pen ACCLAIMS

Volume 28, October 2023 ISSN 2581-5504

"The Role of Competition Commission and SEBI in Promoting Good Corporate Governance in India"

***Manya Kaushik**[1]
Amity University, NOIDA

****Gagan Yadav**[2]
Amity University, NOIDA

Abstract

This study examines the critical contributions of the Securities and Exchange Board of India (SEBI) and Competition Commission of India (CCI) to the advancement of corporate governance in India. It highlights the growing significance of corporate governance and looks at the regulatory responsibilities, authority, and structures of CCI and SEBI. This study presents significant case laws that demonstrate the real influence of these regulatory organisations on corporate governance, showing how they enforce compliance and encourage openness, accountability, and moral behaviour.

Introduction to Corporate Governance in India

Corporate governance is a crucial aspect of business operation in India. It refers to the system and processes that are in place to direct and control companies, ensuring that they operate in the best interests of their stakeholders, including ensuring transparency, accountability, fairness, and overall good management practices. One of the most important steps taken to promote corporate governance in India was the introduction of the CII Code[3] in 1991.However, it was not until 2005 that SEBI's Clause 49 of the Listing Agreement came into effect, providing a more structured framework for corporate governance in India.

Overview of Competition Commission and SEBI in India

The Competition Commission of India (CCI) is critical for ensuring fair competition and protecting consumers' interests in the Indian market. To achieve these goals, the CCI was vested under the 2002 Competition Act, with various roles, functions, and powers. Let us now examine the CCI's key responsibilities and powers, as outlined in the Competition Act of 2002.

CCI's primary responsibilities include preventing anti-competitive practices, promoting competition, and protecting consumer interests. It acts as a regulatory authority to create a level playing field for businesses by actively discouraging activities such as cartels, abuse of dominance, and anti-competitive agreements as well as regulating, administering, and

[1] LLB, THIRD YEAR, AMITY UNIVERSITY NOIDA
[2] LLB, THIRD YEAR, AMITY UNIVERSITY NOIDA
[3] https://www.cii.in/

Volume 28, October 2023 ISSN 2581-5504

enforcing the provisions of the 2002 Competition Act[4], with a particular emphasis on preventing anti-competitive practices. It examines M&A s to determine their potential impact on market competition, ensuring that market structures remain conducive to fair competition and that consumers have a variety of options by diligently performing these functions.

Aside from regulation and enforcement, it promotes competition law and its benefits through competition advocacy, developing an understanding of fair competition and its positive effects on economic growth through advocacy programs, both within the industry and among consumers. Additionally, it provides valuable policy advice to the government to assist in the development of competitive policies. The body has significant power to carry out its mandates. These abilities include investigative capabilities, such as conducting investigations, summoning witnesses, and gathering critical information. When anticompetitive behavior is discovered, it has the authority to levy penalties proportionate to the violation. Penalties can be up to 10% of the average turnover over the previous three fiscal years, acting as a deterrent to anticompetitive practices. Furthermore, it includes leniency provisions to encourage entities involved in cartels to voluntarily disclose information and cooperate with investigations, resulting in lower penalties.

The Securities and Exchange Board of India has been charged with a variety of functions and powers, including investor protection, securities market regulation, market development, supervision and surveillance, granting licences and registrations, enforcing regulations, and engaging in policy formulation and research in the securities market. It takes on the responsibility of preventing fraudulent practices, unfair trade practices, and manipulation, and instilling trust in investors.

Second, it serves as a regulatory authority overseeing the securities market with care. It enables fair and transparent operation of stock exchanges, brokers, and other market intermediaries by establishing comprehensive rules and regulations. The regulatory environment contributes to the overall efficiency and integrity of the market.

Third, it actively promotes growth in the securities market by encouraging innovation and making the introduction of new financial products easier. SEBI aims to boost market growth and to expand opportunities for market participants by fostering an investment-friendly environment.

