

**THE ROLE OF CORPORATE SOCIAL RESPONSIBILITY IN THE NEW COMPETITIVE ERA****CA. Raj Garg***

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KEYWORDS: Csr Expenditure, the Income Tax Act & Views and Criticism of the Scheme.**ABSTRACT**

CSR relates to the companies manning their business in such a way as produces overall positive impact on the society. This article contains provision regarding Corporate Social Responsibility. Every company with a net worth of Rs. 500 crores or more, turnover of Rs. 1000 crores or a net profit of Rs. 5 crores or more during any financial year shall spent minimum of 2% of 'average net profit on CSR'. The Company falling in any of the categories referred to earlier shall have to constitute a Corporate Social Responsibility Committee (CSRC), which shall formulate and recommend to the Board, a Corporate Social Responsibility Policy, which shall indicate the activities to be undertaken by the company as specified in Schedule VII. But the CSR concept in the Act has not been universally welcomed. There has been criticism of the proposals by those who believe that welfare of the people is the responsibility of the Government for which it collects taxes and hence this extra burden on the companies is unjustified.

INTRODUCTION

The Companies Act, 2013 for the first time has introduced a welcome provision requiring corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. The country has a new law for Companies after long deliberations extending to nearly two decades - the exercise for giving a new Companies Act to replace the Companies Act, 1956 having been started in the year 1993.

Every company with a net worth of Rs. 500 crores or more, turnover of Rs. 1000 crores or a net profit of Rs. 5 crores or more during any financial year shall spent minimum of 2% of 'average net profit on CSR'. The amount has to be spent on the 9 broad areas that result in social good as specified in Schedule VII of the new Act.

The areas are:

- i) eradicating extreme hunger and poverty;
- ii) promotion of education;
- iii) promoting gender equality and empowering women;
- iv) reducing child mortality and improving maternal health;
- v) combating human immuno deficiency virus, acquired immuno deficiency syndrome, malaria and other diseases;
- vi) ensuring environmental sustainability; (vii) employment enhancing vocational skills; 1054 September 2013 CHARTERED SECRETARY Article [A-357] The Concept of Corporate Social Responsibility under the Companies Act, 2013 - Whether well-conceived?
- vii) social business projects;
- 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

The Company falling in any of the categories referred to earlier shall have to constitute a Corporate Social Responsibility Committee (CSRC), which shall formulate and recommend to the Board, a Corporate Social Responsibility Policy, which shall indicate the activities to be undertaken by the company as specified in Schedule VII; recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and monitor the Corporate Social Responsibility Policy of the company from time to time. The Board of Directors of the Company shall after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such



Policy in its report and also place it on the Company's website, if any, in such manner as may be prescribed; and ensure that the activities as are included in Corporate Social Responsibility Policy of the Company are undertaken by the Company.

WHAT IS CSR?

CSR relates to the companies manning their business in such a way as produces overall positive impact on the society. In other words, it implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.

The Indian scheme is going ahead in this matter by providing spending of 2% of net profits mandatorily for the CSR and in cases of failures in compliance, explanation will have to be given by the directors at the Annual General Meeting. There, besides paying taxes, companies donate a certain share of profits to charitable causes – an act of giving as a reciprocity for receiving something. There cannot be any rigidity in the outlook in this regard. In different countries, there could be different parameters, values and priorities and the companies generally consider this aspect in the background of their core business activities operating their businesses in a way that meet (or exceed) the ethical, legal, commercial and public expectations that the society has from the business. However, no country, appears to have prescribed statutorily any limit for expenditure which has to be mandatorily spent on CSR.

India is, perhaps, the first country to proceed in this manner. Some companies despite their having profits, net worths, turnovers, as prescribed may find themselves ill-equipped to engage in broad societal goals. Further, there could be arguments whether the companies could be compelled to assume such roles which legitimately are to be undertaken by the Governments for which they are collecting taxes!

WHETHER CSR EXPENDITURE SHOULD QUALIFY FOR DEDUCTION UNDER THE INCOME TAX ACT?

