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Provisions for Corporate Social Responsibility in Companies Act, 2013

Prof. I N Tandel
Associate Professor,
Department of Commerce & Management
B. J. Vanijya Mahavidyalay,
Vallabh Vidhyanagar, Dist. Anand Gujarat, India
E-Mail: intandel1962@gmail.com

Abstract: ***CSR as a concept has attracted worldwide attention and acquired a new resonance in the global economy Heightened interest in CSR in recent years has stemmed from the advent of globalisation and international trade, which has reflected in increased business complexity and new demands for enhanced transparency and corporate citizenship. Moreover, while Governments have traditionally assumed the sole responsibility for the improvement of the living conditions of the population, society's needs have exceeded the capabilities of Governments to fulfill them. In this context, the spotlight is increasingly turning to focus on the role of business in society and progressive companies are seeking to differentiate themselves through engagement in what is referred to as CSR. The Companies Act, 2013 has taken one step ahead and introduced mandatory provisions in the field of CSR. Though many believe that concerns on the new company law are manifold and it is a bold yet not beautiful step. For instance, India Inc is concerned that the cost of board performance evaluation may outweigh the benefits for many small companies in this regard. Also, it has concerns about the prospect of an over regulated regime and the attendant scourge of corruption. Given the advantages and concerns on the new regulations introduced by the new Companies Act, we all need to wait and watch once the companies start implementing the new provisions and therefore, the practical aspects and implications will be evaluated thereafter.***

Keywords: CSR, Corportate, Companies, Citizenship, Global Economy

I. INTRODUCTION

Corporate Social Responsibility ("CSR") is a heterogeneous concept with diverse perceptions. In general, CSR may be understood as the responsibility that corporations owe towards the society in which they operate while addressing stakeholders' expectations. Jamali and Rabbath (2007) stated: CSR as a concept has attracted worldwide attention and acquired a new resonance in the global economy Heightened interest in CSR in recent years has stemmed from the advent of globalisation and international trade, which has reflected in increased business complexity and new demands for enhanced transparency and corporate citizenship. Moreover, while Governments have traditionally assumed the sole responsibility for the improvement of the living conditions of the population, society's needs have exceeded the capabilities of Governments to fulfill them. In this context, the spotlight is increasingly turning to focus on the role of business in society and progressive companies are seeking to differentiate themselves through engagement in what is referred to as CSR.

Moreover, the recent years have witnessed the development of various codes and standards in the field of CSR at national and global levels. Mostly voluntary in nature ("and to some extent now mandatory from Financial Year 2014-15"), these codes and standards address the economic, environmental and social concerns that firms should take into consideration while discharging their corporate social responsibility. With the New Companies Act, 2013, India became the first country to mandate spending on CSR activities through a statutory provision.

Commencing with the historical background of CSR from an Indian perspective and various standards and guidelines relating to it, this article describes how Indian companies have been initiating CSR at their respective ends and how new CSR provisions under Indian Companies Act, 2013 put formal and greater responsibility on them to set out clear framework and process to ensure strict compliance.

II. HISTORICAL BACKGROUND

In general, the history of CSR can be studied in five phases:

1. Phase one considered CSR in terms of assigning social duties to companies covering the views of J. M. Clark who emphasised the significance of transparency in business dealings, of Prof. Theodore Kreps who applied the expression social audit with respect to companies reporting on their social responsibilities, of Peter Drucker who stated that apart from pursuing economic purpose, companies had a social dimension, and of Bowen who said that businesses should follow those objectives or policies that were desirable in terms of values of society.

2. Phase two regards corporate power as a central theme in the debate over CSR and the business society relationship. K. Davis expressed that social power in long run will rest with companies which will assume social responsibilities. However, during this phase Milton Friedman objected the notion of social responsibilities for corporations and stated, " The social responsibility of business is to increase its profits".

3. CSR was redefined is phase three. There models were introduced in this phase to explain this concept. Firstly, three concentric circles by the committee for Economic Development where Corporate Social Responsibility was understood in terms of the inner circle, the intermediate circle and the outer circle. Secondly, the model of Corporate Social Performance by Sethi, where the levels of a corporate social performance were based on social obligation, social responsibility and social responsiveness. Lastly, The Pyramid of CSR by Archie Carroll where social responsibility was defined as a whole of economic responsibility, legal responsibility, ethical responsibility and philanthropic responsibility.

