MANDATORY CORPORATE SOCIAL RESPONSIBILITY OBLIGATION
IN INDIA: ISSUES, CHALLENGES AND OPPORTUNITIES

For the first time in the world, a state, India, has introduced a mandatory obligation on the corporate sector to discharge social responsibility through the Companies Act, 2013. The mandate has become effective on April 1, 2014. Thus the financial year 2014-15 was the first year of operation of mandatory CSR norms. This paper attempts to 1) disseminate the provisions of the Indian regulatory CSR norms in a simpler, devoid of legal jargon, and clarificatory manner with suitable examples, 2) carry out a critique on the implications of the regulatory norms and to raise the concerns posed by them and discuss and analyse the challenges and opportunities thrown by these norms in the sphere of corporate social responsibility. It is hoped that the researchers, not having a legal background in particular and others in general, wishing to pursue research in this area of contemporary significance will benefit from this paper.

Key words: Average profit, Companies Act, 2013, Corporate Social Responsibility (CSR), Philanthropy, Endowed foundations

Introduction

1. The Ancient Tradition of Philanthropy by Indian Business Houses

"India’s tradition of charity dates back to ancient times. Its history of institutionalised giving by the wealthy is also very mature, with the first known endowment, the J.N. Tata Endowment Scheme, appearing in 1892. India also stands out as one of the few countries in the world where philanthropy has played a critical role in its foundation as a modern independent state. With such a long track record, philanthropy has deeper roots in India than in many other countries.....philanthropy has left an indelible, albeit underestimated, imprint on India and Indian society", thus observe Cantegrel, M., Chanana, D. and Kattumuri R. (2013) in their edited book ‘Revealing Indian Philanthropy’.

Indian business houses have been conscious of their responsibilities towards the society in which they operate. Philanthropic activities such as building and running full townships (Jamshedpur, Modi Nagar, Dalmia Nagar, Factory townships, for example, The Godrej Industrial Estate in Vikhroli), educational institutions (Shiv Nadar University, Satya Bharti Schools), hospitals (Dr. Shroff’s Charitable Eye Hospital, Tata Memorial Hospital), temples (Birla Mandirs, Mohan Mandir) etc., carrying out community development (Dr. Reddy’s Foundation, Ambuja Foundation),
granting scholarships and artistic/scholastic/scientific awards (Mahindra Excellence in Theatre Awards, Shanty Swarup Bhatnagar Award) and contribution to the NGOs etc., by the corporate houses of Birla, Tata, Ambuja, Godrej, Azim Premji, Shiv Nadar, Mahindra, to name a few, bear the manifestation of discharge of these responsibilities.

As Indians become wealthier, they are increasingly expected to give more to support society. According to research by the consultancy Wealth-X, “in 2012 the top 10 UHNW (Ultra High Net Worth) philanthropists in India gave an average of 4.8 percent of their net worth to philanthropic causes largely by transferring large shares of their wealth to set up endowed foundations. That amounted to some USD2.1 billion” (Wealth-X, 2012).

2. Philanthropy vs. Social Responsibility

PricewaterhouseCoopers (2013) in their ‘Handbook on Corporate Social Responsibility in India’, prepared by the consulting firm on behalf of the Confederation of Indian Industry, bring out a clear distinction between Corporate Philanthropy and Corporate Social Responsibility. They state, “Although the roots of corporate social responsibility (CSR) lie as donations, charity, relief globally, the concept of CSR has all related concepts such as citizenship, philanthropy, value, corporate sustainability. The CSR approach is holistic business strategy for addressing impacts of businesses. CSR of all stakeholders and not just the company’s shareholders. Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits”.

United Nations Industrial Development Organization (UNIDO) seems to have put the concept of CSR in the right perspective. Here are the views of the organisation.

3. UNIDO’s Views on CSR

UNIDO (n.d.) states, “Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (“Triple-Bottom-Line- Approach”), while at the same time addressing the expectations of shareholders and stakeholders. In this sense it is important to draw a distinction between CSR, which can be a strategic business management concept, and charity, sponsorships or philanthropy. Even though the latter can also make a valuable contribution to poverty reduction, will directly enhance the reputation of a company and strengthen its brand, the concept of CSR clearly goes beyond that”.

