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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE IMPACT OF SHAREHOLDER ACTIVISM ON CORPORATE GOVERNANCE PRACTICES WITHIN THE INDIAN CONTEXT.

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ABSTRACT

Within the field of corporate law, shareholder activism captures the way that shareholders are increasingly influencing corporate strategy, governance, and decision-making in businesses. The abstract delves into the complex aspects of shareholder activism, including its processes, ramifications, and effects on corporate governance dynamics. The proactive is shown by shareholder activism. Participation of shareholders in promoting internal firm improvements. It takes many forms: proxy fights, shareholder motions, holding discussions with management, or even going to court to change business practices and rules.

The reasons behind shareholder activism are diverse and can include campaigning for greater transparency, upholding environmental or social responsibility, increasing shareholder value, or questioning executive compensation arrangements. Whether they are hedge funds, individual shareholders, or institutional investors, activists frequently use their holdings to express worries or prompt strategic changes in businesses. The ramifications of this activity for corporate governance are profound. It encourages more accountability and transparency by forcing businesses to respond more quickly to shareholder concerns.

But, because management and shareholders may have different ideas about the course and priorities of the business, this could also result in conflicts. The legal and regulatory environments are crucial in determining how shareholder activism develops. The tactics and efficacy of activist interventions

are influenced by shareholder rights legislation, proxy procedures, and disclosure obligations. As a result of shareholder activism, courts frequently end up arbitrating conflicts and establishing precedents that clarify the parameters of influence from shareholders. Beyond specific businesses, investor perceptions, market dynamics, and corporate best practices are all impacted by shareholder activism. In order to achieve a balance between the interests of shareholders and more general company goals, it forces firms to review their governance frameworks and stakeholder engagement tactics. In order to manage the changing landscape of corporate governance, shareholder rights, and the interaction between them, stakeholders companies, investors, regulators, and legal practitioners alike must comprehend the subtleties of shareholder activism in corporate law.

Key word- Shareholder activism, corporate governance, Indian Context, Shareholder democracy, corporate laws.

INTRODUCTION

In Indian corporate governance, shareholder activism has become a powerful force that is changing the dynamic between shareholders and firms. This developing pattern signifies an active approach from investors with the goal of influencing business strategies, governance procedures, and general decision-making processes¹. India has seen a notable increase in shareholder activism in recent years, which is indicative of a greater focus on the rights and responsibilities of shareholders. In order to advocate for changes within corporations, activism can take many different forms. Some examples of these include voting at shareholder meetings, filing resolutions, having discussions with management, and even bringing lawsuits. There is a broad range of problems that propel shareholder activism in India. Shareholders comprise activist funds, retail investors, and institutional investors. Investors frequently concentrate on matters like raising the bar for corporate governance, supporting transparency, questioning CEO remuneration packages, encouraging social or environmental responsibility, or trying to increase shareholder value².

Shareholder activism has brought about changes to the corporate governance landscape in India. Businesses are under growing pressure to implement more open procedures, fortify their governance

¹ N. R. Narayan Murthy Committee report on corporate governance. page no 1

² Shri Kumar Mangalam Birla Committee report on corporate governance.

structures, and be more sensitive to the worries of investors. The implementation of legislative reforms and amendments aimed at improving the alignment between business practices and shareholder interests has been sparked by activist initiatives.

The legislative structure in India that oversees shareholder rights and corporate governance is crucial in determining the parameters of shareholder activism. Shareholder activism techniques are greatly impacted by provisions pertaining to voting rights, transparency obligations, board structures, and shareholder meetings.

In India, the effects of shareholder activism go beyond specific businesses. It affects the dynamics of the market, moulds investor attitudes, and advances the of business best practices. Aiming for a harmonic balance between shareholder interests and larger corporate objectives, organisations are encouraged to review their governance structures and stakeholder engagement initiatives as shareholders grow increasingly vocal and involved. Comprehending the intricacies of shareholder activism within the framework of Indian corporate governance is vital for all relevant parties involved, including firms, investors, regulators, and legal experts, as it signifies the dynamic and ever-changing dynamic between shareholders and corporations. It emphasises how important investor activism is in encouraging ethical business practices and influencing the environment of corporate national governance³.

