annual general meetings to answer shareholders' queries. The audit committee possesses certain powers such as to investigate any activity within its terms of reference, to seek information from any employee, to obtain legal or other professional advice from outsiders and to secure the attendance of outsiders with relevant expertise. The audit committee oversees the company's overall financial reporting process and the disclosure of its financial information to ensure its credibility and sufficiency.

3. Remuneration of directors: The company must disclose the remuneration package of all the directors i.e., salary, benefits, bonus, pension, etc in the annual report of corporate governance. Also, details of fixed components and performance-linked incentives along with criteria must be disclosed for the directors.

4. Management: The annual report for the shareholders must consist of a Management Discussion and Analysis report containing discussion on the opportunities and threats, risks and concerns, financial performance with respect to operational performance and material development in human resources.

5. Compliance: The organization must get an endorsement from the inspectors in regards to the consistency of states of corporate governance which will be added with the Directors' Report sent to investors and stock trade.

LITERATURE REVIEW

Corporate governance can be depicted as a framework of tenets, the standard of practice rehearses and forms by which an organization is coordinated and controlled.Claessens (2006) defines "corporate governance as the rules under which companies are operating, deriving from such sources as the legal system, the judicial system, financial markets, and factor (labor) markets"(Mugova & Sachs, 2016). Corporate governance can be characterized as the key plans and choices set up by the governing body with an essential objective to expand the association generally execution and all the more explicitly the money related outcomes (Young &Thyil, 2014).

All hierarchical administrative commitment to key choices' and administration significantly affect the advertising execution. Along these lines, a change in the association' showcasing execution is specifically interrelated to the viability of the administration connected by associations and enterprises (Filatotchev, Toms, & Wright, 2006).The corporate governance set tenets and guidelines for all the hierarchical incorporated exercises so as to ensure institutional execution, client's productivity, gainfulness, and profitable administration quality; such exercises incorporate advertising, advancement, fund, financial matters, and bookkeeping. Consequently, corporate administration might be characterized as the execution of a guaranteed and approved examination on the corporate's money related records and administrative strategies (Claessens &Yurtoglu, 2013).(Fawal & Mawlawi, 2018)

The Anglo-American model of Corporate Governance is a liberal model of governance in the corporate body. Adapted from and influenced by the systems of governance followed in the USA and UK, this system of governance provides primary importance to shareholders' interest and as a result, the role played by banking and financial institutions in the governance of an enterprise is drastically reduced. The protection of shareholder interest is the chief characteristic of the Anglo-American model of governance and the fundamental principle behind its existence for global acceptance proves to be the most favourable model of governance in a corporate body.(Nehaa, 2009)

The expanded catalyst to create a foundation in the nation is drawing in both residential and global players. The private segment is rising as a key player crosswise over different foundation fragments, going from streets and interchanges to power and airplane terminals. So as to help the development of structures in the nation, the Government of India has chosen to think of a solitary window leeway office to accord fast endorsement of development projects. The Government is additionally dealing with improving vitality foundation in the nation and speculation openings worth US$ 300 billion will be accessible in the area in the coming 10 years.(IBEF, 2018)

Foundation Industry in India has enlisted incredible advancement in the ongoing years. Production of the framework is fundamental for India's financial advancement as the open doors for future development are gigantic in the nation.Here is a list of some of the major challenges which need the immediate attention of all the players:

There is a huge deficiency in arranged ventures. A few of the reported ventures are yet to be finished, deferral in Implementation and execution, not ready to get Land-securing and ecological clearances. Absence of coordination between different government organizations. The careful methodology by Banks in loaning to foundation segments. There must be an upgrade of the present method for working together in this circle and a superior viable and critical thinking approach, Evaluating the challenges in raising assets, as banks have limited introduction to the segment and investment from abroad come up short on an appropriate road to contribute (Infrabazaar)

This paper states the need and the standards of Corporate Governance. The requirement for corporate governance emerges due to the accompanying reasons, for example, widespread investors, changing possession structure, corporate tricks, threatening take-overs and so on. A better level of corporate governance is essential for infrastructure businesses, given the scale of investments, the lack of alternative uses of assets once created, and the urgent need to develop such assets. Whether publicly listed or not, overall corporate governance standards need to improve to create a more robust ecosystem.(Mukherjee, 2018)

Sheets of executives can be depended upon to play out their observing job successfully just on the off chance that they are given all the essential data in regards to their issues of the organization with the end goal that they can make educated choices. In any case, a noteworthy imperative on this check is that the accessibility of data and the degree thereof are constrained by insiders, for example, administrators or advertisers, who may give deficient data or in such structure and way that inspires their ideal result from board basic leadership. (Umakanth, 2011). To advance great corporate administration, SEBI (Securities and Exchange Board of India) comprised a council on corporate administration under the chairmanship of Kumar Mangalam Birla. Based on the suggestions of this advisory group, SEBI issued certain rules on corporate administration; which are required to be joined in the posting understanding between the organization and the stock trade. (Talathi)

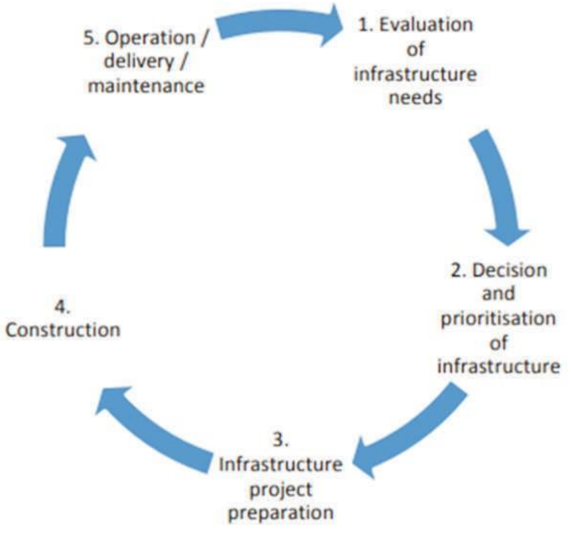

Figure 1 Life cycle of Infrastructural Development((OECD, 2015)

