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THE NEW ERA OF GROWTH IN INDIAN ECONOMY: REFORMATION THROUGH FOREIGN JOINT VENTURES AND ITS LEGAL STRATEGIES OVER CORPORATE FINANCE:

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ABSTRACT:

The Indian corporate governance scenario features twin structures of the regulatory frameworks created by the Ministry of Corporate Affairs and the Securities and Exchange Board of India respectively, as well as the Companies Act, 2013. The latter, together with the Limited Liability Partnership Act, 2008 and the Foreign Exchange Management Act 1999, also envisage the various modalities of joint venture operations, including those entered in collaboration with foreign entities. Given the need for legal and management-level synergies in such collaborative operations having cross-border implications, it is imperative that said operations receive coordinated cooperation from all the players involved in the Indian financial market from the perspective of corporate governance, thereby strengthening their own structural and operational integrity. Such a need has been supported by global institutions such as the World Bank Group. While India is not a member of the OECD, the foreign direct investment inflow to India that occurs via the joint venture route comes from multiple countries that are OECD members –the latter need to adhere to globally accepted corporate governance norms in course of such transactions. The TATA Sons and Singapore Airlines' joint venture in the form of Vistara serves as an illustrative example. Initiatives such as 'Make in India' have not only sought to expand the already huge consumer market that the country represents, but also sought to encourage Indian companies to attract foreign funds and improve operational efficiency including internal management and governance practices, so as to better cope with stakeholder demands, create value, reduce foreign or non-resident participant transaction costs, and remain better prepared to absorb the shock of global as well as regional economic crises. The absence of proper corporate governance norms is likely to encourage inefficiency and adversely affect the effectiveness of agents and firms alike, thereby dissipating stakeholder return and enhancing the risks involved in joint ventures. In course of this paper, the authors intend to examine the role that corporate governance norms play in the Indian context to manage the organizational risks associated with joint ventures, to facilitate FDI inflow into the Indian economy and to enhance existing market power mechanisms for leveraging the benefits of corporate synergy and overcoming the barriers for new market entrants.

KEYWORDS:

Corporate Governance, Corporate Finance, Foreign Joint Ventures, Foreign Direct Investment, Foreign Exchange Management Act.

INTRODUCTION:

Corporate Governance is the process to manage and transfer the creation of value among the Corporate Claimants, hence ensures the accountability among themselves.

Good Corporate Governance shifts a positive remark on Company's reliability and integrity to lead increment in their financial wealth. It emphasizes both value creation and value transference. The claimants include Shareholders, employees, creditors, suppliers, competitors etc who are eventually called as stakeholders because they share an economic relationship with the firm and even claim revenues and cash flows of the firm.

Since the 2000s, when the credit crisis began, the banking industry has been affected by loss of finance due to the default on the mortgage system, inter banks lend to be insolvent and the customer credit started to dry up.

The financial crisis over the community banks spawned new regulatory actions for capital requirements and which was no doubt went to impossible without the strength of corporate amalgamation. The mechanisms of corporate governance can be broadly grouped into two categories. For instance, Internal & Externals…, and both are substitutes for one another. Due to the lack of proximity, the traditional issues in Joint Ventures (JVs) for community banks and Indian Companies faced serious challenges regarding the Internal and External control system. For instances, structuring the role of boards along with the role of CEO towards one another, the natural practices between the employees and its performances after the banks and companies get amalgamated with one another. All the internal mechanisms are being operated in explicit and external environment. The external mechanisms including capital & product market, managing the labour market and corporate control have involved the target institutions in receiving premium for their book value as per share which was higher than the credit crisis.[1]

EFFECT OF JOINT VENTURE IN CORPORATE GOVERNANCE

The short-term effects such as change in leadership and cost cutting, aggressive business objectives, weak internal control system, white collar crimes, pressure to perform during the JV activities have resulted in Governance failure.

Though amalgamated firms set up to a new entity. The amalgamated firms need to cope up with the new market system in globalization. They need to increase their size, scope, control and management systems. Both the parties need to adapt themselves with each other's cultural requirements, norms and internal labour market.

Thus, it leads to change in leadership and cost cutting which in turn may turmoil the employees work performance. Any lack of efficient supervision may weaken the internal management.

Hence, lack of knowledge leads to fraudulent activities among the employees.

The staff and the labourers may come under the purview of greater pressure to work to meet the financial requirements of the community.

Thus, it leads to aggressive business objectives and is subject to dominance.

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[1] Volume 42 No. 5, Agarwal Manish and Bhattacharjya Aditya, "Mergers in India: A Response to Regulatory Shocks", Pg. 46 – 65, Emerging Market Finance and Trade 2006; *available on:* http://ssrn.com/abstract=983290 (last visited at: July 12, 2022; 05:02 PM).

Weak Internal Control System creates confusion and weakens the expectations of the employees as they lack conformity to report about their professional constraints. Fraudulent activities may be committed in internal audits. And hence this causes to invoke 'good faith' mistakes while such fraud may be discovered as there will be lack of good support and supervision.

