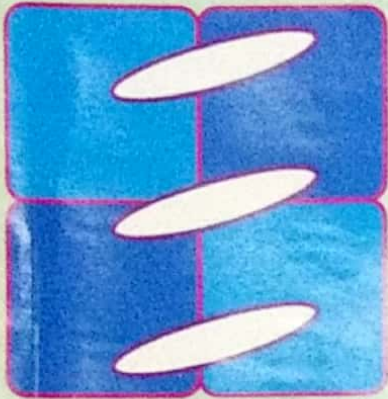


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## CHANGING FOCUS OF CORPORATE GOVERNANCE- BOARD EFFECTIVENESS IN INDIAN CORPORATE

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### ABSTRACT

*In the current scenario the focus of Corporate Governance drastically changed and in which part of Corporate Governance – Board Effectiveness played an important role. This research paper indicates board effectiveness is related with Board Evaluation. The concept of Board Evaluation in India is at a nascent stage. It has been brought to SEBI's notice by market participants that as the number of listed entities in India is very large, many of them may not have much clarity on the process of Board Evaluation and hence, may need further guidance. Accordingly SEBI has come out with Guidance Note on Board Evaluation. Therefore, Board Effectiveness can be related with Board Evaluation. The further details of this topic are outlined and examined in this research paper.*

**Key Words:** Board Effectiveness, Corporate Governance, SEBI, Board Evaluation.

### INTRODUCTION:

*“A carefully crafted, conceptually rigorous purpose of governance forms the heart of board effectiveness.”*

To take note this sentence explained the importance of board effectiveness in corporate sector. Earlier the requirements as to corporate governance were mainly contained in the erstwhile Clause 49 of the Listing Agreement. However, now, they are part of the statute and indeed they are not only elaborate and detailed but overlapping too. They are now contained in the Companies Act, 2013 (the Act), and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (SEBI LODR).

The Securities and Exchange Board of India (SEBI) vide its circular no SEBI/HO/CFD/CMD/CIR/P/2017/004 dated 5<sup>th</sup> January, 2017 has issued guidance note on how companies should evaluate the performance of their directors to ensure objectivity and improve corporate governance. According to the guidelines, companies should consider whether discussions among board members are healthy and free-flowing, whether critical and dissenting suggestions are welcome and whether conflicts of interest are monitored and dealt with SEBI. The note is essentially intended as guidance note and does not constitute new rules. It is to educate the listed entities and their boards of directors about various aspects involved in the board evaluation process and improve their overall performance as well as corporate governance standards to benefit all stakeholders. Companies should check if they are allowing independent directors to perform their roles effectively and whether directors are allowed to exercise their own judgment and voice their opinions freely.

SEBI's Guidance Note on Board Evaluation is not intended to act as interpretation of the law, but serves as a great and much needed road map for implementation of several provisions in the Companies Act, 2013, and SEBI regulations on corporate governance. Auditors have guidance from the Institute of Chartered Accountants in respect of several areas of their work and increasingly Company Secretaries have from their alma mater. However, the Board of Directors and individual directors generally find their role, obligations and even liabilities having increased

manifold but yet do not have detailed formal guidance as to how they are to carry on their work. This knowledge gap is felt even more, since most directors may not be well conversant with the law. The Guidance Note, to reiterate, does not have a binding effect but diligent compliance in letter and spirit can be a good defense in case of action against independent directors by regulators. Such action can be expected to be manifold considering that corporate governance is now a law with severe consequences for violations. Indeed, it is possible.

#### REVIEW OF LITERATURE:

In India, Board evaluation was a non-mandatory requirement under Clause 49 of the Listing Agreement, prior to the announcement of the Securities and Exchange Board of India (SEBI) following its Board meeting on 13<sup>th</sup> February, 2014, to amend Clause 49.