Moreover, SEBI employs advanced surveillance systems to conduct the strict supervision and surveillance of market activities. This proactive approach enables SEBI to quickly detect potential market abuses, insider trading, and other unauthorised activities, and implement corrective measures.

[4] https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf

In addition, it oversees granting licences and registrations to market participants such as brokers, investment advisers, and mutual funds. This procedure ensured that the established eligibility criteria and standards were followed.

Furthermore, SEBI has the authority to enforce regulations and take appropriate enforcement actions against entities involved in market manipulation, insider trading, or any other violation of securities laws. This included imposing penalties and initiating legal proceedings to ensure compliance and accountability.

What is the significance of these regulatory bodies in ensuring fair competition and promoting good corporate governance?

Regulatory bodies, namely the Competition Commission of India (CCI) and Securities and Exchange Board of India (SEBI), play a crucial role in ensuring fair competition and promoting good corporate governance in India.

Clause 49 of the Listing Agreement[5] mandates corporate governance practices for listed companies in India. These practices include the composition and role of the board of directors, audit committees, disclosure, transparency requirements, and measures to prevent insider trading. Through Clause 49, SEBI has established a comprehensive framework for corporate governance in India, which has become the standard for listed companies.

Fair Competition: A fair and competitive business environment is essential for economic growth and consumer welfare. CCI is responsible for enforcing competition laws and preventing anti-competitive practices in the market. By regulating mergers, acquisitions, and unfair trade practices, CCI ensures a level playing field for businesses, encourages competition, and prevents market distortions that could harm consumers.

Corporate Governance: Good corporate governance is crucial for maintaining investor confidence, attracting investments, and protecting stakeholder interests. SEBI regulates the securities market and aims to improve governance practices among the listed companies. SEBI promotes transparency, accountability, and responsible management practices through various regulations and guidelines. It sets standards for board composition, audit committees, remuneration, and executive compensation, encouraging companies to adopt better corporate governance practices.

Investor Protection: Both CCI and SEBI safeguard investors' interests by ensuring fair practices and promoting transparency. CCI's efforts to prevent anti-competitive behavior contribute to a healthier market by fostering investor confidence. SEBI's regulations on corporate governance aim to protect shareholders, improve disclosure norms, reduce information asymmetry, and mitigate the risk of corporate fraud and abuse.

[5] Securities and Exchange Board of India Act, 1992. (n.d.). Clause 49 of the Listing Agreement.

Volume 28, October 2023 ISSN 2581-5504

Economic Development: Sound corporate governance and fair competition create an environment conducive to economic development. By enforcing competition laws and promoting good governance practices, the CCI and SEBI attract domestic and foreign investments, facilitate business growth, and enhance India's overall competitiveness in the global economy.

Case laws highlighting the impact of CCI and SEBI on corporate governance in India

Satyam computers case[6]

One of India's most notorious corporate fraud scandals is the Satyam Computer Services fraud case. It involves the company's founder and chairman, Ramalinga Raju, manipulating financial statements and misrepresenting the company's financial condition. In 1987, Satyam Computer Services, an Indian provider of IT services, was established. It expanded quickly and rose to the top of India's IT industry, serving its clients worldwide.

Ramalinga Raju acknowledged in a letter to the board of directors in January 2009 that he had been committing accounting fraud for a number of years. In his confession, he claimed that Satyam's financial reports contained bogus assets and fraudulently inflated profits. He fabricated invoices, inflated sales, and bank statements in order to manipulate the company's books. Additionally, he inflated the business’s financial position and undervalued its obligations. His intention was to mislead investors and keep up with lucrative expansion.

When Satyam attempted to acquire two infrastructure companies, a scam was discovered. The acquisition procedure included commissioning of a due diligence study. This study revealed that Satyam's reported bank and cash balances were greatly exaggerated, raising questions about possible fraud.