Weak governance only aims for profit maximization in the hands of shareholders, rather than achieving overall good performances of the corporation. If the assets of the company get seized even after entering into JV activities then it is considered that the company may suffer from pay cuts, less chances of promotion and may lead to depreciation of status. On average rate of return, the shareholders of the acquiring company give pressure to the staff for working more to gain high operating performances with less wages and resources to meet the rapid announced synergies.

Thus, the short-term effects are costly.[2]

The long-term effects such as harmful transfer of governance practice, cross-border amalgamation during JV activities have resulted in governance failure. If the managerial system followed during the pre JV activities does not fit to the new entity then it is generally faced with superior corporate governance practices like stricter accounting standards, anti-fraud guidelines, better screening, compensation of workers & staff, ethical corporate standards etc. But if such practices of corporate governance are inferior to perform then it may deteriorate the competition, leading to internal politics or hubris and shall cause adverse effect upon the shareholders of the joint venture entity.

Cross Border amalgamation broadens the geographical scope, paves way for practicing heterogenous or various business environments. But the linguistic problems, cultural differences, differences in the laws of the nations, corporate codes and account practices complicates the governance. If the JV company adopts the weaker governance of the old one during cross-border dealings then it may reduce the level of investor protection, even if the corporation adopts any codification law for protection of those investors of the nation.

Thus, the long-term effect of JV may lead to death.[3]

The additional challenges faced during JVs such as lack of joint control of the cash, failure in recognising that there is no such thing as equal partners, conflict of interest arising among the JV partners and no way out to end the JV have strongly argued for high governance standards. Mostly the process of Joint Ventures has been found appropriately evident in the energy and resources sector.

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[2] Gregorion N. Greg and Renneboog Luc, "Corporate Governance and Regulatory Impact on Merger and Acquisitions: Research and analysis on Activity WorldWide Since 1990", Pg. 158 – 168, Quantitative Finance 2007; *available on:* https://doi.org/10.1016/139780123741424.X50003 (last visited at: July 17, 10:44 PM).

[3] Volume 2, Schnatorely and Karen, "How M & A can lead to Governance failure", Pg. 6 – 8, Mastering Corporate Governance; *available on:* https://www.researchgate.net/publication/304998692 pdf; (last visited at: July 18, 2022; 11:00 PM).

WHAT IS JOINT VENTURE?

JV is an arrangement where two or more parties jointly co-operate for forming a business in an intention to achieve a common goal. It may take both the forms such as 'Equity based' or 'Contractual JVs. The equity based or incorporated joint venture is a business arrangement where the parties set up a separate legal entity to carry out the common set of goals. Whereas, in case of contractual JV, the parties enter into an agreement where they outline the terms & conditions under which they shall work together and share the profits or losses of the JV contract.

Nature of JV entity –

i. Incorporated JV entity;
ii. Unincorporated JV entity.

Documentation required for Incorporated JV entity are as follows:

A. <u>For Company:</u>
a. JVA/Shareholder's agreement;
b. Memorandum of Association and Article of Association of the JV entity;
c. Other agreements include trademark licensing and technology transformation.
B. <u>For LLP:</u>
a. LLP Agreement;
b. Other agreements include trademark licensing and technology transformation.

Whereas, documentation required for Unincorporated JV entity are as follows:

A. <u>Partnership:</u>
a. Agreement of partnership;
b. Other agreements include trademark licensing and technology transformation.
B. <u>Cooperation/Strategic Alliance/Consortium:</u>
a. Cooperation Agreement;
b. Other agreements include trademark licensing and technology transformation.

MEMORANDUM & ARTICLE OF ASSOCIATION:

The Companies Act 2013 states that each and every company should have a 'Memorandum' and 'Article of Association' which are signified as the charter documents of the company. Eventually in case of equity-based JV, the JV agreements are enforced only between the partners. According to section 1 & 14 of the Companies Act 2013, the terms and conditions set out in the agreement can not be held binding upon the JV entity until and unless its terms & conditions are included in the AoA of the JV entity.

Hence, its essential to incorporate its terms & conditions of the JVA/SHA into the AoA of the JV entity. In case of any inconsistency arising among the parties shall affect the JV agreement only after the amendment made in MoA and AoA accordingly.

As, MoA sufficiently covers the proposed activities of a company and it has been considered as a way towards flexibility therefore, the MoA can be altered only with the consent of the shareholders of the entity.

Whereas, AoA are the regulations that codifies the internal conducts of the company. It states the rules, bye-laws and regulations for the conduct in board's meetings, shareholders issues and meetings, transfer of securities, powers and duties of the board members set out the differential class rights of the stakeholders (if any).

Types of JV:

A. Equity based JV:
   a. Company;
   b. LLP;
   c. Partnership.
B. Contractual JV: Cooperation Agreement/Strategic Alliances.