However the focus in this paper is not on dissecting the finer differences between corporate philanthropy and CSR. This paper rather focuses on the implications of the recent radical legal intervention in India, via the Companies Act, 2013, binding the corporate sector to spend 2 percent of their net profits towards the discharge of social responsibilities as specified therein.
Rest of the paper is organised in the following sections: Indian state’s intervention in CSR: The first in the world, objectives of the paper, research methodology, understanding the mandatory CSR norms and their implications, key findings, a critique: issues and concerns, challenges and opportunities and conclusion.

4. Indian State’s Intervention in CSR: The First in the World

Nicolas, P. (2012) observes, “Though government-mandated corporate reporting of ESG (Environmental, Social, and Governance) issues is not new (between 1995 and 2008, 24 countries have instituted one or more compulsory regulations), Clause 135 (of the Companies Act, 2013) would be the first time a government makes holistic CSR a mandatory legal requirement”. The Environmentalist Blog (2014) reports, “India becomes first country to mandate CSR. New legislation in India requires companies, including Tata and Birla, to spend at least 2 percent of their net profits on corporate social responsibility (CSR) projects”.

Mandatory CSR norms are governed by the following regulatory framework under the newly enacted Companies Act, 2013:

i. Relevant sections of the act.
ii. Schedule VII of the act.
iii. Companies (Corporate Social Responsibility) Rules, 2014

Within this regulatory framework, the Companies Act and obligations of a company towards discharge of CSR activities that could be undertaken towards this purpose. Companies (Corporate Social Responsibility Policy) Rules, 2014 (In short CSR Rules) make detailed rules and specify processes for the discharge of CSR obligations cast by the act. CSR obligation is effective April 1, 2014 (MCA newsletter. March 2014). Thus the financial year 2014-15 was the first year of operation of mandatory CSR norms.

5. Objectives of the Paper

In the above background the objectives of this paper are:

i. To disseminate the provisions of the Indian regulatory CSR norms in a simpler, devoid of legal jargon, and clarificatory manner with suitable examples,

ii. To carry out a critique on the implications of the regulatory norms and to raise the concerns posed by them,

iii. To discuss and analyse the challenges and opportunities thrown by these norms in the sphere of corporate social responsibility.

Since the subject of corporate social responsibility encompasses interaction through many functional areas such as strategy, finance, general management and corporate law, it is hoped that the researchers, not having a legal background in particular and others in general, wishing to pursue research in this area of contemporary significance will benefit from this paper.
6. Research Methodology

To pursue the above objectives descriptive research methodology has been applied. This paper is a view based research where interpretational research paradigm has been used. The paper carries out detailed analysis of various legal provisions related to CSR through interpretative assessment. The interpretative assessment has been further supported with numerical examples and case study to clarify the quantitative impact of various legal provisions, such as, those relating to the applicability of the CSR mandate, obligation to incur CSR expenditure, methodology for computation of profits to ascertain 2 percent CSR spend and expenditure on CSR capacity building.

The presentation has been made simpler, for example, in some of the following respects:
- Legal jargon, like, ‘further’…… used in the ‘Provided that’……., ‘Provided has been removed.

- Various legal drafting of the CSR norms provisions and the rules have been common to both the act one place singularly.
- The entire subject matter has been grouped and sub-grouped in to suitable heads and sub-heads for a cohesive presentation and discussion.

- CSR rules specify additional adjustments over and above those specified by section 198 to arrive at the reference net profit for CSR spend. They have been clubbed together in the methodology for computation of profits.

7. Understanding the Mandatory CSR Norms and their Implications

7.1 Duties of Directors towards the Community and Protection of Environment (Section 166)

This section clearly points towards corporate social responsibility of the directors. It requires that a director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, and the community and for the protection of environment. CSR responsibility has thus been specifically included within the gambit of normal duties of the directors.

