



Corporate Social Responsibility in India: A Review of The Indian Companies Act, 2013 with Reference to CSR Provision.

Dr. Ratan Borman

Associate Professor, Department of Commerce, Assam University
Diphu Campus

Dipanjana Chakraborty

Associate professor, Department of Commerce, Darrang college,
Tezpur, Assam

ABSTRACT

The Indian Companies Act, 2013, which incorporates CSR clause provides more clarity on standardizing the meaning of CSR in the Indian context and a favorable policy environment to the companies. The mandatory provisions incorporated in the Act will help in creating uniformity and accountability of actions and also the ability measure the impact will be a step in a positive direction. However, industry is apprehensive that implementation of this provision is bound to throw up challenges because of the rather prescriptive manner in which rules have been formulated. Considering these, the paper examines provision regarding CSR and the issues and challenges that may pose in implementation of CSR with reference to provisions of Indian Companies Act. The study is primarily descriptive in nature. The findings suggest that there are few issues like restricted thematic areas with geographic focus, promotion of CSR ahead of corporate responsibilities, contribution to funds set up by Government, FCRA Regulation and others which need to be addressed to employ CSR strategically to achieve more sustainable businesses.

KEYWORDS

Corporate Social Responsibility, Indian Companies Act, 2013, CSR Clause, Sustainable development

1. Introduction:

According to the UNIDO, "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."

Hence, it can be said that the CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses. Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

India is a country of myriad contradictions where it has grown to be one of the largest economies in the world, but still home to the largest number of people living in absolute poverty and undernourishment. This uneven distribution of the benefits of growth which many believe, is the root cause of social unrest. Companies too have been the target of those perturbed by this uneven development and as a result, their contributions to society are under severe scrutiny. Many companies have been quick to sense this development, and have responded proactively while others have done so only when pushed.

Governments as well as regulators have responded to this unrest and the National Voluntary Guidelines for Social, Environmental and Economic Responsibilities of Business or the NVGs (accompanied by the Business Responsibility Reports mandated by the SEBI for the top 100 companies) and the CSR clause within the Companies Act, 2013 are two such instances of the steps taken. (CSR Handbook, 2013)

2. RATIONALE FOR THE STUDY

The Government of India's initiative to provide a mandate to corporates to spend a certain percentage of profit for CSR has set the wheels in motion for increased contribution and more socially responsible behaviour to lead to inclusive growth.

With a view to provide a framework for companies (private and public) to implement need-based CSR activities, the Government of India has included CSR-related provisions in the Companies Bill, 2012 which has been notified by the Ministry of Corporate Affairs ("MCA") on February 27, 2014 giving effect to Section 135 of the new Companies Act, 2013 ("Companies Act") dealing with CSR and the Companies (Corporate Social Responsibility) Rules, 2014 ("CSR Rules") and have come into force from April, 1, 2014.

However, industry is apprehensive that implementation of this provision is bound to throw up challenges because of the rather prescriptive manner in which rules have been formulated. There is concern on flexibility within legitimate boundaries and how the monitoring and interpretation of companies efforts will take place. Further, the industry grouping said the rules do not provide clarity on the certain issues including taxation front. There needs to be clarity and alignment of the rules with the issues. (Assam Tribune, Jun2, 2014) Hence, the present study is a modest attempt to understand the provision regarding CSR and examine the issues and challenges that may pose in implementation of CSR with reference to provisions of Indian Companies Act.

3. Review of Literature

Goyder (2003) argues: • Industry in the 20th century can no longer be regarded as a private arrangement for enriching shareholders. It has become a joint enterprise in which workers, management, consumers, the locality, govt. and trade union officials all play a part. If the system which we know by the name private enterprise is to continue, some way must be found to embrace many interests whom we go to make up industry in a common purpose.

Gupta, et.al. (2013) in a study on CSR in respect of CPSE in India, opined that, although most of the Indian CPSEs has started implementation of social projects under CSR scheme even though some CPSEs are still not utilising CSR fund on the ground that they have no expertise in social field. Some CPSEs are also making excuses that this is not their core activities.

PHD Chamber of Commerce (2013) in a Global Summit in the Companies Act is a welcome step, however the current discourse of corporate philanthropy without giving any express autonomy to companies in choosing their CSR activities may not yield the desired outcome. By allowing only selected list of activities within the Schedule in a sectional manner may end up encouraging only a passive participation by corporates towards CSR activities. In order to enable corporates to participate fully in the philanthropy space, the participation must start with a more inclusive management of CSR policies.

Rishi et.al. in a study on New Rules for CSR (2014) stated that there are several queries and concerns of companies related to the applicability, implementation and likely impact of the Clause 135 of the Companies Act, 2013. The MCA and others have undertaken series of deliberations to understand their concerns. They suggested that companies now need to put in place some compliance procedures and introduce an adequate governance framework. Companies need to establish a CSR Committee to design CSR policy and identify projects based on the proposed thematic areas. Companies will also have to monitor projects and evaluate effectiveness and measure the impact created. All of these actions will be required to be documented, reported and disclosed formally to all stakeholders.