Discussion

Competent corporate governance shall be transparent, inclusive, equitable and responsible. For such effective corporate governance in infrastructure sector certain measures must be undertaken:

Control Measures

Internal Mechanism:

The objective of an effective mechanism includes smooth operations, clearly defined reporting lines and performance measurement systems.These measures monitor the progress and activities of the organization and involve in taking corrective actions when a business goes off-track. The internal mechanisms include independent audits, the structure of the board of directors into levels of responsibility, segregation of control and policy development.

Infrastructure projects must be awarded and management strictly by using procedural rationality which makes rational choices among alternatives on a logical and conceptual level.

External Mechanism:

These control measures are controlled by outsiders and they serve the objectives of entities such as regulators, governments, trade unions, and financial institutions. These measures are necessary for adequate debt management and legal compliance. The imposition of these external mechanismsis in the form of union contracts or regulatory guidelines. Industry associations may suggest guidelines for best practices as an external measure.

The regulatory bodies functional under the infrastructure sector should ensure compliance and cost overruns in public-funded projects.

Independent Audit:

In an independent external audit, the company's financial statements form a part of the overall corporate governance structure. Both the internal and external stakeholders are served at the same time with the audit of the company's financial statement. It helps the investors, employees, shareholders, and regulators to determine the financial performance of the company. With the help of the audit, all the stakeholders get the view of the organization's internal working mechanisms and future outlook.

The appointment and performance of the auditing body should be monitored to ensure no misappropriation of shown funds takes place. Independent directors should be vigilant and should be held accountable for any kind of malpractices.

Preventive Measures

Risk assessment:

Accessing the risk of fraud in an organization becomes important as it points out the deficiencies that exist in internal control. Brainstorming can be used for accessing fraud risks which may help the organization to be defrauded.

Fraud prevention techniques:

Effective fraud prevention techniques require strong internal controls. Having strong ethics and HR policies help in forming a strong internal system. Exposure of the employees to the HR policies of the organisation helps in the ethical conduct of the employee. Certain functional level controls are necessary for fraud prevention. They exist at the lower levels within an organisation.

The functional level control includes segregation of duties, access control, and account reconciliations. Segregating duties helps in reducing the likelihood of occurrence of fraud as it makes it difficult for a fraudster to act alone when committing fraud.Access control helps in preventing fraudulent activities as it denies certain employees from having the opportunity to defraud the organisation. It can be physical as well as logical. Physical controls include having a security guard and locking sensitive areas of the building such as filing cabinet or safe etc. Whereas in logical access control certain information systems are restricted to only the necessary individuals.

Fraud detection techniques:

It serves the dual purpose of deterring fraud and thus also be a fraud prevention technique. The availability of fraud hotline for employees encourages them to report unethical behaviour. It helps in opening lines of communication with upper management. Frauds may also be detected during analytical reviews and account reconciliations.An internal audit also assists in fraud detection.

Reporting and investigation processes:

In this process evaluation of fraud allegations and the implementation of corrective actions take place. It is important to have appropriate corrective action for a fraud that has occurred. Swift and decisive actions must be taken to instil a message among the employees that the organisation will not tolerate unethical behaviour.

CONCLUSION

Corporate governance both in regard to strategy and practice made a quantum jump in India. On the approach side, India has a standout amongst the best structures for corporate governance. On the training side, there is an extraordinary improvement in the principles of announcing, divulgence and consistency of organizations. Given more than one hundred thousand organizations enrolled, of which around 5000 are recorded, observing corporate administration in Indian organizations is a strongly difficult undertaking.

India experiences a picture of being a troublesome nation in which to contribute and to dobusiness. Postponements in endorsements from various offices at the national and state levels, clashing choices at various dimensions frequently slow down ventures. Onceactive, the permit adds to the challenges of concentrating on running a focused endeavour.

The present condition has been one of the significant foundations for speculation choices being made for different nations. Poor governance and defilement undermine the economies of creating nations just as the World Bank's central mission of neediness decrease and excessively influence poor people. The World Bank has a guardian commitment to guarantee its own investors and partners that reserves are utilized for their expected purposes thus looks to fortify administration and hostile to debasement measures in its borrower nations. Though infrastructure is a booming industry, Indian organizations experience the inability to perform well because of issues in proper corporate governance measures and lack of communication between interdependent regulatory bodies causing delays and distortion in the project activities. These lags in the corporate governance systems give rise to issues such as corruption, frauds, and mismanagement due to lack of transparency and an unstable regulatory framework.

Appropriate coordination must be established by government agencies to develop a smooth flow of information. There should be the implementation of clear and single window documentation to attract more foreign funds to the industry. Strict monitoring of projects. To avoid unnecessary litigation cases the organisation must have a proper and fully functional dispute redressal committee or grievance cell to handle cases regarding frauds, mismanagement or any harassment.

Limitations of Research

Empirical feedback from the CEO and Board of Directors to understand the existing prevention and risk assessment mechanism will give more in-depth knowledge about the corporate governance practices in the infrastructure sector.

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