

CORPORATE SOCIAL RESPONSIBILITY

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1. INTRODUCTION

1.1 I initiate the subject of Corporate Social Responsibility (CSR) with a sutra written by Chanakya

सुखस्य मूलं धर्मः

धर्मस्य मूलं अर्थः

अर्थस्य मूलं राज्यः

राज्यमूलंमिन्द्रियजयः

Dharma – religion (ethics or commitment to duty as a human being) is the nucleus of happiness. The core of dharma is wealth or Artha. The stability of the state is the precondition for Artha (wealth) in the state. The primary duty of the rulers/government is to be in command over senses and emotions (perennially until they are ruling)

Corporate Social Responsibility (CSR) is an evolving concept and represents the collective culmination of fundamental desire of every human being to be happy and to direct the efforts of all to make it happen.

1.2 General Aspects

Corporate Social Responsibility (CSR) can be explained as the initiative of a company to assess and take responsibility for the company's effects on the environment and impact on social welfare. The term, generally, applies to company's efforts that go beyond what may be required by regulators. Corporate social responsibility is a form of corporate self-regulation integrated into a business model. CSR functions as a built-in, self-regulating mechanism whereby a business monitors and ensures its active compliance with the spirit of the law and its response to societal needs.

1.3 The term "corporate social responsibility" came into common use in the late 1960s and early 1970s after certain corporations formed the term stakeholder, meaning those on whom an organisation's activities have an impact. It was used to describe corporate owners beyond shareholders.

1.4 A single globally accepted definition of CSR does not exist. However, various organisations have developed formal definitions of CSR, some of them are:

1.4.1 Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large. - **World Business Council for Sustainable Development.**

1.4.2 Corporate Social Responsibility is essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. - **European Commission; Employment & Social Affairs.**

1.5 Corporate social responsibility offers manifold benefits both internally and externally to the companies. Externally, it creates a positive image amongst the people for its company and earns a special respect amongst its peers. Internally, it cultivates a sense of loyalty and trust amongst the employees in the organisational ethics. It can improve operational efficiency of the company and can be accompanied by increase in quality and productivity.

1.6 The essence of CSR comprises philanthropic, corporate, ethical, environmental and legal as well as economic responsibility. In India, the evolution of CSR refers to changes over time in cultural norms of corporations' engagement and the way businesses managed to develop positive impacts on communities, cultures, societies, and environment in which those corporations operated.

1.7 In the last decade, CSR has rapidly evolved in India with some companies focusing on strategic CSR initiatives to contribute toward nation building. Gradually, the companies in India started focusing on need-based initiatives aligned with the national priorities such as public health, education, livelihoods, water conservation and natural resource management.

2. CSR IN INDIA – LEGAL POSITION

2.1 The government introduced mandatory CSR requirements in Companies Act 2013. The 2013 Act mandates companies to spend on social and environmental welfare, making India perhaps one of the very few countries in the world to have such a requirement

embedded in a corporate law. The CSR provision became effective from 1st April 2014. Significant amendments have been made to CSR provisions through issuance of various notifications, clarifications (including Frequently Asked Questions (FAQs)), Guidance Note on accounting for expenditure on CSR (GN on CSR) by The Institute of Chartered Accountants of India.

2.2 As per rule 2(c) of Companies (Corporate Social Responsibility Policy) Rules 2014 CSR means and includes but it is not limited to –

- i. Projects or programs relating to activities specified in Schedule VII to the Act; or
- ii. Projects or programs relating to activities undertaken by the board of directors of a company in pursuance of recommendations of the CSR committee of the Board as per declared CSR Policy of the Company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

2.3 Applicable to certain companies

Section 135 (1) provides that every Company having –

- i. Net worth of rupees five hundred crore or more; or
- ii. Turnover of rupees one thousand crore or more; or
- iii. Net profit of rupees five crore or more during the immediately¹ preceding financial year shall constitute a Corporate Responsibility Committee of the Board.

As per rule 3 (1) of Companies (Corporate Social Responsibility Policy) Rules 2014 every company including its holding or subsidiary and a foreign company defined under clause (42) of section 2 of the Act, having its branch office or project office in India which fulfils the criteria specified in section 135(1) shall comply with the provisions of section 135 of the Act and The Rules.

