

CORPORATE SOCIAL RESPONSIBILITY (CSR) IN INDIA- JUSTIFICATION OF A MOVE TOWARDS IT THROUGH REGULATIONS

Raj Kumar Sah¹

This paper is an attempt to analyze the feasibility of provisions of Corporate Social Responsibility under section 135 of the recently enacted Companies Act, 2013 and Companies (Corporate Social Responsibility) Rules, 2014 in Indian context. Upon analysis of the content of the said section and the relevant rules, it may be concluded that making provisions to spend the money on corporate social responsibility mandatory for large corporate houses based on the specified limit of turnover /net worth /net profit has been observed as an appreciable move, but certain criticisms can't be negated at the same time. Hence, it has become a healthy issue to discuss to extract the feasibility of these provisions at ground level. Further, an effort has also been made to elaborate the effect of CSR activities on the business performance. The paper finally concluded with certain suggestions and recommendations that can be significant for the policy makers and strategists who are constantly putting their efforts to lead the Act in right direction for the betterment of society.

Key words: Corporate Social Responsibility, CSR Rules, Criticism, Suggestions and Recommendations

INTRODUCTION

Many debates have been going on about the justification of a move towards Corporate Social Responsibility (hereinafter referred to as CSR) through regulation but the term 'CSR' itself has not been defined so far by law and therefore, different definitions have been given by different persons /institutions at different times in their own different ways.

CSR is nothing but the capacity building for sustainable development of the corporates and the society as a whole. Sustainable development, as per Brundtland Commission, is

¹ Assistant Professor, Department of Commerce, Shri Ram College of Commerce, University of Delhi, Delhi-110007, India. Email: rajkumarsah42@yahoo.com

the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The company should, therefore, align the CSR activities in such a way as to enable the growth and development of the corporate and society simultaneously. Normally, CSR activity is misunderstood as a philanthropic/charitable activity. Social responsibility has now become an integral part of the wealth creation process- which, if managed properly, would enhance the competitive position of the business and maximize the value of wealth creation to the corporates and the society.

A question also arises as to why CSR is important to business or, in other words, why corporates should undertake CSR activities. When companies operate in an economically, socially and environmentally responsible manner and they do so in a transparent manner, it helps them succeed especially through social power because society values such organizations more than other organizations which do not so operate. Branding covers a considerable part of marketing strategy. CSR helps in strengthening the brand image. The relationship between brand value and CSR is stronger for familiarity and not for favourability. This is because if the company is well known in its community, its CSR activities will strengthen its brand more than if the company is less well-known. CSR activities have, thus, a significant impact on the customers who are already familiar with the company. CSR activities cast a cascading effect of converting the prospective customers to actual customers in the near future. Thus, the corporates can enhance their reputation by undertaking CSR activities which results in enhancement of their goodwill and strengthening of the brand thereby. As per Mr. S.K Todi, Chairman, Shrachi Group Limited, corporates have to recognize that their progress comes from the society and they must give back to the society its fair due.

CSR is, therefore, no more an expenditure but an investment for longevity and sustainability of the enterprise. It is high time to realize that sustainability is not just another environmental or social issue. It is an opportunity by virtue of which goods business can be delivered to its stakeholders.

OBJECTIVE OF THE PAPER

The objective of the paper is to have a comprehensive analysis of the provisions of CSR under section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility) Rules, 2014; to provide an insight into the deficiencies in the form of criticisms, and also to offer suggestions and recommendations for improvement in the

present provisions of the Companies Act, 2013 and the Companies (Corporate Social Responsibility) Rules, 2014 so as to draw the attention of the policy makers and researchers in the field. Further, the objective is also to make an effort to measure the effect of CSR activities on the business performance.