RESEARCH QUESTIONS

1. What are the primary motivations driving shareholder activism within the realm of corporate law?
2. How do different forms of shareholder activism, such as proxy fights and shareholder motions, impact corporate governance dynamics?
3. What are the key legal and regulatory factors shaping the landscape of shareholder activism?
4. How do conflicts between management and shareholders manifest in the context of shareholder activism, and what strategies are employed to resolve them?

³ Jayanti Sarkar "Corporate governance in India "

Subhash Chandra Das "Corporate governance in India An evaluation "19(PHI, New Delhi, Third edn2012)

5. What are the broader implications of shareholder activism on corporate governance practices, investor perceptions, and market dynamics?

RESEARCH OBJECTIVES

1. To investigate the diverse motivations behind shareholder activism, including the pursuit of greater transparency, environmental and social responsibility, and enhancement of shareholder value.
2. To analyze the various forms of shareholder activism and their effects on corporate governance mechanisms, accountability, and transparency.
3. To examine the legal and regulatory frameworks governing shareholder activism, including shareholder rights legislation, proxy procedures, and disclosure obligations.
4. To explore the nature of conflicts arising between management and shareholders as a result of activist interventions and identify mechanisms for conflict resolution.
5. To assess the broader impacts of shareholder activism on corporate governance practices, investor sentiments, market dynamics, and corporate best practices.

POSITIVE STIMULANT FOR THE BUSINESS'S GROWTH.

Shareholder activists produced value when a publicly traded subsidiary of a multinational corporation proposed to sell one of its business divisions to a separate parent company. Since the proposal involved linked parties, a special majority of the parent and subsidiary shares were necessary. Nevertheless, the concept was turned down due to a poor evaluation. The amended plan raised the valuation to the shareholders' advantage. A shareholder may keep company stock for a number of years if they wish to guarantee a long-term return on their investment. One way to do this is to ensure that the management gives careful consideration to achieving a balance and maximising long-term returns on these shareholders' investments. By enhancing the company's performance, activist investors hope to optimise their return on investment. The organization's long-term value is increased as a result of encouraging competent and efficient management.

As a way to maximise earnings through the fair and responsible use of the company's resources, activist shareholders are in favour of cost reduction⁴.

⁴ CM Madtha "Shareholders' activism: An Emerging Paradigm "181(IUP,Tripura,firstedn 2008)

There is a growing number of stockholders expressing their thoughts and worries. As an illustration, 25% of the financial conglomerate's shareholders cast ballots against the chairman's hold-out. Due to his service on the boards of eight other firms, which may have made it more difficult for him to do his job well, a proxy advisory firm encouraged investors to vote against the motion to reappoint the non-executive chairman of the company. Shareholder activism began at a well-known Indian automaker when several of the public expressed dissatisfaction with the company's acquisition of cars from a connected party. The corporation had to modify the terms of the deal to gain approval because of strong resistance from activist shareholders.

LEGAL STRUCTURE

The Companies Act of 2013 is a key driver of shareholder participation in company decision-making, urging shareholders to cease being passive. This section will look at Chapter VII of the Act, which primarily addresses management and administration, to delineate the legal entitlements accorded to shareholders and to encourage and fortify their participation in board proceedings.⁵

In order to give shareholders the opportunity to learn about the company's activities and to exercise their voting rights, Sections 96 and 100 outline the procedures for calling and holding annual general meetings ("AGM") and extraordinary general meetings ("EGM"). The National Company Law Tribunal calls meetings, which are detailed in Sections 97 and 98⁶.

