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CARPORATE SOCIAL RESPONSIBILITY: AN ANALYSIS OF COMPANIES (CSR POLICY) AMENDMENT RULES-2021 (Hereinafter called Rules)

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Abstract: Corporate Social Responsibility indicates to the responsibilities of business entity towards society within which it operates. It contains and denotes to pursue those policies, to make those policies, to make those plans, to take those decisions or to follow those lines of action which are expected from business organizations and are desirable interns of objective and values of Society. There are many business entities like sole proprietorship, partnership firm, company, Public Corporation and Government undertakings. Each business entity has some ongoing duty and dedication to behave morally and to play vital role in social and economic development while ameliorating the quality of the Society at large in general and any community or group in particular

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INTRODUCTION

CSR is the unexpressed promise of business to give sustainable economic development. There are many groups which have expectation from a business entity:- Employees, Customers, Government, Creditors, Competitors and Community. If the people remain dependent upon the Government for all kinds of Social development it is not possible on the part of Central or any State Government to come true to desirable expectations. So there us plour, moral, ethical and legal obligation of Corporate Sector to come forward and contribute substantially for social development.

The Companies Act, 2013 (hereinafter called the Act) contains some specific provisions regarding CSR like Section 135, 134(3) and Schedule VII. Though there provisions are not exhaustive, yet that contain some obligations of corporate entities crossing the thresholds as mentioned in the Act. Until the Rules of 2021, CSR Provisions in the Act were viewed as voluntary and all the guidelines issued by Ministry of Corporate Affairs, Government of India were considered as voluntary guidelines. These voluntary guidelines were not followed by many companies in respect of their CSR obligations. Moreover the content of the Act and guidelines issued so far do not contain strong and sharp teeth to bike the defaulter companies that are bunkers in respect of their statutory obligations of CSR. Therefore, in order to make the CSR provisions and guidelines from voluntary to mandatory, the Government of India through MCA has vide the Rules of 2021 made the spending of CSR from voluntary to mandatory.

The Amendment Rules come into effect on the date of notification on 22 January, 2021, unless clearly provided elsewhere in it. The main contents of the Rules are analyzed as under:-

The company is required to follow CSR Rules and schedule VII of the Act to undertake activities under CSR, however the Rules of 2021 has made CSR activity's definition from inclusive to exclusive. It does not include activities undertaken in normal course in business, however, MCA has included research and development activity of the new vaccine, drugs and medical device related to the COVID 19 for the f.y. 2020-21, 2021-22, 2022-23 subject to the certain conditions. Similarly activity undertaken outside in India, political contribution, benefit of employee under section 2 (k) of the Code on Wages,2019, benefit deriving from product or services and activities carried out for the fulfillment of any other statutory obligations under any law in force in India.

(I) CSR Committee :

The threshold limit as prescribed under section 135 of the Act, if fulfilled then the companies is required to constitute CSR Committee of directors including one or more independent director.

- Where a company is not required to appoint an independent director under the Act, there is requirement of that company to have two or more directors in its CSR Committee.
- The Board's report shall disclose the composition of the CSR committee.
- As per provisions of the Act, if the amount of CSR is less than fifty lakh rupees, the CSR Committee is not required and the functions of such committee provided under the Act are to be performed by the B.O.D. in the Company.
- The functions of CSR Committee are :-

To formulate an action plan, recommend the amount of CSR expenditure and monitor the CSR Policy of the company.

- The CSR Committee shall formulate & recommend an annual plan to the Board Containing the list of CSR projects or programs that are approved to be undertaken in subjects specified in Schedule VII of the Act, the manner of execution of such projects or programs including the modalities of utilization of funds and implementation schedule, monitoring and reporting mechanism, the details of need and impact assessment, if any, for the projects undertaken by the Company.
- The Board of the company is permitted to change the plan on the basis of recommendations of the CSR Committee on justification.

(II) Board's Responsibility [Section 135 (4)] :

- The Board is after approval of CSR Policy required to give it in companies website
- The Board is follow the CSR activities as included in the CSR policy and ensure that the companies has in fact undertaken the same either by itself or with the help of eligible entities .

The CSR liabilities can be undertaken through eligible entities namely association not for profit formed under section 8 of the Act and trust or a registered society, registered under section 12 A and 80 G of the Income Tax Act, 1961 or such society or organization established by the central Government or State Government, any entity established under an Act of parliament or a State legislature etc..

The company may engage international organizations to avail services of eligible entities, have collaboration with other companies for CSR purpose.

Every entity who is covered under these rules, who intends to undertake any CSR activity, shall register itself with the CG by filing the e-form CSR-1 with the ROC w.e.f. 01 April 2021. On filing of CSR-1, one 'Unique CSR Registration Number' shall be generated by the system automatically.

