

Corporate Social Responsibility under Companies Act 2013: A welcome step to bridge the welfare gap in India**AHMED HUSSAIN****Ph. D. Research Scholar****University of Kalyani****Kalyani, Nadia, West Bengal, India – 741235****Abstract**

This paper is an attempt to know and understand the extent to which the newly introduced mandatory Corporate Social Responsibility (CSR) under Companies Act 2013 as a socially responsible initiative is capable of bringing positive social and environmental changes to bridge the welfare gap in India. For this study data has been collected from various secondary sources including journals, articles, newspapers and various research based websites. Indian companies have a crucial role to play in uprooting all the causes of social unrest to bring a sea change in the social upliftment by means of needful contribution towards CSR activities as per the societal expectations. The regulatory framework for CSR in India in form of section 135 of the Companies Act, 2013 read together with the Companies (Corporate Social Responsibility Policy) Rule, 2014 and the amendment to the schedule VII of the said act encourages the giant companies to contribute towards needful development activities in India giving preference to the area of its establishment in a structured manner through a mandatory CSR commitment. In order to bridge social welfare gap the Companies Act, 2013 is promoting greater transparency and disclosure through its disclose-or-explain mandate. Schedule VII of the Act makes the communities focal point of CSR projects. According to a survey carried out by Forbes India, only 6 out of the top 100 companies of India (ranked on the basis of net sales figures) contributed more than 2% of their profits after taxes towards CSR initiatives As India is one of the largest growing economies globally, number of companies with higher profitability falling into the ambit of CSR provision will keep on growing which is a clear sign of positive social and environmental changes towards welfare of the society attracting thousands of crores for gigantic social welfare measures in upcoming years.

Key words: Companies Act, 2013, Corporate Social Responsibility, CSR activities, welfare gap.

Introduction

India, one of the largest growing economies in the world is facing innumerable Social, environmental and economic challenges for getting itself enrolled in the list of developed countries. To cope up with these challenges arising from globalization, the need for inclusive development and the imperatives of climate change a number of initiatives has been undertaken by the Government of India such as issuance of 'Corporate Social Responsibility Voluntary Guidelines' in December 2009 by Ministry of Corporate Affairs (MCA) which has been revised and renamed as "National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business"(NVGs) in July 2011 and again based on these NVGs issuance of a circular CIR/CFD/DIL/8/2012 dated 13th Aug, 2012 by Securities and Exchange Board of India making Business Responsibility Report mandatory in the larger interest of public disclosure as a part of the Annual Report for top 100 listed entities shortlisted by Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) based on Market Capitalization as on 31st March, 2012 and has been made effective from the financial year ending on or after December 31, 2012 along with insertion of Clause 55 of the Equity Listing Agreement.

One of the most applauded welcome steps taken by Government of India in this regard is the introduction of mandatory spending requirement on Corporate Social Responsibility (CSR) by the companies in the newly passed Companies act 2013. India is the only country in which CSR has a legislation law. Indian companies have a crucial role to play in uprooting all the causes of social unrest to bring a sea change in the social upliftment by means of needful contribution towards CSR activities as per the societal expectations. Section 135 of the Companies Act 2013 has made it mandatory for companies meeting certain criteria to spend two per cent of their net profit for the specified CSR activities. The Ministry of Corporate Affairs (MCA) has also issued the Companies (Corporate Social Responsibility Policy) Rule, 2014 through a notification G.S.R. 129(E) dated 27th February, 2014 for ensuring the implementation of CSR initiatives effectively through appropriate procedure and reporting and decided to be effective from 1st April, 2014. Schedule VII of the new Company Act, 2013, specifies certain social responsibility activities for the companies which form the basis of mandatory spending amount on CSR. That is why it is important to understand the capacity of such initiatives to bridge the need-based welfare gap existing in our country.

Objective

The objective of the study is to know and understand the extent to which this socially responsible initiative is capable of bringing positive social and environmental changes towards welfare of the society.

Research Methodology

The paper is descriptive in nature and based on the information collected from various secondary sources including journals, articles, newspapers and various research based website as well as on my conceptual understanding.

Corporate Social Responsibility in India

An entity is supposed to do all its activities acquiring all resources from society in different forms. So it is important to know how society is benefitted by the entity which uses its resources without compromising socio-economic and environmental sustainability of the broader society. It should be based on fair principle of "Give and Take" between corporate and societal stakeholders. It is only the companies which assess and take responsibility for the company's effect on environment and impact on

social welfare. As there is no universal definition of CSR, still every definition that we have in public domain did nothing but underpins the impact that the businesses have on society at large and the societal expectations of them.