The acceptance of audited financial statements, directors' and auditors' reports, dividend declarations, appointment of auditors and directors, and approval of their compensation are among the annual results that must be discussed at mandatory AGMs. However, in order to get shareholder approval for corporate measures, the Board may call EGMs under Section 100(2) on its own initiative or at the request of any member under Section 100(1). Requisitioners have the power to call their own EGMs in the event that the Board fails to follow the process specified in Section 100(2). Within the member's right to convene a general meeting by sending out a requisition notice was upheld in the case of LIC of India v. Escorts Ltd. under the prior Act. In one of the most recent cases of shareholder activism—which will be looked at in the section that follows—this authority was also maintained. Unless the

⁵ Corporate Governance - Definition, Scope and Benefits available at <https://www.managementstudyguide.com/corporate-governance.htm> visited on 20Mar2024

⁶ The companies act 2013.

written approval of the shareholders owning at least 95% of the share capital has been acquired to call a meeting on a shorter notice, Section 101 requires a corporation to give 21 days' clear notice in writing for a general meeting.

This is done to make sure that the shareholders are informed about the meeting's agenda and have adequate time to attend. Furthermore, the provision guarantees that in order to keep shareholders informed about the company's governance, appropriate notice is given to them regarding the date, location, and agenda of the general meeting. To accomplish this, section 102 and this clause cooperate. As part of the "bundle of rights" that come with owning shares in a firm, investors are given the capacity to exercise their "corporate franchise" and take part in corporate decision-making. Shareholders are not obliged to exercise their right to vote in any specific way or at all.

The provision of electronic voting under Section 108 of the Act and technological improvements have allowed the authorities to make corporate voting accessible.

2015 companies (management & administration) rules, rule 20.

Thus, shareholder engagement has been secured by the statute throughout the Act by requiring the recommended motion to be placed before the shareholders and authorising it only through the passage of a special resolution at the general meeting. Investor approvals are required in certain situations, such as when it comes to Section 188, which deals with plans of arrangement or compromise for mergers, and Section 152, which deals with related party transactions. Furthermore, combinations under section 230 and so on.

PROMINENT CASES OF ACTIVIST SHAREHOLDERS

This section will focus on India Inc.'s remarkable experiences with shareholder activism in recent years. Investors who are activists have taken over the firms they invest in, and thus, shareholders have rejected board recommendations to limit related party transactions, add independent directors, and raise the pay of top executives. These steps have made it easier to map out how the corporate landscape is changing.

1. The Vote Of Shareholders On Executive Pay

Tata Motors Ltd. requested approval from its shareholders to pay executive salaries because the

remuneration for three of the company's senior executives exceeded the allotted amounts payment as early as 2014. The Board rescinded the proposal because they could not muster the required 75% of votes to approve a special resolution endorsing the higher pay. However, the investors rejected the plan when the Board brought it to their attention in January 2015. This was one of the earliest instances of shareholder activism, though, since investors contended that the previous motion was out of step with the company's success. The promoters and management of many companies faced opposition from shareholders who voted against board measures aimed at raising executive compensation. As an illustration, in August. In 2021, Siddhartha Lal, the managing director of Eicher Motor Ltd., received a 10% compensation rise; nevertheless, the firm failed to obtain the requisite votes for the special resolution to be approved. In a vote held in September 2021, shareholders rejected the plan to increase the pay of promoter and directors Shobha and Ekta Kapoor of the Balaji Telefilms group company⁷.

2. The Right Of Shareholders To Nominate Directors

Beyond demands for increased executive compensation, there is a growing tide of shareholder activism. Furthermore, in 2021, a lawsuit involving activist shareholders was hauled in front of the judge. The parties involved were Zed Entertainment Enterprises Private Limited, a listed firm, and Invesco Developing Markets Fund, an institutional shareholder of Zed. A requisition notice issued by Invesco demanding the dismissal of three Zed directors and the nomination of six new independent directors to the Zed board marked the beginning of the dispute. Zed then declined to arrange a meeting of shareholders. In a petition submitted to the NCLT pursuant to section 98 of the Act, Invesco replied by asking that the meeting that was requested be called.⁸

They simultaneously filed a motion for an injunction to prevent Invesco from executing the request with the Bombay High Court, and the judge approved it. The Division Bench overturned the Learned Single Judge's ruling, arguing that the phrase "valid requisition" under Section 100(4) should be read literally and restricted to "numerical and procedural compliances," omitting any reference to the requisition's "object."

⁷ S.K Sahary, Company Law, Universal Law Publication, Fifth Edition (2008)

⁸ Dr. G.K Kapoor and Dr. Sanjay Dhamija, Company Law, a comparative text book on company law 2013, Taxmann Publications (P) Ltd. New Delhi, Twenty first Edition (2018).