2.3.1 “Net Worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

2.3.2 “Turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

2.3.3 “Net Profit” means the net profit of a company as per its financial statement calculated as per section 198 of the Companies Act 2013, but shall not include the following:

- i. any profit arising from any overseas branch or branches of the company whether operated as a separate company or otherwise; and
- ii. any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

2.3.4 “average net profits” shall be calculated in accordance with the provisions of section 198 of the Companies Act 2013.

2.3.5 The net worth, turnover or net profit of a foreign company shall be computed in accordance with the balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (l) of section 381 and section 198 of the Act.

2.3.6 It has been provided that the net profits in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act 1956, shall not be required to recalculate the same in accordance with the provisions of Companies Act 2013.

2.4 Constitution of the CSR Committee

2.4.1 Section 135 (1) provides that every Company covered by section 135(l) shall constitute Corporate Social Responsibility committee with 3 or more directors, out of which at least one director shall be independent director. In case where company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its CSR committee two or more directors.

A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

A foreign company shall constitute CSR Committee comprising of atleast two persons of which one person should be resident in India authorised to accept on behalf of the company service of process any notices or other documents served on the company and another person shall be nominated by the foreign company.

The composition of the Corporate Social Responsibility Committee is required to be disclosed in the Board’s report prepared under the Act.

2.4.2 The 2013 Act mandates that every company (including its holding or subsidiary, as well as foreign companies having project office/branch in India) to undertake CSR activities if they meet certain thresholds. One question which arises is whether a holding or a

¹ Substituted for “any financial year” by the Companies (Amendment) Act, 2017 with effect from a date yet to be notified.

subsidiary of a company (which fulfils the criteria for CSR applicability under the 2013 Act) also has to comply with CSR provisions, even if such holding or subsidiary itself does not fulfil those criteria. The FAQs issued by the MCA clarify that a holding or a subsidiary of a company is not required to comply with CSR provisions unless the holding or subsidiary itself fulfils the CSR criteria.

2.4.3 It has also been clarified in the rules that every company which ceases to satisfy the criteria mentioned above for three consecutive financial years shall not be required to-

- a. constitute a CSR Committee; and
- b. comply with the provisions contained in section 135, till such time it meets the criteria specified in sub section (1) of section 135.

2.5 Functions of CSR Committee

Section 135 (3) provides that the CSR committee shall –

- a. formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; of Companies Act 2013
- b. recommend the amount of expenditure to be incurred on the CSR activities.
- c. monitor the Corporate Social Responsibility Policy of the company from time to time.

The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

2.6 CSR Policy and Report

Section 135 (4) provides that the Board after taking into account the recommendations of CSR Committee, approve the CSR policy for the Company and disclose the content of such policy on the Company's website.

The Board's report to shareholders pertaining to a financial year shall include an annual report of CSR containing particulars specified in the Annexure to Companies (CSR Policy) Rules 2014.

2.7 Contribution under CSR

2.7.1 Section 135 (5) provides that every company referred in s/s. (1) shall ensure that the company spends in every financial year at least 2% of the average net profits of the Company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

If the Company fails to spend such amount the Board shall in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

2.7.2 Contribution of any amount directly or indirectly to any political party u/s. 182 of the Act shall not be considered as CSR activity.

3. CSR ACTIVITIES

3.1 As per rule 4 of Companies (Corporate Social Responsibility Policy) Rules 2014 CSR activities includes activities undertaken by the Company as per its policy as projects or programs either new or ongoing excluding activities undertaken in pursuance of its normal course of business.

3.2 Activities which are included in CSR - As per Schedule VII of Companies Act 2013

Activities relating to –

- i. eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation (including contribution to the Swachh Bharat Kosh set up by the Central Government for the promotion of sanitation) and making available safe drinking water;
- ii. promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- iii. 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;
- iv. 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; (including contribution to the clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga)
- v. 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;
- vi. measures for the benefit of armed forces veterans, war widows and their dependents;
- vii. training to promote rural sports, nationally recognised sports, para Olympic sports and Olympic sports;
- viii. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Caste, the Scheduled Tribes, other backward classes, minorities and women;
- ix. contributions or funds provided to technology incubators

located within academic institutions which are approved by the Central Government;

- x. rural development projects;
- xi. slum area development.

