



Emergence of CSR under Companies Act 2013 & its Impact

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Abstract:

Legal framework and authorities in India has recently shown the necessity for inclusion of socially unprivileged sections of the society in India's growth story, the new company law of 2013 has come up with a mandate for giant corporates to shell out at least two per cent of their three years annual average profits towards Corporate Social Responsibility (CSR) activities. Probably the law is the first of its kind in Indian history to recognize the scope of utilizing corporate strengths towards fulfilling country's social objectives. Going by the new norms, the two per cent spending on CSR is not mandatory but reporting about it is mandatory. Proper disclosure of the CSR policy by the corporates, reasons for not meeting the required expenditure and various activities that may be included in the CSR agenda of the companies are on the board in the new CSR provisions. The study is carried out to find out the effect of new Companies Act 2013 on CSR activities of the companies.

Keywords: Companies Act 2013, CSR

1. Introduction

Recently Indian parliament approved Companies Bill 2013 which also got presidential assent and has become Companies Act 2013. Companies Act 2013 aims to motivate Indian companies to employ CSR to integrate economic, environmental and social objectives with their operations and growth. Thus, this bill seeks to actively engage top management by constituting a CSR board committee of 3 or more directors, with at least one of them being an independent.

Section 135 of Companies Act 2013 prescribes a mandatory CSR spend of 2 % of Profit Before Tax (PBT) for companies with net worth of Rs. 500 Cr or turnover of Rs. 1000 Cr or net profit of Rs. 5 Cr. Of late several policies and laws have been introduced by Government of India but most of them suffer from poor enforcement. In this regard, CSR Bill tries to forge a new path, where in difficult to enforce penalties have given way to self assessment and disclosure. So, if companies fail to spend the earmarked amount on CSR activities, instead of a penalty, they will have to issue an annual statement specifying the reasons for the same.

2. Guidelines for CSR Spending

The recently approved CSR bill is very comprehensive in terms of where the funds could be deployed and companies have the liberty to choose action areas which are most strategic, beneficial for them as per their CSR policy. For providing guideline on as many as nine activity areas encompassing all social development activities like education, healthcare, environmental sustainability, gender equality, employability etc. are covered.

CSR bill also recommends that local area action and collaboration are preferred thus, paving way for wide cluster level actions. So, for example, automotive clusters might see bigger OEMs pooling their resources to bring real impact for the residing communities like educational/vocational institutes, comprehensive environment up gradation programs, healthcare

facilities etc. This also suggests that projects/schemes designed exclusively for employees will not qualify under this act as it wants to encourage outward actions.

Companies can choose to set up own trusts, societies or section 8 companies or fund such existing firms operating in India to implement the activities outlined in its CSR strategy. If the companies choose to set up their own arms, they will have to make sure that a robust monitoring mechanism is in place to ensure funds are spent only on specified programs identified in their CSR policy. On the other hand, existing trusts, societies or section 8 companies are eligible to receive such funds, only if they have an established track record of at least three years in carrying out such activities.

3. Tax Treatment of CSR Spending

Newly enacted Corporate Social Responsibility (CSR) framework under the Companies Act 2013 comes into effect from April 1 2014. There is great anxiety among the Indian companies anticipating the Income Tax Law to be clarified upfront so that their CSR spend by these corporate becomes eligible for deduction for income tax purposes.

Presently the Income Tax Law provides for deduction under section 80G for donations to certain funds and institutions with maximum limit of 10% of the total income. Deduction for CSR spending should preferably be over and above deduction under section 80G to give a direct motivation to companies to spend for CSR activities. Alternatively CSR may be declared as a business expense and deduction may be allowed under the Income Tax Law.

Apart from this capital and revenue expenditure on CSR activities require separate tax treatment to avoid future litigations. The Income Tax Law has to address these and various other issues which we hope that government would be covering in the next Budget of 2014.

Indian companies like any other individuals also pay various taxes to the government in one form or the other. Companies in India pay direct taxes particularly that sums up for almost 1/3rd of their profits each year. In addition to this corporate also bear wealth tax of 1% calculated on their taxable net wealth. According to one school of thought the corporate responsibility should end there, it is for the government now to use the money collected efficiently.

