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An Analysis of Impact of CSR 'Mandate' on CSR Spending and Reporting of Indian Companies

Abstract :

Corporate Social Responsibility (CSR) is a company's commitment to operate in an economically, socially and environmentally sustainable manner, while recognising the interest of its stakeholders. The Companies Act, 2013 has introduced several provisions which would change the way Indian corporates do business and one such provision is mandatory spending on Corporate Social Responsibility (CSR) activities. CSR, which has largely been voluntary contribution by Indian corporates has now been included in law and with this India became the first country to mandate spend on CSR activities through a statutory provision. Under new CSR Rules, which is applicable from 1st April 2014 i.e. Financial Year 2014-15, it is compulsory, for public as well as private companies of the size prescribed, to spend 2% of average net profit of past three years for specified CSR activities.

This paper critically analyses the mandatory CSR provisions of the Companies Act, 2013 and also examines the impact of CSR 'Mandate' on CSR spending and reporting of Indian companies. For this study, top 20 Indian Companies (top 15 Private Sector Companies and top 5 Public Sector Companies) as per ET 500 Companies (based on Revenue) Report have been selected as sample and the data relating to CSR spending of these 20 companies during the year 2013-14 (i.e. year immediately before the implementation of mandatory CSR) are collected and analysed to examine whether with implementation of mandatory CSR the Indian Companies will have to spend more on CSR or not.

KEY WORDS: Corporate Social Responsibility, Section 135 of Companies Act 2013, CSR Spending of Indian Companies

1. INTRODUCTION

Stakeholders today are redefining the role of corporates taking into account the corporates' broader responsibility towards society and environment, beyond economic performance, and are evaluating whether they are conducting their role in an ethical and socially responsible manner. Across the globe, the concept of Corporate Social Responsibility has been accepted as an element for success and survival of business along with fulfilling social objectives.

Corporate Social Responsibility (CSR) is a company's commitment to operate in an economically, socially and environmentally sustainable manner that is transparent and ethical, while at the same time addressing the expectations of shareholders and stakeholders.

According to **World Business Council for Sustainable Development (WBCSD)** "Corporate social responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large."

2. OBJECTIVES OF THE STUDY

The main objectives of this study are:

- To critically analyse the mandatory CSR provisions as per section 135 of the Companies Act 2013.
- To examine the impact of CSR 'Mandate' on CSR spending of Private and Public Sector Indian Companies.

3. RESEARCH METHODOLOGY

3.1 Research Design:

To achieve research objectives, the descriptive and analytical research design is used for the study.

3.2 Sources of Data:

The study is based on the secondary data collected mainly from website of Ministry of Corporate Affairs, research papers published in journals and magazines, news articles as well as from published Annual reports.

3.3 Sample Size:

For analysing the impact of CSR 'Mandate' on CSR spending of Indian Companies, top 20 Indian Companies (top 15 Private Sector Companies and top 5 Public Sector Companies) as per ET 500 Companies (based on Revenue) Report have been selected as sample.

3.4 Period of Study:

To examine whether with implementation of mandatory CSR the Indian Companies will have to spend more on CSR or not, the data relating to CSR spending as a % Net Profits of the top 20 Indian companies during the year 2013-14 (i.e. year immediately before the implementation of mandatory CSR) are collected and analysed.

4. CSR 'MANDATE' UNDER COMPANIES ACT 2013

The Companies Act, 2013 has introduced several provisions which would change the way Indian corporate do business and one such provision is mandatory spending on CSR activities for a certain size of companies. CSR, which has largely been voluntary contribution by corporate has now been included in law. This new CSR rules are effective from 1st April 2014.

