

Corporate Social responsibility: A Study

By

Prof(Dr) Mukund Sarda[×]

1. One of the significant feature of the Indian Companies Act, 2013 is the introduction of corporate social responsibility to be undertaken and discharged by the corporates.¹ The CSR was even discharged by some of the major companies in India before the Act,2013² such as Tatas and others based on the concept that ‘service to mankind is service to God’. There is no doubt that activities like CSR enhances the reputation and image of the corporate bodies in the eyes of the public and in a way such activities help the corporates to increase their marketability and sales promotion, despite the fact that the products manufactured by them commended to the public with regard to quality and affordability. CSR activities will strengthen the arms of the Government in promoting social welfare projects in a society wedded to a Social Welfare State where the State has to promote the welfare of the people so that in the welfare of the people lies the welfare of the State.
2. There is no clear-cut definition of CSR. However, from the definitions attempted by several expert bodies, it may be stated thus:-
 - i) As a continuing commitment by business to contribute to economic development which improves the quality of life of the community as a whole;³

[×] Principal & Dean, New Law College, Bharati Vidya Peeth University, Pune.

¹ See for details Schedule III & VII of the Indian Companies Act, 2013.

Corporate social responsibility is referred to CSR throughout this study.

² Act 2013 means the Indian Companies Act, 2013 throughout this study.

³ World Business Council for sustainable development quoted by P.S.Raamaanathan, Company Secretary in “Corporate social responsibility under Companies Act, 2013”, SEBI and Corporate Laws June 2014 P.63.

ii) As a management concept companies integrating social and environmental concerns in their business operations.⁴

These definitions make a strong point that corporates have to contribute to social welfare projects as a part of their business operation, in order to achieve sustainable development.

3. One of the basic requirements for participating in CSR activities is the need for adequate financing by the corporates. The Indian Institute of corporate affairs has stated that Rs.20,000/- comes is needed for CSR activities.⁵ Sec 135(1) of the Act 2013 provides that every company having a net worth of Rs.500/- crores or more or Turnover of Rs.1000/- crores or more or net profit of Rs.5 crore or more during any financial year shall have to constitute a CSR committee of the Board. An average of last (3) financial years profit after tax would be considered for calculating 2% of CSR spending of a corporate.

Instead of a flat rate of 2% it is desirable that the income-tax slab system of the percentage being fixed on the basis of net worth or turnover or net profit basis be adopted. Even the companies having profits below 5 crores may also be required to contribute atleast 0.2 to 0.10 percentage as may be required by the rules to be framed in this regard.

4. The Act 2013 provides that CSR committee to be constituted may consist of 3 or more Directors one of which atleast should be an independent Director. It is desirable to have the Registrar of Companies or a senior official of the Ministry of corporate affairs or the Indian institute of Corporate affairs (or their nominee) to be ex-officio member of the CSR committee, so that the

⁴ Ibid. UN Industrial Development Corporation.

⁵ The Indian Institute of corporate affairs pointed out that nearly 10,000 companies may be covered by CSR activities.

policy framed, implementation of the monitoring functions may best serve the needs of the community. Though the Board of Directors of the company is made responsible for ensuring implementation of CSR activities in accordance with the policy formulated by CSR committee, there is no adequate provision to deal with the failure or omission to discharge the responsibility. There is a need to have a provision for adequate imposing of fine on the Board of Directors as a whole or in the case of deliberate acts for failure to discharge, a penal provision like prosecution and imposition of some term of imprisonment may be desirable. A mere report as to why it was not discharged will not be an adequate remedy. It will only increase the chances of deliberate failure to discharge CSR activities on several grounds that the company is not interested in such activities.

5. Instead of allowing each corporate body to determine CSR policy and its implementation, it is desirable to establish a CSR corporation to compulsorily collect the money from the corporates like deduction of income-tax at source and advance payment of money periodically depending upon approximates, to be settled at the end of the year. A separate return may be required to be filed by the company before the Registrar of Companies annually like some of the annual returns which are required to be filed. This CSR corporation may have the powers like ESI Corporation or PF to maintain the accounts of the money collected and a committee be constituted which includes representatives of the company and officials of the Ministry of Corporate affairs as well as, from the Indian Institute of Corporate affairs to lay down the policy and its implementation of various programmes listed in VII schedule as CSR activities in order to

avoid 'scams' and the like where money is misutilised by the officials of the company in the name of CSR activities where no such activities is carried out in reality but merely shown on paper that such activities have been done. This will also protect the interest of the community as a whole in the matter of reaping the benefits out of CSR activities.

