

CORPORATE SOCIAL RESPONSIBILITY: SHIFT OF BURDEN FROM GOVERNMENT TO CORPORATE

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ABSTRACT

We always heard that the payment of the tax is for the by the public for the public. By our tax money whether of Individual or corporate is used by the government for meeting out the expenses of country that is the welfare of public at large. This is the reason people pay tax. Since corporates earn more than that of an individual and naturally uses more resources of the earth or any country, hence they should pay taxes which are much higher than that of an individual, and they are paying taxes as high as 30% of their income in addition to all other indirect taxes. This how they pay or compensate the nature or country for using their natural resources as well as other resources. The however this remains a question of debate that whether the government is truly justifying this by putting an additional burden on the corporates? After paying such a huge amount of tax still it is the responsibility of corporates to put their money into public welfare? This article is enlightening on this aspect of corporate social responsibility of the corporates is truly a responsibility of the corporates of it is simply a burden of the government which has been shifted or diverted to corporates.

KEYWORDS: *Corporate Social Responsibility, Contribution, Role of Government, Policies.*

Introduction

It is a provision which binds the corporates to compulsorily spend a portion of their profit on certain specified areas of social development as a result of discharge of their duties and using the resources of the country more than that of individuals. According to Companies (CSR Policy) Rules, 2014 CSR includes all the activities as specified in Schedule VII of the companies Act, 2013, and those activities or programmes undertaken by the company or its board of directors as recommended by the Corporate Social Responsibility committee. Such policy shall include the activities as specified in schedule VII of the company's act 2013. The companies use to have settled down a separate department for their corporate social responsibility function discharge as it has to undertake number of activities and spend a huge amount which needs considerable management.

As per the provisions companies has to spend at least two percent of their Average Net Profit of last three years on Corporate Social Responsibility programme. Average Net Profit includes the profit calculated as per section 198 of companies Act, 2013 but does not include any profit earned from foreign branches of the company whether having their separate registration or not, and it also do not include any dividend received from those companies in India which are already covered in provisions of Corporate Social Responsibility.

Companies that are Liable for Corporate Social Responsibility

A company including its holding or subsidiary, and a foreign company, having its branch office or project office in India, having turnover of rupees one thousand crore or more or having net worth of rupees five hundred crore or more, or having a net profit of rupees five crore or more shall constitute a Corporate Social Responsibility Committee of the Board. Here, it shall be noted that the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared.

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Under the provisions of section 381 and section 198 of the Companies Act 2013. It shall also be noted that every company which ceases to fulfill all above conditions as mentioned above for 3 consecutive financial years, shall not be required to constitute a CSR Committee, and is not required to comply with the provisions as per section 135 relating to Corporate Social Responsibility. Any Holding or Subsidiary of a company which fulfils the above mentioned criteria does not have to comply with section 135 unless the holding or subsidiary itself fulfils the criteria. Provisions of Corporate Social Responsibility shall not apply for a period of 5 years from the commencement of business of a Specified IFSC private company or IFSC unlisted public company.

The committee for Social Corporate Responsibility shall consist of 3 or more directors, out of which at least 1 director shall be an Independent director. However a Company which is not required to appoint an independent director shall have its CSR Committee without such Director. Same as a private company having only two directors on its Board shall constitute its CSR Committee with two such directors. With respect to a foreign company as covered in above mentioned provisions, the CSR Committee shall comprise of at least two persons out of which one person should be that person who has been prescribed under section 380 of the Companies Act and another person shall be nominated by that foreign company. The Report of Board of Directors shall describe the composition of the Corporate Social Responsibility Committee.

Role of Corporate Social Responsibility Committee and Board of the Directors in Regard to the Corporate Social Responsibility

The Corporate Social Responsibility Committee shall perform the functions of entire governance of Corporate Social Responsibility. Their functions broadly include drafting and implementing the Social Responsibility function. However the detailed functions includes Formulation and recommendation to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII, Recommending the amount of expenditure to be incurred on the activities referred to in clause (a) and ensure that Corporate Social Responsibility Policy of the company shall be followed as drafted or suggested by the Corporate Social Responsibility Committee.

The Duties of the Board of Directors of the company no doubt is not as broader as of company's Corporate Social Responsibility Committee but also not less than it. Its functions mainly include approving and implementing the Corporate Social Responsibility. It includes functions of after taking into account the recommendations made by CSR Committee, Approve the Corporate Social Responsibility Policy for the company, Disclose contents of such Policy in its Board Report and Place it on the company's website, if any, in such manner as may be prescribed. The other one is to ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company. Also to ensure that the company spends, in every financial year, at least two percent of the average net profits (calculated as per section 198 and shall not include such sums as may be prescribed) of the company made during the 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. Here one thing which every company shall ensure and it is also must that Company shall give preference to the local area and areas around it where it operates, for spending the amount set aside for expending on Corporate Social Responsibility activities. In case company does not spend the mentioned amount in any year, because of whatever reason, the company's board shall specify in his report the reasons for the same. The amount unspent in any year out of the CSR Contribution (i.e. out of minimum 2%) may be voluntarily carried forward to next year and may be spent in that year. However that will not adjust in that year's expenditure. It means company has to spend minimum two percent in that subsequent year in addition to the amount carried forward from the last year. At the same time a check has been implemented on it that if a company has expended more than two percent (as required by the provisions) in any year, then it cannot take the benefit of it in the next year or years. That means excess spending cannot be carried forward to the subsequent year's CSR expenditure.