3.3 The CSR projects or programmes or activities undertaken in India only shall amount to CSR Expenditure. Companies should give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities. The MCA has also clarified that CSR activities enumerated in the Schedule VII of the 2013 Act are broad-based and are intended to cover a wide range of activities. Thus, these prescribed activities should be interpreted liberally to capture their essence.

3.4 Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that the CSR activities that shall be undertaken by the companies for the purpose of section 135 of the Act shall exclude activities undertaken in pursuance of its 'normal course of business'. The Rules also specify that CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with the requirements of the Act. Such programmes or projects or activities, that are carried out as a pre-condition for setting up a business, or as part of a contractual obligation undertaken by the company or in accordance with any other Act, or as a part of the requirement in this regard by the relevant authorities cannot be considered as a CSR activity within the meaning of the Act.

3.5 Similarly, the requirements under relevant regulations or otherwise prescribed by the concerned regulators as a necessary part of running of the business, would be considered to be the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities.

4. IMPLEMENTING CSR ACTIVITIES

4.1 A Company can undertake CSR activities in one or more of the following ways:

- i) The Company itself can do these activities
- ii) A company established u/s. 8 of the Act or a registered trust or a registered society, established by:-
 - a) the company, or
 - b) the company alongwith any other company, or
 - c) the Central Government or State Government or any entity established under an act of Parliament or a State legislature, or

d) Any other person or persons, where such company or trust or society have an established track record of three years in undertaking similar programs or projects and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism.

iii) A company can collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.

4.2 Companies may build CSR capacities of their own personnel as well as those of their implementation agencies through Institutions with established track records of atleast three financial years but such expenditure including expenditure on administrative overheads shall not exceed five per cent of total CSR expenditure of the company in one financial year.

5. CSR – ACCOUNTING AND RELATED DISCLOSURES

5.1 The Institute of Chartered Accountant of India has issued Guidance Note on Accounting for expenditure on CSR activities which provides accounting guideline for CSR expenditure.

5.2 The amount of contribution made towards CSR would generally, be treated as an expense and charged to the statement of profit and loss, unless it gives rise to an asset. According to the Guidance Note on Accounting for CSR, an asset would be recognised on the basis of an evaluation of control over the asset and accrual of future economic benefits to the company.

5.3 Section 135 (5) of the Companies Act, 2013, requires that the Board of every eligible company, "shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy". A proviso to this Section states that "if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount".

Further, Rule 8(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, prescribes that the Board Report of a company under these Rules shall include an Annual Report on CSR, containing particulars specified in the Annexure to the said Rules, which provide a format in this regard. The above provisions of the Act

clearly lay down that the expenditure on CSR activities is to be disclosed only in the Board's Report in accordance with the Rules made thereunder.

In view of above, no provision for the amount which is not spent, i.e., any shortfall in the amount that was expected to be spent as per the provisions of the Act on CSR activities as compared to the amount actually spent at the end of a reporting period, may be made in the financial statements.

The proviso to section 135 (5) of the Act, makes it clear that if the specified amount is not spent by the company during the year, the Directors' Report should disclose the reasons for not spending the amount.

However, if a company has already undertaken certain CSR activity for which a liability has been incurred by entering into a contractual obligation, then in accordance with the generally accepted principles of accounting, a provision for the amount representing the extent to which the CSR activity was completed during the year, needs to be recognised in the financial statements.

Where a company spends more than that required under law, a question arises as to whether the excess amount 'spent' can be carried forward to be adjusted against amounts to be spent on CSR activities in future period. Since '2% of average net profits of immediately preceding three years' is the minimum amount which is required to be spent u/s. 135 (5) of the Act, the excess amount cannot be carried forward for set off against the CSR expenditure required to be spent in future.

Further, the Board of Directors of the Company are free to decide whether any unspent amount from the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to atleast 2% of the average net profit of the Company of the immediately preceding three years.

Additionally, a company should also disclose related party transactions e.g. contribution to a trust controlled by the company in relation to CSR expenditure.

