International Journal of Management and Commerce Innovations ISSN 2348-7585 (Online)
Vol. 2, Issue 2, pp: (416-420), Month: October 2014 - March 2015, Available at: www.researchpublish.com

Corporate Social Responsibility in the Companies Act, 2013 -A Boon for Scientific Research

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Abstract: **The Corporate Social Responsibility (CSR) is not a new concept in India. Ever since the inception, corporates like Bharat Petroleum, Birla Group, Hindustan Unilever, Indian Oil, and Tata Group and ITC to name a few are involved in serving the community. Through donations and charity events, many other organisations have also been doing their part for the society. On the other hand, the CSR programmes of corporations like GlaxoSmithKline and a few others focus on the health aspect of the community. They set up health camps in tribal villages which offer medical check-ups and treatment and undertake health awareness programmes. Corporate social responsibility has gained tremendous momentum in today's economic and social environment. The traditional approach of corporates that 'the business of business is to do businesses has changed and now business goals are inseparable from the societies and environment within which business operate. Whilst short-term economic gain can be pursued through traditional approach, the failure to align the business goals with social and environmental factors will make those businesses unsustainable in the long term. Corporate Social Responsibility (CSR) can be understood as a management concept and a process that integrates social and environmental concerns in business operations and a company's interactions with the full range of its stakeholders. Due to the world becoming a global village, companies are encouraged to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption.**

Keywords: **Corporate Social Responsibility (CSR), Health Awareness Programmes.**

1. INTRODUCTION

The Companies Act, 2013 (hereinafter referred to as the 'new Act'), which replaces nearly six decade old Companies Act, 1956, contains detailed provisions regarding CSR. The Act was passed by Lok Sabha and Rajya Sabha on 18thDecember 2012 and 8th August 2013 respectively and notified in the Gazette of India on 30th August 2013. CSR has been recognized for the first time through the said Act. Section 135 (under Chapter IX – Accounts of Companies) of the new Act deals with CSR while Schedule VII of the new Act lists out the CSR activities which may be undertaken by the companies.

According to Section 135(1) of the new Act , every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which atleast one director shall be an independent director.The Committee of the Board of Directors shall be accountable for Undertaking the CSR activities.

There is no definition in the new Act for the term Corporate Social Responsibility though the areas in which the money could be spent have been specified in Schedule VII. Broadly, 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.

CSR is the integration of business operations and values, whereby the interests of all stakeholders including investors, customers, employees, the community and the environment is reflected in the company's policies and actions.

2. LITERATURE REVIEW

In the United States, the term 'CSR' has been described with a shade of philanthropy. 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.

India is one of the few countries that have provided by legislation a scheme of the nature like CSR. Other countries are Sweden, Norway, Netherlands, Denmark & France. Mauritius too has a legislation that mandates spending of 2% of PAT (Profit after Tax) towards CSR. However, the law as enacted is not likely to have wide coverage. Media reports show that according to a study made by Ernst & Young, a Consulting firm, there are more than 13.29 lakh Companies registered with the Registrars of Companies in various parts of the country and out of these only 9 lakh companies are active and out of this, only 8000 companies (even less than 1% of active companies) are likely to be covered by the section 135 on the basis of criteria prescribed. Thus the impact of this provision on the total company population in the country is expected to be minimal.

In an interview published in "The Economic Times" of 14th August, 2013 the Minister of State for Corporate Affairs has expressed the following views regarding CSR :"It is a new idea, a new beginning. India is perhaps the first country in the world to have CSR in a statute and it has been well received by corporate India. There have been problems in manufacturing and in mining sectors with regard to the trust deficient between the people who live in tribal areas and the large companies which operate there. Paying taxes to the federal structure is part of the law of the land, but CSR initiative can be used to win the endearment of people. You are also adding to your potential talent pool by contributing to quality education and healthcare. Religious donation can't be considered as CSR." Regarding funding religious trusts through CSR, the Minister stated that he was against any religion's donation to be counted as part of CSR but the final decision rests with the rule committee and I will not like to interfere with their work." On some other aspects, the Minister observed: "I feel CSR is an avenue for companies to earn that 'goodwill' which sponsorships can't. Corporate houses spend so much money on media to get eyeballs. The kind of impact CSR can create in the hearts and minds of people is phenomenal. To improve the investment climate, to create better investment opportunities we need that harmonization. So CSR has many facets to it, besides this 2% contribution. It's not just the quantum of money, but quality of work. I don't want to straightjacket a company but it shouldn't be done with an idea to get commercial benefits out of it."

In India, the evolution of CSR refers to the changes over time in cultural norms of corporations' engagement and the way business managed to develop positive impacts on communities, cultures, societies, and environment in which those corporations operated. Over the time, way back from 1850 during industrialisation, the charity and philanthropy were main matters of CSR. CSR motives changed during the independence movement in India to more of social reforms to encourage empowerment of women and rural development. Then came the era of globalisation and economic liberalisation where, due to increased growth momentum, Indian companies grew rapidly and, therefore, they showed more interest and were able to contribute towards growth of society and for social cause.

Legal provision in a nutshell:

Section 135 of the Companies Act, 2013 provides that CSR will apply to 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; The amount has to be a minimum of 2% of 'average net profit'.

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 immune deficiency 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.

(x) Such other matters as may be prescribed.

In spending the funds, the company is to give preference to the local area and areas around it where it operates and the activities to be undertaken will be those specified in Schedule VII.

