

Government of India  
Ministry of Corporate Affairs

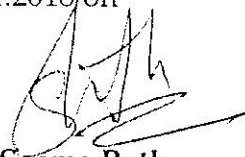
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Dr. R. P Road, New Delhi - 110 001

Dated: 26.04.2018

OFFICE MEMORANDUM

**Subject: Report of the Legal Sub Committee on Corporate Social Responsibility - reg.**

The undersigned is directed to forward herewith the Report of the Legal sub-Committee chaired by Shri Sanjay Shorey, Joint Director (Legal) constituted by the Ministry vide Office Order no. 12/03/2018 (Part File ) dated 04.04.2018 on CSR for appropriate action at your end.



Seema Rath

Deputy Director-CSR

To

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**REPORT ON**  
**CORPORATE SOCIAL RESPONSIBILITY**  
**BY LEGAL SUB-COMMITTEE**

**(to revisit / review the existing framework of the CSR)**

**Ministry of Corporate Affairs**  
**Government of India**  
**26<sup>th</sup> April, 2018**

# REPORT ON CORPORATE SOCIAL RESPONSIBILITY

## BY LEGAL SUB-COMMITTEE

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## PREFACE

Corporate Social Responsibility (CSR) for companies has been mandated through legislation in India for mandating corporate social responsibility (CSR) for companies.

Ministry set up a High Level Committee on 03.02.2015 under the chairmanship of Shri. Anil Baijal to recommend suitable methodologies for monitoring compliance of the provisions of Section 135 of the Act. High Level Committee submitted its report on September, 2015 and one of the recommendations of the Committee inter alia was to conduct the review of the programme, after three years as first couple of years would appropriately be a 'learning experience' for all stakeholders including the companies, implementing agencies, auditors etc.; and information relating to the implementation of CSR by the companies is expected to be available by the end of the year 2015.

Keeping in view the above recommendation, Steering Committee on CSR as well as Legal Sub-Committee and Technical sub-committee has been constituted by the Ministry to revisit & reviewing the existing framework of CSR provisions.

The legal sub-committee had limited mandate of aiding and assisting Steering Committee on certain legal issues. The members of legal sub-committee were Smt. Seema Rath, Deputy Director, Shri A.K. Sahoo, DRoC, Shri Patwagar Avais Kadeer, ARoC, Shri Manish Joon, Assistant Director, Statistics Division and Shri Vedant Ojha, Assistant Director. The sub-committee also called representatives of the ICSI as special invitee.

I place on record my sincere thanks to the Committee Members for not only sparing valuable time from their otherwise hectic schedule of commitments but more importantly for their priceless contribution in discussions and suggestions. Working with them has indeed been a pleasure.

I hope the Steering Committee would find recommendations of the legal sub-committee as basis for preparing its report.

  
(Sanjay Shorey)

26<sup>th</sup> April, 2018

New Delhi

# REPORT ON CORPORATE SOCIAL RESPONSIBILITY BY LEGAL

## SUB-COMMITTEE

### 1. INTRODUCTION

In December, 2009 Ministry of Corporate Affairs (MCA) introduced "Corporate Social Responsibility (CSR) Voluntary Guidelines" (**Annexure I**). The guidelines were served as a statement of intent by the Government of India to encourage businesses to adopt responsible business practices. The guidelines were based on fundamental principle 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 overall business policy and aligned with its business goals. These guidelines were reviewed and elaborated by MCA through a Guidelines Drafting Committee (DGC), appointed by MCA in 2009. The revised guidelines were the National Voluntary Guidelines on Social (NVGs), Environmental and Economic Responsibilities of Business (**Annexure II**) was released by MCA on 8<sup>th</sup> July, 2011. These guidelines contained the national framework on Business Responsibility **which essentially is a set of nine principles** that offer businesses an Indian understanding and approach to inculcate responsible business conduct. **These nine principles are:**

- i. conduct and govern themselves with ethics, transparency and accountability.

- ii. provide goods and services that are safe and that contribute to sustainability throughout their life cycle.
- iii. promote the well-being of all employees.
- iv. respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
- v. respect and promote human rights.
- vi. protect and make efforts to restore the environment.
- vii. when engaged in influencing public and regulatory policy, they should do so in a responsible manner.
- viii. support inclusive growth and equitable development.**
- ix. engage with and provide value to their customers and consumers in a responsible manner.