5.4 In some cases, a company may supply goods manufactured by it or render services as CSR activities. In such cases, the expenditure incurred should be recognised when the control on the goods manufactured by it is transferred or the allowable services are rendered by the employees. The goods manufactured by the company should be valued in accordance with the principles prescribed in Accounting Standard (AS) 2, Valuation of Inventories. The services rendered should be measured

at cost. Indirect taxes (like excise duty, service tax, VAT or other applicable taxes) on the goods and services so contributed will also form part of the CSR expenditure.

Where a company receives a grant from others for carrying out CSR activities, the CSR expenditure should be measured net of the grant.

5.5 Item 5 (A)(k) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered u/s. 135, the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a note to the statement of profit and loss. From the perspective of better financial reporting and still be in line with the requirements of Schedule III in this regard, it is generally recommended that all expenditure on CSR activities, that qualify to be recognised as expense should be recognised as a separate line item as 'CSR expenditure' in the statement of profit and loss. Further, the relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure'.

5.6 In case a contribution is made to a fund specified in Schedule VII to the Act, the same would be treated as an expense for the year and charged to the statement of profit and loss. In case the amount is spent through a registered trust or a registered society or a company established u/s. 8 of the Act the same will be treated as expense for the year by charging off to the statement of profit and loss.

5.7 In cases, where an expenditure of revenue nature is incurred on any of the activities mentioned in Schedule VII to the Act by the company on its own, the same should be charged as an expense to the statement of profit and loss. In case the expenditure incurred by the company is of such nature which may give rise to an 'asset', a question may arise as to whether such an 'asset' should be recognised by the company in its balance sheet. In this context, it would be relevant to note the definition of the term 'asset' as per the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India. As per the Framework, an 'asset' is a "resource controlled by an enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise". Hence, in cases where the control of the 'asset' is transferred by the company, e.g., a school building is transferred to a Gram Panchayat for running and maintaining the school, it should not be recognised as 'asset' in its books and such expenditure would need to be charged to the statement of profit and loss as

and when incurred. In other cases, where the company retains the control of the 'asset' then it would need to be examined whether any future economic benefits accrue to the company. Invariably future economic benefits from a 'CSR asset' would not flow to the company as any surplus from CSR cannot be included by the company in business profits in view of Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Where a company receives a grant from others for carrying out CSR activities, the CSR expenditure should be measured net of the grant.

5.8 Recognition of income earned from CSR projects/programmes or during the course of conduct of CSR activities

Rule 6(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, requires that "the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company". Thus, in respect of a CSR project or programme or activity, it needs to be determined whether any surplus is arising therefrom. A question would arise as to whether such surplus should be recognised in the statement of profit and loss of the company. It may be noted that paragraph 5 of Accounting Standard (AS) 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies, *inter alia*, requires that all items of income which are recognised in a period should be included in the determination of net profit or loss for the period unless an Accounting Standard requires or permits otherwise. As to whether the surplus from CSR activities can be considered as 'income', the Framework for Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India, defines 'income' as "increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants". Since the surplus arising from CSR activities is not arising from a transaction with the owners, it would be considered as 'income' for accounting purposes. In view of the aforesaid requirement any surplus arising out of CSR project or programme or activities shall be recognised in the statement of profit and loss and since this surplus cannot be a part of business profits of the company, the same should immediately be recognised as liability for CSR expenditure in the balance sheet and recognised as a charge to the statement of profit and loss. Accordingly, such surplus would not form part of the minimum 2% of the average net profits of the company made during the three immediately preceding

financial years in pursuance of its Corporate Social Responsibility Policy.

5.9 Presentation and disclosure in financial statements

The General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered u/s. 135, the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a note to the statement of profit and loss.

The notes to accounts relating to CSR expenditure should also contain the following:

- a. Gross amount required to be spent by the Company during the year;
- b. Amount Spent during the year;
- c. Details of related party transactions eg; contribution to a trust controlled by the Company in relation to CSR expenditure as per AS -18 – Related Party Disclosures;
- d. Where provision is made in case of CSR activity for which a liability has been incurred by entering into a contractual obligation the same should be presented as per requirements of Schedule III to the Companies Act, 2013. Further movements in the provisions during the year should be shown separately.