7.2 Meaning of Corporate Social Responsibility and Scope of Related Activities

CSR Rules define Corporate Social Responsibility (CSR) to mean and include:

7.2.1 “Projects or programmes relating to activities specified in Schedule VII. These activities are related to:
- **Poverty alleviation and healthcare**: Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water.
- **Education**: Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently-abled and livelihood enhancement projects.
• **Social equality**: Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

• **Environment**: 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.

• **Heritage, art and culture**: 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.

• **Armed forces**: Measures for the benefit of armed forces veterans, war widows and their dependents.

• **Sports**: Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports.

• **Contribution to Contribution to the any other fund set for socio-economic and welfare of Scheduled Tribes, minorities and various government funds**: Prime Minister's Relief Fund or up by the Central Government development and relief the Scheduled Castes, the other backward classes, women.

• **Technology incubation**: Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.

• **Rural development projects**.

7.2.2 Projects or programmes 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”.

7.3 Obligations Related to CSR and its Governance (Section 135)

This section specifies the companies to which CSR mandate applies and other related issues, such as, formation of CSR committee, CSR policy, CSR spend and area preference for undertaking CSR activities. These are enumerated here under:

7.3.1 **Applicability: CSR mandate applies to every company having a:**

• Net worth of INR 500 crore or more, or

• Turnover of INR 1,000 crore or more, or

• Net profit of INR 5 crore or more, during any financial year.

7.3.2 **CSR Committee**: A company liable to mandatory CSR activities needs to constitute a CSR Committee of the board of directors consisting of three or more directors, out of which at least one director has to be an independent director. The board’s report under Section 134 (discusses later) has to disclose the composition of the CSR Committee. This committee is to be entrusted with the following responsibilities:
• Formulate and recommend to the board, a **CSR Policy** which should indicate the activities to be undertaken by the company as specified in Schedule VII.

• Recommend the amount of expenditure to be incurred on these activities; and

• Monitor the CSR Policy of the company from time to time.

**CSR Rules** specify that CSR Committee will be constituted as under:

• An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.

• A private company having only two directors on its board shall constitute its CSR Committee with two such directors;

• With respect to a foreign Committee shall comprise on which:
  - One person shall be the authorised to receive the company, and
  - Another person as company.

• The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programmes or activities undertaken by the company.

### 7.3.3 CSR Policy: The board has to –

• After taking into account the recommendations made by the CSR Committee, approve the CSR 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 by the rules; and

• Ensure that the activities as are included in CSR policy of the company are undertaken by the company.

**CSR Rules** specify that CSR Policy is to be composed of:

• The CSR activities to be undertaken by the company, i.e.,
  - A list of CSR projects or programmes, **other than those undertaken in the normal course of business**, which a company plans to undertake falling within the purview of Schedule VII,
  - Specifying modalities of execution of such projects or programmes,
  - Implementation schedules for the same; and
  - Monitoring process of such projects or programmes.

• The expenditure thereon, excluding amount incurred in the normal course of business.

• A statement that the surplus arising out of the CSR projects or programmes or activities shall not form part of the business profits of the company.
### Table 1

<table>
<thead>
<tr>
<th>Company</th>
<th>Net worth (INR crore)</th>
<th>Turnover (INR lac)</th>
<th>Net profit (INR lac)</th>
<th>CSR spend (INR lac)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>500.00</td>
<td>999.00</td>
<td>4.00</td>
<td>8.00</td>
</tr>
<tr>
<td>B</td>
<td>499.00</td>
<td>1000.00</td>
<td>4.50</td>
<td>9.00</td>
</tr>
<tr>
<td>C</td>
<td>9.00</td>
<td>99.00</td>
<td>5.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

Source: Author’s research.

#### 7.3.4 CSR Spend

The board has to ensure that the company spends, in every financial year, at least 2 percent of the average net profits (calculated in accordance with the methodology prescribed in Section 198 of the Act) of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy. If the company fails to spend such amount, the board is required to detail in its report the reasons for not spending the amount.

