

CSR-THE NEW MANTRA FOR CORPORATES

The historic Companies Bill which had received the President's assent on 29th August, 2013 and became the Companies Act, 2013, (hereinafter the "new Act") by notification in the Official Gazette, on 30th August, 2013, had initially made 98 sections applicable w.e.f. 12th September, 2013. However, on Thursday, 27th February, 2014 the Ministry had further; vide three circulars, made all the provisions with respect to the Corporate Social Responsibility applicable and effective from 1st April, 2014, i.e. Section 135 of the Companies Act, 2013 pertaining to the Corporate Social Responsibility (CSR) requirements, Schedule VII (as amended) to the Companies Act, 2013 pertaining to the activities of CSR and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as amended. Let us first understand the concept of CSR.

The mandatory undertaking of Corporate Social Responsibility (CSR) activities by selected companies had been one of the key highlights of the Companies Act, 2013. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth.

The CSR activities are not new; rather they already have a history of more than 100 years. Originally CSR came from the charity principle: meaning contributions made by some firms or some rich people, who can afford to help others or the community as a whole because of their richness, power or status, for the upliftment of the society. Over the years, the concept of CSR gained momentum with many companies voluntarily undertaking CSR initiatives. It has become more of a business approach for corporates, thereby providing them an opportunity for positioning themselves as a more responsible & ethical corporate citizens who are closely connected with the social ecosystem. Big Companies like Tata Group, Birla Group, ITC, Hindustan Lever, Glaxo Smith Kline Pharmaceuticals, Indian Oil, ONGC, among others have made a name for themselves in CSR activities by running institutions, adopting villages or lending support in the field of education, health care, etc.

Till date, there had never been any statutory requirements on companies to spend any part of their profit on CSR activities though the Ministry of Corporate Affairs had issued "National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business," in July, 2011 for voluntary adoption by companies. Furthermore, on the basis of the MCA guidelines, the SEBI has mandated top-100 listed entities, based on market capitalization at

BSE and NSE, to include Business Responsibility Report in their Annual Report with effect from financial year ending on or after 31st December, 2012. However, a strong step was required in this regard so that CSR can achieve the goals for which it has been introduced and after extensive discussions and debates, the government thought it fit to incorporate it by way of a legally binding requirement in the newly enacted Companies Act. Let us look into the provisions of CSR as specified and made applicable by the Ministry.

Section 135(1) of the new Act states that a Company having

- Net Worth of Rupees Five Hundred Crore or more, or
- Turnover of Rupees One Thousand Crore or more or a
- Net Profit of Rupees Five Crore or more

during any financial year, shall constitute a Corporate Social Responsibility Committee of the Board.

Now, what is meant by “Net Worth”, “Turnover” and “Net Profit” Subsection 57 of Section 2 of the new Act defines Net Worth as “the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.”

Further, Section 2 (91) defines Turnover as “the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.” W.e.f. 12th September, 2013, the above two subsections have already become effective.

As per the amended CSR rules, Net Profit means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include: any profit arising from any overseas branch or branches of the company and any dividend received from other companies in India which are complying with CSR provisions.

Companies which meet the above financial criteria will have to spend at least 2% of their average net profits of the past three years on any of the specified CSR activities and in case the same has not been spent, the Board shall specify the reasons for the same in its report. Therefore, even though the Act has prescribed it very strongly, still it has adopted a

“comply or explain” approach. Furthermore, such a Committee shall consist of three or more directors, out of which at least one director shall be an independent director. Subsection 3 of Section 135 of the new Act states the role of the Committee which will be to formulate, recommend and oversee the Corporate Social Responsibility Policy of the Company.

In view of the consultations with the stakeholders and the public comments received, Schedule VII to the Companies Act, 2013 pertaining to the activities which can be undertaken by a Company, had been amended and now covers a wide range of activities which shall include and be directed towards-

(i) Eradicating hunger, poverty and malnutrition; promising preventive health care and sanitation and making available safe drinking water

(ii) Promoting education including special education and employment enhancing vocational skills especially among children, women, elderly and differently abled and livelihood enhancement projects.

(iii) Promoting gender equality and empowering women; setting up homes and hostels for women and orphans, setting up old age homes, day care centres and such other facilities for senior citizens and measures for inequalities by socially and economically backward groups

(iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water

(v) Protection of national heritage art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(vi) Measures for benefit of armed forces veterans, war widows and their dependents

(vii) Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports

(viii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief

and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

(ix) Contribution or funds provided to technology incubators located within academic institutions which are approved by the Central Government

(x) rural development project.

It has been clearly specified that for undertaking these activities, preference should be given to the local areas in which a company operates and further only those activities which are undertaken within India shall be considered as CSR. It had also been made applicable to foreign companies registered in India and falling within the required criteria of CSR. The rules have further stated that for the same a company can either set up an organization which is registered as a Trust or Section 8 Company, or Society or Foundation or any other form of entity operating within India to facilitate implementation of its CSR activities in accordance with its stated CSR Policy or may join hands with NGO's already established and actively working in the related fields or collaborate with other companies for CSR activities, provided they separately report about spending on such projects and programmes. However, for these certain requirements have been prescribed in the rules to be fulfilled.

The CSR rules notified have answered and clarified many questions which companies had. One point which had been specifically cleared by the rules is that contributions made 'directly or indirectly' to any political party have been excluded from CSR ambit. Funds given to political parties and the money spent for the benefit of the company's own employees (and their families) will not count as CSR. They have also clarified many questions as to the composition of the CSR Committee, expenses covered under the CSR ambit, exclusions from CSR provisions, etc. However, from taxation point of view, though the draft CSR Rules had left it to the Central Board of Direct Taxes (CBDT) to look into and determine the taxation benefits which could accrue to the companies in respect to CSR activities undertaken, the amended CSR rules is silent on the same.

Unlike in the past, companies will now be required to undertake CSR activities strategically and in a more structured manner since creating effective CSR programs will surely lead to good corporate reputation and will also directly contribute towards building sustainable businesses as well as protect its reputation in times of difficulty. What required is to embed it within and reflect the core values of the firm thereby linking it to the mission, vision and

values of the organization and this core vision needs to openly recognize that CSR is core to creating not only social or environmental value, but that it is core to creating business value as well.

P.S: This article is based on the research and contains the views of the author on the above subject. The author does not assure error free content and cannot be held liable for the content or for any errors in the article. The users and readers are advised to cross check with the concerned Act before acting upon this article.