

Corporate Social Responsibility in India: Challenge of Implementing CSR Provisions of the Companies Act, 2013

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Abstract

The Corporate Social Responsibility (CSR) is not just spelt out but given legal sanction in Section 135 of the Companies Act, 2013 followed by the notification of the Companies (Corporate Social Responsibility Policy) Rules 2014. The Act and the Rules essentially seek to operationalize the idea of CSR in the Indian industrial context. It mandates that companies must "make every endeavor" to ensure that they spend a minimum amount of 2% of the average net profits for preceding three years on socially relevant activities in terms of Schedule VII and pursuant to their CSR policy. The latest legislation is meant to be a measure to ensure that CSR obligations are more widely undertaken by companies in India and its benefits accrue to the Indian society at large.

Key words: Corporate Social Responsibility, Specified Company, CSR Committee, CSR Policy, CSR Reporting.

Introduction

The concept of Corporate Social Responsibility, or CSR as it is popularly termed, is defined as the social obligation of business towards the society and its members. CSR involves business organizations using their capabilities and strategic and financial resources to address the challenges of sustainability at social and environmental levels. Corporate social responsibility is thus a practice where large and small businesses seek to positively impact the society at large, through socially relevant and beneficial activities. In recent years there has been a global trend by businesses to be socially useful and perform duties towards the community beyond statutory obligations imposed by business and laws. There has been an emerging belief that business concern's wealth generation for profit, on one hand has to be balanced by social service on the other. It has been realized that wanton profiteering by businesses is against sustainable social and environmental development. Hence increasingly the CSR philosophy has been taking hold in the corporate sector during the last few years and more and more businesses have been setting aside a part of their profits to fulfill their Corporate Social Responsibility.

Scenario in India

The idea of Corporate Social Responsibility, or CSR, is not new to India as many large corporate houses such as Tatas, Wadias and others have been known for decades to involve in social commitments and activities positively directed towards society thereby going beyond the requirements of established laws or routine business practices. The large Indian businesses have been undertaking many socially relevant projects as part of their self-regulated obligation to society or as their Corporate Social Responsibility. However, the social and environmental problems besetting India are not only huge but almost insurmountable if left only to the Government. While the Indian Welfare State has been involved in poverty alleviation and social development through its Five-Year Planning method since 1950s, the fruits of such socio-economic planning have not percolated down to lowest strata in the society. This has been due to many reasons and factors such as rapid growth of population, slow growth of industrial sector, agro-based and rural-based economic development model and political-governmental corruption. However, the last two decades have witnessed India's rise as a global economic powerhouse with its economy at one time growing at the annual rate of 8 percent. Industrial sector has been thriving and the tertiary sector of service industry in particular, has been expanding at rapid pace. But all this growth and development of industry and economy has, on one hand caused huge environmental problems and on the other failed to provide socio-economic benefits to

large sections of marginalized and poor masses. Governmental inefficiency and institutionalization of corruption has only compounded the problems.

It was in this era of India's fast paced industrial and economic growth that the questions of Corporate Social Responsibility of the businesses arose. While CSR has been practiced in India for some time, it was realized through various studies conducted during the last few years that, for most part the Indian industry and businesses were more focused on profit-making and often at the cost of its CSR activities. It was also seen that the concept of CSR was often confused with the business and personnel related activities being considered as CSR. Some companies believed that the adherence to the corporate laws and other legislations meant CSR. It was found that comparatively fewer businesses were fulfilling their Corporate Social Responsibility in the true sense of the term and even where they did, only a minuscule amount of funds or an extremely tiny share of net profits was dedicated to the CSR activities. Thus while the businesses were making huge profits, often utilizing the benefits and facilities provided by the Indian State and Society, they were doing precious little for benefiting the country and society at large. In short, they were largely shirking their real Corporate Social Responsibility and merely putting up a show of doing social obligation.

