

CORPORATE SOCIAL RESPONSIBILITY: A MEANS TO CONTROL OVER COMPANIES

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ABSTRACT:

Change is the order of the today's world. Corporate Social Responsibility is the shift of focussing from the profit orientation to the contribution for the social cause. Companies Act is not the exception to this order of the change. As the establishment of company was to earn the maximum profit in general, the other aspects were given least importance. Especially, the philanthropic attitude was an option to the companies. Hence, the erstwhile Companies Act 1956 was not bent upon over that issue. However, the recent Companies Act 2013 has made it compulsory to every prescribed company having net worth of 500 crore or more or turnover of Rupees 1000 crore or more or net profit of Rupees 5 crore or more during any financial year shall spend at least 2% of its average net profits for the past 3 years towards the activities concerning to the corporate social responsibility. The provisions as regards to Corporate Social Responsibility acts as sort of control over companies who have to spend at least 2% of its profits towards only those activities relating to Corporate Social Responsibility and prohibiting the improper expenditure.

KEY WORDS: Companies, Companies Act 2013, Corporate Social Responsibility, Policy, CSR activities, CSR as a control over companies.

I. INTRODUCTION:

Since civilization, the commercial transactions are carried through different modes. A person individually carries the business but in a very limited extent. Persons with similar mentality may form a firm to carry out the business with little more capital and manpower. If the business requires huge capital in order to invest and to reap the more profit with little liability, the company is the better option to carry any type of business with limited liability.

Company being an organ of the society and does exist for the sake of society. Though optimum profit is the main motto of the company, it can be justified only if it is beneficial to the society. Since company utilises the sources available in the society like capital, labour, raw materials, natural resources etc, and the stakeholders are belonging to the society itself, hence, it becomes the duty of company to take care of the society. Mere profit maximisation is not enough, it must also to be service and society oriented.

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II. HISTORICAL BACKGROUND:

In ancient Indian philosophy, the social obligation or the responsibility of the subjects was on the King. The duty was on the king to take care of the overall welfare of his subjects. The Vedic philosophy proposed the right action on the better use of wealth on self as well as for the welfare of the others through donations etc. The business entities would sustain with prosperity in long term if it conducts its activities ethically as well as socially responsible.

Koutilya's Arthshastra was based on these Vedic philosophy. He stressed on the right action while carrying out any business with ethical practices. In all most all religion, their religious laws compel for the donation towards the community welfare and poor people out of their earnings.

The history of CSR can be classified into four phases. There may not be any watertight compartment between them, but may overlap on one another. The First phase deals with Charity and Philanthropy of wealthy merchants spare a part of their wealth by setting up temple for a religious cause. They also lent their hand towards poor in case of famine and epidemics by providing food from their storages and thus securing an integral position in society. In Second phase dealing with period of freedom struggle which was influenced by the Gandhiji's theory of Trusteeship. The Third phase dealt with emergence of public sector undertakings. In which Government entered into the entrepreneurship and established many public undertakings. The Forth phase dealt with Charity in disguise of responsibility of Companies.¹

III. PROVISIONS UNDER INDIAN CONSTITUTION:

The principles of CSR can be gathered from the constitution as it is a reservoir of supreme values of the political, economic and social system. Non concentration of wealth and material resources of production for avoiding common detriment and distribution of material resources of the community for common good are the key economic objectives set for the State to achieve.² Being the protector of the people, it is the duty of the State to look after the welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life.³

The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best of sub serve the common good⁴ In the present scenario, there is a growing consciousness and awareness towards the protection and suitable measure be adopted to protect the environment, forests and wildlife. Thus, the State shall endeavour to protect and improve the environment and to safeguard the forest and the wild life of the country.⁵

¹<http://www.soulace.in/blog/evolution-of-csr-in-india>

²P Ishwar Bhat, "Corporate Social Responsibility through Law: A critical note on the role of the Third sector Organisations", Legal Opus, Issue No 4 Oct 2009,p.27.

³Art. 38(1) of Indian Constitution.

⁴Art. 39(b) of Indian Constitution.

⁵Art. 48(A) of Indian Constitution.

In erstwhile Companies Act 1956 there was no provision as regards to CSR. The Companies Act 2013 introduces and made it compulsory for the eligible companies to contribute.

