VII– INDIA & "THE LAW"

Corporate Social Responsibility

वसुधैव कुटुम्बकम

Series : Rise

Sociostark.com/publication

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CSR & The Companies Act 2013

India always strives for peace, justice & giving back to the society is well known to the world it is in our DNA. But from last few decades we are struggling for equitable, inclusive and sustainable growth.

India is a country of many contradictions at one hand, it has grown to be one of the largest economies in the world and an important player of the global economy and on the other hand we are with largest number of people living in absolute poverty and undernourished children. This is due to uneven distribution of the benefits of growth which is the root cause of social unrest.

With increasing awareness of this gap between the haves and the have-nots many companies are more proactive sensing the need of the time and societal expectations but a large number of companies need to be pushed to respond the situations.

The inclusion of the CSR mandate under the Companies Act, 2013 is an attempt to supplement the government's efforts of equitably delivering the benefits of growth and to engage the Corporate World with the country's development agenda.

This combination of regulatory as well as societal pressure has meant that companies have to pursue their CSR activities more professionally.

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The Global understanding of CSR

- The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
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- CSR needs to address the well-being of all stakeholders and not just the company's shareholders.
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- Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

India is a first country to make CSR mandatory through The Companies Act, 2013 with an idea to bring CSR on the forefront and through its comply-or-explain, promoting greater transparency and disclosure. Schedule VII of the Act, which lists out the CSR activities, suggests communities to be the focal point.

A well thought of company's relationship to its stakeholders and integrating CSR into its core operations, the rules suggest that CSR needs to go beyond communities and beyond the concept of philanthropy. It is an opportunity to corporate fraternity to participate in the process of inclusive growth of the country by translating their CSR mission & vision into action at the ground level to make a change in the society.

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Section 135 of The Companies Act 2013

In India, the concept of CSR is governed by section 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013.

1. Applicability

a) On all Companies;
b) If
   I. Net worth of rupees five hundred crore or more, or;
   II. Turnover of rupees one thousand crore or more, or;
   III. A net profit of rupees five crore or more during any financial year.
c) Applicable from the fiscal year 2014-15 onwards.

2. Governance

Section 135 of the Act lays down the guidelines to be followed by companies while developing their CSR program. The CSR committee will be responsible for preparing a detailed plan on CSR activities, including the expenditure, the type of activities, roles and responsibilities of various stakeholders and a monitoring mechanism for such activities. The CSR committee can also ensure that all the kinds of income accrued to the company by way of CSR activities should be credited back to the CSR corpus.

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3. Framework

a) Formation of CSR Committee

- A CSR committee of the Board should be constituted.
- It should consist of at least three Directors out of whom at least one is an independent director. This composition will be disclosed in the board's report as per sub-section (3) of section 134.
- Unlisted public company or private company, which is not required to appoint an independent director can have CSR committee without an independent director; two directors in case of a private company having only two directors; at least two persons in case of a foreign company — one person nominated by the foreign company and the other person as defined in Section 380(1)(d) of the Act;

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b) Responsibility of CSR Committee & Board

The CSR committee shall:

- Formulate and recommend to the Board, a CSR policy, which shall indicate the activities to be undertaken.
- Recommend the amount of expenditure to be incurred on the activities referred above.
- Monitor the CSR Policy of the company from time to time.

The board of every company shall *:*

i. Approve the CSR Policy for the company after taking into account the recommendations made by the CSR Committee; 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

ii. Ensure that the activities as are included in CSR Policy of the company are undertaken by the company

iii. Provided further that if the company fails to spend such amount, the Board shall, in its report made, specify the reasons for not spending the amount.

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c) CSR Policy

The Companies Act, 2013 requires every company to give wide publicity to its CSR policy in the public domain and CSR Policy should:

- Exclude normal business activities of the company
- Contain a list of the CSR projects or programs which the company plans to undertake.
- Contain a Monitoring framework for such projects and programs.

4. What is the "2% of net profits" & How to Compute

Section 135(5) places a responsibility on the Board for ensuring that at least 2% of the "average net profits" for the preceding three financial years on CSR activities.