It is found evident from the facts that the foreign companies do not resort to equity-based JV directly with the Indian entities rather they wish to enter into an agreement with the Indian Company by controlling only the certain key aspects of the running business as like entering into a 'Technology Collaboration' agreement with an Indian company and latter would like to adopt the option of purchasing equity capital at a future date only if they find that the growing business is productive.[4]

CORPORATE GOVERNANCE FOR MANAGEMENT AND BETTER STAKEHOLDER'S RETURN IN INDIA

The principle for protection of Stakeholders rights and interests has been analysed as the most effective phenomenon adopted behind the execution of a good corporate governance system in India. The fiscal crisis followed by liberalization and privatisation strategies in the year 1991 has expanded the growth of foreign direct investment for reformation of corporate governance norms in the Indian economy. Since then, the Securities Exchange Board of India has laid stress over the transparency and accountability of good corporate governance norms in the Indian Capital Market. The highest priority has been emphasised by the Confederation of Indian Industry (CII), an independent organization that worked with the Government on various policy issues. It worked to ensure better compliance for frequent update of new rules, regulations and guidelines enumerated by the SEBI. The Ministry of Corporate Affairs and Government of India has made it mandatory for implementation of Corporate Social Responsibility (CSR) over all the Indian models.

In contrast to US and UK, India as per the latest revision in the year 2017, clause 49 of the SEBI (SAST) Guidelines have mainly concerned to improve and protect the interests of the minority shareholders along with improving the accountability of other disciplining dominant shareholders. It has eventually set out norms for prevention of Insider trading. The relationship between Corporate Governance and the performance of firms listed in National Stock Exchange of India have been examined and found that the committees of larger boards have negative impact on ROE

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[4] Anil Chawla, *Joint Ventures in India: Options, Regulations and Restrictions for Foreign Nationals and Companies,* Anil Chawla Law Associates LLP, (August 27, 2022; 09:42 PM), www.indialegalhelp.com.

while the presence of non-executive directors and whistle blower policy have gone with positive impact.

'Stakeholders' in an organisation include the employees, customers, suppliers, investors or shareholders, managers etc who primarily take the risks for smooth functioning of the organization. The two types of stakeholders set out the interests of a company. One is Internal Stakeholder(s), who have a direct relationship with the organization and are directly associated with the conduct of its business. Whereas, the external stakeholder(s) do not have any direct relationship with the company. Such as – Shareholders, Management, Board of Directors are the excellent examples of principle stakeholders. Whereas, Customers, Creditors, Suppliers, Employees, regulations etc are the examples of other stakeholders.[5] The evidence supports that the shareholder's value in the short term can be increased by contributing incentives to the key managers of the organisation.

The spread of share equities and its overvaluation may distort the shareholder's value creation. As because, buy back of equity shares by its own shareholders increase the corporate leverage. It increases the shareholder's value by adding a premium of the company to that of the market value. And if the stock prices lack increment before the buy back of equity then it shall not be able to bear tangible benefit in the open market. But it should be preferably done when companies have cash on hand and the stock market is on an upswing as spending cash on buy back of shares may reduce the amount of investment in emergency situations and raising equity capital where there is no potential growth opportunities having ownership for unused equity funding shall have no good reason. Sometimes, the higher proportion of equity shares causes dilution of shares and shareholder's value. Whereas, higher proportion of debt shares causes aggressiveness of the firm over its financial investments and capital growth leads to the output or assets.

The additional challenges faced during JVs such as lack of joint control of the cash, failure in recognising that there is no such thing as equal partners, conflict of interest arising among the JV partners and no way out to end the JV have strongly argued for high governance standards. Mostly the process of Joint Ventures has been appropriately evident in the energy and resources sector.

JOINT VENTURE GOVERNANCE IN INDIA

JV governance imbibes a single document which signifies how the Joint Venture practices will work. It describes the workings of the Board of Directors, Management, the rights of various classes of shareholders and establishes the expectations of various individual Directors. It is highly optimal that the JV governance is induced by the venture legal agreements enforced between the parties. It provides important guidelines on matters such as Size of the Board, Voting rights of the shareholders, Requirements of the Quorum and other administrative and legalistic proceedings of the organisation.[6]

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[5] Puneeta Goel, *Implications of Corporate Governance on Financial Performance: An Analytical Review of Governance and Social Reporting Reforms in India,* Asian Journal of sustainability and Social Responsibility, Pg. 11 – 21 (2018).

[6] Deyasini Chakrabarti, *All you need to know about Stakeholder Governance Structure*, Ipleaders Intelligent Legal Solutions (August 28, 2022; 04:08 PM), www.blogipleaders.in/all-need-know-about-stakeholder-governance-structure/

India has been witnessed by many non - resident entities who have set up equity based joint ventures in the organisation. However, they have faced restrictions under the FDI policy of India. As India has witnessed too much of complex and hostile relationships with most of its neighbouring countries like China, Pakistan, Bangladesh and Nepal. Therefore, the Government of India has enumerated that a beneficial investor or an entity residing outside India but shares land borders with India can invest only after accessing the approval from Government of India.