4. Objectives

- To understand provision for CSR under Indian Companies Act
- To identify issues and challenges in implementation of CSR with reference to provisions of Indian Companies Act.

5. Methodology

The study was descriptive in nature. Both primary and secondary sources used to elicit required information. To understand provisions regarding CSR, the Companies Act 2013 and Companies (Corporate Social Responsibility Policy) Rules, 2014 have been examined. Also a few executives of CPSEs and NGOs were interacted to solicit opinion on CSR and issues that may crop up as a consequence of amendment of Indian Companies Act and incorporation of CSR Rules.

6. Findings:

6.a Provisions of the Companies Act:

In India, the concept of CSR is governed by clause 135 of the Companies Act, 2013, which was passed by both Houses of the Parliament, and had received the assent of the President of India on 29 August 2013. The new rules, which will be applicable from the fiscal year 2014-15 onwards. The Act contains CSR provisions within the Act :-

Applicability:

It covers all companies in India meeting any one or more of the following conditions:

- Turnover of INR 1,000 crores or more
- Net worth of INR 500 crores or more
- Net Profit of INR 5 crores or more

The corporate social responsibility (CSR) contribution would have to be at least two per cent of the average net profit, made during the three immediately preceding financial years. The net profit as the profit before tax as per the books of accounts, excluding profits arising from branches outside India.

Activities:

The Act lists out a set of activities eligible under CSR. Companies may implement these activities taking into account the local conditions after seeking board approval. The activities which can be undertaken by a company under CSR have been specified under Schedule VII of the Act.

- Eradicating hunger and poverty and malnutrition, promoting preventive healthcare and sanitation and making available safe drinking water.
- Promoting education; including "pecial education and em-

ployment enhancing vocation skills especially among children, woman, elderly and the differently abled and livelihood enhancement projects.

- 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.
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining of quality of soil, air and water
- 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, the Scheduled Tribes, other backward classes, minorities and women.
- Such other matters as may be prescribed, like, Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up of public libraries; promotion and development of traditional arts and handicrafts; Measures for the benefit of armed forces veterans, war widows and their dependents; Training to promote rural sports, nationally recognised sports, and Paralympics sports and Olympic sports; Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government and Rural development projects.

However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

Administration

To formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director as a part of their CSR Committee.

A company can undertake its CSR activities through a registered trust or society, a company established as holding, subsidiary or associate company or otherwise, provided that the company has specified the activities, modalities for utilization of funds, reporting and monitoring mechanism. If the entity through which the CSR activities are being undertaken is not established, such entity would need to have an established track record of three years undertaking similar activities.

Companies can also collaborate with each other for jointly undertaking CSR activities, provided that each of the companies are able individually report on such projects. A company can build CSR capabilities of its personnel or implementation agencies through institutions with established track records of at least three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year.

The committee would be responsible to formulate CSR policy, recommend CSR initiatives and monitor CSR expenditure.

Reporting:

The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed in the CSR Rules setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report. Where a company has a website, the CSR policy of the company would need to be disclosed on such website.

6.b Issues and Challenges in implementation of CSR:-

A. Restrictive scope:

Schedule VII of the rules specifically mention a list of activities which may be included by companies in their CSR policies, along with a customary line "such other matters as may be prescribed".

The recommended activities are already being circulated by many agencies and individuals and are being accepted by many corporate as the preferred activities for CSR. This is not only polarizing the CSR resources to few chosen areas, but also discouraging many other critical areas. On the other hand, section 135 (1) also mandates each company to constitute a CSR committee to decide on the projects and programs. Schedule VII would greatly influence the decision making of the committee and would restrict the freedom of the committee to best invest CSR resources in best way.

b. Restrictive geographic focus:

Section 135 (5) of the Act recommends "the company shall give preference to the local area and areas around it where it operates for spending the CSR resources". Though this is a welcome step to build a stronger community-business relationship, it may skew resource allocation by subverting "inclusive development" principle in the under developed locations where there are no industries such as the North-Eastern states of the country.

C. Promotion of Corporate Social Responsibility ahead of Principles of Corporate Responsibilities:

Milton Friedman said, "The business of business is business". The first principle of corporate responsibility is not contribution to social development but responsible business practices which includes ethical business practices, respect for human rights, fair sourcing and environmental responsibility. However, the CSR rules negate these principles and appear to be valuing a company's 2% contribution for CSR more. This will not only provide a bad precedence but project a distorted image of corporate Governance in India.

D. Contribution to Prime Minister's National relief Fund and such other funds as set up by Government:

Schedule VII recommends, "Contributions to PM's national relief fund and such other funds established by the central or state government" as one of the activities to be taken up under CSR. This is deeply flawed and subject to misuse. As per the submission of the Prime Minister's Office (PMO) to the Central Information Commission, the Prime Minister's National Relief Fund itself is not a Government body and is not even answerable to either houses of the parliament (Verdict by the CIC, A.K. Goel vs PMO, 2009). Such donations may also undermine the true intension of CSR provision, the resources thus raised are not accountable and thus may raise many questions.