6. CSR – TAX IMPLICATIONS

6.1 Before Companies Act, 2013 and Finance Act, 2014, the expenditure on CSR was not mandatory and there was no direct provision under Income Tax Act dealing with CSR expenditure. Therefore, all the voluntary expenditures incurred on CSR were claimed either u/s. 35(2AA) or 35AC or u/s. 80G of the Income Tax Act and in most of the cases the CSR expenditures were claimed to be allowed u/s. 37(1) of the Income Tax Act, 1961. However, after Companies Act 2013, CSR expenditure became mandatory and the tax treatment of CSR spends became contingent upon the Income Tax Act, 1961 and amendments thereof.

The Finance Act, 2014 had brought a very radical and far reaching amendment, as far as CSR expenditures are concerned. The Finance Act had proposed that CSR expenditure shall not be allowed as expenditure u/s. 37 of Income Tax Act, 1961. However, any CSR expenditure which is allowed as deduction under other sections such as section 30, 32, 35, 35AC, 80G etc., should be possible.

6.2 Historically it is well established by various judicial pronouncement that the CSR expenditures were allowed u/s. 37 (1) of the Income Tax Act, 1961, only on the background that these expenditures were considered

to be for the purpose of business or for advancement of the business of the assessee. However, now Rule 4 of CSR Rule specifically provides that CSR activities will not include any activities undertaken in pursuance of normal course of business and therefore, to constitute a valid CSR expenditure, the expenditure cannot be in relation to or for advancement of business of the company. Under this background, the amendment in the Finance Act, 2014 seems to be clarificatory in nature as expenditure can be allowed to be deducted u/s. 37(1) only when it is incurred for the purpose of business.

6.2.1 If the company directly undertakes CSR expenditures there will be no tax deduction and therefore, the company cannot claim the tax benefits when it spends the amount directly.

6.2.2 If the company undertakes CSR expenditures through 80G registered NGOs (including its own foundation) then the company can claim some tax benefit as such contribution provide 50% tax benefit.

6.2.3 Further, if a corporate undertakes CSR activities through Institutions registered u/s. 35CCA, 35AC, 35CCC, 35CCD of the Income Tax Act, 1961 or through funds like Prime Minister Relief Fund, National Defence Fund having 100% tax benefit u/s. 80G then it will get 100% tax advantage.

6.2.4 Further, if a corporate undertakes CSR activities through Institutions registered u/s. 35 for scientific research or social research then it may get 125% to 175% tax advantage and will be most advantages for CSR, but the choice of activities will be reduced and the money will go towards research and not towards direct field level programmes.

6.2.5 Thus, the present tax provisions of differential tax statement of CSR expenditure may shift focus of the company to have a CSR policy on the basis of tax efficiency also.

6.3 The present laws dealing with CSR, i.e. Companies Act 2013 and Income Tax 1961, thus are going in 2 different directions. The Companies Act requires a company to spend certain amount towards C.S.R. and lays down elaborate mechanism in respect of the same. The Income Tax Act very clearly states that the C.S.R. expenditure would not be allowed as business expenditure. However, in case the company spends the amount of CSR through a section 8 Company, Trust or Society, it can legitimately claim this as a deduction under relevant provisions of the Income Tax Act. Thus, it appears that there is a need to have a co-ordinated approach in these two laws, in respect of CSR activities.

7. CSR – IMPLEMENTATION ISSUES

7.1 Certain issues have been surfaced during the implementation of the CSR rules and they can be addressed by setting up appropriate mechanisms. First, if a company has to spend relatively large sums on CSR year after year, because its profits are huge, it will face the challenge of identifying appropriate projects on a sustained basis. It is important to realise that companies need to pump in 2 per cent of their net profits every year. This can put a strain on the company's management to search, select, implement and monitor new projects every year. The task is likely to cumulatively build up both in terms of scale and scope over time. For large companies the issue of identifying appropriate projects on a sustained basis is even more challenging. Spending of such large amounts may require large companies to have dedicated centres that identify, implement, and monitor large scale projects or a large number of smaller projects. This entails additional costs for a company that need to be factored in. The Rules foresee this to some extent and allows companies to carry out their CSR activities through registered trusts set up by the companies or outside trusts with good track records; but the activities of these trusts would in turn become challenging and will possibly need monitoring.

7.2 Another issue relates to the treatment of CSR kind of expenditure that companies may already be incurring. Would reclassifying them as CSR expenses meet the requirements of law? For example, can companies that are operating educational institutions or running major hospital facilities for their employees beyond what the law requires, claim the excess facilities as CSR expenditure u/s. 135?

