

**CORPORATE SOCIAL RESPONSIBILITY (CSR) –
THE NEED OF THE HOUR TO COMBAT CORONA**

In this Article, an attempt is made to list out the concept of Corporate Social Responsibility, under the Companies Act, 2013, and the recent clarifications/directions from the Ministry, with specific reference to COVID-19.

The concept of Corporate Social Responsibility (CSR) was introduced by the Companies Act, 2013 (Act) with effect from 01.04.2014. The provisions of Section 135 of the Act, read with Schedule-VII to the Act, are to be complied with.

A. CSR APPLICABILITY:

The provisions of CSR are applicable to every Company having:

- ➔ Net Worth of Rs.500 Crores or more, or;
- ➔ Turnover of Rs.1,000 Crores or more or;
- ➔ ***Net profit*** of Rs.5 Crores or more during ***any financial year***

Explanations:

1. "Net Profit" for the purpose of CSR shall be computed in accordance with the provisions of Section 198 of the Companies Act, 2013 i.e., **Profit Before Tax.**
- 2."Any Financial Year" implies any of the three preceding financial years.

B. CSR COMMITTEE:

The Company to which CSR is applicable shall constitute a CSR Committee, consisting of Three or more directors, out of which at least one director shall be an Independent Director.

The CSR Committee shall:-

- (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the CSR activities; &
- (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

C. AMOUNT TO BE SPENT UNDER CSR:

The Company to which CSR is applicable, shall ensure that the company spends, in every financial year, **at least 2 % of the average net profits of the company made during the three immediately preceding financial years,** in pursuance of its Corporate Social Responsibility Policy.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

D. CSR ACTIVITIES:

A Company may undertake activities as stated in its CSR Policy, as projects or programs or activities, ***excluding activities undertaken in pursuance of its normal course of business, i.e., a Company engaged in the activity of Road Laying, cannot undertake Road Laying work as a CSR activity.***

The CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

It is for the Company to decide whether to undertake its CSR activities approved by the CSR Committee, through:

- ➔ A Company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or
- ➔ A Company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature;

If the company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified above, then such company or trust or society shall have an established track record of 3 years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism.

E. CSR EXPENDITURE:

CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

Vide General Circular No.21/2014, Dt:18.06.2014, Ministry has further clarified that Contribution to Corpus of a Trust/ Society/ Section 8 Companies etc., will qualify as CSR expenditure as long as:

- (a) the Trust/ Society/ Section 8 Companies etc. is created exclusively for undertaking CSR activities; or
- (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

F. REPORTING OF CSR IN THE BOARD REPORT:

The Board Report of the Company to which the provisions of CSR are applicable, shall disclose the constitution of the CSR Committee.

Information/Annual report on the CSR Activities, to be provided pursuant to Section 135 read with Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, as amended from time to time, shall be attached to the Boards' Report.

The Board Report shall also disclose the details specify the reasons for not spending the amount.

G. CSR EXPENDITURE IN SUPPORT OF COVID-19:

Vide General Circular No.10/2020¹, the Ministry of Corporate Affairs, has clarified that spending of CSR Funds for COVID-19, is an eligible CSR Activity. Accordingly, the companies which are required to comply with undertaking CSR activity, can spend their CSR Funds under items No.(i)² and (xii)³ of the Schedule-VII to the Companies Act, 2013, with specific reference to 'promoting health care including preventive health care and sanitation and disaster management'. The MCA Circular also clarifies that the below entries can be interpreted liberally and does not call for strict interpretation.

Hence, the following expenditures are considered as eligible for the purposes of CSR activity, from COVID-19, perspective:

- ✚ Donations made to PM CARES Fund;
- ✚ Donations to National Disaster Management Authority; or the respective Disaster Management Authority;
- ✚ Spent on promoting preventive health care and sanitation;
- ✚ Spent on disaster management, including relief, rehabilitation and reconstruction activities;

FURTHER CLARIFICATIONS GIVEN BY MINISTRY:

The Ministry of Corporate Affairs has released Office Memorandum⁴ Dated: 28.03.2020, and has clarified that any donations/contributions made to PM CARES Fund⁵ shall qualify as CSR Expenditure under the Companies Act, 2013.

Further, vide General Circular No.15/2020⁶, the Ministry of Corporate Affairs, has released Frequently Asked Questions (FAQs), and has clarified that contribution to the Chief Minister's Relief Fund of the respective States, in relation to COVID-19, shall not qualify as a CSR Expenditure.

In view of the above, corporates are requested to give a helping hand to the Government, in any of the above ways, and avail either the benefit under CSR or the benefit under 80 G of the Income Tax Act, 1961.

¹ General Circular No.10/2020; Dated: 23.03.2020

² Eradicating hunger poverty and malnutrition, promoting preventive health care and sanitation and others

³ disaster management, including relief, rehabilitation and reconstruction activities

⁴ eF No CSR-05/1/2020-CSR-MCA dated 28.03.2020

⁵ PM CARES Fund is also notified for purposes of Entry (viii) of Schedule-VII to Companies Act vide the above Office Memo

⁶ General Circular No.15/2020; Dated: 10.04.2020