In addition to above guidelines, the Indian Government strictly prohibits any investment to be incurred by Pakistani officials in relation to the matters of Indian strategic practices like Defence, Space, Atomic energy etc.

As India has shared a relationship of common brotherhood with its neighbouring countries like Nepal and Bhutan. Therefore, the Indian Government overwhelms the NRI residents of both the nations to make their investment in free foreign exchange (USD or EURO) only through normal banking channels.

The Foreign Portfolio Investors (FPI) and the Foreign Venture Capital Investor (FVCI) may make investment in Indian entity, according to Schedule II of Foreign Exchange Management Act 2019, where the limit for total holdings of an individual FPI should be less than 10 percent of the total paid up equity capital and the limit for total holdings of an aggregate FPI should not exceed 24 percent of the total paid up equity capital on each series of preferential shares, debenture shares and share warrants but on a fully diluted basis.

Subjected to the conditions laid down by the central government in India, a Foreign Venture Capital Investor (FVCI) can not purchase securities of an Indian Company which are listed on a recognised stock exchange at the time of issue of the said securities as the securities of a recognised stock exchange gets available for trading and stimulates liquidity where the shareholders get the opportunity for creating their value and wealth. For which the Indian Government gets fear for holding out the value of the securities to the outsiders rather than their own residential shareholders.[7]

GENERAL STEPS FOR STRENGTHENING CORPORATE GOVERNANCE IN JVs TO ATTRACT FOREIGN INVESTORS IN INDIA

The Indian legislation and Regulatory initiatives have gone down as a watershed since the Indian Corporate history in terms of Corporate Governance reformation. The enactment of the new Companies Act 2013 have reached reforms in the provisions of Listing Agreement for publicly traded corporations and enumerated provisions for Stock Exchange Board of India and regulated foreign investment for Indian Capital Market. The requirements for corporate governance were always wholly handed under the legislative domain till the early 90s. The Act of parliament has enacted an independent regulator, i.e., Securities Exchange Board of India. The SEBI guidelines have replaced the Indian Companies Act, Securities (Contract) Act and Capital Issues Control Regulations for trading of securities under publicly traded companies, listed under Stock exchange

[7]James Bamford, *Governance & Restructuring: Operationalizing Joint Venture Governance*, The Joint Venture ALCHEMIST (August 29, 2022; 09:00 AM) https://jvalchemist.ankura.com.

in India. The Ministry of Corporate Affairs and the RBI Guidelines are too enumerated for the affairs of trading securities. Although the SEBI Guidelines have brought enormous reformation in the corporate affairs in all the life cycle stages for incorporation of a company. The key initiatives taken by the SEBI has been related to five thematic strategies. Such as- Showing concern for Corporate Social Responsibility, Protection of Minority Shareholders, Protection of Shareholders of their nation residents, Processes for Boards of Directors, Transparency in reporting and governance for unlisted companies. The self - regulating business model i.e., CSR has paved the way for a company to be socially accountable towards its stakeholders and public.

The various types of Corporate Social Responsibilities have been proved as the pillars for preserving mother nature such as reducing pollution, consumption of natural resources and recycling of goods. Moreover, the ethical responsibilities have rooted to set out norms for acting in a free and fair manner for all its stakeholders and beside that preserving their interests and expanding vendors. It is mandated to honestly disclose the operations of an investment and manage the relationship with the external and internal stakeholders.

The Philanthropic responsibility supports the pillar for donating profit to charities. Moreover, the financial responsibility ties together for encouraging sustainability towards Research and Development (R & D). The initiatives for social awareness and external audit have been boosted. It has aimed to serve the employees with non – financial job benefits and mitigate the risks of the company. As, employees may file suit against the company in case they are found abused.

According to Section 994 of the Companies Act, a minority shareholder may file suit and seek relief from the court of law if they found that the affairs of the company have been unfair and prejudicial to the interests of minor shareholders.

As per section 395 of the Act, the dissenting or minor shareholders have guaranteed the right of holding the shares of a company not exceeding 10% of the shares. The common remedy sought for them is that a company cannot allot further securities of the company for the improper purpose of dilution of its minority shareholder's shares which is an excellent example of unfair prejudice as it may lead to decrease in value of shareholding.[8]

The foreign investors have been attracted to the Indian Companies because of its rich natural resources, large market size, low wage labour with high skill. Due to the Government or approval route, many foreign investors have been unable to invest their funds over Indian organisations. The consideration by Foreign Investment Promotion Board (FIPB), Ministry of Finance and RBI are required for issue of shares to non – resident investors, within 30 days of its notified receipt.

Under Section 188 (1) of the Companies Act states that no party can enter into any sort of contract or arrangement without any prior approval made by the company by a special resolution. Moreover, no such member shall vote on the basis of special resolution if that member itself wants to be a related party.