1.2 The NVGs serves as a guidance document for businesses of all size, ownership, sector, and geography to achieve the role of business in economic growth which is socially and environmentally sustainable. These guidelines not being prescriptive in nature, nevertheless seek to guide Indian businesses to take into account Indian social and business realities and the global trends, while promoting their businesses.

1.3 **Principle (viii)** of the NVGs on “inclusive growth and equitable development” focuses on encouraging business action on national development priorities, including community development initiatives and strategic CSR based on the

shared value concept. This principle of NVG was subsequently translated into a mandatory provision of CSR in section 135 of the Companies Act, 2013.

- 1.4. The 21<sup>st</sup> Report of the Parliamentary Standing Committee on Finance is one of the prime movers for bringing the CSR provisions within the statute (**Annexure III**). It was observed by the Standing Committee, that annual statutory disclosures on CSR required to be made by the companies under the Act would be a sufficient check on non-compliance. **Thus, it has been a conscious decision not to over regulate this area but to create a conducive environment for self-regulation by companies and engaging in CSR activities as an affirmative action of the companies.** To meet the objective set out in the 21<sup>st</sup> Report of the Parliamentary Standing Committee on Finance, CSR for companies has been mandated through legislation in India under Companies Act, 2013.

## **2. INTRODUCTION OF CORPORATE SOCIAL RESPONSIBILITY UNDER COMPANIES ACT, 2013.**

Section 135 of the Companies Act, 2013 (the 'Act') contains CSR provisions of the Act, Schedule VII of the Act enumerates the activities that can be undertaken by companies as CSR and Companies (CSR Policy) Rules, 2014 prescribes the manner in which companies can comply with the CSR provision of the Act. Section 135, amended Schedule VII to the Act and the Companies (CSR Policy) Rules, 2014 were notified on 27<sup>th</sup> February, 2014, and came into force from 01.04.2014 (**Annexure IV**). The salient features of CSR provision inter-alia, are as follows:

- (i) mandates every company with specified thresholds, i.e.,
  - (i) Net Worth of Rs. 500 crore or more,
  - (ii) Turnover of Rs. 1000 Crore or more, or
  - (iii) Net Profit of Rs. 5 crore or more in any financial year,to spend at least two per cent of the average net profits earned during three immediately preceding financial years on CSR activities as specified in Schedule VII of the Act;
- (ii) each such company is required to constitute a CSR committee of the Board;
- (iii) the Board of each such company is required to have the company's CSR policy formulated and monitor its implementation;
- (iv) the first proviso to section 135 (5) of the Act clearly specified that a company shall give preference to the local area.
- (v) the Board's report shall include an annual report on CSR containing particulars specified in prescribed format;
- (vi) the Board's report shall specify the reasons for not spending the specified amount, if the company fails to spend such amount;
- (vii) companies may implement their CSR Policy through trusts or societies or Section 8 companies etc.;

## 2.2 Responsibilities of Board of Directors of eligible CSR Company

The Board of every company referred to in section 135, sub-section (1) of the Act, shall, —

- a) take into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed;
- b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company;
- c) to ensure that the company spends, in every financial year, at least two per cent of the 'average net profits' of the company made during the three immediately preceding financial years, in pursuance of its CSR;
- d) shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities; and
- e) if the company fails to spend at least two per cent of the average net profits of the company, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

### 2.3 Responsibilities of CSR Committee

As per section 135 (3) of the Act, 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 activities; and
- c) monitor the Corporate Social Responsibility Policy of the company from time to time.

The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

### 2.4 Activities outside the purview of CSR as per Companies (CSR Policy) Rules, 2014:

- a) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.
- b) One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- c) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

- d) Contribution of any amount directly or indirectly to any political party shall not be considered as a CSR activity.
- e) Activities undertaken by the company in pursuance of its normal course of business, shall not be considered as CSR.