A brief look at some of the studies conducted will indicate the ground reality of spending under CSR by Indian corporate businesses. The studies carried out by an organization called *Karmayog* during last several years and publication of the annual ratings of CSR spending by Indian business majors, show that a little over 2 percent from among those surveyed for CSR have dedicated 2 percent of their profits for CSR activities. In a list of 500 companies subjected to CSR ratings in 2010 by the same rating organization *Karmayog*, just 12 companies fell into this category called as Level-4 and surprisingly among these 12 companies, fifty percent were Tata group and IT companies. Reliance companies were conspicuous by their absence in higher CSR spending bracket according to this rating survey. Other studies on CSR spending and ranking have been also conducted by the Times Foundation along with research organization called TNS India, TNS Automotive and by the Asian Governance Association. These studies do indicate that CSR by businesses and public and private corporate entities in India, though done on voluntary basis, is substantial. However, these studies have used methods like public goodwill index and other rating methods to rank India in the CSR ratings *vis a vis* other Asian countries. The conclusions arrived at are not totally reliable or complete. Therefore, a real and comprehensive picture is not available on the CSR of Indian businesses and companies.

Pertinently, while addressing business leaders in May 2010, the then Prime Minister Manmohan Singh had stated "Corporate social responsibility must not be defined by tax planning strategies alone. Rather, it should be defined within the framework of a corporate philosophy, which factors the needs of the community and the regions in which a corporate entity functions." Probably realizing the situation, the Associated Chambers of Commerce and Industry of India had taken an initiative to organize the first sustainability summit in January 2011, to focus on the Corporate Social Responsibility of the industries and businesses in India. The issue of CSR, which has been thus far been on the back-burner and incidental, was thus brought to the fore. There have been several more attempts at making the industries and businesses in India to adopt and implement the CSR philosophy. But the greatest impetus to ushering in a greater adherence to the Corporate Social Responsibility by the industries and businesses in India came about when the Government of India decided for a new Companies legislation by way of Companies Bill 2009, followed by Companies Bill 2011 and finally Companies Bill 2012 (which ultimately became the law and came to be enacted as the Companies Act 2013) and consciously decided to incorporate provisions for CSR in the new law and make CSR mandatory and statutory for certain categories of industries and businesses in India. As usual, the legislative mode was adopted by the Government to push CSR on industries and businesses in India, no more leaving the question of CSR to the whims of arbitrary corporate policy and self-determination by each business or corporate entity.

The Government's decision to force CSR through legislation in all probability stems from its conclusion that unless compelled, most business and corporate entities are not likely to take their CSR seriously or join in the collective effort at nation-building and sustainable social and environmental development especially in an age of

run-away capitalism consequent upon the unleashing of the forces of globalization, liberalization and privatization of industry and economy. Unstated criticisms and reservations apart, this Government move to enforce CSR through legal provisions has been largely accepted and welcomed by the industry, the NGOs and the civil society at large.

The Companies Act, 2013: The CSR Provisions

The Companies Bill 2012 was passed by Lok Sabha on 18th December 2012. The Rajya Sabha then passed it on 8th August 2013. The President of India gave his assent on 29th August 2013 and consequently it became the Companies Act, 2013 (Act 18 of 2013). Thereafter, the Union Ministry of Corporate Affairs (MCA) framed the Companies (Corporate Social Responsibility Policy) Rules 2014 and the draft Corporate Social Responsibility Rules issued under section 135 of the Companies Act, 2013 were first published on 8th September 2013 and were finally notified on 27th February 2014 to come into force from 1st April 2014. The Companies Act, provided for a special and exclusive provision for the CSR at Section 135 and Schedule VII relating to CSR setting out clear framework and process to implement CSR by Indian businesses and companies. India thus became the first country in the world to statutorily mandate a specific spending by companies and businesses on CSR activities.

Legal Provisions

Section 135 reads as below:

(1) 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 at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) 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;

(b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) Monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) 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

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (c) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

CSR Activities:-*Schedule VII of the Act.*

Activities which may be included by companies in their Corporate Social Responsibility Policies be relating to:—

- (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 immunodeficiency 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; and
- (x) Such other matters as may be prescribed.