In the context of the Board chair, the dual role played by the CEO, one as board chair (monitoring) and other as chief executive (execution), both has been regarded as the best standards for practicing in corporate affairs.

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[8]JOINT VENTURE IN INDIA, https://www.lexology.com (last visited on 29 August, 2022).

The foremost step needs to be strengthened the corporate governance norms in Indian JV is that a qualifying director should not have to be the promoter of the company or should not have its holding over the subsidiary or associate company. Even it should not have to be related to promoters or directors of the company. They can hold together 2% of more of the total voting power of the company along with its relatives, if any.

Moreover, the director can be the CEO or director of any non profit earned entity that may receive 25% or more of its receipts from the company. The enhancement for an independent audit board has been a key factor towards good governance norms in Indian Corporation.[9]

The foreign investors shall be highly attracted in Indian JV by additional policies to be adopted in the FDI norms. Such as FDI should be allowed to be provided with the funds that are directly or indirectly not from India. The ODI must include investment that has to be done outside India by the way of subscription and it has to be subscripted in the memorandum of the foreign entity imbibing about the purchase of existing shares of that entity through private placement or market purchase or through stock exchanges that signifies the long-term interest of the securities of the foreign entity.[10]

INDIAN SCENARIO OF JOINT VENTURES AND CORPORATE GOVERNANCE: OVERVIEW

The consolidated policy of FDI 2020 along with the implementation of Foreign Exchange Management (Non – debt Instruments) Rules 2019 and its amendments have liberalised the various key sectors of Indian Corporation that includes Pharmaceuticals, Insurance and Railways etc. India has attracted nearly 70 billion USD from April 2020 to January 2021 which has witnessed considerable growth in JVs. It has ever liberalised the other sectors such as Online education and Artificial Intelligence.

Incorporated JVs like ONGC Mittal Energy Limited (OMECL), a company of ONGC Videsh Limited have incorporated in cyprus and being awarded by the Government of Nigeria;

Secondly, Hindustan Steel Works Company Limited entered into a JV with SR/ICON Infrastructure Private Limited and then terminated the contract due to encashment of the bank guarantee.

Moreover, Unincorporated JVs like Oil India Limited is an obvious operator of six unincorporated JVs where one of the co - venturer is Suntera Resources Limited who failed to pay cash calls of US that has been raised by OIL in the year 2009.[11]

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[9] Id at 5.

[10] DILUTION OF MINORITY SHAREHOLDER'S SHAREHOLDING - WHEN IS IT UNFAIR?, https://brodies.com>litigation>dilution (last visited at: 29 August, 2022; 01:56 PM).

[11] STRENGTHENING CORPORATE GOVERNANCE IN INDIA: A REVIEW OF LEGISLATIVE AND REGULATORY INITIATIVES IN 2013 - 2014, https://www.limb.ac.in>default>tiles>inline-fills, pdf (last visited at: 29 August, 2022; 03:09 PM).

Typically, it has been proved that the structuring of a Joint Venture entity shall be based on the business plan of the parties and the nature accordingly. As, the restrictions imposed by the FDI policies have urged the foreign investor to attract towards the unincorporated joint venture crude oil companies are an excellent example of such where the prices and the customers have to be agreed upon by the shareholders. The shareholders get their benefits in the form of dividends. Whereas, unlike the incorporated JV, the unincorporated JV has been found as a distinct legal entity where the tax has to be separately paid. Moreover, the payments made to its members are not allowed directly in the hands of JVs for various tax purposes. But, if any party has a structure of Capital - Intensive Project, then usually the project of incorporated joint venture is more preferable than unincorporated joint venture. In India, certain initiatives have been led for incorporating JVs for special economic zones. The strategic alliances that have been permitted without the formality of incorporating the vehicle in corporation has attracted the neighbouring foreign investors of India as it emphasizes simpler exit mechanism as compared to Incorporated Joint Ventures.

The capital gains of the investor for its capital assets has to pay tax under the Income Tax Act. India has enhanced the Double Taxation Avoidance Agreement (DTAA) which is governed under IT Act. It has been stated that the tax benefits provided under DTAA which is claimed by a non – resident shareholder will not be available if the non – resident shareholder is gaining the taxing benefit from the place where there has not been found such justification for investing their commercial funds through the intermediary holding company. In India, the foreign investors are generally allowed to invest their fund in common or preferred stock and debt shares that are convertible into common stock as its return by the way of dividends has to be compulsorily paid for tax expenses. Therefore, the compulsory preferential shares and debentures that can be converted into equity shares are exempted from the taxation act for their further conversion.