How Corporate Social Responsibility Policy is Implemented

As per Companies (Corporate Social Responsibility Policy) Rules, 2014 Corporate Social Responsibility policy can be implemented by the board as per the policy determined by the Corporate Social Responsibility Committee through a Non Profit Company incorporated under section 8 of the Companies Act, 2013 or Registered Society or a by the company incorporated by the company either singly or along with any other company, Established by the Central Government or State Government or any entity established under an Act of Parliament or State Legislature.

If the Board of a company decided to undertake its CSR activities through Non Profit Company incorporated under section 8 of the Companies Act, 2013 or Registered Trust or Registered Society or a by the company, than such trust, society or company shall have an established track record of 3 years in undertaking similar programs or projects and that company or trust or society has specified the projects or programs to be undertaken through this company or trust or society, and has also specified the manner of utilization of funds amount wise on such projects and programmes and manner of monitoring of the same.

Another way to undertake Corporate Social Responsibility is to collaborate with other companies for undertaking projects or programs or CSR activities. However in this case it has to be ensures that Corporate Social Responsibility committees of respective companies are in a position that they can find out and report the amount spend by each of them separately.

The third and the last way to implement the corporate social responsibility policy is that, Companies may build Corporate Social Responsibility capacities of their own employees or various implementing agencies through those institutions which has a track record of at least 3 financial years. However, expenditure (including expenditure on administrative overheads) incurring on such agency shall not exceed 5% of total CSR expenditure of the company in one financial year. Here one thing which shall be noted that contribution to corpus of a newly or already established Trust or Society or Nonprofit making company etc. will also be eligible for Corporate Social Responsibility expenditure if such Society or Trust or Company is created only for undertaking Corporate Social Responsibility activities or if they are created for a purpose directly relatable to a subject covered in schedule VII of the act.

Reporting of Corporate Social Responsibility

As per Companies (Corporate Social Responsibility Policy) Rules, 2014 CSR policy The Report of Board of Director's of a company responsible for contributing towards Corporate Social responsibility shall every year include details of corporate social responsibility. Such report shall include, in case of a foreign company, the balance sheet filed under section 381 shall contain an Annexure regarding report on Corporate Social Responsibility. It shall also include a list of Corporate Social Responsibility projects or programs which a company is planning to undertake areas or subjects specified in the Schedule VII of the companies Act 2013, specifying modalities of execution of such activities or plans and schedule of their implementation, Monitoring process of such projects or programs and the CSR Policy of the company shall specify that any benefit of surplus arose from the corporate social responsibility activities shall not be the part of business profit. Here it should be noted that CSR activities do not include the activities undertaken in pursuance of normal course of business of a company. The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the areas or subject specified in Schedule VII of the Act.

What Activities Company has to Undertake for Corporate Social Responsibility

Activities specified under Schedule VII are as follows:

- Eliminating the problem of hunger, poverty and providing facility for health care and sanitation, contribution for Swach Bharat Abhiyaan and providing facility for clean Drinking Water.
- Promoting Educational Activities, including special education and those which are related to enhancing vocational skills in children, women, older people and differently abled.
- Other livelihood increment projects,
- Women empowerment, eradicating Gender Inequality, providing residence facility for women's, orphans and older people in form of homes and hostels, or day care centre, other facility to senior citizens and providing special measures for those backward groups and peoples for reducing inequalities,
- Establishing setups for environment sustainability or ecological balance, providing facility for animal welfare, conservation of natural resources and maintaining and increasing quality of soil, air and water, pollution control measures, including contribution to clean Ganga Fund set up by Government of India,
- Providing facility for protection of heritage of country and Art and culture, providing funds and money for historical buildings and works of art, setting up of public libraries, helping in promotion and development of traditions of country,
- Providing funds and measures for widows of war martyrs and their dependent and armed force people,

- Providing contribution for providing training for promoting rural sports, national level sports, Olympic Sports and paralympic sports,
- Contribution to any fund set up by the government for the social development as well as economic development, welfare of scheduled class, backward class and schedule tribe and scheduled caste, women and minorities, including contribution to Prime Minister's National Relief fund,
- Providing funds or finance to technology developers or incubators which are located within academic institutions as approved by Government of India.

While Undertaking Corporate Social Responsibility Activities, Companies shall not contravene any other prevailing laws of the land including Cigarettes and other Tabasco Products Act (COTPA), 2003. Here the most important thing which has to be kept in mind is that any expenses made by company for those activities which are taken outside India or which is for sole benefit of their Employees and families of employees or any contribution which results directly or indirectly for the political party benefit is not at all considered as part of contribution to Corporate Social Responsibility Programme.

Conclusion

With all above mentioned discussion, what conclusion we reaches? We saw that Government has made out all the strict provision for the purpose of the contribution towards Social Contribution and has posed a larger portion of their social responsibility on corporates. No doubt corporates uses a larger portion of resources of country and for this they should pay an additional amount, but they are already under the pressure of paying huge amount of taxes that cuts around thirty percent of their income. Such an additional burden of tax in form of contribution towards social responsibility discourages companies from doing better and performed for wealth creation as they knows that higher they will, more they need to contribute towards taxes and such contribution, which makes no sense to earn more. This will lead under development of industrial and business expansion and will also results in reduction of employment, Reduction in National Income and undoubtedly decrease in the economy. Hence before putting any kind of tax or contribution, the government shall give consideration to the present economic situation. The gross deficit of the country is not always due to lesser amount of tax, but it is also because of government policies which government starts to fulfill their political and election campaign policy which at all do not give any benefit to the country but yes that gives an additional burden on the population.

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