### An Example on the Applicability of the CSR Mandate and Obligation to Incur CSR Expenditure:

The example in Table 1 shows the applicability of the CSR mandate to three companies on the 3 alternative parameters and their respective obligation to incur CSR expenditure.

The example is hypothetical. Companies meeting the threshold limits of net worth (company A) or turnover (company B) or CSR spend even if their net income is also clear that a smaller company will end up spending more if it is not efficient.

CSR Rules specify that CSR expenditure shall include contributions to corpus, or on projects or programmes relating to CSR activities approved by the board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII.

#### 7.3.5 Methodology for Computation of Profits to Ascertain 2 percent CSR Spend (Section 198)

The net profit is reported in the annual profit and loss account and should accordingly be the reference point for ascertaining 2 percent CSR spend. This section, however, requires certain adjustments to be made to the reported net profit. CSR Rules also require some adjustments. 2 percent CSR spend is to be ascertained with reference to that adjusted net profit. The methodology to arrive at the adjusted net profit is explained hereunder.

Reported Profit before Tax (PBT) has to be increased by bounties and subsidies received from any government or any public authority, any compensation, damages or payments made voluntarily, that is to say, otherwise than by virtue of a liability, loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company partly or fully and any decrease/increase in carrying amount of an asset/liability recognised in equity reserves including deficit in profit and loss account on measurement of the asset/liability.
at fair value. Deductions are to be done from the resultant figure on account of any profit arising from any overseas branch/ies of the company even if operated as a separate company, any dividend received from other companies in India, profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company partly or fully, profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, any increase/decrease in carrying amount of an asset/liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset/liability at fair value, any tax notified by the central government as being in the nature of a tax on excess or abnormal profits and any tax on business profits imposed for special reasons or in special circumstances as notified by the central government. The residual figure represents the Adjusted Profit before Tax or Net Profit for the purposes of 2 percent CSR Spend.

A Case Illustrated:

The details about the profits of company ‘D’ for the last three years are provided in Table II.

<table>
<thead>
<tr>
<th>Company</th>
<th>PY03</th>
<th>PY02</th>
<th>PY01</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 1</td>
<td>105.00</td>
<td>88.00</td>
<td>(6.00)</td>
</tr>
<tr>
<td>2. 2</td>
<td>Additional compensation to employees on retirement made voluntarily beyond the determined liability</td>
<td>...</td>
<td>2.40</td>
</tr>
<tr>
<td>3. 3</td>
<td>Profit (Loss) on sale of fixed assets</td>
<td>4.00</td>
<td>...</td>
</tr>
<tr>
<td>4. 4</td>
<td>Increase (Decrease) in the value of fixed assets on fair value measurement</td>
<td>...</td>
<td>10.00</td>
</tr>
<tr>
<td>5. 5</td>
<td>Profit (loss) from overseas branch</td>
<td>(1.50)</td>
<td>0.80</td>
</tr>
<tr>
<td>6. 6</td>
<td>Dividends received from other companies</td>
<td>3.00</td>
<td>...</td>
</tr>
</tbody>
</table>

Source: Author’s research.

Further Information:

Company received an investment subsidy of INR 2.50 crore from the state government of Gujarat during previous year 2 which was accounted for in reserves.

Table III shows the computation of net profit to ascertain 2 percent CSR spend of the company during current year 4.

Company ‘D’ thus has the legal obligation to spend INR 1.19 crore on CSR activities during current year 4.