### **3. INITIATIVES BY MINISTRY OF CORPORATE AFFAIRS TO FACILITATE CSR COMPLIANCE**

Provisions of CSR under the Act came into force from 01.04.2014, Ministry acted as a regulator as well as an enabler for the compliance of CSR provisions under the Act. To facilitate better compliance of CSR by companies, Ministry issued clarificatory circular dated 18.06.2014 which, inter alia, clarified the following:

*'The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.'*

The Ministry of Corporate Affairs constituted a High Level Committee on 3rd February, 2015 to suggest measures for monitoring the progress of implementation of Corporate Social Responsibility (CSR) policies by companies. The Committee has submitted its report along with its recommendations on 22nd



September, 2015 (**Annexure V**). Inter-alia the following are the recommendations of committee:

- (i) Ceiling on administrative overhead cost should be increased from 5% to not more than 10% of the CSR expenditure.
- (ii) Definition of the term “net profit” used under the Act and Rules need to be clarified
- (iii) Re-examination of reference to the ‘any financial year’ in section 135 (1) of the Act with a view to making necessary amendment(s) either in Section 135 (1) or in the relevant rule.
- (iv) The unspent balance out of the CSR fund should be allowed to be carried forward with a sunset clause of five years, after which the unspent balance should be transferred to one of the funds listed in Schedule VII.
- (v) An omnibus clause may be included in Schedule VII of the Act to suggest that CSR activities must be for larger public good and for any activity that serves public purpose and /or promotes the wellbeing of the people, with special attention to the needs of underprivileged.

3.2 As a follow up action on the recommendations of the High Level Committee on CSR and to facilitate effective implementation of CSR Policies by eligible companies, Ministry issued Frequently Asked Questions (FAQs) on 12.01.2016 (**Annexure VI**).

- 3.3 Sensitization workshops have been organized by the offices of Regional Directorate(s) under MCA, IICA and Institutes to ensure effective compliance of CSR provisions by companies.
- 3.4 Ministry launched the National CSR Data Portal on 19.01.2018 for driving accountability and transparency in corporate India. This portal has been created with the objective of achieving a high level of compliance as well as institutionalizing and consolidating the CSR activities. It is also expected to facilitate social audit of CSR projects, besides bringing together CSR contributors, implementors and beneficiaries thus bridging the information asymmetry presently prevailing on CSR matters.

#### **4. GUIDELINES ISSUED BY DEPARTMENT OF PUBLIC ENTERPRISES**

Department of Public Enterprises (DPE), Ministry of Heavy Industries & Public Enterprises in March, 2010 had issued comprehensive guidelines on CSR for compliance by the Public Sector Undertakings (PSUs) (**Annexure VII**). With CSR provision of the Act coming into force with effect from 01.04.2014, DPE issued guidelines on 'CSR and Sustainability for PSUs' on 21.10.2014 to supplement the CSR provisions of the Act (**Annexure VIII**). As on date the DPE guidelines with respect to CSR stands withdrawn from 01.08.2016 (**Annexure IX**) stating CSR provisions and rules made thereunder under the Companies Act, 2013 are applicable equally to PSUs.

## 5. AMENDMENTS W.R.T PROVISIONS OF CSR IN THE COMPANIES (AMENDMENT) ACT, 2017

The Ministry had received recommendations from Parliamentary Standing Committee on Public Undertakings; and Department-Related Parliamentary Standing Committee on Industry; among others, for amending certain provisions of CSR under Section 135 of the Companies Act, 2013. These recommendations were examined by the Companies Law Committee of this Ministry, who further sought suggestions from the public before proposing amendments to the provisions of CSR under the Act. The Companies (Amendment) Bill, 2016 was passed in the Lok Sabha on 27<sup>th</sup> July, 2017 as Companies (Amendment) Bill, 2017. Subsequently, the Bill was passed by Rajya Sabha on 19<sup>th</sup> December, 2017. The Amendment Bill has received the assent of the President on 03<sup>rd</sup> January, 2018. The following are amendments w.r.t provisions of CSR in the Companies (Amendment) Act, 2017:

SI. No.	Section 135 of Companies Act, 2013	Amendments in Companies (Amendment) Act, 2017
1	sub-section (1) the words " <b>any financial year</b> "	Substituted by " <b>the immediately preceding financial year</b> "
2	sub-section (1)	This proviso shall be inserted.  " <b>Provided that where a company is not required to appoint an</b>

		independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors”.
3	In sub-section (3) (a) for the words and figures “as specified in Schedule VII”	Substituted by “in areas or subject, specified in Schedule VII”.
4	In sub-section (5), the explanation “average net profit” shall be calculated in accordance with the provisions of section 198.	Substituted by 'Explanation. - For the purposes of this section “net profit” shall not include such sums as may be prescribed and shall be calculated in accordance with the provisions of section 198’.