The relevant part of the previous 1956 Act served as the foundation for the Supreme Court's decision in LIC v. Escorts³¹, upon which the Court founded its own decision. It came to the conclusion that breaking with the precedent set in this case would support the Board's restrictive policies, which would be detrimental to shareholder democracy. Zee was consequently compelled to call the meeting nomination of Yasir Al-Rumayyan, a governor of Saudi Arabia's Public Investment Fund and chairman of the kingdom's oil company Aramco, as an independent director on the board of Reliance Industries.⁹ On the recommendation of the proxy consulting firm Glass Lewis, the California State Teachers Retirement System, an institutional shareholder in Reliance Industries, initially objected to the appointment. According to the Public Investment Fund (PAF), which contended that there was a potential conflict of interest, Aramco was negotiating to buy a 20% share in Reliance's oil-to-chemical business, and the PAF held substantial investments in two other Reliance group companies. However, the appointment was later approved.

3. Say In Related Party Transaction By Shareholders

Investors who are actively participating have also been closely monitoring the transactions between the company's associated parties. For instance, Raymond Ltd. suggested a related party transaction in 2017 before its annual general meeting (AGM), comprising of a discounted property sale of the corporation to its controlling shareholders. Even though a tiny portion of the overall shareholding opposed the motion, it was lost because promoters and other controlling shareholders are not allowed to vote in related party transactions.¹⁰

4. Instances Where Shareholder Activism Failed

Boards do not always comply with the requests of activist shareholders, notwithstanding instances in which they have succeeded. Comparable to Eicher Motor Ltd.'s situation. The management teams of Hero MotoCorp Ltd., Bajaj Auto Ltd., and Balkrishna Industries Ltd. encountered difficulties when their chairmen's remuneration recommendations were turned down by minority shareholders. However, unlike Eicher Motor Ltd., the other firms' resolutions pertaining to the remuneration that their chairmen would receive were conventional in character, requiring only a simple majority of 50%.

⁹ Kailash Rai, Company Law, Allahabad, Allahabad Law Publication, Eleventh Edition (2009), reprint in 2011.

¹⁰ Dr. N.V Paranjape, Company Law, Central Law Publication, Allahabad, Seventh Edition (2015).

As a result, the management's resolutions were approved despite the objections of minority shareholders, thanks to larger promoter stakes.¹¹

TYPES OF SHAREHOLDER ACTIVISM ¹²

Encouraging shareholder activism can lead to better corporate governance practices and more value added by companies. There are numerous approaches.

Because shareholders who engage in activist investment have access to a range of tools for influencing the company's choices. Among the main types of shareholder activism are the following:

1. Proxy Contests

A proxy contest is held when an activist shareholder nominates candidates to succeed departing board members. Taking over the company or making an application. A proxy war aims to achieve two key objectives: it puts pressure on the board and management to change their plans or policies.

2. Shareholder resolution

Shareholder resolutions are recommendations made by shareholders during a shareholder meeting. These resolutions might cover a variety of subjects, such as the choice of concerns about executive compensation, social and environmental issues, independent directors, and other business-related matters

3. Litigation

Shareholders have the right to sue the business or its management for violating securities laws or fiduciary duty breaches.

4. Engagement with Management

Shareholders can correspond with the company's management via letters, meetings, or other channels to express their concerns or suggestions and communication.

¹¹ Subhash Chandra Das, Corporate Governance in India, New Delhi, PHI Learning Private Limited, 3rd Edition (2012).

¹² Jayanti and Subrata Sarkar, Corporate Governance in India, New Delhi, Sage Publications India Pvt. Ltd., 1st Edition (2012).

5. Media campaigns

Media activism is a tool that activist shareholders can use to highlight their issues and worries and to put pressure on the board and management to take action. These diverse kinds of shareholder activism require a range of instruments, strategies, and methods. While some forms of activism are more aggressive, others are more cooperative and seek to build a relationship with the company's management.