According to the provisions of IT Act, the shares that are being received with a lower price than the fair market value then the price paid for the same shall be chargeable for tax in the hands of the recipient.[12]

IMPACT OF CORPORATE FINANCE IN INDIAN JOINT VENTURES:

Corporate finance can be referred to as a division of capital structure or finance that deals with enhancing funds and its various sources, decisions related to investments so that the shareholder may maximize its value in both short and long run performance with various financial planning and implementing various initiatives. Example – A corporation may plan to diversify or invest upon its resources even in risky environments with its ventures in an intention for enhancing potential to the shareholders in gaining huge profits through its equity shares. It balances the corporate risks with profitability.

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[12] NEW NORMS TO EASE RESTRICTIONS ON FDI BY JOINT VENTURES OF INDIAN COMPANIES AS GOVT BIDS TO REVIVE ECONOMY, https://www.cnbctv18.com>economy (last visited at: 29 August, 2022; 01:00 PM).

ACTIVITIES OF CORPORATE FINANCE:

- **a.** Capital Investments – It involves investment in projects and acquisitions of the corporation;
- **b.** Capital Financing – It determines the funding of capital investments and analyse the capital structuring of the firm;
- **c.** Dividends & Return of Capital - It decides how the capital investors can get return on their capital investments.

A. <u>Investments and Capital Budgeting:</u>

It plans to adjust the company's long-term capital assets for generating returns that may adjust the highest risky circumstances. It includes the way of estimating cash flows and identifies capital expenditures from proposed capital projects, it compares the investments that are planned for creating capital structure with the incomes of the project. It decides about the projects which will be included in the budget of capital sources. It compares the Internal Rate of Return (IRR) with NPV through various financial accounting tools.

B. <u>Capital Financing:</u>

It paves way for financing the investments related to capital through equity and debt or both. The investment banks may sell the company's stock or issue debt securities in the market for funding major capital expenditures in the long-term.

There should be a balance between the equity and debt. Because high value of debt increases the risk of default in repayment. Whereas, high equity dilutes the earnings and reduces the value for original stakeholders. The corporate finance optimizes the company's capital structure by lowering its weighted Average Cost of Capital (WACC).

C. <u>Dividends and Return of Capital:</u>

The corporate finance decides about the excess earnings of the business to retain for future projects or investments or for requirement operating performance or to distribute such to the shareholders in the form of share buybacks and dividends. If retained earnings are used to have it for future investment that it shall be referred as the best source of finding. Because business expansion shall add to shareholders value and reduce additional debt. Whereas, distributing earnings to shareholders may lead to dilution of equity shares and may incur additional debt. The company's cost of capital should be relatively lower than the rate of return on capital investment. If it is not so, then the shareholders should get or return with excess capital through dividends or share buy backs. The capital structure consists of both equity and debt shares. Both combine and refer to assets. The company should hold less debt shares so that it becomes less risky for the stakeholders. As if there is a higher number of equity shares than the debt shares, it will add to shareholders wealth.

ROLE OF CORPORATE FINANCE IN JOINT VENTURE:

In regard to Joint Venture activities, the corporate finance intends to gain market share, increase revenues, move towards new market segments, achieve cost synergies, acquire technological advancement through capital investments, acquire R & D, allocate new resources in new locations, reduce competitions etc.

After India following the activities of amalgamation in a great phase, it witnessed 75 finance and strategy executives. It witnessed that 10 percent of the respondents were chief financial officers, 5 percent as finance vice presidents or directors and 4 percent as controllers. Corporate Finance determines how a transaction optimally financed as:

A. Assets Versus Stocks:

The corporate finance aims to put specific stress upon financing and selling of those stock that has lesser tax liabilities, so as because the buyers intend to purchase such assets which have lesser tax treatment so to sell off such assets or shares, it aims to finance upon such assets which shall bring benefits to the shareholders value and growth in the operations of the economy.

B. Earn-Outs:

Earn-outs are an approx. for sharing the risks between the shareholders of the acquiring companies and shareholders of the target companies. It seeks to provide additional consideration to the shareholders tied to the company's post acquisitions performance above a defined level (measured by revenue/profits).

C. Working Capital Adjustments:

It aims that sufficient working capital should be left to the business at the time of joint venture to meet ongoing requirements or to keep as a source of funds. In such cases, if the equity shares fall below the ongoing requirements, then the price of the share shall be adjusted to downwards, accordingly. Thus, the capital adjustments are designed to offset any unusual removals of cash financing from the business. It analyses to have a fair and suitable working capital of the target ones only if such adjustments get contemplated.[13]

OTHER APPLICABLE LAWS:

A. COMPANIES ACT 2013 –

Under Section 390 to 395 of the Act, it deals with arrangements, amalgamations, M & A. It deals with the procedures to be followed for getting the approval by the court of law. It deals with the compromise and the scheme of amalgamations.

As section 391 of the Act deals with filing an application by the members and stakeholders of the two companies intended for carrying out the M & A activities.

It conveys calls for meetings between the creditors, shareholders and the BODs of the companies. It provides no subsequent litigation.