From 1st April 2021, it is mandatory for every implementing agency to register itself with the ROC by filing the e-form CSR-1. If any implementing agency fails to file CSR-1, they shall not be eligible to continue as the Implementing agency.

Unique Registration No.

The rules also provides for mandatory registration for every entity who is covered the under it by filing the e-form CSR-1 with R.O.C. w.e.f. o1st April 2021 on filing of CSR-1, One Unique CSR Registration number would be generated by the system automatically. On failure to do so, the implementing agency will not be continued to work.

Spending on Capital Assets :-

The CSR amount may be spent by a company for the creation or acquisition of a capital assets which shall be held by :-

- A Company under section 8 of the Act, or a Registered Public Trust or registered society with the charitable object, having CSR registration number or
- Beneficiaries of the said CSR project, in the form of self help groups, collectives, entities or,
- A Public

  Any CSR assets created prior to these Rules, is required to company the above within a period of 180 days which may be extended by 90 days by the board.

CSR Expenditure:

As companies as which sec-135 of the Act is applicable needs to spend 2% of the average net project of the previous three financial years on the CSR activity. If a company spent on CSR is in excess of 2% as mentioned, such excess amount may be set off against.

The requirement of the CSR spending up to the immediate succeeding 3 financial year subject to the conditions that the excess amount to be set off does not include the surplus of CSR activity and the B.O.D. passes a resolution to that effect.

The company is required to prefer local areas for spending CSR fund.

Net Profit :

Net profit means the product as per financial statement of the company with the applicable provisions of the Act, but does not include:-

- Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise, and

- Any dividend received from other companies in India which are covered under and complying with the appropriate provisions of the Act.

Administrative Overheads.

The administration over head shall not exceed 5% of the total CSR expenditure of the company for the financial year. It actual means the expenses incurred for general management and administration of CSR functions in the company but does not include expenses incurred for the designing, monitoring, evaluation and implementation of a particular project or program.

Ongoing project:-

It means a multy year project having time-lines not exceeding there years excluding the financial year in which it was not approved a such initially.

Treatment of unspent Amount:

If the company fails to spend the required 2% of the average net profit, than the treatment of the unspent amount is as follows:-

(1) The Board's report will contain the reasons for not spending the amount and transfer that unspent amount to a fund specified in schedule VII within a period of six months of the expiry of the financial year unless such amount relates to any ongoing project as mentioned above.

(2) The unspent amount be transferred within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for the financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account (UCSRA).

(3) If the company fails to spend in 3 years, it shall transfer the same to a fund specified in Schedule VII, within a period of thirty days from the date of competition of the third financial year.

Reporting of CSR Discloser:

The Company shall annex with its board report an annual report on CSR in the format of Annexure-I (fa the F.Y. 2020-21) or in Annexure-II (w.e.f. F.Y. 2021-22). In case of a foreign company, the balance sheet filed under section 381 shall contain such report of Annexure-I (for F.Y. 2020-21) or in Annexure-II (w.e.f. F.Y. 2021-22).

Impact Assessment:

It is new concept introduced through the rules. A company having the obligation of spending the average CSR amount of Rs. 10 Crore or more in 3 immediately preceding financial years is to undertake impact assessment to done by an independent agency in respect of CSR projects having outlays of one crore or more which have been completed not less than one year before undertaking the impact study. The impact assessment reports are to be placed before the board and are to be annexed to the annual report on CSR expenditure for the financial year or fifty lakh rupees, whichever is less.

Penalty for Non-Compliance:

(1) Twice the amount of CSR to be transferred to CSR fund specified in Schedule -VII or, Inspect CSR Account or one crore, whichever is less.

(2) Officer in default is liable for $1/10^{th}$ of the amount as mentioned on two lakh rupees whichever is less.

CONCLUSION:

After analyzing the relevant provisions of the CSR in the Act, of2013 and Rules of the 2021, the author concludes that the growing social need has made corporate to face challenges accept and adopt the concept of Social responsibility for a better tomorrow. The Rules of, 2021 has strengthen the system of implementation and the era of voluntary compliance of CSR laws and rules has been made mandatory compliance. These rules have installed new sharp teethes in the provisions of law to punish the defaulter company and delinquent Officers. The provision for eligible service providing entities, CSR reporting, Impact assessment and penalty have really been given place under new rules to make it more stringent. Above all the Indian Government should follow "Carrot stick" formula i.e. various incentives in the form of subsidies, tax holidays etc. could be used as carrot for socially responsive companies and stick as heavy fines like pollution Tax for defacing the environment could be imposed. The stakeholders should also take an oath not to invest ordeal with such companies which are highly irresponsible towards social welfare.

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