7.3.6 Area Preference for CSR Activities

The Company needs to give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.
### Table III

**Company ‘D’ - Computation of Net Profit to Ascertain 2 percent CSR Spend for Current Year 4**

<table>
<thead>
<tr>
<th></th>
<th>PY03</th>
<th>PY02</th>
<th>PY01</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INR crore</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reported Profit before Tax (PBT)</td>
<td>105.00</td>
<td>88.00</td>
<td>(6.00)</td>
</tr>
<tr>
<td><strong>A-Add:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Additional compensation to employees on retirement made voluntarily beyond the determined liability</td>
<td>...</td>
<td>2.40</td>
<td>...</td>
</tr>
<tr>
<td>2 Loss on sale of fixed assets</td>
<td>...</td>
<td>...</td>
<td>3.00</td>
</tr>
<tr>
<td>3 Decrease in the value of fixed assets on fair value measurement</td>
<td>...</td>
<td>...</td>
<td>5.00</td>
</tr>
<tr>
<td>4 Loss from overseas branch</td>
<td>1.50</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>Sub-total (A)…………</strong></td>
<td>1.50</td>
<td>2.40</td>
<td>8.00</td>
</tr>
<tr>
<td><strong>B-Less:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Profit on sale of fixed assets</td>
<td>4.00</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>2 Increase in the value of fixed assets on fair value measurement</td>
<td>...</td>
<td>10.00</td>
<td>...</td>
</tr>
<tr>
<td>3 Profit from overseas branch</td>
<td>...</td>
<td>0.80</td>
<td>1.50</td>
</tr>
<tr>
<td>4 Dividends received from other companies</td>
<td>3.00</td>
<td>...</td>
<td>1.00</td>
</tr>
<tr>
<td><strong>Sub-total (B)…………</strong></td>
<td>7.00</td>
<td>10.80</td>
<td>2.50</td>
</tr>
<tr>
<td>Balance being Adjusted Profit before Tax or Net Profit for the purposes of CSR Spend………………..</td>
<td>99.50</td>
<td>79.60</td>
<td>(0.50)</td>
</tr>
<tr>
<td>Total Net Profit…………………..</td>
<td></td>
<td></td>
<td>178.60</td>
</tr>
<tr>
<td>Average Net Profit……………….</td>
<td></td>
<td></td>
<td>59.53</td>
</tr>
<tr>
<td><strong>CSR spend required for the current year 4 @ 2% of INR 59.53 crore……..</strong></td>
<td></td>
<td></td>
<td>1.19</td>
</tr>
</tbody>
</table>

*Source: Author's research.*

### 7.4 Operational Mechanism for CSR Activities

CSR Rules specify that:

- The CSR activities need to be undertaken by the company, as per its stated CSR Policy, as projects or programmes or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

- The board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company. However if such entities are not established in this manner, they should have an established track record of three years in undertaking similar programmes or projects. The company needs to specify:
  - The project or programmes to be undertaken through these entities,
  - The modalities of utilisation of funds on such projects and programmes and
  - The monitoring and reporting mechanism.
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- A company may also collaborate with other companies for undertaking CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such activities.

7.5 Certain Activities not to Qualify for CSR Spend

CSR rules provide some exceptions to the activities to be included within the scope of mandatory CSR.

- The CSR projects or programmes or activities undertaken in India only shall amount to CSR Expenditure.
- The CSR projects or programmes or activities that benefit only the employees of the company and their families are not to be considered as CSR activities.
- Contribution of any amount directly or indirectly to any political party shall not be considered as CSR activity.

7.6 CSR Capacity Building

CSR rules provide that companies may build CSR capacities of their own personnel as well as those of their implementing agencies through institutions with established track record of at least three financial years but such expenditure shall not exceed 5 percent of total CSR expenditure of the company in one financial year.

An Example of Expenditure on CSR Capacity Building:

Continuing with the case of company ‘D’ Table IV shows the permissible break-up of total CSR expenditure during current year 4.

<table>
<thead>
<tr>
<th>Table IV</th>
<th>Company D: Permissible Break-up of Total CSR Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(INR crore)</td>
</tr>
<tr>
<td>Obligatory CSR spend @ 2% as per Table III</td>
<td>1.19</td>
</tr>
<tr>
<td>Out of which 5% allowed for capacity building</td>
<td>0.06</td>
</tr>
<tr>
<td>Balance: Actual spend on CSR programmes</td>
<td>1.13</td>
</tr>
</tbody>
</table>

Source: Author’s research.