Specified Company

The Companies Act 2013 states that every company, whether public/private/foreign company, having a net worth of 500 crore or more, or a turnover of 1000 crore or more, or a net profit of 5 crore or more is covered under Section 135 and is statutorily and mandatorily required to implement CSR as set out in the Companies Act 2013 and the Companies (Corporate Social Responsibility Policy) Rules 2014. Such a company is termed as a 'specified company'. Section 135 of Companies Act 2013, specifically requires that every specified company spend at least 2% of its average net profit of the immediate three preceding financial years on CSR and it must be spent on projects and programs as specified in Schedule VII of Companies Act 2013..

CSR Committee

Also the specified company is required to form a CSR Committee consisting of at least 3 Directors out of which 1 should be an independent director, to formulate the CSR policy of the company and to continually and effectively monitor the CSR activities of the company. The CSR Committee is needed to formulate corporate social responsibility policy in fulfillment of and in view of Schedule VII, and then to recommend that it be approved by the Board of Directors. The CSR Committee has to plan and propose the amount to be spent for the CSR activities and has to ensure that it is not less than 2% of average net profit of previous three years.

Net Profit

The "Net profit" mentioned at Section 135(1) means the net profit of a company as reflected in its financial statement prepared in accordance with the applicable provisions of the Companies Act. The Net Profit is not to include (i) any profit arising from any overseas branch or branches of the company and (ii) any dividend received from other companies in India. For a foreign company covered under this Act, Net profit means the net profit will be according to profit and loss statement prepared in terms of Section 381(1) (a) read with Section 198 of the Companies Act 2013.

CSR Policy

The CSR Policy as already stated is framed by the CSR Committee and approved by the Board of Directors. The CSR Policy of a company includes a Plan and a list of CSR projects or programmes as per the Schedule VII of the Act to be implemented along with the implementation schedules for completing the CSR projects and a

monitoring mechanism for ensuring effective implementation of CSR projects or programmes. The Act further provides that the Board of Directors of the companies will be responsible to ensure that the company spends the mandatorily required amount on specified CSR activities in keeping with the CSR policy of the company. However it is to be noted that those activities which are undertaken in pursuance of normal course of business of a company are not to be included in the list of CSR activities. Also the CSR Policy has to state in clear terms that any surplus arises due to the CSR projects or programmes or activities will not be construed as company profits and will have to be entirely used only for further CSR activities.

CSR Reporting

The Act also requires the Reporting of the Company's CSR policy and CSR activities. The Annual Report made by the Board of Directors has to necessarily include a report on CSR activities planned and conducted by the company. The Report has to be filed providing particulars as specified in Annexure given in the Companies (Corporate Social Responsibility Policy) Rules 2014. The same mode also applies to the foreign company's annual Report of CSR activities, but is to be made in terms of sub-clause (b) of sub-section (1) of section 381 along with an Annexure.

The Challenge of Implementing CSR Provisions

While the law has been enacted and CSR has been forcefully etched on the corporate psyche, its implementation is not an easy task. Law is easier done than implemented. India has some of the finest and socially relevant laws in the world. But the implementation of the many enabling legislations is a far cry. Hence, until and unless the business and corporate entities sincerely adopt and make the CSR philosophy their own, very little impact will be felt on the social development. The CSR, instead of being a genuine endeavor, will be just one more formality to be done with. The CSR spin doctors and CSR consultants like vultures will descend upon the CSR scene with innovative proposals, not with the primary intention to benefit the society but to make the CSR itself another profit making business. This has been happening already, though to a limited extent, but now the floodgates to CSR-business and CSR-industry will open. There is a lurking danger of CSR of businesses becoming the businesses of CSR.