## 6. REVIEW OF EXISTING FRAMEWORK OF CSR FOR THE PURPOSE OF ENFORCEMENT OF CSR:

High Level Committee (HLC) recommended the following in their report at para 4.7 which read as:

*“As regards penalty for non-compliance with CSR provisions of the Companies Act, the present provisions in the law appear to be sufficient. However, the Committee is of the view that leniency may be shown against the companies for non-compliance in initial*

*two/three years to enable them to graduate to a culture of compliance. This is being recommended because initial three years will be a “period of learning” for all the stakeholders. This liberal view can at least be taken for smaller companies, which become eligible at the margin to take up CSR programme under Section 135(1) of the Act.*

Basically, HLC recommended to have a lenient approach for initial years of compliance of CSR provisions by the Companies. In this regard, Ministry of Corporate affairs has acted as a regulator as well as an enabler for CSR provisions by organizing workshops, seminars, conducting various programmes through offices of Regional Directors and by partnering with various Professional Institutes in India, IICA.

6.2 Further, the following were also recommended by HLC in their report at **Para 4.20** which reads as:

*“The Committee feels that all information relating to implementation of CSR by Companies including amount spent, activities undertaken, geographical areas covered etc., as reported by the Companies in their annual disclosure need to be complied by the Ministry of Corporate Affairs and placed in the public domain.”*

As a follow up action on the recommendation of the High Level Committee on CSR, the Ministry organized sensitization workshops through the offices of Regional Directorate(s) under MCA, IICA and professional Institutes to ensure effective compliance of CSR provisions. Further, as a proactive initiative the

Ministry launched the National CSR Data Portal on 19.01.2018 as a step towards driving accountability and transparency in corporate India.

- 6.3           The following recommendations was stated by High level Committee in its report at **Para 4.24** which reads as:

*“with a view to incentivizing the corporate to undertake their CSR mandate in right earnest, the Committee recommends setting up of annual awards – one each for two categories of Companies, large and small.”*

On the recommendations of the High Level Committee on CSR, Ministry of Corporate Affairs has instituted National Annual CSR awards as step towards incentivizing the corporates to comply, thereby fulfilling the intent of CSR.

## **7. RECOMMENDATIONS OF THE LEGAL SUB-COMMITTEE:**

Financial Year 2018-2019 as such being the fifth year of implementation of CSR provisions, reporting under the provisions of CSR for financial year 2017-18 has just started. Provisions of CSR for implementation & regulations has been analyzed taking into consideration the recommendations of HLC at para no 4.7. The disclosures made by the companies for the FY 2014-15, 2015-16 and 2016-17 has been analyzed and observed that some of the companies do not comply with the provisions of CSR and there is a need for initiating stricter compliance towards monitoring the provisions of CSR as experience suggest invariably non-complaint companies give various reasons for non-compliance or non-spending the CSR amount which are basically in the nature of excuse. As on date there has not been

any judicial order of the High Court(s) or Hon'ble Supreme Court on what constitute valid justifiable, demonstrable and more particularly are acceptable "specific reasons". Thus, in view of the use of the words "SHALL ENSURE THAT THE COMPANY SPENDS" under section 135 of the Act, it becomes mandatory for the CSR eligible companies to spend the prescribed amount and non-spending of CSR amount shall invite penal action as mentioned in the Act unless the regulatory authority accepts the reason(s) given in the report to members which at this stage cannot be the case as mentioned above that no finality on reason(s) has been pronounced by any Court of Law under section 135 of the Act. Thus the following steps are proposed.

## 7.2 GENERAL CIRCULAR(S)

On review of General Circular dated 18.06.2014, 17.09.2014 and 16.05.2016 issued by the Ministry (**Annexure X**) it seems that by giving illustrative examples it restricts Central Government to take punitive actions against the non-complaint companies as:

- a. no power or provisions is given to Ministry of Corporate Affairs to issue circulars with reference to clarification on CSR.
- b. circulars issued by the Ministry is not binding on others.