Thus, the wider scope of conducting meetings helped the companies to settle down with their issues related to equity and debt among themselves. But these too tend to cause proxy fights between the shareholders and the BODs of the target company if the BODs think that any such

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[13] SETTING UP AND OPERATING A JOINT VENTURE IN INDIA, https://www.lexology.com (last visited at: 29 August, 2022; 09:43 PM).

acquisition may not add value to the company's efficiency. On the other hand, the shareholders think that it fits only for its own sake of interests.

The legislature providing a provision that the scheme should get approved by the majority of the stakeholders has paved the way for the stakeholders to enhance its powers over the share prices of the company and also over the management of the company to an extent.

Especially, the shareholders are enhanced with the powers of taking the decisions regarding the acquisition of shares to be made only in terms of their interests, which may in turn fall with negative returns to the financial value of the company.

The provisions of disclosing all the material facts in the meetings shall be considered as a positive note for the interests of each and every member of the companies.

B. COMPANIES (AMENDMENT) ACT, 2017 -

Under Section 53 of the Amendment Act, it deals with 'Distressed Companies'. Due to the high fixed costs of assets, illiquid assets and sensitive revenues during the economic downturns the company met with distress. To meet the financial obligations through paying off to its creditors, the distressed companies are allowed to issue shares but at a discount.

Under Section 62 (1) of the Amendment Act, it proposes the Company to issue compensation in the form of company's share to its employees through RSU (Restricted Stock Units) and SAR (Stock Appreciation Rights) for entitling the employee for having cash payment proportionate to the appreciation of stock traded on a public exchange market which even tend to increase foreign investment from the foreign employees.

C. COMPANIES (AMENDMENT) ACT 2020 -

a. **Decriminalization of Offences:** Certain offences are re-categorized for in-house adjudication which has attracted the foreign investor by lessening their punishment on imprisonment and decreasing the burden of courts;

b. **Power to exclude certain companies from definition of Listed Company**: Certain debt securities companies have been excluded from the definition of listed company for ensuring ease of doing business and reducing the compliance burden. The listed company whenever issues new shares, it is followed by public offering, issue of rights or bonus. They are part of the primary market. Therefore, debt securities have been excluded from the definition of listed company;

c. Exemption from certain provisions for issue of securities of public company for listing in foreign jurisdictions: Under Section 5 of the Companies (Amendment) Act 2020, it allows the publicly traded companies to issue securities and that particular class of securities are to be permitted for listing in stock exchanges in Foreign territorial jurisdictions;

d. Relaxing the Corporate Social Responsibility (CSR) Provisions:

i. The companies which have not completed the duration of three years from its incorporation have been recommended to have relaxation from the CSR provisions.

ii. The CSR projects have been recommended to have creation of capital assets. Amending the provisions of companies act 2013, the companies amendment act 2020 provides the asset created by the companies not gaining cash inflows can carry out the project in partnership with the state and community, where the asset ownership shall rest with public and its operations shall be carried out by the company itself;
iii. The Ministry should prepare and draft the CSR report after its survey and various audits done by the statutory board.

D. COMPETITION ACT, 2002 –

Under Section 5 of the Act, it deals with 'Combinations' in reference to assets and turnover, exclusively both domestic and cross-border amalgamation. Under this provision, an Indian company with maximum turnover cannot acquire another domestic company without an approval by 14Indian Companies. These provisions shall be considered to have positive outcome as it enhances fair competition in the market with fair price, it prevents malpractices and dominance. Moreover, it controls the inflows and outflows of Indian currency.

E. FOREIGN EXCHANGE MANAGEMENT ACT, 1999 –

These regulations have made provisions for the FDI scheme. An issue of security and transfer of such can be made by a person residing in foreign territories. And Indian entities too issue and transfer securities to the entities residing outside India.

F. SEBI TAKEOVER CODE 1994 –

It provides that no acquirer shall consolidate shares or exercise voting rights beyond 15% to 55% of the target company in any financial year. These provisions have protected the interests of the target company's stakeholders from peering into the dominating hands of acquiring a company.

G. THE INDIAN INCOME TAX ACT (ITA), 1961 –

It regulates the economic growth of a firm along with individual interests.

H. MANDATORY PERMISSION TO BE GRANTED BY THE COURTS –

Any scheme for Mergers has to be sanctioned by the courts of the country. The courts shall not allow any Joint Venture activities if that contravenes the provisions guaranteed by the legislatures or any Judicial pronouncements.

I. INTELLECTUAL PROPERTY DUE DILIGENCE IN JOINT VENTURE –

The provisions guaranteed under these Act has protected the 'trademark' or the intangible assets of a company before it lost its cachet in the marketplace. Hence, this reduces the act of duplication over the brands. The due diligence and valuation provide an accurate conclusion regarding the asset's present and future value.

J. GUIDELINES OF RESERVE BANK OF INDIA –

The RBI has managed the outbound investments and large foreign exchanges reserves in India. It provides qualitative information regarding potential investment opportunities in regular periodic intervals. Moreover, it controls the clash of interests arising between FDI inflows and outflows of India.