4. Phase four was dominated by Freeman's Stakeholder Theory which states that all stakeholders who are affected by or could affect the company's actions have a right to be considered in the decision-making process of the company.

5. Phase five gives rise to enriching themes of CSR in terms of corporate citizenship, triple bottom line, etc.

III. CSR IN INDIA

India has an extensively rich history of close business involvement in social causes for national development. Known by social duty or charity historically, CSR has evolved over a longer period of time in India. Gautam and Singh (2010) pointed out: The ideology of CSR in the 1950s was primarily based on postulation of the obligation of business to society.

In initial years, there was little documentation of social responsibility initiatives in India. Since then, there is a mounting recognition towards contribution to social activities globally with a desire to improve the immediate environment. They went on to indicate: After independence, JRD Tata…pointed out that there were many ways in which industrial and business enterprises can contribute to public welfare beyond the scope of their normal (profit making) activities.

For Infosys founder, Shri NR Narayana Murthy, CSR is to create maximum shareholders value working under the circumstances, where it is fair to all its stakeholders, workers, consumers, the community, government and the environment. The four models of corporate responsibility have been hence described briefly:

Model	Focus	Champions
Ethical	Voluntary commitment by companies to public welfare	M.K. Gandhi
Statist	State ownership and legal requirements determine corporate responsibility	Jawahar Lal Nehru
Liberal	Corporate responsibilities limited to private owners (shareholders)	Milton Friedman
Stakeholder	Companies respond to the needs of stakeholders customers, employees, communities, etc.	R.Edward Freeman

IV. CSR STANDARDS/ PRINCIPLES

Recognised efforts at standardised corporate responsibility reporting began in the early 1990s. A wide compendium of global initiatives, principles and standards designed to stimulate changes and promote good corporate citizenship have evolved over a period of time which not only addresses environmental issues but also economic and social performance. Various codes and standards on CSR are:

1. United Nations Global Compact: The Global Compact comprises 10 principles, surrounding the issues of human rights, labour standards and environment and anti-corruption. The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values within these four areas.

2. Global Reporting Initiative (GRI): GRI is a foundation-funded programme that established the generally accepted sustainability-reporting framework to which corporations adhere. Reporting criteria cover all aspects of a company's performance—economic, environmental and social. Other traits include strong governance, accessibility and transparency as well as the ability to create strong partnerships throughout the globe.

3. ISO 14000: ISO 14000 series is a voluntary initiative developed in 1996 by the International Organisation for Standardisation in Geneva. It places an emphasis on environmental management standards and operations, i.e., management systems, auditing, labeling, performance evaluation, and life-cycle assessment. Its core mission is to offer voluntary environmental management

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standards to augment a company's ability to administer environmental impacts and risks, and to advance environmental performance.

4. ISO 26000: 2010: ISO 26000:2010, Guidance for Social Responsibility: It aims to help all type of organisations in both in the public and private sectors to consider implementing ISO 26000 as a way to achieve the benefits of operating in a socially responsible manner. ISO 26000 addresses seven core subjects of social responsibility which include organisational governance, human rights, labour practices, environment, fair operating practices, consumer issues, community involvement and development.

5. Organisation for Economic Co-operation and Development (OECD): OECD guidelines contain recommendations on core labour, environmental standards, human rights, competition, taxation, science and technology combating corruption and safeguarding consumer rights. International Labour Organisation Conventions: With endorsement of more than 180 conventions, International Labour Organisation has been addressing an extensive range of labour issues, including the freedom of association, prohibition of compulsory labour, prohibition of child labour, employment of disabled persons, equal remuneration/equal work and health and safety. The conventions' positive elements – international reach, history and tripartite structure – give it credibility in addressing the topic of social reporting.

6. Corporate Social Responsibility Voluntary Guidelines 2009: Issued by the Ministry of Corporate Affairs, Government of India, these guidelines state that each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of the overall business policy and aligned with its business goals. The core elements for CSR policy include care for all stakeholders, ethical functioning, respect for workers' rights and welfare, respect for human rights, respect for environment and activities for social and inclusive development.

7. National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business, 2011: Released in July 2011 by the Ministry of Corporate Affairs, Government of India, these guidelines provide a robust framework that may be adopted voluntarily by companies to address interests of various stakeholders, including employees, customers and investors. Accordingly, the SEBI has mandated listed companies to report on environmental, social and governance (ESG) initiatives undertaken by them.