In view of the above, circulars need to be issued only where it encourages effective enforcement. Due to above mentioned reasons, the general circular issued by the Ministry on 18.06.2014 may be withdrawn. However, in order to ensure that

companies become compliant of CSR the Ministry may issue a circular stating that in case a company is not able to spend the entire prescribed CSR amount by end of the financial year, then the balance remaining unspent should be transferred to designated Central Government Funds as listed in Schedule VII of the Act i.e Prime Minister's National Relief Fund or Swachh Bharat Kosh or Clean Ganga Fund, etc. A clarification in this regard may also be issued through revised FAQ's. Further the circular inter alia should also clarify that contribution to private funds such as those set-up by a not-profit company, etc. is not allowed as per the CSR provisions. In addition to this as a matter of policy the proposed circular should also highlight Ministry is desist that no individual clarification be issued.

Similarly, issue regarding carry forward of unspent CSR amount is drawing lot of attention. Thus its needs to be clarified that carry forward of unspent CSR amount would tantamount deferment of expenses. It is observed that deferment as prescribed under Accounting Standard(s) is possible only in respect of Revenue Expenditure or Tax. Since CSR do not fall either under revenue expenditure or under tax expenditure, therefore carry forward of CSR would be improper as per the accounting standards. Besides, such carry forward of CSR would decrease the compliance rate and corporates will take undue advantage. Further, no such carry forward has been intended under section 135 of the Act. Thus it may be clarified in the circular that carry forward of CSR is not permissible on account of above reasons and wherever, it is reflected in the books of account of the companies, the



same should be either spent within a year or alternatively deposited in the Central Government Funds as prescribed in Schedule VII of Companies Act, 2013 such as Prime Minister National Relief Fund, Swatch Bharat Kosh and Clean Ganga Fund, etc. Further the clarification shall be provided that contribution to private funds such as those set-up by a not-profit company, etc. is not allowed as per the CSR provisions

7.2.2 The Ministry issued clarifications in the form of Frequently Asked Questions (FAQs) through general circular dated 12.01.2016 to facilitate effective implementation of CSR Policies by eligible companies and ensure compliance under the legislation. These FAQ's were issued majorly on the recommendations submitted by High Level Committee in their report dated September 2015. However, it is observed that the FAQ's issued in the form of general circular restricts Central Government to take punitive actions against the Non-Complaint Companies thereby restricting enforcement against such non complaint companies on account of inclusive interpretation pertaining to CSR which can be interpreted loosely and may extend beyond Schedule VII of the Act. Hence, the present FAQ issued on 12.01.2016 may be withdrawn.

For stricter compliance of the provisions of CSR and to facilitate stakeholders, a revised FAQ with clarity to the stakeholders with reference to need for compliance and consequences of non-compliance be considered for issuance. In this regard the following revised FAQ is for adoption of the Ministry.

## FREQUENTLY ASKED QUESTIONS ON CORPORATE SOCIAL RESPONSIBILITY

Sl. No.	FAQs
1.	<b><i>Which activities would not qualify as CSR Expenditure?</i></b>
	<i>Expenditure on any activities or items that are not in conformity or in line with activities which fall within the purview of Schedule VII of the Act.</i>
2.	<b><i>Whether provisions of CSR are applicable on Section 8 Company or Foreign Company or any other form of company, if it fulfills the criteria of section 135(1) of the Act.</i></b>
	<i>Section 135 of the Act reads “Every company... .”, i.e. no specific exemption is given to section 8 companies or foreign company with regard to applicability of section 135. Hence section 8 companies as well as foreign company or any other form of company are required to follow CSR provisions</i>
3.	<b><i>Whether display of CSR policy of a company on website of the company is mandatory or not?</i></b>
	<i>As per section 135(4) the Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company’s website, if any (refer Rule 8 &amp; 9 of CSR Policy, Rules 2014).</i>
4.	<b><i>Whether reporting of CSR is mandatory in Board’s Report?</i></b>
	<i>The Board’s Report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1<sup>st</sup> day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure. (refer Rule 9 of CSR Policy, Rules 2014).</i>

5.	<b><i>Whether it is mandatory for Foreign Company to give report of CSR activity</i></b>
	<i>In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.</i>
6.	<b><i>Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?</i></b>
	<i>Carry forward of unspent CSR amount could treated as either deferment of expenses or Contingent Liability. It is observed that deferment as prescribed under Accounting Standard(s) is possible only in respect of Revenue Expenditure or Tax. Since CSR do not fall under both the category, thus it cannot be deferred and therefore cannot be carried forward.</i>
7.	<b><i>Can CSR funds be utilized to fund Government Scheme?</i></b>
	<p><i>The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resources gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. In-principle, CSR fund of companies should not be used as a source of funding Government Scheme. CSR projects should have a larger multiplier effect than that under the Government Schemes.</i></p> <p><i>However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Central Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are complied by the company such as contribution to Prime Minister National Relief</i></p>