**SEBI'S GUIDANCE NOTE ON BOARD EVALUATION:** India has moved recently from a voluntary Board evaluation under Clause 49 of the Listing Agreement (SEBI) and Corporate Governance Voluntary Guidelines of MCA (2009) to a mandatory Board evaluation under Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

The Companies Act, 2013 and SEBI LODR provide for several mandatory provisions for Board Evaluation on who is to be evaluated, who is to evaluate such persons, disclosure requirements, etc.

An Article published in **CHARTERED SECRETARY (VOL 47)** indicates that how effectively the roles of Board of Directors have been changed. The Board can clearly articulate and communicate the Company's strategic plan and the Board is knowledgeable about the competitive factors affecting the Company. And also competency of directors, experience of directors, mix of qualifications, and diversity in Board under various parameters are to be taken into consideration in structuring the Board. Further the appointment to the Board of Directors is clear and transparent and includes provisions to consider diversity of thought, experience, knowledge, perspective and gender in the Board of Directors.

**KPMG: VOICES ON REPORTING (MAY 2017):** considering guidance note on board evaluation. The Companies Act, 2013 and the Listing Regulations contain broad provisions on Board of Directors' (BOD) evaluation i.e. evaluation of the performance of:

- The Board as a whole
- Individual directors (including independent directors and chairperson) and
- Various committee of the Board.

After reviewing above literature I have analyzed various annual report of different segment to indicate and evaluate the board effectiveness through board evaluation. So contain below:

#### ANNUAL REPORT (2016-17): KALPATARU POWER TRANSMISSION LIMITED

The Board has prepared performance evaluation policy for evaluating performance of Individual Directors including Chairman of the Company, Board as a whole and its Committees, thereof. The criteria of the Board evaluation includes Board composition, talents, experience and knowledge, presentations and discussions at the Board Meeting, frequency of the Board Meeting, feedback and suggestion given to the management, participation in the discussion etc.

Pursuant to the provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Board has carried out the annual performance evaluation of its own, the Non Independent and Independent Directors individually as well as the evaluation of the working of various Committees at their Meetings in the manner prescribed in the Performance Evaluation Policy. The evaluation of the Independent Directors were made on the basis of attendance at the Meeting of the Board, Committee and General Meeting, knowledge about the latest development, Contribution in the Board development processes, participation in

the Meeting and events outside Board Meetings, expression of views in best interest of the Company, assistance given in protecting the legitimate interests of the Company, employees and investors, extending individual proficiency and experience for effective functioning and operation of the Company etc.

#### **ANNUAL REPORT (2016-17): IDFC BANK LIMITED**

The Companies Act, 2013 and Listing Regulations contain broad provisions on Board evaluation i.e. evaluation of the performance of:

- a. Board as a Whole
- b. Individual Directors (including Independent Directors and Chairperson)
- c. Various Committees of the Board

SEBI vide its circular no SEBI/HO/CFD/CMD/CIR/P/2017/004 dated January 05, 2017 issued a Guidance Note on Board evaluation in order to guide listed entities by elaborating various aspects of Board evaluation that may help them to improve the evaluation process, derive the best possible benefit and achieve the objective of the entire process.

#### **ANNUAL REPORT (2016-17): ASHAPURA INTIMATES FASHION LIMITED**

During the year, the board conducted a formal annual evaluation mechanism for evaluating mechanism for evaluating its performance as well as that of its committee and individual Directors, including the chairman of the Board. The performance of the committee was evaluated by the board seeking inputs from the committee members.

The directors were satisfied with evaluation results, which reflect the overall engagement of the board and its committee with the company.

#### **ANNUAL REPORT (2016-17): MAHASAGAR TRAVELS LIMITED**

The board of directors has carried out an annual evaluation of its own performance, board committees and individual directors pursuant to the provisions of the Act and the corporate governance requirements as prescribed by Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations 2015 ("SEBI Listing Regulations")

The performance of the Board was evaluated by the Board after seeking inputs from all the directors on the basis of the criteria such as the Board composition and structure, effectiveness of board processes, information and functioning, etc.

