

SOCIO-LEGAL PERSPECTIVES ON THE CONCEPT OF CSR (AN INDIAN PERSPECTIVE)

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ABSTRACT

This paper looks at changes in the legal requirements regarding CSR in Indian context. This is a review paper which reviews the proposed legal reform. Different perspectives regarding making CSR mandatory are being discussed in the light of the discussions of proposals. The focus has shifted from Profit to People. The whole concept of CSR is based on the fact that the society provides resources for business and business has to give back to the society for its inclusive growth. Business goals have to be aligned with the social and environmental needs for its long term growth. A few corporate houses view the mandatory spending on CSR activities as an unjustified burden on corporates and is going to hit their bottom line because of additional spend of a minimum 2% of the profits on the prescribed CSR activities. There is criticism over the dictating terms of the legislatures for philanthropic initiatives of the companies.

KEYWORDS: CSR, companies act, legal requirements, corporate social responsibility

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INTRODUCTION

Corporate Social Responsibility (CSR) has become a buzz word today and these three words have attracted the attention of all concerned be they Corporates /Academics /Environmentalists /Researchers /Politicians /Bureaucrats and have wide importance and impact on the society as a whole. The concept of CSR does not need any introduction. The Corporate as we all know may be referred to as an organized business entity which is an important constituent of the society. Society means people at large- the provider of all the requisite resources for business- Man, Material and Market. Responsibility is the accountability/relationship between two. Thus, CSR is the responsibility of corporates towards society. Over a period of time there is a major shift in the style in which the business is done and the main object of the business today is not just to make profit. The focus has shifted from Profit to People. The whole concept of CSR is based on the fact that the society provides resources for business and business has to give back to the society for its inclusive growth. Business goals have to be aligned with the social and environmental needs for its long term growth.

CSR is not new in India. For ages, entrepreneurs and business persons have tried to help the society at large through some or other means in its development. The word was not CSR, but the spirit was that of CSR. Tata group always tried to develop the citizens from the neighboring areas while setting up its plants, Birla group always tried to set up residential township before setting up the plant and machinery, Bajaj group always came forward to contribute to the national cause. Entrepreneurs from Rajasthan, Gujarat, Maharastra came forward to set up schools and educational institutions in their native places during freedom struggle and thereafter also. These are only a few of the instances which reflect the spirit of CSR which pervaded Indian mindset. Today this philanthropic spirit is branded as CSR initiative. Today CSR is recognized as initiative towards social development as a responsibility of organizational citizenship. CSR is a source of corporate goodwill gesture towards its stakeholders. Researchers have found a positive relation between CSR and employee motivation, organizational goodwill and organizational performance. CSR contributes to the growth of the organization indirectly. CSR builds a rapport between the organization and its stakeholders, which bridges the gap between them.

While earlier CSR was a voluntary initiative, slowly it is going to become a mandatory initiative. This will put a mandatory obligation on companies to comply with CSR requirements as per law. The new companies act will make CSR a mandatory assignment on some companies.

CSR under the Companies Act, 2013

The Companies Act, 2013 replaces 6 decades old legislation of Companies Act, 1956 and has recognized the concept of CSR in the statute itself. The term “Corporate Social Responsibility” has not been defined in the new Act. The focus of the legislation has been on self-regulation, disclosure, transparency and accountability. Section 135 (The effective date of implementation yet to be announced) of the new Companies Act, 2013 requires corporates to mandatorily spend some percentage of their profit on the prescribed CSR activities in the prescribed manner. It also requires to make necessary disclosure in the Board’s Report about the activities and the amount spent during a particular period and disclose the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

If the company fails to spend the prescribed amount on CSR activities, it has to specify the reasons for not spending the amount.

Applicability

Every company having net worth of Rupees 500 crore or more or turnover of Rupees 1000 crore or more or a net profit of Rupees 5 crore or more during any financial year will have to comply with the CSR provisions as laid down under the new Act. The companies falling in any of these three categories are mandatorily required to spend at least 2 percent of the average net profit of past three financial years on specified CSR activities. The net profit for the purpose has been defined in the proposed Rules as net profit before tax as per the books of accounts and shall not include profits arising from branches outside India.

Responsibility of the Board of Directors

The Board of directors of every company falling in any of the above three categories is required:

- To constitute the CSR Committee of the Board;
- To approve the CSR policy recommended by the CSR committee and disclose the contents of such policy in its report and place it on company’s website;

- To ensure that the activities included in the CSR Policy are undertaken by the company;
- To ensure that the Company spends at least 2 percent of the average profit made during the three immediately preceding financial years on CSR activities;
- To report CSR activities in Board's report and
- To disclose non-compliance (if any) with the CSR provisions.