V. COMPANIES ACT, 2013

The Companies Act, 2013 through Section 135, has introduced mandatory provisions for CSR as applicable on certain classes of companies. These provisions include the following:

1. Companies following under any of the below mentioned criteria shall have to mandatorily follow provisions of Section 135:-
a. Having a minimum net worth of R500 crore;
b. Having a minimum turnover of R1,000 crore; and
c. Having a minimum net profit of R5 crore.

2. Companies which fall under either of the above mentioned criteria shall have to constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which one shall be an independent director.

3. Roles of the committee shall be as follows:-
a. To formulate and recommend a CSR policy to the board;
b. To recommend amount of expenditure to be incurred on CSR activities; and
c. To monitor the implementation of CSR policy of the company from time to time.

4. Roles of the Board formed of three directors shall be as follows:-
a. To approve the CSR policy recommended by the CSR committee and disclose the contents of such policy in its report and place it on company's website;
b. To ensure the CSR activities are undertaken by the company;
c. To ensure 2% spending on CSR activities;
d. To report CSR activities in Board's report and disclose non-compliance (if any) with the CSR provisions; and
e. The draft CSR rules provide the format in which all qualifying companies shall report the details of their CSR initiatives in the Director's report and in the company's website.

5. Section 135 has established that the CSR Board shall ensure that at least 2% of average net profits of the company made during the three immediately preceding financial years shall be spent by the company on its CSR activities. It should be noted that Act further clarifies that average net profit shall be computed in accordance with Section 198 of The Companies Act, 2013.

6. Schedule VII of the Act specifies the list of activities which may be included by companies in their CSR policies :-

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a. Eradicating hunger, poverty and mal nutrition, promoting preventive health care and sanitation, and making available safe drinking water;

b. Promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly, and the differently-abled along with livelihood enhancing projects;

c. Promoting gender equality, empowering women, setting up houses 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;

d. Ensuring enviornmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conversation of natural resources and maintaing quality of soil, air and water;

e. Protection of national heritage, art and culture including restoration of archaeological buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;

f. Measures for the benefit of armed forces veterans, war widows and their dependents; g. Training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports;

h. 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 Castes (SCs), the Scheduled Tribes (STs), Other Backward Classes (OBCs), minorities and women;

i. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government; and

j. Rural development projects.

7. Section 135 has established that companies shall give preference to the local areas and areas around it where it operates, for spending the requisite amount.

8. Various disclosures which have been mentioned in The Companies Act, 2013 are as follows :-

a. Board report under Section 134(3) of the said Act shall disclose the composition of the CSR committee; and

b. If the company fails to spend the requisite amount, Board shall in its report under Section 134(3) of the said act disclose the reasons for not spending the required amount.

VI. PRACTICAL APPROACH

It is recommended that companies should establish separate CSR-related departments in order to help them to align their CSR strategies with their business objectives appropriately. A separate CSR department or foundation managed by qualified professionals should ensure that provisions of the Companies Act, 2013 are complied with and also the same shall facilitate integration of company's social and environmental objectives with its business strategies.

Involvement of separate board will further ensure that socially responsible and sustainable practices percolate across the company. It has been found that more transparency is required in terms of disclosure of expenditure on CSR activities by various firms. Details in terms of expenditure on community investments in general and amount spent on each project in particular will ensure fair, transparent and ethical dealing of social programmes by a firm thus increasing the reliability of stakeholders towards the firm and its social activities.

VII. CONCLUSION

Globally, the number of businesses reporting CSR and sustainability is highest in India, followed by Vietnam and the Netherlands. A survey by Grant Thornton found that 68% of businesses in India now issues CSR and sustainability information, up from about 32% two years ago, either in their financial reports or separately. The increasing level of responsibility taken up by the businesses in India on CSR aims at a better environment and life for the society.

The Companies Act, 2013 has taken one step ahead and introduced mandatory provisions in the field of CSR. Though many believe that concerns on the new company law are manifold and it is a bold yet not beautiful step. For instance, India Inc is concerned that the cost of board performance evaluation may outweigh the benefits for many small companies in this regard. Also, it has concerns about the prospect of an over regulated regime and the attendant scourge of corruption. Given the advantages and concerns on the new regulations introduced by the new Companies Act, we all need to wait and watch once the companies start implementing the new provisions and therefore, the practical aspects and implications will be evaluated thereafter.

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