The performance of the committees was evaluated by the board after seeking inputs from the committee members on the basis of the criteria such as the composition of committees, effectiveness of committee meetings, etc.

The Board and the Remuneration & Nomination Committee reviewed the performance of the individual directors on the basis of the criteria such as the contribution of the individual director to the Board and committee meetings like preparedness on the issues to be discussed, meaningful and constructive contribution and inputs in meetings, etc. In addition, the Chairman was also evaluated on the key aspects of his role.

In a separate meeting of independent Directors, performance of non-independent directors, performance of the board as a whole and performance of the Chairman was evaluated, taking into account the views of executive directors and non-executive directors. The same was discussed in the board meeting that followed the meeting of the independent Directors, at which the performance of the Board, its committees and individual directors was also discussed.

#### **ANNUAL REPORT (2016-17): DYNAMIC INDUSTRIES LIMITED**

Based on the criteria laid down in the Policy for evaluation of Board and Independent Directors, the Board carried out the annual performance evaluation of Board Committees and the Independent Directors, whereas at a separate meeting, Independent Directors evaluated the performance of Executive Directors, Board as a whole and of the Chairman. Nomination and Remuneration Committee also evaluated individual directors' performance.

**TITLE OF THE STUDY:**

After going through existing literature in the library, researchers has selected topic as under:

“Changing Focus Of Corporate Governance- Board Effectiveness In Indian Corporate”

**OBJECTIVES OF THE STUDY:**

The main objectives of the study are stated below:

- 1) To evaluate the effectiveness of Board of Directors as per Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (SEBI LODR).
- 2) To have a glimpse on SEBI's Guidance Note on Board Evaluation
- 3) To indicate the focus of corporate governance has changed for example, Board Effectiveness.
- 4) To view Board effectiveness can be related with board evaluation.

**GAP ANALYSIS:**

On the basis of evaluation of literature and objectives. researcher found the gap in this area. After considering a few research have been taken for the study, researcher is found following gap:

1. As per the Companies Act, 2013 (the Act), and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (SEBI LODR), the role of Board of Directors have been significantly changed and yet it was not studied.
2. Review of Board evaluation is not properly done yet so far. To taking note this point review may be done based on feedback from management, Board members, Chairpersons, external assessors and various stakeholders.

**RESEARCH METHODOLOGY:**

Researcher analyzed all the data based on secondary data and based on that data analysis and evaluation can be done in an effective manner. So main source of this research paper is annual report of different segment wise Indian corporate and after considering this authenticated annual report researcher done all the analysis of board effectiveness.

**FINDINGS OF THE STUDY:**

The following findings are:

- 1) Board evaluation is related with board effectiveness.
- 2) As per Section 134(3)(P) of Companies Act,2013 in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- 3) As per Schedule IV (Code for Independent Directors), the performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the directors being evaluated.
- 4) As per 8(4) of the Companies (Accounts) Rules, 2014 every listed company and every other public company having such paid-up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of Directors, a statement indicating the manner in which formal evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- 5) Competency of directors, experience of directors, mix of qualifications, and diversity in Board under various parameters are to be taken into consideration in structuring the Board.

**LIMITATIONS OF THE STUDY:**

The following limitations are:

- 1) Limitation of secondary data will remain with the study of the Board effectiveness in corporate sector.

- 2) The study was limited to reflect the effectiveness of Board of Directors in corporate sector.
- 3) Perception and understanding of directors may be different.

#### CONCLUSION:

To sum up, concluding whole things with that board effectiveness played significant roles in board evaluation. SEBI's Guidance note on Board Evaluation is also explaining the significant importance of board effectiveness and board evaluation. So board evaluation is related with board effectiveness and further we can say that-

*"For good corporate governance Board effectiveness is primarily requirements"*

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