The moot question is how one ensures that the CSR is carried out conscientiously and without reducing it to another form of business proposition. A mere glance at the internet sites indicates that there are already many companies who have made the CSR of other companies itself their own business for profit making. Some have become very enterprising by offering the large corporates facilitation for the implementation of the CSR philosophy for a profit! But then what about their own CSR? Another moot question is whether the non-profit NGOs would be a better forum to carry out the CSR of those companies who do not have the time or the expertise to involve in CSR activities. Could better option be the creation of a National Corpus of CSR Fund managed by a non-profit National Trust represented by industry, government, civil society members and technocrats who would decide and channel the CSR funds in areas where they are really needed?

Then there are questions about CSR's relationship to the essential purpose and nature of business and questionable motives for undertaking CSR, including the fundamental concern regarding insincerity and hypocrisy, and its relation to the very Management profession and practice. For instance the fundamental question that arises is with regard to the motives for CSR by businesses, such as to distract the people and society from ethical questions posed by their core operations which may be anti-social (tobacco/liquor/gambling companies) and anti-environmental (chemical/polluting companies) or use CSR to gain positive publicity to cover-up unethical and socially/environmentally harmful practices by the businesses. The CSR thus poses a direct challenge to ethics in business.

Ultimately, the success or failure of CSR presently brought within the purview of the legal frame work of corporate law is likely to depend entirely on how each business or company is likely to sincerely pursue CSR as a true measure of welfare aimed at reaching the society at large, primarily for people's collective advantage and not simply limited to the 'stake holders' (read employees and clients) of the business or company. Furthermore there is

no clarity yet on whether the profits are to be calculated on a consolidated basis or on a stand-alone basis. Thus there are many unanswered questions which need to be clarified before CSR becomes truly meaningful and socially relevant in India. Until that happens we can only take solace in the fact that CSR has been elevated to a social pedestal to which every corporate entity is expected to at least pay obeisance to.

Implementation of CSR

While within the Indian context the idea of CSR is a relatively new development, in the western capitalist economies and countries, there has been a long history of implementation of CSR. For instance, there has been much discussion about the strategies to implement CSR by the industries and businesses and there have been many publications on the subject. In a major work entitled "*Corporate Social Responsibility: An Implementation Guide for Business*" the author Paul Hohnen has suggested myriad ways on implementation of CSR. The suggestions made by him include involving the scholars and experts from the field of CSR to devise strategies for CSR. It also includes appointment of External Multi-Stakeholder CSR Expert Advisory Group, using key international CSR instruments, using Non-governmental CSR-related organizations and establishing National-level CSR guidance regime.

In the opinion of the author it is necessary to prioritize which stakeholders or members of the society to engage with, in terms of their ability to impact positively or negatively on the firm. Then devise specific CSR programs for these stakeholders and community. It also involves finding local support or partners to help translate the company's CSR into real advantage for the community around.

The involvement of NGOs to achieve social relevance is probably the most effective strategy in implementation of CSR. However, given the late arrival of the idea of CSR in India and the slow pace at which it had picked up in the corporate sector, it is likely to take more time to devise appropriate implementation strategies suitable for Indian conditions and context. Considering the socio-economic situation in India the CSR will largely have to focus on issues concerning economic poverty and social development. In such an approach not just the state intervention but the active participation of all the other stake-holders is of vital importance.

Conclusion

At the most basic level, CSR is concerned with a firm or a business viewing the society as an integral part of itself. It also means a firm or a company viewing its business as a part of the society, the wider global context and the environment which encompasses it. CSR implementation involves engagement by firms and companies with the society around not simply to keep the various stakeholders informed of its plans and activities but to achieve a level of interaction which leads to stakeholders influencing corporate decision making benefiting both the businesses and society. The implementation of CSR also involves consultation and participation by all the stakeholders which invariably includes the members of the society around and society at large. The attempt by the Government to impose CSR through legal enactment is a welcome step and must be wholeheartedly accepted by businesses and industry and more importantly implemented with true sincerity and purpose. There is, of course, a long way to go yet, but this is a welcome beginning.

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