The Income-tax Act, 1961 (Act) provides tax benefits for expenditure on charitable activities should such expenditure by Companies on CSR be made eligible to tax benefits also needs consideration? If so provided, this will encourage expenditure on CSR activities. Such expenditure should normally be admissible being expenditure wholly and exclusively incurred for business. A clarification from the CBDT will avoid undue litigation in the matter. Incidentally, contributions to Prime Ministers Relief Fund will get double benefit. These will be entitled to 100% deduction in income tax as well as will be counted against discharge of obligation for CSR under section 135 of the new Act.

THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY UNDER THE COMPANIES ACT, 2013 - WHETHER WELL CONCEIVED?

If they aspire to be national and global their reach in the social sector also must be national and global. Parity with political contributions Section 183 provides for political contributions up to 7.5% of net profit (increased from existing limit of 5%). In view of this, limiting expenditure for CSR to 2% only seems unfair. CSR expenses relating to employment The expression 'employment enhancing vocational skills' in Schedule (VI) needs to be expanded to cover expenditure on employees welfare and efficiency increasing activities also. Clarity about unspent amount For how long the unspent accumulated funds for which explanations have been given in the published accounts of the Companies can remain unspent has not been provided.

Some time limit for this needs to be prescribed and if the same is not adhered to, the Company and its Directors should be made liable to penal action as provided in section 134(8) of the new Act. Companies should not get away from CSR expenditure merely by giving an explanation for non-spending.

The phrase 'social business projects' is ambiguous and needs to be elaborated. CSR needs to be extended to cover philanthropy and charity also. CSR activities need to be pooled for undertaking major projects in a group. This, if



done, would bring in more funds and expertise and may result in better results. Promotion of education Promotion of education is one head on which CSR expenditure can be spent

VIEWS AND CRITICISM OF THE SCHEME

The CSR concept in the Act has not been universally welcomed. There has been criticism of the proposals by those who believe that welfare of the people is the responsibility of the Government for which it collects taxes and hence this extra burden on the companies is unjustified. Then there is also a view:

- 1) Why only companies should be made to discharge social responsibility! Why not other sectors like Firms, Individuals, Association of Persons etc. who are being assessed to tax. A mining firm may choose to open schools or hospitals for tribals in its area of operations. Corporates value the goodwill these create, which may even be in their shareholders' long-term interest.
- 2) India is perhaps the first country in the world to have CSR in a statute and it has been well received by corporate India.
- 3) There will be advantage to the companies contributing towards CSR activities because it will enhance their images as socially responsible entities which understand the need of the day towards the society.
- 4) It would ensure better compliance, if each company keeping in view its area of activity declares its CSR policy each year as Annexure to Directors reports in clear terms relating to eradicating hunger and poverty, promotion of education, women empowerment, reduction in child mortality and improving national health, environmental sustainability, enhancement, employment and vocational skills or contributions to Central or State Government set up funds including the Prime Ministers National Relief Fund or in regard to any other area prescribed by the Government from time to time.
- 5) To give incentive to companies to excel in the area of CSR, companies should be given 'CSR credits' on the lines of Carbon credits on the basis of criteria fixed in advance for giving such credits. These credits should not be transferable or saleable like carbon credits.
- 6) These should count for National Awards to be announced by the Ministry of Corporate Affairs annually in functions to be organized at different places on yearly basis. Ten companies should be given award each year on the basis of such credits. The awards should be in terms of trophies.
- 7) There should be specific audit of expenditure on CSR during annual statutory audits of the Companies.
- 8) The ICAI should amend the auditing report format on companies to include a special mention about the CSR in the Auditor's report. A Committee of in-house officers of the Ministry of Corporate Affairs may be formed to examine the various aspects relating to functioning of the scheme immediately which can examine the relevant issues and frame appropriate guidelines for the implementation of the CSR scheme.

DISCLAIMER

This paper has been compiled based upon documents and information available in public domain. Anybody wishing to act on the basis of this paper should do so only after cross checking with original document. We do not present any opinion on any matter whatsoever and matters expressed herein should not be taken as directive or opinion for any reason. We have tried to highlight the significant changes.

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