	<i>Fund, Swatch Bharat Kosh, Clean Ganga Fund and any other Central Govt Fund. However, any contribution to state Govt fund will not be a CSR.</i>
<b>8.</b>	<b><i>How can companies with small CSR funds take up CSR activities in a project/programme mode?</i></b>
	<i>A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programme with other similar companies by way of pooling their CSR resources. (refer rule 4 in Companies (CSR Policy) Rules, 2014). However in case company finds that no sustainable activity under CSR can be undertaken on account of any reasons it need to contribute to Cenral Government fund as prescribed under Schedule VII viz Prime Minster National Relief Fund, Swatch Bharat Kosh, Clean Ganga Fund or any other Central Govt Fund. However contribution to private funds such as those set-up by a not-profit company, etc. is not allowed under the provisions of CSR.</i>

### **7.3 UNSPENT AMOUNT OF CSR AT THE END OF FINANCIAL YEAR**

Section 135 of the Act as already mentioned does not provide carry forward of the unspent amount at the end of the financial year. High Level Committee in its report under para 4.10 stated that the unspent amount be allowed to carry forward. However, it also recommended for a sunset clause of five years be followed and the balance remaining unspent should be transferred to one of the funds listed in Schedule VII. The said recommendations was not accepted earlier and the Ministry issued clarification in the form of FAQs dated 12.01.2016 at point number 17 which reads as

*“The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year’s CSR allocation equivalent to at least 2% of the average net profit of the company of the immediately preceding three year”.*

As recommended in para 7.2 above a circular need to be issued with reference to carry forward of CSR amount disclosed in the financial statement. It is stated that it is not permissible under Accounting Standard and unspent amount be either spent within a year or alternatively it has to be transferred to any of the Central Government funds as provided under Schedule VII of the Act. Thus keeping the recommendations of High Level Committee a circular for consideration is suggested as per **Annexure XI**.

#### **7.4 PENAL ACTIONS UNDER CSR REGULATIONS:**

##### **ENFORCEMENT MODULE FOR CSR COMPLAINCE-**

- a. Presently the enforcement of CSR is carried out like any other provisions of the Companies Act, 2013 through Regional Directors and Registrar of Companies by the Ministry. Section 135 of the Companies Act, 2013, the rules made thereof, and Schedule VII read with General Circulars dated 18th June, 2014 and 12th January, 2016 issued by the Ministry provide the broad contour within which the Board of the eligible companies are empowered to formulate their Corporate Social Responsibility (CSR) policies including the projects/activities to be

- undertaken, monitor the implementation of such projects from time to time and disclose an annual return on CSR in the prescribed format in the Board's Report.
- b. The Ministry through Regional Directors and Registrar of Companies monitors the compliance of CSR provisions of the companies through mandatory disclosure by company in their Board's Report under provisions of section 135 read with section 134 (3) (o) of the Companies Act, 2013.
- c. As per the modalities for initiating action for non-compliance of the CSR provisions of the section 135 read with section 134 (3) (o) of the Act, the Registrar of Companies (ROCs) initiate action against non-compliant CSR eligible companies under the provisions of the section 206 of the Act.
- (i) The ROCs can suo moto or on receipt of complaints by stakeholders can check the compliance of the provisions of CSR and may issue show cause notice to the company and its officers in default.
  - (ii) The Registrar through its Directorate send its findings to the Ministry for seeking approval to initiate penal action, if any, against the companies and its officers in default.
  - (iii) On the basis of findings and report submitted by ROCs/RDs, the Ministry may issue permission to proceed for penal action under section 134(8) of the Act.
  - (iv) The cases for the same shall be tried in Special Court established under section 435 of the Companies Act, 2013.

## **7.5 ISSUES IN ENFORCEMENT OF COMPLIANCE OF PROVISIONS OF CSR:**

### **A. Problems mainly in identification of eligible companies are as under:**

- (a) Non- filing of the returns by the companies
- (b) Late filing of the returns by the companies
- (c) Effective data capturing from the returns of the companies for CSR.
- (d) Reasons or excuses are examined at discretion by the RoC's with regard to compliance of second proviso of Section 135 of Companies Act, 2013.