7.7 CSR Reporting: Board’s Report on CSR Initiatives (Section 134)

This section requires the board of directors of a company to lay a report before its shareholders in its annual general meeting about the policy developed and implemented by the company on CSR initiatives taken during the year, along with the financial statements and other reports.

CSR Rules specify that:

- The board’s annual report of a company shall include a report on CSR containing particulars specified in the prescribed format.
- In case of a foreign company, the balance sheet filed with the registrar of companies shall contain the above particulars.
7.8 Dissemination of CSR Activities on the Website

CSR Rules specify that the board of directors of the company shall display the contents of CSR policy on the company’s website, if any. Following particulars have been specified in this regard:

- A brief outline of the company's CSR policy, including overview of projects or programmes proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programmes.
- The composition of the CSR committee.
- Average net profit of the financial years.
- Prescribed CSR of the average net
- Details of CSR amount
- Year:
  - Total amount to be spent
  - Amount unspent, if any;
  - Manner in which the amount was spent during the financial year (project/programme/activity wise):
    - CSR project or activity identified
    - Sector/s in which the project is covered
    - Projects or programmes (Local area or others. The states and districts where projects or programmes were undertaken to be specified).
    - Amount outlay (budget) project or programmes wise
    - Amount spent on the projects or programmes’ Sub-heads (Direct expenditure on projects or programmes, Overheads).
    - Cumulative expenditure up to the reporting period
    - Amount spent directly or through implementing agency (Details of the implementing agency to be given)
    - Total amount spent
- In case the company has failed to spend the two per cent, of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its board report.
- A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

8. Key Findings

Based upon the above analysis, key findings may be summarised as under:

8.1 CSR responsibility has been specifically included within the gambit of normal duties of the directors.

8.2 Meaning of corporate social responsibility and scope of related activities has been clearly specified.

8.3 Obligations related to CSR and its governance have been laid down, for example, the companies to which CSR mandate applies and other related issues, such as, formation of CSR committee, CSR policy, CSR spend and area preference for undertaking CSR activities.
8.4 Operational mechanism for CSR activities has been put in place.

8.5 The board of directors is required to lay a report before its shareholders in its annual general meeting about the policy developed and implemented by the company on CSR initiatives taken during the year, along with the financial statements and other reports.

8.6 Additionally, dissemination of CSR activities is required on the website together with a responsibility statement of the CSR committee.


While the norms have generally been welcome, they have attracted criticism and some stiff opposition as well. For example, Philanthropist Rohini Nilekani is highly critical. “I just don’t get it,” she says. “This is outsourcing of governance. This is taking the failure of the state and the corporates and trying to create a model out of it. If you want, you tax the corporates and put the money into social programmes. But you can’t dictate CSR” (knowledge@Wharton. 2011). The author has his own views on the norms. These views veer around the following issues:

9.1 The applicability of INR 500 crore/tturnover one hand and net profit are not in sync with each turnover companies are higher net profit than INR smaller companies have ambit of CSR.

9.2 Norms stipulate that if the company fails to spend the 2 percent CSR amount, the board is required to detail in its report the reasons for not spending the amount. But what beyond that? Should not the unspent amount of a year be required to be spent in the immediately succeeding year? In the absence of such a provision, companies may tend not to spend fully as a rule rather than exception.

9.3 The stipulation that CSR expenditure which does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII imposes unnecessary rigidity without any reason. After all, any CSR spend is to be done as per the board’s stated CSR policy that is supposed to be formulated with wide consensus.

9.4 As required by the norms, unnecessary complication of recomputing the net profit by adjusting the reported profit could be done away with. Reported PBT as the reference point is verifiable and ensures objectivity.

9.5 In a loss year, companies will still have to incur CSR spend if the 3 prior years’ average profit results in a positive figure. This means they will have to dip into their past reserves. Should there be CSR spend at the cost of the owners?

9.6 In the case of a holding company, its subsidiary/ies being in to red is not uncommon. Should not, therefore in such cases, the CSR spend be determined with reference to consolidated profits of the whole group as one entity to be fair to the group?