One of the most contemporary definitions has been put forward by the World Bank Group, stating, "Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large, to improve their lives in ways that are good for business and for development."

CSR in India has traditionally been in practice since 1850s in terms of philanthropy. It has been gaining its importance in India after 1990s. In the sixty year old Companies Act, 1956 there was no provision for CSR; hence CSR activities were purely voluntary in nature. There are many big entities who have been actively engaged in the CSR activities but unfortunately the number is relatively less. In order to encourage more entities to participate in the process of development of the society via- CSR, the Government of India has actually implemented the concept of CSR in the new Companies Act 2013. Most of the companies fail to meet the required level of societal expectations which became the root cause for the prevailing uneven social welfare gap in India. According to a survey carried out by Forbes India, only 6 out of the top 100 companies of India (ranked on the basis of net sales figures) contributed more than 2% of their profits after taxes towards CSR initiatives. The matter of concern is that India is a country where one-third population is illiterate, two-third population lacks access to proper sanitation, and 400 million people still live on less than US\$1.25 a day (World Bank, 2010). In order to bridge such social welfare gap the Companies Act, 2013 is promoting greater transparency and disclosure through its disclose-or-explain mandate. Schedule VII of the Act makes the communities focal point of CSR projects. According to Indian Institute of Corporate Affairs, a minimum of 6,000 Indian companies will be required to undertake CSR projects in order to comply with the provisions of the Companies Act, 2013 with many companies undertaking these initiatives for the first time. Thus CSR needs to go beyond the concept of charity and philanthropy. Thus CSR under the said act seems to be a promising positive step forward that ensures to bridge such social welfare gap in Indian context.

Section 135 on Corporate Social Responsibility under the Companies Act, 2013

In India, the subject of CSR is governed by section 135 of the Companies Act, 2013 according to which every company having an annual turnover of 1000 crore INR or more, or a net worth of 500 crore INR or more, or a net profit of 5 crore or more is mandatorily required to spend, from the fiscal year 2014-15 onwards, at least 2% of the average net profits of the company made during the three immediately preceding financial years on CSR activities.

CSR committee

- All such companies doing business in India in any form are also required to constitute a CSR committee consisting of at least three directors, one of whom must be independent except unlisted company or private company for which appointment of independent director is not required under the new Companies Act, 2013. Such Flexibility in form of constructive development is welcomed as removal of hindrance in the way of effective implementation of law.
- In case of a foreign company CSR committee consists of at least two persons, one of whom will be nominated by the foreign company and the other must be the person resident in India.

- The CSR committee is required to formulate CSR policy as well as recommend the expenditure to be incurred on CSR projects to the board of directors in accordance to the specifications made under the Act and at the same time monitor and implement the CSR policy effectively..

Board of directors

- It is the board which must approve and adopt the CSR policy recommended by CSR committee after due consideration and bring the same in public domain publishing on company's website.
- It is the painful duty of the Board to ensure the successful execution of activities mentioned in the CSR policy putting its best efforts to spend the allotted amount as applicable.
- The Board will also be responsible to include a CSR report as a part of its annual Board report containing the details of CSR committee, CSR policy, explanations for not complying with the requirement of the law to spend on CSR activities, and the efforts made to implement its CSR obligations as per the prescribed format in the CSR rules, 2014. CSR regulation under the said Act actually makes the reporting mandatory of two per cent of the average net profit for the specified CSR activities, not the spending.
- In case company fails to explain reasons for non compliance of CSR law, the company will be punishable by a fine not less than 50,000 rupees and may be extended up to 25 lakh rupees. Even the officer responsible for making such default on reporting CSR provision could be sentenced up to three years in prison or fine of not less than 50,000 rupees and may be extended up to 5 lakh.
- In case of foreign company, CSR report forms a part of its balance sheet to be filed with Registrar of Company (Sec. 381 of Companies Act, 2013)

The Companies (Corporate Social Responsibility Policy) Rule, 2014

The issue of the Companies (Corporate Social Responsibility Policy) Rule, 2014 is an appreciated initiative by Ministry of Corporate Affairs which has clarified many unclear points raised by several representing authority of industry about CSR and has played a pivotal role in making amendments to schedule VII of the Companies Act 2013 but also in making the Companies Act 2013 fully operational. It guides the list of CSR Projects Company intend to undertake falling within the purview of schedule VII along with the execution model within time bound framework for the projects and reflects the outcomes. Undoubtedly compliance with the mandate CSR law will work as a marketing tool in favor of the company. Strict adherence to the CSR rule, 2014 will work as a miracle for the uplifting of the economically underprivileged society and thereby wiping out the sufferings of the humanity and mankind in India. Point worth of mentioning is that the surplus arising out of CSR projects will not be the part of business profit of the company instead such surplus will have to be ploughed back into CSR activities

CSR Activities as per Schedule VII of the Companies Act, 2013

The CSR activities mentioned in schedule VII of the Companies Act 2013 are generic in nature with an intention to cover a wide range of activities falling under the essence of the societal needs and not at all strictly limited to only those stated in the schedule though they have covered almost all needy areas of society. It means that there is open and liberal interpretation of CSR activities mentioned in schedule VII. The companies are free to choose which CSR activity to spend on giving preference to the local areas where it is established for the welfare of the weaker section of the society. The point to be appreciated

is that expenditure on any item not in conformity with schedule VII will not be considered as CSR expenditure.