Also the "Average net profits" would have to calculated as per provisions of Section 198 [*Explanation to Section 135*]

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For calculating average net profit, the individual net profit for preceding three financial years would be calculated as mentioned below :

Particulars	**Amount**
Profit before tax as per Profit & Loss Account	XXX
Credit to be provided for:	
Bounties and subsidies received from Government	XXX
Credit not to be provided for:	
Premium/ Profit on sale of shares Profits of Capital Nature – including profits on sale of undertakings Profits from sale of immovable property/ fixed assets – unless undertaken Any change in carrying amount of an asset or liability recognized in Equity Reserves as business activity *(Provided when the asset is sold for a consideration higher than WDV, income will be considered for the amount in excess of WDV but limited to difference between WDV and Original Cost)*	XXX
*Permissible Deductions:	
Usual Working Charges- revenue expenditures, bonus or commission Abnormal or Special Tax Interest on debentures, loans or advances Compensations/ damages in virtue of legal liability, bad debts written off…	(XXX) (XXX) (XXX) (XXX)
*Non- permissible deductions:	
Income tax paid under Income Tax Act, 1961 Loss of Capital Nature Compensations/ Damages paid voluntarily	XXX
Net Profits as per Section 198	**XXX**

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After calculating individual net profits for preceding three years, their average has to be taken:

Particulars	***Amounts (in INR)***
Net Profit before tax as per books of FY 2013-14	2,500
Net Profit before tax as per books of FY 2012-13	1,700
Net Profit before tax as per books of FY 2011-12	1,000
Total (A)	**5,200**
Average of annual net profit of the preceding three financial years B (A/3)	**1,733**
CSR expenditure for the FY 2014-15 (B*2%)	**34.67**

In computation of net profits as above following shall not be included: [*Rule 2(f)*]

a) Any profits arising from any overseas branch or branches of the company, whether operated as separate company or otherwise;

b) Any dividend received from any company in India, which is covered under and complying the provisions of Section 135.

In case of foreign company covered under section 135, Net Profit would mean net profit of the company as per Profit & Loss Account prepared in terms of *Section 381(1)(a) & Section 198.*

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5. CSR Activities [Rule 4]

The CSR activities would include activities undertaken by the Company pursuant to its CSR Policy, excluding activities undertaken in normal course of its business, provided these activities are covered under the activities mentioned in Schedule VII of the Act.

As per *Rule 4(4)* and subject to *proviso to Section 135(5)*, only activities undertaken in India would amount to CSR Expenditure.

Moreover, contribution of any amount directly or indirectly to any political party u/s 182 would not be considered as a CSR activity. [*Rule 4(7)*]

CSR activities undertaken solely for the benefit of employees of the Company or their family would not be treated as CSR expenditure. [*Rule 4(5)*]

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6. Areas of CSR Interventions

Within India, preferably in local areas & areas around which it operates [*Proviso to section135(5) and Rule 4(4)*]

Mode of Undertaking CSR Projects

- Registered society, trust or Section 8 company established by the Company [*Rule 4(2)*]
    - Provided that if such society, trust or Sec 8 company is not established by the Company(including its subsidiary, holding or associate company) then they should have an established track record of three years in undertaking similar programs.
    - And the company has to specify the projects to be undertaken through these entities and modalities of utilization of funds on such programs and monitoring and reporting mechanism.
    - Collaborate with other companies, provided the amount spent by collaborating companies on CSR can be segregated and reported separately by the respective CSR Committees.[*Rule 4(3)*]

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7. CSR Expenditure

Any expenditure on the projects or programs relating to CSR activities stated in CSR policy approved by Board. But would not include any expenditure on an activity or projects which do not fall within purview of Schedule VII of the Act. [*Rule 7*]

Moreover a Company can spend up to 5 percent of the total CSR Expenditure of the Company in one financial year on capacity building of its own personnel or of the implementing agency through Institutions having track record of at least 3 financial years and such expenditure would be treated as a part of CSR expenditure of the Company [*Rule 4(6)*].