E. CSR Implementing Agency

The CSR rules encourage companies to implement CSR activities by establishing own trust/society or section 8 companies. However, deep-rooted developmental issues are often complex and local civil society and organizations presence in the local area for years understand the peculiar issues and solutions better. Many of them also operate in a larger framework of social justice than on a project activity basis. It is beneficial both for the company and for the local community to partner with such a local organizations for better results and impact of activities.

F. FCRA regulation

As per the FCRA regulations, any CSR contribution to an Indian organization from a foreign owned company would be treated as FCRA money. The same applies to donations from Indian companies in which foreign investors hold 51% or more ownership. Looking at the free movement of capital in a globalised world and thus ownership holding of a company, it might become difficult for many development organizations receiving CSR donations from Indian Companies to track

their ownership/ shareholding. It might lead to a frequent involuntary FCRA violations and litigations.

7. Suggestion:

On the of issues highlighted above as well as discussion with few executives of CPSE and other relevant individuals, the following suggestion may be considered to make CSR as meaningful tool for a company to be a social institution.

- a. The list of activities recommended as CSR in Schedule VII should include a few other critical areas such as – Human rights, livelihood interventions to create jobs and providing sustainable source of income, Population Health areas such as child malnutrition and access to healthcare ensuring accessibility, affordability and availability of health services, Research and Advocacy to bring knowledge from grass-roots through research for policy/program formulation and designing implementation frameworks which may bring improvement.
- b. While a larger proportion of the CSR funds can be utilized in the vicinity where the company is located, certain amount of the funds should be mandated to be spent on development of the "backward districts" as identified by the planning commission. This provision has already been made in the "Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises".
- c. In the line of SEBI mandate, MCA should mandate all companies coming under the purview of section 135 to develop specific policies on ethical business practices, respect for human rights, fair sourcing and environmental responsibility and report their adherence to same, any violation of which should be appropriately punishable.
- d. Prime Minister's National Relief Fund should be excluded from the list of funds eligible for CSR donations. Donations to any such funds set up by central of state Government should be limited to 20-25% of the total CSR funds earmarked for a financial year.
- e. At least 50 per cent of the CSR funds should be channeled to work through local development organizations not created by the company to implement activities planned.
- f. At least 60 % of CSR funds should be invested in projects aiming at brining long term sustainable socio-economic changes. This will ensure that CSR activities should not remain activity/ event based but rather on a long term change perspective of social justice and social development.
- g. Achievements against planned objectives in CSR projects should be reported. The amount of funds given to each implementing agency including company promoted agencies should be disclosed.

8. Conclusion:

CSR, today goes way beyond the old philanthropy of the past-donating money. CSR is, now, considered a vital part of the strategic business of corporations. CSR is a way of conducting business, which makes corporate entities socially responsible citizens, visibly contributing to the social good. Indeed, the brand names depend not only on quality, price and uniqueness but on how, cumulatively they interact with companies' workforce, community and environment leading to sustainable development. The Companies Act, 2013 has become a legal acceptance to this vital concept and this would help further the cause and hopefully motivate organisations to undertake CSR proactively by providing a few more clarity on standardizing and addressing issues as discussed. The Companies Act, 2013 will be a game changer and infuse new investments, strategic efforts and accountability and open new opportunity for all the stakeholders to find innovative ways to synergize efforts and contribute toward equitable social and economical development.

REFERENCES

1. The Assam Tribune page 15, June2, 2014 | 2. Goyder, quoted from Dr. Jitender Loura, "Corporate Social Responsibility - A Case Study of Select PSU's Role in Rural Development" in International Journal of Management and Social Sciences Research (IJMSSR) ISSN: 2319-4421 Volume 3, No. 2, February 2014 | 3. Gupta, B.K., Pal, S., Mittal, S., "Corporate Social Responsibility (CSR) in Indian Central Public Sector Enterprises" in International Journal of Management & Business studies ISSN : 2230-2463 IUMBS Vol. 3, Issue 2, April - June 2013 | 4. Handbook on Corporate Social Responsibility in India, CII, www.pwc.in (2013) PricewaterhouseCoopers Private Limited. NJ 123 - Nov 2013 CSRHandbook.indd | 5. UNIDO: [http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1\[g1\]/0/](http://www.unido.org/what-we-do/trade/csr/what-is-csr.html#pp1[g1]/0/) | 6. PHD Chamber, "Corporate Social Responsibility in India- Potentials to Contribute towards Inclusive Social Development" in Global CSR Summit 2013, CSR: An Agenda for Sustainable Inclusive Growth"- PHD Chamber of Commerce, July, 25, 2013. | 7. Rishi, R., Srivastava, A., Dr. Antani, M. "New rules for Corporate Social Responsibility Announced" Nitish Desai Associates March, 12, 2014 | 8. pradeep@nfi.org.in National Foundation of India, Comments on Draft CSR Rules under Section 135 of Companies Act 2013. |