The Government regulations have given birth to competitive concerns regarding the M & A in the activities in the international scenario, which generally gets approved between 30 – 60 days. It binds time being for the Judiciary to deal with both straight forward and complex cases. It enhanced FDI policies to be more liberalized which in turn paved the way for practising multilateral types of businesses, enhanced economies of scale, strategic skills, competitive advantage, increase in profits, expansion of operations etc all over the world.

CASE STUDY OF VISTARA JV:

Vistara has set an excellent example as a Joint Venture of Tata Sons Private Limited and Singapore Airlines Limited (SIA), where Tata Group holds 51% of its stake and the rest are being held by Singapore Airlines. Prior to the event, TATA Group tied up with low-cost Malaysian Carrier, i.e., 'Air Asia' and started a three-way joint venture which even includes "India's Telestra Trade place".

It has been evident that Vistara has been found optimal in providing both low-cost and full services airlines that have been served in various categories with variation in tickets as per the convenience of the passengers and their comfort.

Hence, it avoids conflict of interests among the services provided by the different airlines working together as Joint Venture.

The TATA Singapore Airlines even tend to include international services in the future circumstances and shall certainly improve their domestic service. Whereas, the TATA AirAsia deal has been emphasised as an International Joint Venture for their catering in different markets. TATA eventually has a strong potential to develop it as one of the top three airlines and thus avoid back door deals. After receiving the No – Objection Certificate in the year 2015 by the Indian Government Singapore Airlines have been able to invest 49% of shares in the landscape. Even after, it has suffered with adverse effects in the Indian market affected by devaluation of rupee, high operational costs, slow growth of the economy due to demonetization in the year 2016 and low yield costs.

Hence, Singapore – TATA JV required an increase in competition and thus needed to move towards greener pastures which has proved good for the economy but bad for the competitors because of lack of developed synergies which resulted in revenue generation through network expansion and joint marketing.

On the other hand, the joint maintenance of the airlines has reduced the cost. And joint – call centres with fleet harmonization had led the environment to a high level of integration.

Hence, the cause for success in Vistara JV is firstly because of its good governance. Secondly, the Government control over its market access was late being handed over to thank after receiving a faith over these legendary brands. And thirdly, for the fund infusion from its promoters through the economic reformation.[14]

RECOMMENDATIONS:

a. During Foreign Joint Venture activities, thorough due diligence should be undertaken right in the time when actual date of investment shall be performed;
b. The interests of the PSUs should be safeguarded by the governmental agencies. Thorough regulatory mechanisms should be enforced for enhancing good corporate governance where the substantial public funds are invested in highly risky overseas ventures entered into by PSUs.

SUGGESTIONS:

a. A new start up should start entering into market with a minimum viable product and should try to iterate it in regard to the response received from the Consumer's feedback;
b. Target for entering in Joint Venture should be made with the business that is already well established in the market or in regard to Consumer's expectations;
c. Disruptive Pricing model should be adopted with various objectives in the business;
d. Government should act with least strictness in respect of providing with legal patent or licenses to the foreign investor that have strong influence of fund infusion;
e. Predatory pricing or first mover should be avoided because it causes to market dominance;
f. The parties entering into Joint Venture should acquire with high start-up costs and full of technical knowledge and should adopt the objective of working with brand loyalty.

CONCLUSIVE OBSERVATIONS

In the current Scenario, the World Bank has supported India over 127 projects worth over 30 billion. It helps India build projects with an intention of social protection and provides benefits to diversified needs that are portable with assurance towards social insurance and supports India with cash across state boundaries. The top projects funded by the World Bank in India are as – 'Innovation in solar power and Hybrid Technologies', 'Maharashtra Project on Climate Resilient Agriculture' etc.

Though India is not a member of OECD, but still India receives active support from OECD for the role of India as Co-Chair of the G20 Framework working Group in which India works to harness the growth of new sources, explore its future work and boost the structural reform agenda. It enhanced the fairness of international tax architecture where the foreign investor may avoid tax evasion in Indian Joint Venture Practices.

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[14] JOINT VENTURES OF CENTRAL PUBLIC SECTOR UNDERTAKINGS, https://blog.gov.in>pdf (last visited at: 29 August 2022; 09:00 PM).

OECD is in support of India because of its rapidly growing economy whose GDP Per Capita tends to grow faster than in most of the developed and developing countries with skilled labour productivity as one of the most driven key factors.

Most importantly, the organisational risks that are found associated with the Indian Joint Venture are mismatched financial resources, narrower access towards sources of capital at lower cost and lack of ability of drawing market driven banking partners where they shall get loan with low interest, lack of government funding agencies, tax incentives and lack of other innovative sources of capital.

Hence, from the above discussions, it shall be concluded that a good corporate governance inclusive of efficient utilisation of resources, skilled labour, high employment opportunities, efficient capital markets and search out a way for better access to capital can help in preventing economic problems.

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