Furthermore, activist shareholders can achieve their objectives by using multiple techniques at once. Apart from providing several benefits to companies and investors, shareholder activism has the potential to greatly enhance corporate governance protocols. But there are other limitations as well that need to be considered.

EFFECTS OF SHAREHOLDER ACTIVISM ON INDIAN CORPORATE GOVERNANCE

In 2018, the Kotak Committee, led by Mr. Uday Kotak, the managing director (MD) of Kotak Mahindra Bank, adopted the proposals. The committee's purpose was to suggest revisions to SEBI's 2015 LODR and the Companies Act of 2013. These documents had several errors that led to business scandals and frauds that seriously impeded the growth of the country's economy. The committee's two main objectives were to: a) focus on generating long-term value; and b) suitably protect shareholders' interests. Following committee recommendations, SEBI implemented the following changes:

Any information on the auditor's appointment or reappointment, the recommendation's foundation, the auditor's. At an annual general meeting (AGM), shareholders must be informed of the auditor's qualifications, the fees owed, and the reason behind their resignation. The shareholder must approve all related party transactions by a separate resolution if linked party shareholders do not participate in the voting process. Listing entities will not be able to pay other entities more than 2% of their aggregated turnovers without the consent of their shareholders. These recommendations for alterations to the listing agreement have been accepted by SEBI. Nonetheless, shareholder activism is unrestricted. There are none in India certain guidelines pertaining to "shareholder activism." Nonetheless, it is envisaged that greater shareholder participation will arise from the Covid-19

situation, which made virtual AGMs and EGMs possible.¹³

The impact and authority of activist shareholders on corporate governance procedures in India directors are principally in charge of managing the business's operations and making decisions within Indian law. Despite the fact that no third party is permitted to have any the ability to hold the board and management responsible for their actions gives shareholders the power to influence or meddle in a company's internal affairs. Because they were unhappy with the company's current sale process, two large shareholders of Fortis Healthcare Ltd., who held 12% of the company's shares, successfully removed a director from the board and installed three new independent directors in their place in May 2018.

One of the most recent instances of the function of shareholder activism is this episode. Given the increasing trend of shareholder activism, this case is significant because it demonstrates how shareholders can change the composition of the board.¹⁴

It directly affects the management of the business. In India, minority shareholders are subjected to terrible abuse and inadequate corporate governance. Because they lack the same exit strategy as shareholders of publicly traded companies in the event that they are unhappy with the way the company manages their money and shares, minority shareholders of close corporations—such as private companies or family-run businesses—are especially vulnerable to this. Consequently, minority shareholder rights are safeguarded by the Companies Act of 2013 and the previous Companies Act of 1956.¹⁵

In the event that minority shareholders and the company's management are shown to have mistreated them, they are entitled to remedies. Over 25% of a Minority shareholders hold the majority of the company's voting power and can influence a number of transactions that need special resolution approval. If investors see any instances of fraud, mismanagement, or oppression within the firm, they now have the opportunity to bring a "class-action suit" on the company's behalf before the National firm Law Tribunal (NCLT). In the 2019 lawsuit, the asset transfer of the Leela Hotels to Brookfield

¹³ Dr. Madan Pal Singh, *Company Law as an instrument for the protection of public interest*, Allahabad Law Agency, Faridabad, (2010)

¹⁴ A.K.Majumdar and Dr. G.K.Kapoor, *Company Law and Practice*, Taxmann Publications (P) L.t.d New Delhi (2001)

¹⁵ Id at 1

was opposed by ITC, a non-financial investor, and Life Insurance Corporation, a state-owned insurer.

In *J M Financial Asset vs. SEBI*,¹⁶ 2019 due to the fact that a few of the deal's shareholders were connected parties and couldn't cast their votes in support of the sale. It is evident that more shareholders are now certifying to their entitlements, even if this challenge and its appeal were turned down. In a share exchange programme that would exchange one share of Reliance Industries Limited (RIL) for four shares of Reliance Retail Ltd., a subsidiary of RIL that is not listed on the stock market, RIL issued shares of RIL to its owners. In December 2019, a mergers and acquisitions context was seen about this most recent shareholder campaign. Minority stockholders of Reliance Retail Ltd. are in danger.¹⁷

To bring legal action against the firm for not offering them an exit strategy, which would have forced RIL to remove the share swap program's requirement that investors take part in it or risk fines beginning in January 2020. These incidents show that shareholders are choosing to sell their shares in the contemporary corporate world in situations other than when the company is losing money as a result of unscrupulous board members or subpar management. Instead, they are making their rights known.