The residuary sub-clause(x) in the Schedule gives power to the Government to enlarge this list. A number of claims are bound to be made for inclusion in the list by the Government by exercising power under this sub-clause, which is going to be a continuing exercise. 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. The Board of every company falling in the categories specified earlier has to ensure spending of the amount as prescribed and if the Company fails to do so, the Board shall, in its report made under section 134(3)(o) of the new Act specify the reasons for not spending the amount. Section 134(3)(o) mandates that with financial statements to be presented, there shall be a statement showing the details about the policy developed and implemented by the Company on corporate social responsibility initiatives taken during the year. Section 134(8) of the new Act provides that if it is not done, the company shall be punishable with fine which

shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall be less than 50 thousand rupees but which may extend to five lakh rupees, or with both.

CSR-A boon for scientific research:

With the enactment of the Companies Act, 2013, companies would be required to spend at least 2% of their net profits on CSR activities, and hence it becomes imperative for corporate India to plan its spending on CSR activities and avail appropriate benefits/ deductions available under the Income Tax Act, 1961. Investments/ spending on scientific research appear to be one such area which apart from complying with the requirement of law is going to encourage scientific research hugely in India.

A reading of the provisions of the IT Act shows that expenditure incurred on scientific research was always the focus area of the Government. Nevertheless, mandatory spending on CSR will be the driving factor for the companies to look for the activities where they can avail appropriate benefits under IT Act.

The Companies Act does not specifically include spending on scientific research. However, if the companies spend/contribute to the approved association(s) or university or institution(s) etc. engaged in scientific research pertaining to the activities mentioned under section (iv), (v), (vi) and (viii) of

Schedule VII of the Act, then they would not only meet the requirement of the Companies Act, 2013 but also allow them to avail appropriate deductions under IT Act. Nevertheless, investments/ spending in scientific research have innumerable benefits.

Relevant Provisions of Income Tax Act on Scientific Research:

As per the provisions of Section 35 of the Income Tax Act, 1961(IT Act), deduction is available of an amount

- Equal to any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business of the assessee. [Section 35(1)(i)]
- Equal to one and three-fourth times (175%) of any sum paid to a research association which has as its object the undertaking of scientific research or to a approved university, college or other institution to be used for scientific research. [Section 35(1)(ii)]
- Equal to one and one-fourth times (125%) of any sum paid to a company (registered in India and whose main object is scientific research) to be used by it for scientific research and approved by the prescribed authority and fulfill other conditions. [Section 35(1)(iia)]
- Equal to one and one-fourth times (125%) any sum paid to a approved research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research.[Section 35(1)(iii)]

The above mentioned association, university, institution etc. should have been approved by the Income Tax Department of the Govt. of India for the purpose of scientific research. The scope of scientific research in the IT Act appears to be quite wide. Member (IT), CBDT on the recommendation of jurisdictional Commissioner or Director Income Tax is the approving authority for such matters.

There are many approved Institutions/ University/ Associations viz. AIIMS, IITs, BITS, ISM, IISc, ISI, ICAR, etc. and any contribution to them for scientific research would allow the contributor to avail appropriate benefits.

Benefits of Scientific Research:

Scientific research is certainly a significant contributor to economic growth. R&D policies must be designed in such way which could respond to the complex societal issues within which scientific research can be applied. Scientific and technical research far outstrips our knowledge of the relationship between research and its outcome. There are countless benefits both direct and indirect that society and mankind obtain from scientific research. Some of them are as follows:

- Policy makers frequently frame discussions of the economic benefits from science in terms of job creation. This suggests that scientific research is the creator of various new employment opportunities.
- Companies would gain by having a stronghold in the Global market because of the innovations arising from scientific research within the country.
- Talent management and restricting talent drain will be possible as professionals and researchers would stop migrating to foreign lands in search of better career prospects.

3. OBJECTIVE OF THE STUDY

1. Appropriate planning of CSR activities would benefit the company in availing benefits/ deductions under the income tax act as well as complying with the requirement of law

2. To highlight that, CSR is a means by which a company manages its business to produce an overall positive impact on society.

3. Mandatory spending on CSR will be the driving factor for the companies to look for the activities where they can avail appropriate benefits under IT Act, Thus promoting the tax planning in the country.

4. CSR is coming out of the purview of 'doing social good' and is fast becoming a 'business necessity'.

5. To enlighten that, CSR is a responsibility, beyond that required by the law, for a business to pursue long term goals that are good for society.

6. CSR is indirectly a significant contributor to economic growth, employment creation and a tool for competitive edge in global market.

4. CONCLUSION

There are many companies and large corporate houses that are spending substantial amounts on CSR activities voluntarily. Primarily, such spending is on development of neighborhood, primary health care, education, safe drinking water etc. in the areas where the businesses are located. Nevertheless, CSR activities in the country suffer from a lack of understanding, inadequately trained personnel, non-availability of authentic data and specific information on the kinds of CSR activities that companies should be investing in. The CSR Committee of the Board of Directors of the companies would strive to find avenues on focused areas where the allocated funds for CSR activities can be deployed. The Companies Act, 2013 has already provided relatively huge avenues where the CSR Committee can strategize their spending. Spending on scientific research appears to be one such area which would give the companies dual benefits of complying with the requirement of law and availing appropriate benefit under IT Act. Hence, companies would tend to allocate and contribute certain part of its CSR spending on scientific research which can become a boon for the specified Institutions/ Universities / Associations engaged in scientific research. Finally, spending on scientific research would also immensely benefit Indian companies and they will have competitive edge globally.

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