IV. CSR IN COMPANIES ACT 2013:

The Parliament, in its new Companies Act, 2013 mandates the companies 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 at least one director shall be an independent director. The composition of this committee to be included in the Board Report. The Committee shall formulate policy which includes those activities that are provided in the Schedule VII. The Board to publish its policy on its official website. Further, the Board to ensure at least 2% of average net profits of the company made during three immediately preceding financial year to be spent on such policy. In case, company fails to spend so, shall give the reasons for not spending in its report.⁶

Schedule VII of the Act defines the activities which may be included by the companies in their CSR policies. As the word may is used which is a directory in nature and not mandatory. Further, the activities as not pin pointed, there is a wide leeway left to the companies for opting such activities. In such situations companies may abuse in situation by disguising CSR activities channelizing for the self-interested compliances. Otherwise, the companies ought to have complied under different statutes. like Environmental Acts, Labour Laws, etc.

Activities which may be included by companies in their CSR policies are eradicating hunger, poverty, and malnutrition healthcare, sanitation, promoting education, gender equality; protecting national heritage; ensuring environmental sustainability, ecological balance, conservation of natural resource; Rural Development projects, etc.⁷ Further, the Act prohibits certain activities which are not to be included in the CSR compliances⁸

V. CSR AS CONTROL OVER COMPANIES:

Company is an artificial person but appoints natural persons to act on behalf of it. Though the capital is invested by various shareholders, still the company remains the owner of it. Company cannot act according to its own whims and fancies. It is controlled by various controls. According to the Sec.135 of the Companies Act, 2013, the eligible companies have to spend at least 2% of its net profit on the activities as stated in the Schedule VII. These activities are to be included in the company's policies which were to be published in their official website. In the guise of CSR compliance companies are spending towards their own benefit. To override such sort of tendency the following activities shall not to be included in CSR.

1. Activities undertaken in normal course of business.
2. Activities undertaken outside India.

⁶Sec.135(1) of the Companies Act, 2013.

⁷Schedule VII to Companies Act, 2013

⁸Proviso to Rule 4 of Companies (Corporate Social Responsibility Policy) Rules, 2014

3. Contribution of any amount directly or indirectly to any political party.
4. Activities benefitting only employees of the company and their family members.
5. Activities not covered within Schedule VII of Companies Act 2013⁹

The Ministry of Corporate Affairs has suggested to the eligible companies shall give preference while spending the earmarked amount to the local areas in which company operates. That will bring a good rapport with the locals who will be direct beneficiary of these schemes.

The controls that the government applies to private enterprise or to any other thing flows from the social and economic objectives which are enshrined in our Constitution and they are also included in the planned development that we are seeking and that we are constantly trying to achieve.¹⁰

As the companies have to restrict their CSR activities as shown in the Schedule VII and not to opt such activities in the guise of CSR and as provided in the proviso to the Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Thus, the provisions as regards to the CSR compliances are acting as the control over the companies.

VI. EFFECT OF NON-COMPLIANCE:

If the eligible company fails to spend the required amount on CSR activities, the Board shall, in its report specify the reasons for not spending the amount.¹¹ If a company contravened the provisions of this section, it 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 three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.¹² Further, for general penalties of the contravention of any of the provisions under the Companies Act, 2013 we may take the help of Sec, 450 and 451.

The merits of the CSR are profit maximisation, more flow of capital, enhancement of goodwill, increase in reputation, responding to the world trend, concern towards the environmental development, concern to the society, creation the brand image, power coupled with responsibility, increase in credibility, boost in the sales, loyal to the legal compliances etc.

The demerit lies in contributing out of the company profit that, the sole motto of the company comes to standstill. Because, the company comes into existence with the sole motto of profit maximisation. The State has shifted its responsibility of welfare of the citizens on companies. It's like lip sympathy towards the society.

⁹Rule 4 of companies (corporate social responsibility policy) rules, 2014

¹⁰Dinesh C Pandey, "Government Regulation of Private Enterprises", (New Delhi: N.M. Tripathi Pvt. Ltd.), p. 5.

¹¹Proviso to sub section (5) of Sec. 135

¹²Sec.134(8) of Companies Act 2013.

VII. CONCLUSION:

CSR though a noble initiative to fill the gap of socio-economic inequality and to be complies properly by the companies. It is the one of the key elements that helps to achieve the vision and mission of the company. To carry out the activities effectively companies may avail the assistance from the NGOs. There are other legislations which control and regulation can be enforced on the corporate bodies. The spreading of awareness about CSR is the need of the hour. There is a need of regulating authority to observe as to the proper spending has taken place. The defaulting companies along with its officers in default are to be dealt with seriously like publishing their names in media, not providing the facilities, etc. by the Government, Trained and expert professionals are needed for managing CSR funded expenditure to be publish on websites. The genuine compliers of the provisions are to be recognised and to be rewarded through extra facilities. That may impress the others to come forward in compiling the CSR provisions.