In addition to all these taxes corporate in India are also major contributors and work towards the welfare of the society in different forms and manners, through employment generation, potential investments in technology and transforming people's pooled savings into productive capital. Corporate also create wealth for shareholders and also pay taxes. In any case it will be a greater challenge for the giant companies to manage the total burden of income tax, wealth tax and CSR spending.

4. CSR Initiatives in India by Corporates

Though legal CSR provisions has been recently brought into by the new Company Law of 2013, CSR is not any new concept in India, there has been a history of giant corporates like the Indian Oil, Tata Group, Aditya Birla Group and many more like Bharat Petroleum Corporation Limited, Maruti Suzuki India Limited, Hindustan Unilever Limited etc., who involved themselves in various CSR activities without legally required to do so. Such companies view CSR not being just an expense but it is viewed in a larger context of building goodwill, brand building, image in the society and fight business competitiveness.

These companies set aside funds for such activities to be managed by CSR teams, which are professionally managed, to meet the desired CSR objectives of these firms. CSR programs include promotion of education, protecting environment and healthcare facilities etc. Provision of

improved medical and sanitation facilities, building schools and houses and empowering the villagers and in process making them more self-reliant by providing vocational training and a knowledge of business operations are the facilities that these corporations focus on.

NTPC has worked towards creating opportunities of sustainable Self- Employment for the Physically Challenged Persons (PCPs), had invited creative ideas from Individuals, Organizations, Consultants/ Professionals, individual PCPs or group cooperatives of PCPs. NTPC expresses its continued support for the Global Compact and its commitment to take action in this regard. The NTPC's Centre for Power Efficiency & Environmental Protection (Cen PEEP) has received the United States Environment Protection Agency's 'Climate Protection Award' for 2013 and the 'Climate Technology Initiative (CTI) Award' of CTI, an initiative of the International Energy Agency (IEA), and the Organisation for Economic Cooperation and Development (OECD).

Hero Moto Corp has set up an Integrated Rural Development Centre on 40 acres of land along the Delhi-Jaipur Highway. The Centre-complete with wide approach roads, clean water, and education facilities for both adults and children-now nurtures a vibrant, educated and healthy community. The Hero Foundation has adopted various villages located within vicinity of the Hero Honda factory at Dharuhera for integrated rural development. The company has also set up the Raman Munjal Vidya Mandir which began with three classes and has now grown into a modern Senior Secondary, CBSE affiliated co-educational school with over 1200 students and 61 teachers. The school has a spacious playground, an ultra-modern laboratory, a well-equipped audio visual room, an activity room, a well-stocked library and a computer centre. Multi-specialty hospital set up by the Hero equipped with the latest diagnostic and surgical technology.

5. Unclear questions?

- (a) Calculation of average profits under different situations, e.g. if a firm has incurred losses in a particular financial year then how to determine average profit in these scenario.
- (b) How the government does ensures CSR activity that does not shore up profits is misuse of shareholder funds?
- (c) Section 135 of the Companies Act, 2013 provides CSR committee to consist of three or more directors. A private limited company only requires two directors. "In case where a private limited company meets one of the criteria to attract the CSR provision, will it mean that the private company will specifically need to increase its board strength to three only for the purposes of the CSR Committee? This will be too harsh and can be relaxed for private companies," said an Expert.

6. Conclusion

The study has revealed that Corporate Social Responsibility (CSR), for the corporate sector is more about corporate community involvement than anything else. The participation of the corporates in the community betterment programmes, going beyond their economic arguments is what they call it CSR. Attitudes to broader social responsibility issues have changed drastically in the past few years. The factors leading to this trend are the global standards set by the international corporate houses and the corresponding domestic pressure associated with it.

Although CSR itself requires money for its implementation, the objectives set by the corporate houses as part of CSR activities and their realization have positive impact on the profit and corporate image of the business houses. There is no fundamental dichotomy between long-term profit-maximization and social responsibility.

Education and health welfare of the under privileged sections of the society are rated higher in the practice of CSR activities followed by the corporates that have been studied. This is followed by

environment and health. One thing should be noted here is that whereas the education and health measures taken by the corporates are more voluntary in nature the environmental activities are more due to governmental enforcements.

The corporates have their employee volunteers in their headquarters as well as in their respective fields; they have a greater role to play in the later case. The number spreads to thousands and varies according to the size of the company and the diversification of the same. Employees, community, economically and socially marginalized groups and the persons living below poverty line are the topmost beneficiaries of the CSR activities pursued by the corporate sectors.

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