In India, while many corporate have been traditionally engaged in doing CSR activities voluntarily, the new CSR provisions put formal and greater responsibility on companies to set out clear framework and process to ensure strict compliance. The critical analysis of key mandatory CSR provisions as per section 135 of the Companies Act 2013 is as under:

4.1 Applicability:

- As per Section 135 of the Companies Act, 2013 every company having:
 - Net worth of Rs.500 crore or more, or
 - Turnover of Rs.1000 crore or more, or
 - Net profit of Rs.5 crore or more during any financial year.....
 will have to comply with the CSR provisions as laid down under the Act. If any of the above financial strength criteria is met, the qualifying company is mandatorily required to spend at least 2 percent of the average net profits of past three financial years on specified CSR activities.
- While the threshold limit of net worth criteria and the turnover criteria are kept higher, the net profit threshold limit of mere Rs.5 crore will bring majority of companies under the CSR net.
- Net profit is defined to mean 'net profit before tax' as per books of accounts and shall not include Profits arising from overseas branches of the company and Dividend received from other companies (provided the other companies are covered under and complying with CSR provisions).
- Ineligible CSR expenditure are:
 - Expenditure not in conformity with activities specified in Schedule VII,
 - CSR activities undertaken outside India, and
 - CSR projects that benefit only the employees / their families and contribution to political parties.

4.2 Appointment of CSR Committee:

- Every qualifying company needs to constitute a CSR committee of the Board consisting of 3 or more directors. At least one CSR committee member should be an independent director. The mandate of the said CSR committee shall be:
 - To formulate and recommend a CSR policy to the Board;
 - To recommend amount of expenditure to be incurred on CSR activities;
 - To institute a transparent monitoring mechanism to monitor the CSR policy of the company from time to time.
- Requirement of appointing independent directors in CSR committee relaxed for unlisted public company / private companies.
- Private company having only two directors can constitute its CSR committee with two such directors.
- CSR policy should include the list of CSR projects (related to activities included in Schedule VII) planned to be undertaken, modalities of carrying out such project, implementation schedules, monitoring process, etc. CSR policy should provide that surplus arising out of the CSR activity will not be part of business profits of a company.

4.3 Responsibility of the Board:

The Board of every qualifying company is required to hold following responsibilities:

- 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;
- To ensure the CSR activities are undertaken by the company;
- To ensure 2 percent spending on CSR activities;
- To report CSR activities in Board's report and disclose non-compliance (if any) with the CSR Provisions.

4.4 Specified CSR Activities:

Activities which may be considered as eligible CSR spend are provided in Schedule VII of the Act. The some of the specified activities are as under:

- Eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation and making available safe drinking water.
- Promotion of education, including special education and employment enhancing vocation skills especially among children and woman.
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old age homes 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, agro- forestry, conservation of natural resources and maintaining of quality of soil, air and water.
- 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 recognized sports and Olympic sports.
- 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.
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.
- Rural development projects.

4.5 Mode / Manner of Conducting CSR Activities:

- CSR activities to be conducted as per stated CSR policy as projects or programmes (either new or ongoing), however, excluding activities undertaken in pursuance of the normal course of business of a company.
- Company may implement CSR programs through other not-for-profit organizations that are not set up by the company itself provided it has an established track record of three years and company has specified the project / programs to be undertaken, modalities, monitoring and reporting mechanism.
- Company can undertake CSR activities through a registered trust, society or section 8 company – no three years track record for these not-for-profit entities if set-up by the company itself.
- Companies may also collaborate or pool resources with other companies to undertake CSR activities in such a manner that each company is in a position to report separately on such CSR projects.

4.6 CSR Reporting:

- CSR rules provide the format in which all qualifying companies should report the details of their CSR initiatives in the Director's report and on the company's website.
- This mandatory reporting standards being introduced in the Companies Act 2013 will aid in creating uniformity and accountability of actions.
- Failure to report would attract penalty on the company of maximum Rs.25 lakhs and probable imprisonment of concerned officer which may extend to 3 years.

IMPACT OF CSR 'MANDATE' ON CSR SPENDING OF INDIAN COMPANIES

Under new CSR Rules, which is applicable with effect from 1st April 2014 i.e. Financial Year 2014-15, it is mandatory, for public as well as private companies of the size prescribed, to spent 2% of average net profit of past three years for specified CSR activities So, it is important to examine whether with implementation of mandatory CSR Rules the Indian Companies will have to spend more on CSR or not, as compare to what they were spending earlier.