As per Rule 4(1) the CSR activities are to be undertaken in project/program mode, so onetime events such as sponsorships/marathons etc shall not qualify as CSR activities.*[MCA clarification on Sec 135 vide General Circular No 21/2014 dated 18th June 2014]*

Also the salaries paid to staff can be treated as a CSR expenditure in the proportion of time/hours specifically spent on CSR Activities. .*[MCA clarification on Sec 135 vide General Circular No 21/2014 dated 18th June 2014]*

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8. CSR Reporting

[*Section 135(2), Rule 8 and Annexure to the Rules*]

Company's Annual Report (Board Report) under section 134(3) would include a report on CSR containing below mentioned particulars

- Brief outline of Company's CSR Policy
- Composition of CSR Policy
- Average Net Profit for last 3 years
- Prescribed CSR Expenditure
- Details of CSR Expenditure during Financial Year (In following format)
- A responsibility statement of CSR Committee that monitoring and implementation of CSR Policy, is in compliance with CSR objectives and policy of the Company.

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR Project or activity indentified	Sector in which the Project is covered	Projects or Programs (1)Local area or other (2)Specify the State and district where projects or programs was undertaken	Amount Outlay (budget) Project or Program wise	Amount spent on the projects or programs Sub Heads: (1)Direct expenditure on projects or programs. (2)Overheads	Cumulative expenditure upto the reporting period	Amount spent: Direct or through implementing agency*
1.							
2.							

*Give details of implementing agency

In case of a Foreign Company Balance Sheet filed under Section 381(1)(b) shall contain annexure regarding report on CSR. [*Rule 8(2)*]

Note :

Report on CSR would be signed by the CEO or Managing Director and Chairman of CSR Committee. In case company has failed to spend two percent of net profit on CSR, the company shall have to provide reasons for such failure in the Board Report.

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9. Dissemination of Information on CSR Activities

The CSR Policy as approved by the Board shall be included on the Board's Report and same shall be displayed on the website of the Company, if any.[*Section 135(2) & Rule 9*]

10. Activities to be undertaken under Corporate Social Responsibility Policy

(As per Schedule VII of The Companies Act, 2013)

i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care "including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation" and making available safe drinking water;

ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-able 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 centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward classes;

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iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water; "including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;"

v. Protection of national heritage, art and culture including restoration of building 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 dependants;

vii. Training to promote rural sports, nationally recognized sports and Olympic sports;

viii. Contribution to 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 Caste, the Scheduled Tribe, Other Backward Classes, minorities and women;

ix. Contributions or Funds provided to technology incubators located within academic institutions which are approved by Central Government;

x. Rural development projects.

xi. Slum area development.

xii. Disaster Management, including relief, rehabilitation and re construction activities.

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11. Penalties for Non Compliance

Contravention/Offence	Penalty	Section
Contravention of Section 134(3)(o) i.e Not publishing details of CSR Policy formulated and initiatives undertaken by the Company in Board's Report	For Company : Penalty not less than Rs 50,000 upto Rs 25 Lakhs For Officer in Default : Imprisonment upto 3 years or fine not less than Rs 50,000 upto Rs 5 lakhs, or both	Section 134(8)
Penalty for making false statement i.e making false statement while providing reasons for not spending requisite amount on CSR	Officer making false statement : Imprisonment not less than six months upto ten years and fine not less than the amount involved upto three times the amount involved	Section 448 and Section 447
Punishment for contravention of a provision where no specific penalty is prescribed i.e non constitution of CSR Committee or any other provision of Section 135 where no penalty is prescribed	Officer in Default : Fine upto Rs 10,000 or Rs 1000/day in case of a continuing offence	Section 450

* Here "Officer in Default" means officer as defined under *section 2(60)* and would normally include a whole time director, Key managerial person, or any director who was aware of such contravention and didn't object to it or any other person authorized by the Board for doing such act, etc.

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12. Tax Treatment of CSR Expenditure

No specific tax exemptions have been extended to CSR expenditure per se. Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.

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SNPL's social development team

The social development team at SNPL advises clients on the impact that the social development environment may have on their businesses, combining vision, policy and mandate with data analytics to help them develop their strategies for sustainable development and better SROI.

With the social environment expected to remain diverse and at large, risks as well as opportunities to integrate business with inclusive holistic growth of society. At the same time, organizations can benefit themselves by benefitting society, adhering ethics, social policy, regulations and socio economic development with an aim to contribute society, nation and ultimately the world.

The Sociostark team helps clients to identify risks and opportunities in their current and future social development investment for better SROI.

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