CONCLUSION

Finally, the emphasis on accountability, transparency, and ethical behaviour in corporate governance has resulted from shareholder action in India. Companies' approaches to overcoming obstacles, meeting stakeholder expectations, and pursuing ethical and sustainable business practices are all being shaped by its ongoing progress. The constant interaction between corporate governance and shareholder activism highlights the necessity for a well-balanced strategy that unites shareholder interests with the more general objectives of stakeholder wellbeing and sustainable value development. Justice is by nature just. Since shareholders are more of fair-weather allies than militant activists, shareholder oversight is difficult.¹⁸ Investors have the power to vote with their feet if they are dissatisfied with management, and even other investors often ignore legal procedures. But given

¹⁶ Avtar Singh, *Company Law*, Eastern Book Company publication, Sixteenth Edition (2015).

¹⁷ Everything You Need to Know About Shareholders' activism available at <https://www.insidesources.com/everything-need-know-shareholder-activism/> visited on 22mar2024

¹⁸ A Ramaiya, *Companies Act*, Wadhwa and Company Nagpur, 16th Edition (2004)

the current trends in policy that favour

In order to promote sound corporate governance, the establishment of independent directors is assisting in drawing attention to the function of the board of directors. Furthermore, banks and other financial organisations are still able to act as conscience keepers.

Fostering a culture of shareholder activism for better governance is a major responsibility of both investor protection organisations and proxy consulting businesses. Keep in mind that rights to governance will never truly be "rights."

SUGGESTIONS

The following ideas could be applied to shareholder activism in Indian corporate governance in an efficient and seamless manner:

1. Improve Openness and Disclosure

Encourage corporations to provide more thorough and transparent financial reports, executive pay, board composition, and procedures for making decisions. Encourage frequent and thorough reporting so that investors can make wise choices.

2. Put Long-Term Value Creation First

Promote a change in focus from immediate profits to long-term, sustainable value generation. Encourage tactics that put social responsibility, ethical behaviour, and environmental sustainability first, guaranteeing the long-term profitability of the business.

3. Have a constructive conversation

Stress the value of positive communication between the management of the company and its shareholders. Promote regular channels of communication that facilitate insightful conversations on performance indicators, governance procedures, and strategic direction.

4. Encourage independence and diversity on the board

Promote the appointment of diverse board members with a range of backgrounds, viewpoints, and levels of independence. Boost the nomination of directors from a variety of backgrounds in order to

promote a more inclusive procedure for making decisions.

5. Bolster governance frameworks

Advocate for more robust governance frameworks, such as risk management and independent audit committees, strong internal control systems and frameworks.

Make sure the business abides by the strictest corporate governance guidelines.

6. Put Stakeholder Interests First

Emphasise the significance of taking into account the interests of all parties involved, including the community, workers, and customers, in addition to shareholder interests. Promote policies that take into account the requirements of many stakeholders.

7. Exercise Your Right to Vote Sensibly

Urge shareholders to exercise their voting rights responsibly. In order to appropriately represent the concerns of shareholders, push for informed voting on important issues, resolutions, and nominations during shareholder meetings. Encourage Moral and Sustainable Behaviours promote the use of sustainable business practices and ethical business methods.

8. Activities involving social and environmental responsibility.

Increase Collective Impact: To increase impact, think about working with other investors or investor groups. Collaborative endeavours frequently result in more notable effects on governance protocols.

Take Advantage of Regulatory Support: Interact with regulatory agencies to push laws that uphold openness, shareholder rights, and ethical corporate governance. In order to effectively engage in shareholder activism in Indian corporate governance, one must take a strategic strategy that strikes a balance between immediate objectives and long-term sustainability, encourages open communication, develops transparency, and supports ethical business practices that benefit all parties involved.