6. Schedule VII of the Act 2013 lists the following activities as coming within the ambit of CSR:-

i) Eradicating hunger, poverty and malnutrition promoting healthcare including preventive healthcare, sanitation and making available safe drinking water;

This activity will strengthen the right to food, right to live in an atmosphere free of pollution and right to health which are the core elements of the right to life guaranteed under Art 21 of the Constitution. This CSR activity must be given top priority in CSR policy formulation.

ii) The second listed item relates to promoting education, including special education and employment enhancing vocation skills specially among children, women, elderly and the differently abled and livelihood projects.

The above CSR activity gives support to right to education (Art 21 A of the Constitution) and right to livelihood and social justice to various categories of people like senior citizens helpless women and handicapped people in their struggle to find the means of livelihood.

iii) The third listed item relating to CSR is to promote 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.

This really relates to right to shelter as part of guaranteed right under Art 21. People who are homeless find it difficult to live. This will seriously violate the human right for decent living. Corporates will be doing a real service in providing 'shelter' for such people who are homeless.

- iv) The fourth listed CSIR activity relates to ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resource and maintaining quality of soil, air and water.

This activity strengthens the right to live free of pollution which is an integral part of Art 21. This activity will further strengthen the 'Swachh Bharat' movement launched by the Central Government. The life of the people is protected by environmental cleanliness which otherwise would have resulted in their death.

- v) The fifth listed CSR activity relates to protection of national heritage, art, culture, including restoration of building and sites of historical importance and works of art, setting up of public libraries, promotion and development of traditional art and handcrafts.

This CSR activity promotes cultural values, heritage and its preservation which enhances the glory of the nation-like Taj Mahal which is considered as one of the wonders of the World.

vi) The sixth listed CSR activity relates to the measures for the benefit of armed forces veterans, war widows and the dependents.

The persons who have served the interests of the Country by defending the territorial sovereignty of the Country and sacrificed their lives for a noble cause like survival of the Country as an independent and sovereign entity, should be taken care of. For those still surviving increased pension and for those since deceased their widows and dependents should be given social security such as houses to live and enough money to live or employment and other means. This will definitely promote the interests of the people to join the Army and to serve the nation in defending its sovereignty. We must remember that we enjoy freedom today on account of their sacrifices.

vii) The seventh listed item relates to training to promote rural sports, nationally recognized sports, Para Olympic sports and Olympic sports.

No doubt some of the companies are giving awards in the form of money for those who excel in sport. Sportsmen are honoured by giving them land as gifts and also money. Sports activities preserve the health of the individuals and contribute to a 'sound mind in a sound body'. The corporates will be doing a vital service to the cause of physical education which will ultimately contribute to enhanced human resource in individuals who will be fit to render more efficient service to promote the interests of the community.

viii) The eighth list CSR activity relates to contribute to PM's national relief fund or any other fund set up by the Central Government for

socio-economic development and relief and welfare of SC, STs and other backward classes, minorities and women.

This activity goes a long way in empowering people in various ways and requires implementation in letter and spirit.

- ix) The ninth CSR activity relates to contribution or funds provided to technology incubators located within academic institutes which are approved by the Central Government and
- x) Lastly rural development projects.

This will really give effect to Gandhiji's observation that unless villages develop, there is no real development of the nation.

In the conclusion, the following suggestions are made:-

- i) Corporates have to increasingly participate in CSR activities;
- ii) CSR needs a clear-cut definition, so that the activities may fall within the said definition;
- iii) For the purposes of financing, the law should provide for slab system of contribution like IT Act and even companies with less than 5 crores profit should contribute atleast something, like 0.2. to 0.10% as may be prescribed;
- iv) Act of 2013 should provide for wider composition so as to include officials from the Registrar of Companies, Ministry of Corporate affairs and the Indian Institute of Corporate affairs by giving them 'ex-officio' representation;
- v) For the implementation of CSR it should be subjected to 'civil' as well as 'penal liability' in case omission or deliberate avoidance to discharge CSR obligations;

- vi) There is a need to establish a CSR corporation to compulsorily collect the money from corporates like Income-Tax deduction at source and for utilization thereof;
- vii) A separate annual return to be filed before the Registrar of Companies with regard to CSR activities by each company;
- viii) The CSR committee (widely constituted) should lay down the priority for activities to be carried out (from the list in VII schedule) of Act 2013);
- ix) Special emphasis should be laid on education, as without it the other fundamental rights carry no significance;
- x) Focus should be on rural development as without development of villages, there will be no real development of the nation.