Constitution of CSR committee

The CSR committee constituted by the Board will consist of three or more directors with at least one independent director. The mandate of the said CSR committee shall be:

- To formulate and recommend a CSR policy to the Board;
- To recommend amount of expenditure to be incurred on CSR activities;
- To monitor the CSR policy of the company from time to time.

Activities included in the CSR Policies

Schedule VII to the Companies Act, 2013 prescribes that the Activities relating to following areas may be included by companies in their Corporate Social Responsibility Policies:

- 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 immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- vi. ensuring environmental sustainability;
- vii. employment enhancing vocational skills;
- viii. social business projects;
- ix. 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
- x. Such other matters as may be prescribed.

The various activities prescribed show that there are wide scope for taking different activities while spending the CSR fund. It has been specifically prescribed that the companies shall give preference to the local area(s) where it operates for spending the amount earmarked for CSR activities. The last clause (x) has given opportunities to the corporates to represent to the Government for inclusion of any other activity that they consider should be included looking at the local needs of the areas where they operate. This will go a long way to give a direction for CSR spending and is going to serve a booster for the local CSR activities which are relevant for the areas where the individual corporate operates.

Spending the Fund earmarked for CSR Activities:

A corporate has mainly got two options for spending the funds earmarked for the CSR activities i.e. through setting its own structure viz. a not-for-profit organization in the form of trust, society, foundation or a non-profit company to facilitate implementation of its CSR activities or it may also implement its CSR programs through organizations that are not set up by the company itself i.e. some other established organization outside its control. Alternatively, the companies may also collaborate or pool resources to undertake CSR activities. However, the contributing company/companies shall specify projects / programs to be undertaken by such an organization and monitoring mechanism has to be established to ensure that the allocation to such organization is spent for intended purpose (s) only.

CSR activities as such may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company. A rider to such spending is that the activities which are not exclusively for the benefit of employees of the company or their family members shall be considered for CSR spending.

CSR : A Boon for Society or a Burden for Corporates

The mandatory spending on CSR activities by the corporates has opened a debate amongst big corporate groups. We have seen a number of big industrial and business houses spending voluntarily a lot on the social activities relating to a wide spectrum like Environment improvement, Education, Health, Climate, Vocational Skills, WasteMgt/ Radiation Mgt/ Pollution Control etc. etc. There have been instances of adopting the whole village/locality for

taking care of their basic needs by the Corporates. Many PSEs are already spending a lot towards various social projects. All these have reflected in the positive impact on society and led to a better society with improved resources.

However, there is second thought on the subject. A few corporate houses view the mandatory spending on CSR activities as an unjustified burden on corporates and is going to hit their bottom line because of additional spend of a minimum 2% of the profits on the prescribed CSR activities. There is criticism over the dictating terms of the legislatures for philanthropic initiatives of the companies. The corporates are already contributing to the exchequer by paying a number of Taxes/Cess or Corporate Tax and other statutory dues and enhancing the resources for taking up such social activities. Welfare of the people is responsibilities of the State and a business entity cannot be expected to run their business for philanthropic activities and such activities should be left to the individuals and the organization set up for the purpose.

Opportunities V/s Challenges

A huge fund in the shape of prescribed contribution of 2% of the corporate profit, the income and surplus arising out of the CSR activities will be generated every year. As per various estimates made by different agencies the total spending on account of the newly introduced provisions for CSR activities under the Companies Act, 2013 is going to be in the range of 15-27 thousand crores every year from the corporates covered. No doubt, a big corpus for CSR activities. The corporates with such resources would search for the right activities and organization with whom they can be associated in order to achieve the intended objectives of the proposed changes in the legislation. This will require talent and well established and recognized agencies/organisations who have good knowledge and expertise to understand the local needs and device the program for eradication of the problems being faced by the community. As per the newspaper report the compulsory CSR activities is likely to increase the demand for the professionals in this field and will create at least 50,000 more jobs opportunities in this sector.

Conclusion

There is no doubt that the new provisions being included in the Companies Act, 2013 are very crucial and important from the social point of view provided the implementation is done with the

right spirit and not just to comply with the legal obligation imposed on the corporates. The Corporates will have to understand that the CSR is a business necessity and not just a cost. The spending on these activities will earn reputation and help in image and brand building for them. The Government should develop a mechanism to oversee that spending of huge resources being generated by this novel provisions is done on the right projects and reflect in better and improved living standard of the people at large. There can also be increased tax rebate/concession for the corporates who take the initiatives for such activities and implement them in the right manner. The day is not far away when we can see introduction of the corporate award for good CSR activities to recognize the initiatives and efforts made by the corporates in this field.

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