Activities considered as CSR activity

CSR activities aim at improving the lives of underprivileged in a environment friendly and socially acceptable manner. Companies can build CSR capabilities of their own personnel as well as those of their implementing agencies through institutions with a good track record of at least of three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year

As per the Ministry of Corporate Affairs notification dated 27th February, 2014 (effective from 1st April, 2014) these activities include:

- Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- Promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- 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;
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- Contribution to the Prime Ministers' National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institution which are approved by the Central Government;
- Rural development projects.

Activities not considered as CSR activity

- Activities undertaken in pursuance of its normal course of business. A clear cut distinction has to be drawn between activities undertaken in the normal course of business and activities undertaken incrementally as a part of CSR activities.
- Expenses on activities required for compliance of CSR law
- Contribution made directly or indirectly to any political party
- Activities meant exclusively for employees and their families
- One-off event such as marathons, awards, charitable contribution, advertisement, sponsorships of TV programmes etc
- Activities carried out outside the territory of the India or abroad

Way to implement CSR obligations

- CSR activities (either new or ongoing) must be conducted in project or program mode only in India.
- CSR activities must be based on CSR policy and schedule VII of the Companies Act 2013
- CSR activities must be preferably conducted in local region where the company operates.
- CSR activities can be undertaken through a registered trust, registered society or charitable company having a good track record of at least three years in undertaking similar programs or through its own foundation operating within India.
- Companies can jointly undertake CSR projects in collaboration in such a manner that each company can report separately on such project. It will positively help companies to conduct CSR project of a large scale.
- CSR rules focuses to have a transparent monitoring and reporting mechanism for bringing positive social and environmental changes to bridge the welfare gap in India in order to attain the sustainable development.

Conclusion:

- As India is one of the largest growing economies globally, number of companies with higher profitability falling into the ambit of CSR provision will keep on growing which is a clear sign of positive social and environmental changes towards welfare of the society attracting thousands of crores for gigantic social welfare measures in upcoming years.
- The regulatory framework for CSR in India in form of section 135 of the Companies Act, 2013 read together with the Companies (Corporate Social Responsibility Policy) Rule, 2014 and the amendment to the schedule VII of the said act encourages the giant companies to contribute towards need-based development activities in India giving preference to the area of its establishment in a structured manner through a mandatory CSR commitment.
- Criteria set in the section 135 Of Companies Act 2013 for the applicability to come under the ambit of mandatory CSR provision has the potential to bring not only the giant profitable companies but also SMEs with minimum profit of 5 crore within the reach of the said provision.
- A giant profitable company once fulfilling the criteria of Section 135 of the Act, if fails to meet the criteria in any financial year is bound to spend the CSR expenditure for the financial year out of its profit. Only if the company fails to satisfy the criteria for a consecutive period of three years, then there will not be such CSR obligation for the company. This criteria has potential to keep the companies contributing toward their CSR year after year because it gives a period of

three year to come back under the ambit of CSR provision in case if it fails to meet the criteria in any financial year.

- We can say that this mandatory CSR will make companies in India more responsible to ensure inclusive growth, the need of the hour without any compromise with sustainable development keeping in mind the next generation only through fulfillment of their CSRs ethically.
- It will provide the society more sensible artificial persons who will fall in competition to earn better corporate image in order to attract the main source of its all resources by fulfilling their corporate responsibility in legalize structured manner. In other words more socially and environmentally developed society is the producer of more developed man workforce which ultimately forms the basis for the growth of business.
- A meaningful comparison can be easily drawn by the stakeholders as far as the CSR activities conducted by the giant profitable companies is concerned which helps not only Government but also the common people to know whether the entities are doing enough to meet the requirement for a socially, environmentally and economically developed society in return what they are acquiring in form of different resources from society to attain their ultimate goal.
- I agreed with many experts who are of the opinion that 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.
- Undoubtedly for the predetermined outcome of this appreciated welcome step professionally experts and trained CSR personnel will be key to success for attainment of the objectives of CSR projects.

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