The disclosure of fraud resulted in a significant loss of investor trust and a precipitous drop in Satyam's stock prices. An auction was held to sell the majority of Satyam after the Indian government had to step in to stop the company from collapsing. Authorities in India detained Raju, his brother Rama Raju, and a number of other senior officials. Numerous offences, including criminal conspiracies, forgery, and breaches of trust, were alleged against them. Later, the case was turned over to the Central Bureau of Investigation (CBI) and legal action began.

After a protracted court battle in 2015, Ramalinga Raju, his brother, and other significant figures were found guilty and given prison sentences. Raju and other others were found guilty of fraud and given sentences ranging in duration. The Satyam Computer Services fraud case brought attention to the necessity of more stringent corporate governance laws and a strong system of checks and balances in the Indian corporate sector.

[6] 2018 SCC OnLine SEBI 165.

Volume 28, October 2023 ISSN 2581-5504

Need of CCI and SEBI with relevance to the above mentioned Case

The Satyam Computer Services fraud case exposed notable shortcomings in the corporate governance system in India. This incident also underscored the importance of effective oversight and regulation of entities like the Competition Commission of India (CCI) and the Securities and Exchange Board of India (SEBI) to promote integrity and transparency in business operations.

1. CCI: The Satyam case illustrated the value of putting in place a powerful competition regulator like CCI. Fraud involves Satyam's illegal attempt to buy two infrastructure firms, which was against the law. In order to encourage competition, stop anti-competitive behavior, and guarantee fair market conditions. It encourages healthy competition within industries and keeps an eye on M&A s to prevent any abuse of market power.

2. SEBI: The Securities and Exchange Board of India (SEBI) is a key player in overseeing the securities industry and defending investor rights. The Satyam fraud case exposed the falsification of financial statements to portray a company's financial stability. To maintain transparency and confidence in Indian capital markets, SEBI's role in enforcing appropriate disclosure rules, guaranteeing accurate financial reporting, and enforcing strong penalties for non-compliance is essential.

In reaction to the Satyam fraud case, various reforms and rules have been implemented by both CCI and SEBI. By enacting more stringent guidelines for the makeup of boards, audit committees, and whistleblower mechanisms, the SEBI tightened corporate governance standards. CCI has taken action to guarantee ethical business practices, encourage parity in the marketplace, and investigate anti competitive acquisitions.

These regulatory agencies continue to be extremely important in India for maintaining investor protection, fostering fair competition, and monitoring and enforcing compliance with corporate governance practices.

Cement Cartel Case[7]

The Cement Cartel case represents a noteworthy instance of collusion within the Indian cement industry. It saw several prominent cement companies collaborating with the deliberate aim of manipulating market prices and controlling supplies, effectively creating conditions akin to a monopoly. This cartel was formed during the late 1980s and early 1990s, and it operated for an extended period before coming under the scrutiny of the Competition Commission of India (CCI), which subsequently initiated an investigation into the matter.

The cartel involved cement businesses such as ACC, Ambuja Cements, and JK Cement in price-fixing and market-sharing arrangements. These businesses conspired to set similar prices,

[7] Builders Association of India v. Cement Manufacturers' Association, 2012 SCC OnLine CCI 43

limit production, manage distribution systems, and divide up regions through private meetings and conversations. The cartel sought to maximise profits and eliminate competition in the sector by managing cement supply and pricing. Consumers were significantly affected by this because it led to higher cement prices and fewer options for both businesses and individuals engaged in construction.

When a whistleblower approached the CCI in 1990 and informed them of cartel operations, cartelization was made public. The CCI initiated an inquiry into the situation, compiling information, conducting raids, and questioning company representatives.

The CCI fined the involved cement companies significantly for engaging in anti-competitive behaviour based on the evidence gathered. The severity of companies' membership in the cartel and their turnover were factors in determining fines.