Will this be allowed if such facilities are also open to nonemployees as well? Some questions have already been raised as to whether certain types of expenditure which companies have been incurring will qualify as items towards meeting the specified CSR target. In response to this, the Ministry of Corporate Affairs issued a circular dated June 18th, 2014 (MCA, 2014b) specifying that "the activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Act and the activities mentioned in the Schedule VII must be interpreted liberally capturing the essence of the subjects enumerated therein." As stated earlier, the circular also lists certain specific types of expenditures that will count as CSR expenditure for meeting the provisions of section 135 and those that will not. More such explanations and clarifications are likely to be made over time.

7.3 Another problem relates to coordination among companies in choosing their respective CSR activities. This is a concern, particularly because the Rules recommend that the companies give preference to local areas in their CSR spending. To prevent duplication in particular types of CSR projects by companies within a particular region, formal partnerships or consortiums can be set up to achieve better coordination of CSR activities among companies within that region. In instances where large investments are necessary, such as in hospitals and schools, smaller companies may be better off by pooling their CSR resources through such consortiums.

7.4 Many companies give donation to Trust or Societies for the purpose of CSR and claim it as CSR expenditure. In such cases, it is necessary for the company to obtain a certificate from the Trust or Society that the requisite amount has been actually spent for the purpose for which it was received by the Trust. The Trust/ Society should produce some documentary evidence for the company to show that the actual work is done and the amount is spent on such work.

7.5 The Trust or Societies which receive money from companies towards CSR need to follow a proper method of accounting whereby they should be able to show to the companies that the money received is actually spent for the specified purpose. The company may even ask for a certificate from the auditor of such Trust/Society for this purpose and even ask for a copy of the financial statement of the Trust/Society for its records.

7.6 Companies need support from Non-Profit Organisations (NPO) in various area of CSR activities such as identification implementation and perseverance in undertaking such activities. People need a different mindset when they do social work. This is an area where people working in social sector through NPO need to guide and support the people from the corporate sector in respect of various skills required for doing such work. The combination of perseverance of persons doing social work coupled with the effective and efficient way of handling the matter can give better results from CSR activities.

7.7 The N.P.Os need to prepare proper project reports and present their ideas in an organised manner before the corporates so that the Companies get the required confidence before they commit their money and time for such projects. This is one area which needs substantial improvement since a large number of N.P.Os do not have the necessary expertise and skills to make proper

presentation even when they are actually doing good work at ground level.

7.8 There is a need to carry out social audit of many of the CSR projects so as to identify and measure the impact of such work on the various sections of the Society. There is a need for more agencies who can do such work. Mere spending of money is not sufficient for achieving the desired social results and this aspect needs to be brought to the notice of the corporates in proper manner.

7.9 Registrar of Companies has issued Notices to many companies to explain as to why the companies have not spent the necessary amount towards CSR. There is no penalty provided in the Companies Act 2013 for non-payment or less payment towards CSR. However, the collection of such data and explanations from companies by Registrar of Companies indicate that the Govt. might soon come out with some more stringent provisions in this matter.

8. WAY FORWARD

8.1 CSR is a social movement wherein the companies are contributing their money and time in fulfilling certain social objectives which help the members of the society. It would be more useful if the top management of the companies put their heart and soul into it and spend some more time for these activities. This would achieve better effective and efficient use of economic resources for the betterment of the Society. This would be also a good step in the right direction to ensure sustainability of the business of the company.

8.2 Corporate Social Responsibility should now move on to Individual Social Responsibility whereby each individual feels the necessity of doing something for the society. Of course doing your own job with full integrity and honesty itself is a positive contribution to the Society. However, if every individual decides to spend atleast 5% of his/her time for some social work, it will make great difference to the society. Everyone can choose the area of work as per his choice, but such commitment of time will make all the difference to the area of work selected. This will support many good initiatives taken by N.P.Os since the social work actually needs involvement of many people in addition to the monetary contribution. Such social work will also enhance the work experience and reputation of people doing it and make them more happy.

The purpose of this article would be achieved if more readers decide to do something for others and move on to fulfil Individual Social Responsibility. ■