For analysing the impact of CSR 'Mandate' on CSR spending of Indian Companies, top 20 Indian Companies (top 15 Private Sector Companies and top 5 Public Sector Companies) as per ET 500 Companies (based on Revenue) Report have been selected as sample. For the study, the data relating to CSR spending as a % Net Profits of top 20 Indian Companies during the year 2013-14 (i.e. year immediately before the implementation of mandatory CSR) are collected as under:

Table 5.1: CSR Expenditure of India's Top 15 Private Sector Companies (2013-14)

Company	CSR Spending (USD Millions)	CSR Spending (% of Net Profits)
Reliance Industries Ltd.	119.88	3.24
Tata Motors Ltd.	2.84	5.17
Tata Steel Ltd.	34.7	3.31
Essar Oil Ltd.	N/A*	N/A*
Hindalco Industries Ltd.	5.28	1.81
Bharti Airtel Ltd.	6.62	1.46
Larsen & Toubro Ltd.	12.6	1.40
TCS Ltd.	15.06	0.48
ICICI Bank Ltd.	80.59	2.00
Mahindra & Mahindra Ltd.	5.35	0.87
Vedanta Ltd.	28.83	1.67
Adani Enterprises Ltd.	0.9	3.08
Infosys Ltd.	1.47	0.09
JSW Steel Ltd.	4.42	2.00
HDFC Bank Ltd.	11.52	0.83

*Not Available in Published Annual Reports

Source: Published Annual Reports

With a quick scan of the CSR spending patterns of India's top 15 Private Sector Companies, it is apparent that out of the 15 companies listed in the Table 5.1, only six of them had reported CSR spending at or above 2 percent of net profits. It implies that the 2 percent CSR mandate is likely to impact a wide range of Indian private sector companies.

Table 5.2: CSR Expenditure of India's Top 5 Public Sector Companies (2013-14)

Company	CSR Spending (USD Millions)	CSR Spending (% of Net Profits)
Indian Oil Corporation	13.7	1.20
Bharat Petroleum Corporation	5.59	0.85
Hindustan Petroleum Corporation	3.86	1.37
State Bank of India	24.26	1.37
Oil & Natural Gas Corporation	55.49	1.55

Source: Published Annual Reports

With a quick scan of the CSR spending patterns of India's top 5 Public Sector Companies, it is apparent that the CSR mandate will impact this group of companies also even to a larger extent, as in the year 2013-14 all 5 public sector companies listed in Table 5.2 had reported CSR spending of less than 2% of net profits.

The Indian Institute of Corporate Affairs (IICA), established by the Ministry of Corporate Affairs, estimates that at least 6,000 companies will have to adopt the new CSR rules. Many, if not all, would already have some level of CSR spending. But, this provision of mandatory CSR spending as per the Companies Act is expected to increase the scope of CSR spending in India to a great extent. The IICA also estimates that currently average CSR spending across India is around 1 percent of net profits. The mandatory CSR provisions of the Companies Act are expected to generate \$3.6 billion in CSR spending.

6.CONCLUSION

Across the globe, the concept of Corporate Social Responsibility has been accepted as an element for success and survival of business along with fulfilling social objectives. The Companies Act, 2013 has made CSR spending mandatory for a certain size of companies. With this India became the first country to mandate spend on CSR activities through a statutory provision.

Above analysis reveals that the CSR 'Mandate' under Companies Act 2013 will definitely increase the total CSR spending by Indian companies and will also bring greater transparency and uniformity in the CSR reporting. However, in order to move from theory to concrete action, some important clarifications and modifications are required for activities to be qualified for CSR spending and the tax treatment of CSR expenditure.

In order to ensure meeting the true spirits of the new CSR provisions, it is necessary that companies come forward and join together for this common good goal. A small portion of 2% of profit, if spent judiciously and for welfare, it shall go a long mile. The companies should see this as an opportunity to partner in building the nation rather than an onerous task. However, the biggest challenge for the companies is to determine a strong and innovative CSR strategy which should deliver high performance in ethical, environmental and social areas and meet all the stakeholders' objectives.

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