Need of CCI and SEBI with relevance to the above-mentioned Case

Promoting corporate governance and curbing anti-competitive behaviors in India hinges on the pivotal role played by regulatory bodies like the Competition Commission of India (CCI) and the Securities and Exchange Board of India (SEBI).This was highlighted in the Cement Cartel case.

1. CCI: The Cement Cartel case demonstrates the need for a powerful competition regulator like the CCI to identify and investigate corporate collusion. Price-fixing and market-sharing agreements, which are blatant violations of fair competition laws, have been implicated in cartelization. CCI plays a critical role in upholding competition laws, fostering fair market conditions, and safeguarding consumer interests by preventing cartel formation and reducing anti-competitive behavior in a variety of industries, including the cement industry.

2. SEBI: It also contributes significantly to the advancement of market integrity and good business practices. Although the Cement Cartel case was primarily concerned with anti-competitive behavior, it also emphasizes the necessity for sound corporate governance procedures in general. SEBI ensures that listed firms adhere to stringent corporate governance standards such as accurate financial reporting, open disclosure procedures, and shareholder accountability. By upholding these standards, SEBI encourages investor confidence and lowers the probability of fraudulent acts such as cartelization, which can impair market competition and investor interests.

CCI and SEBI both continue to push for improved corporate governance standards in India. The Cement Cartel case served as a reminder of the significance of these regulatory organizations in promoting fair competition, discouraging collusion, promoting transparency, and safeguarding the rights of investors and consumers. The presence and efficiency of CCI and SEBI are essential for encouraging moral business conduct and maintaining the Indian corporate environment.

Volume 28, October 2023 ISSN 2581-5504

DLF Case[8]

A well-known legal and regulatory dispute involving DLF Limited, one of the biggest real estate firms in India, is referred to as the "DLF case." Allegations of unfair commercial practices, abuse of a dominant market position, and violations of securities regulations are central to the case.

The dispute started in 2010 when Arvind Kejriwal, a well-known social activist and his group, accused the DLF of numerous irregularities and corruption.

The main conclusions are as follows.

Misuse of Dominant Position: The DLF was charged by abusing its monopoly status to force unjust terms and lopsided agreements on potential buyers of its properties.

Non-disclosure: It was claimed that the corporation misled investors by omitting several important facts in the prospectus for its first public offering (IPO).

·Deals with Land: The DLF was charged with buying land from the state of Haryana at a discount in return to help powerful people.

Influence on Politicians: The business was also accused of leveraging its clout to secure favourable legislation and political favours from the government.

Need of CCI and SEBI with relevance to the above-mentioned Case

The Competition Commission of India and the Securities and Exchange Board of India, among other regulatory authorities, began to investigate DLF as a result of these claims. Real estate practices, market domination, and compliance with the corporation's securities rules have been investigated by several regulatory organisations.

The DLF lawsuit produced various conclusions and legal actions.

1. CCI Penalties: The CCI fined DLF 630 crore (about $90 million) in 2011 after determining that the business had abused its dominant position. The CCI concluded that DLF had placed one-sided restrictions on flat purchasers, limiting their rights and options.

2. SEBI Settlement: In 2017, SEBI reached a resolution on a matter involving DLF's IPO disclosures by fining the business 30 crore (about $4.2 million). This fine was allegedly imposed on material information in the IPO prospectus, which was not disclosed or misrepresented.

[8] Belaire Owner's Association v. DLF Limited, 2011 SCC OnLine CCI 89

Volume 28, October 2023 ISSN 2581-5504

It is crucial to note that throughout the court procedures, the DLF has steadfastly denied any wrongdoing and defended its business practices. The business contends that the accusations are unfounded and politically motivated.

The DLF case clarifies the importance of upholding ethical business conduct, encouraging openness, and safeguarding investors and consumer rights. It also emphasised the necessity of watchful regulatory authorities such as CCI and SEBI to look into claims of unfair practices and guarantee adherence to market and securities laws.