9.7 Promoters have, as a human tendency, emotional attachment with their native places. Hence such places should also be acknowledged as the preference areas for spending the amount earmarked for CSR activities.
9.8 Norms specify that the CSR projects or programmes or activities that benefit only the employees of the company and their families are not to be considered as CSR activities. It is an undue hardship for the large companies having ‘factory townships’ in far flung areas.

10. Challenges and Opportunities

However, the new regulation throws lots of challenges and opportunities in the sphere of corporate social responsibility.

10.1 As discussed in the the rise in India, Forbes “CSR Report Card: published on March 18, top 100 Indian companies INR 1765 crore on CSR 2011-12 which as per then 2 percent spend would to INR 5611 crore. Business corporate affairs minister Sachin Pilot as having said “Our assessment is that if every company that is qualified for doing the CSR does so, then INR 15,000-20,000 crore would be spent in a year in various projects”. What all this suggests is that a very large philanthropic capital is waiting to be managed.

10.2 The norms permit collaboration among different companies for undertaking CSR activities. This comes as a boon for smaller companies. For example, a company having a net profit of INR 6 crore and thus required to spend INR 12 lac on CSR will practically find it very difficult to formulate worthwhile programmes and projects of social impact. Pooling of resources will enable small companies to contribute effectively towards social purposes.

10.3 The above factors are expected to lead towards institutionalisation of the CSR sphere sooner than later. Possibly a new functional area of CSR may emerge in corporate organisational set up. For example, Balmer and Lawrie Company Limited (2014) has recently advertised for the recruitment of a Head—Corporate Social Responsibility. How elaborate the institutionalisation is going to be in this sphere is evident from the advertisement for the post of CSR Officer by the Indiabulls Foundation (2014) which provides the following job description of the position:

- Responsible for developing the organisations Corporate Social Responsibility strategy and identify programmes to be implemented internally and externally.
- Prepare a yearly CSR action plan for the organisation.
- Continuously update and finalise strategies.
- Collaborate with the various functions to ensure proper implementation of programmes and identify ways to enhance the process if needed.
- Responsible for preparing Sustainability reports covering the annual performance at the CSR front to be submitted internally and externally, as needed.
- Stay abreast with the latest CSR trends and global initiatives.
- Analyze and study CSR related sponsorship requests and submit briefs for approvals.
• Manage the relationship with non-profit organisations and identify best collaboration opportunities.

• Manage volunteering initiatives and ensure proper implementation of activities including all required logistics and PR.

• Ensure keeping records of all volunteering initiatives (call reports, post event analysis, pictures, number of volunteers, cost, number of activities, satisfaction rates, etc.)

• Manage CSR budget.

• Ensure all CSR activities are covered and Internal Communications.

• Responsible for preparing CSR related information for the website and other publications.

10.4 Eventually CSR related educational qualifications and consulting may emerge as a sought after professional career. The function is expected to become highly professionalised. For instance, The Indian Institute of Corporate Affairs (IICA) has already launched a nine-month online course on CSR on May 6, 2014 termed as IICA Certificate Programme in CSR (IICA, 2014.). As yet another example, IIM Bangalore (2014) has announced 3 day (14-16 July, 2014) executive development programme termed as ‘Leading Responsibly: Strategic CSR for Corporate Advantage’. Many more institutions are coming forward with dissemination of knowledge and capacity building in this field.

11. Conclusion

The regulatory norms on CSR have met with some stiff opposition as well as mentioned earlier. However this paper does not seek to examine the justification of legally bound CSR. It is just in the offering that this view has also been presented here. One more aspect, the CSR obligation for the purposes of these regulations mean other than those undertaken in normal course of business. This means that the later expenditure (like ad hoc charity) will have to be in addition to the regulatory spend. Companies need to clearly understand this. Also the religious activities have been kept away from the regulatory list of doables. It means any spend on these activities will also be in addition to the mandatory spend.

Summing up, the new regulation, despite critique, has thrown lots of challenges and opportunities in the arena of CSR. Developments during the year will reveal how the India Inc responds to them. Till then it is wait and watch.

References