### **B. Major challenge in CSR enforcement is identification of eligible companies as well as Officer-in- Default (O-I-D) as defined under Companies Act, 2013:**

On reviewing the functioning of CSR provisions, a uniform approach for enforcement of CSR is needed to be followed wherein a centralized command and control system titled "Centralized Scrutiny and Prosecution Mechanism (CSPM)" is established by the Ministry and effective implementation can be made only with the help and assistance of technological tools. To ease and speed up the process, scrutiny as well as reply thereafter including Show Cause Notices (SCNs) need to be electronically only. The feasibility of these electronic process is required to be settled. In addition to this, various legal issues too are involved for enforcement of CSR provisions. To move ahead, these issues need to be handled in a holistic and mission mode manner.

Thus, present enforcement module mentioned at para 7.4 has not lived up to the standard where uniformity and transparency across the length and breadth of the country can be enforced as different yard sticks are applied by each Registrar of Companies.

To conclude, one needs to have uniform approach for enforcement of CSR through an e-centralized Scrutiny and Prosecution Mechanism (e-CSPM) which needs to be established by the Ministry by appointing e-Registrar of companies for CSR who will be working paperless through portal called e-CSPM and shall be responsible for scrutiny of 100% CSR eligible companies. Presently CSPM is working on adhoc basis partially with assistance of electronic interphase and partially with manual interphase. Inspectors are appointed under section 206(4) of the Act with an intentions to have uniformity in approach and ultimately scrutinize all CSR eligible companies to ensure Compliance and the e-CSPM would ensure standard procedure and uniform practice. A revised and standard Show Cause Notice as per **Annexure XII**.

7.5.1 However, a major issue whether after issue of Show Cause Notice, in case a company who has not spent or under spent agrees to pay it to the Central Government Fund, whether such companies would be still subject to prosecution for violation of CSR provisions under Companies Act, 2013. Although technically violation once committed cannot be undone but keeping the fact that resources are limited and are to be deployed optimally for effective governance. Therefore it is



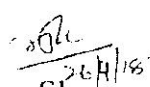
proposed that a line may be added in the show cause notice that the Companies who have either spent less or not spent and after issuance of show cause notice in case such companies deposits such amount to the Central Government Fund as per Schedule VII then the Central Government shall not file prosecution against such Companies. This would ensure optimum compliance with minimum prosecutions as a matter of Policy.

#### **7.6 MANPOWER REQUIREMENT FOR CSPM:**

Last but not least, success of any form of enforcement depends upon the skilled and adequate number of manpower. Presently, there are approx. 20,000 CSR eligible companies and only three inspectors have been appointed who are responsible for enforcement of CSR spent compliance. On an average each inspector is expected to scrutinize approx. 6,666 companies annually. Presently average scrutiny is 8-10 companies per inspector on a daily basis. It is expected this to raise to the level of 20 per day. Keeping in view of the above, approx. 4800 companies [20 days in a month, hence  $(20 \times 20) \times 12$  months] shall be scrutinized thereby resulting in a shortfall of 1866 Companies per Inspector. Thus total shortfall in scrutiny would be 5598 ( $1866 \times 3$  inspectors). Further one dedicated officer is needed for Inter-Ministerial work, parliament questions, for attending various seminars, programmes on CSR, dealing with IICA, National CSR awards, NVG and etc. Keeping in view of the above, and for smooth functioning of e-CSPM, we need the following manpower is required:

- 1) 5 Inspectors – 4000 Companies per inspectors, as inspectors would also require to follow up prosecution and depose as witness before trial court wherever required till trial commences.
- 2) 10 Consultants – 2 consultants per inspector
- 3) Three MTS

In this regards, a separate work station may be provided with all the facilities including place to sit with proper complete computer/fax/photocopy/scanning facilities for all the above mentioned manpower, with complete logistics support, stationery etc. e-CSPM is expected to achieve 100% compliance in CSR in upcoming years subject to the development of e-CSPM software. The manpower requirement keeping futuristic growth, prosecution etc. would remain as mentioned above for e-CSPM. However, the inspector may be designated as e-RoCs by way of notification. It is expected that Steering Committee shall take/include necessary input from technical sub-committee for design, development for robust e-CSPM.

  
Sanjay Shorey

Chairman  
Legal sub-committee