By CS Rahul Patwi

CORPORATE SOCIAL RESPONSIBILITY (CSR) UNDER THE CA, 2013

Section 135

Applicability:

Every Company having

- Net Worth of - Rs. 500 Crore or more, or
- Turnover - Rs. 1000 Crore or more, or
- A Net Profit of - Rs. 5 Crore or more

during any Financial Year.

CSR spend in Financial Year

- At least 2% of the Avg. Net Profits of the Company made during the 3 immediately preceding Financial Years.
- The Section postulates that "Net Profit" shall be calculated in accordance with the provisions of Section 198 of the CA, 2013.
- Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.
- Where the Company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.

Companies (CSR Policy) Rules, 2014

CSR EXPENDITURE

- The CSR projects or Programs or Activities undertaken in India only shall amount to CSR expenditure.
- Activities undertaken in normal course of business of Company shall not be included in CSR spend (Eg. The business of Company is to run educational institution)

Schedule VII

ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES

Activities relating to:—

(*i*) eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation 1 *including contribution to the Swach Bharat Kosh set up by the Central Govt. for the promotion of sanitation* and making available safe drinking water;

(ii) promotion of education including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;

(*iii*) promoting gender equality, 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 reducing inequalities faced 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; 2 *including contribution to the Clean Ganga Fund set up by the Central Govt. for rejuvenation of river Ganga;*

(*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 the benefit of armed forces veterans, war widows and their dependents;

(v*ii*) 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 for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

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

(x) rural development projects

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1 inserted vide Notification dated 24.10.2014

2 inserted vide Notification dated 24.10.2014

<u>Implementation</u>

CSR activities may be undertaken through

- A Registered trust, or
- A Registered Society, or
- A Company established by the Company or its holding or subsidiary or associate Company under Section 8 of the CA, 2013

MCA Clarification vide General Circular 21/2014 dated 18th June, 2014

"Registered Trust"

- Registered with Registrar of Trust in the State.
- Where no Registrar of Trust in the State, Registered with IT Authority.

Trust / Society / Companies (Other than related to the Company)

- shall have an established track record of 3 years in undertaking similar programs or activities
- the Company has to specify the projects or programs to be undertaken through these entities
- The CSR projects or programs or activities that benefit only the employees of the Company and their families shall not be considered for CSR.

Actions needs to be taken

- Company has to spend the amount on CSR activities as required by Section 135 during the FY 2014-15 and reporting of the same would be in 2015 Board's Report or otherwise state the justification for the same in Board Report.
- Avg. Net Profit of 3 preceding FY will include FY 13-14, 12-13, 11-12.

What if the Company does not comply nor explain?

Disclosure has to be made in the Board's Report U/S 134

Penalty U/S 134(8)

- Company fine which shall not less than Rs. 50,000/- but not more than Rs. 25,00,000/-
- Every Officer – imprisonment extending upto 3 Years or fine not less than Rs. 50,000/- but not more than Rs. 5,00,000/- or with both.

Further, in case a Company has ***not spent the amount required under the law on CSR activities*** and ***if it has explained the same in the Directors' Report***, its legal responsibility in this regard stands discharged. [Section 135(5)]

Also, since it is answerable to all the stakeholders, the Company can only escape by explaining the genuine problem and which is not possible every year.

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