Journal of Civil & Legal Sciences

ISSN: 2169-0170

Perspective Open Access

Involvement in Sorting of Corporate Scandals: Deception or Intentional

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Introduction

There are kinds of Companies, adopt various modus-operandi to commit such corporate frauds, which may include miss-information in the prospectus, manipulation of accounting records, debt hiding etc. The aspect of falsification of financial information includes false accounting entries, false trades for inflation of profits, disclosure of price sensitive information which comes under the ambit of insider trading and showing false transactions which result in attracting more investors and lenders for funding. There can be several reasons cited for which companies commit such frauds like making more falsified money, creating a false image of the company for the market scenario and misguiding Governmental authorities for tax evasion [1]. In India, the Commission on 'Prevention of Corruption', in its report, observed, "The advancement of technological and scientific development is contributing to the emergence of mass society with a large rank in file and small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. There is a necessity for a strict adherence to high standards of ethical behaviour for even the honest functioning of the new social, political and economic processes. The report of the Vivian Bose Commission inquiring into the affairs of the Jain group of companies in 1963, highlighted as to how the big industries indulge in frauds, falsification of accounts and record tampering for personal gains and tax evasion etc. The first successful trial of a financial scandal in independent India was the Mudra Scam, in which Honourable Justice Chagla made certain critical observations about the big business magnate Mudra who wanted to build an industrial empire entirely out of dubious means.

There are many types of frauds like Fraudulent Financial Statements, Employee Fraud, Vendor Fraud, Customer Fraud, Investment Scams, Bankruptcy frauds and miscellaneous. Some of the common types of frauds are: Manipulation, falsification, alteration of accounting records, misrepresentation or intentional omission of amounts, misapplication of accounting principles, intentionally false, misleading or omitted disclosures. Theft of tangible assets by internal or external parties, sale of proprietary information, causing improper payments [2]. Making or receiving improper payments, offering bribes to public or private officials, receiving bribes, kickbacks or other payments, aiding and abetting fraud by others. The financial and corporate frauds or scams like Harshad Mehta case, Satyam fiasco, and Sahara case required the attention of law makers . Such frauds made it imperative to evaluate the standards set in corporate governance and stringent methods were needed to be implemented to tackle corporate frauds.

Discussion

The Companies Act, 2013, is the legislation which focuses on issues related to corporate frauds. Fraud in relation to affairs of a company or any corporate body as defined in S.447 of the Companies Act, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. In order to amount to Fraud, an act must be confined to acts committed by a party to contract with an intention to deceive another party or his agent or to induce him to enter into a contract [3]. Fraud, which vitiates the contract, must have a nexus with the acts of the parties entering into the contract. This definition highlights the precondition to prove the intention of the person who has committed fraud. If that person has willingly committed a fraud, then he will be punished. Here the person means himself or his agent [4]. The acts which include fraud are wrong suggestions or concealment of facts or false promises or any fraudulent act to deceive others. Independent directors shall report concerns about actual or suspected fraud. Any person who is found guilty of fraud shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years [5].

Conclusion

Central Government can order investigation into the affairs of a company on the receipt of a report of the Registrar or inspector; on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or in public interest .

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Received: 23-Apr-2022, Manuscript No. JCLS-22-65343; **Editor assigned:** 25-Apr-2022, PreQC No. JCLS-22-65343 (PQ); **Reviewed:** 11-May-2022, QC No. JCLS-22-65343; **Revised:** 16-May-2022, Manuscript No. JCLS-22-65343 (R); **Published:** 23-May-2022, DOI: 10.4172/2169-0170.1000329

Citation: Swart M (2022) Involvement in Sorting of Corporate Scandals: Deception or Intentional. J Civil Legal Sci 11: 329.