REVIEW OF RELATED STUDIES

An attempt has been made to review the limited literature on corporate social responsibility rules particularly related with the spending of funds on CSR activities. Studies on related Acts & Rules, research articles, analysis of policy documents have been reviewed as follows to fill the gap:

Kothari (2014) dealt with the various matter of the newly enacted Companies Act, 2013 under 40 chapters divided into 13 parts. Part VIII of the book covers three chapters especially devoted to corporate social responsibility. Chapter 33, 34 and 35 are titled as “Corporate Social Responsibility: FAQs”, “Corporate social Responsibility and CSR Rules” and “Mandating CSR-Will Spending based Measures lead to Responsible Corporate Citizens?” respectively. Under chapter 33, it had been pointed out that the clarity about allowing of CSR expenditure is not there at present for which the Central Board of Direct Taxes (i. e. CBDT) should come with a clear view. However, in his view, this should be allowed as a business expense on the principle that it is a way of doing sustainable business. Under chapter No. 35 of his book, he had examined the effect of mandating CSR spending by the companies. In this respect, he has stated that more and more and more laws and regulation are also accompanied by scams after scams. So, the major question is whether there is a lack of law or lacuna in the implementation of the law. He is, therefore of the view that CSR spending is a responsibility which should come from within and hence, mandating CSR spending is not the solution to the problem. Mandating CSR may not lead to a good corporate governance rather creating awareness for the need and benefit of CSR is the ultimate solution.

CLA & ICSI (2014) had divided the whole book into two divisions i.e. Division I and Division II. Division I of the book contained 29 chapters dealing with 470 sections of the Companies Act with section wise concise commentary and 7 schedules i.e. Schedule I to Schedule VII to the said Act. Division II contains 12 referencers for simple and easy understanding of important matters related to the Companies Act, 2013 from the point of view of practical application of the provisions of the said Act. Under chapter IX titled “Accounts of companies”, section 135 of the Companies Act related to the Corporate

Social Responsibility has been followed by concise commentary thereon in which they had stated that though it is mandatory to contribute specified amounts towards CSR activities, yet if the company fails to contribute, it is only required to specify reasons in the board report for failure. There is no fine or penalty provided in the section for its failure to contribute towards CSR activities as per section 135(5) of the Act.

ICSI (2010) dealt with the matters related to corporate social responsibility under various headings like CSR Policies, Channeling CSR Activities, Fund allocation for CSR initiatives, Alignment to business Activities, Employees' Welfare, Care for Environment, Resource Management, Water Management, Waste Management, Sustainability Reporting, climate change Measures, CSR Audit, Environment, Social and Governance Index and Report of the Twenty First Parliamentary Standing Committee on Finance on the companies Bill, 2009 and Epilogue. They had mentioned that the book was the result of the study of top companies that participated in the ICSI National Award for Excellence in Corporate Governance" during 2008-10. Their study analyzed the response to first and second questionnaires received by the ICSI from top 25 participating companies, in particular relating to CRS policies, fund allocation, care for environment, measures relating to climate change and sustainability reporting. These responses were analyzed by them with a view to provide an insight into the practices followed by the companies in India and their commitment towards CSR. The ICSI team had, inter alia, dealt with the CSR policies, the factors to be included in an effective CSR policy including vision, implementation, fund resources, medium of dissemination of CSR information and management commitment.. They had concluded that CSR was no more an expenditure but an investment for longevity and sustainability of the enterprise. They had also stated that CSR activities should not ignore the employees' welfare because they are the core stakeholders and they should, inter alia, be provided healthy working environment and equal opportunities for their growth. They had concluded that for the business leaders there is only one thing that is certain and that is that business will change ever faster, issues will become more complex and CSR will continue to be one of the most challenging aspects of the business. They had also stated that setting up of industries was essential for the economic development of the country and the people, simultaneously; the maintenance of the natural resources that would be affected by the industrial usage and wastage was inevitable for the sustenance of the planet. It was not the responsibility of the single individual or single company but of every single person on this planet Earth.

Jasthi, Lawaharlal (2014) had manly dealt with the issues of Social Responsibility Versus

Social Accountability. He had pointed out the fact that only corporates should not be burdened with social responsibilities but also the individual citizens of the country who owe to the society in more than one way. He had also criticized the provisions of mandating of CSR for corporates as shifting of burden from the Government which was its duty. He had criticized the provisions on the ground that the company is being mandated to incur amounts on the CSR activities which are alien to its objects in the MOA. Hence, he had suggested that individuals should also be made accountable along with corporates. He expected the company secretary to rise to the occasion to ensure the protection of the interest of the company so that funds of the corporates were not used for any alien purposes.

Banerjee, Sunil Kumar (2014) dealt with the positive and negative points of the provisions of the Companies Act, 2013 related to the Corporate Social Responsibility. He had analyzed the provisions of section 135 of the Act read with schedule VII to the Act. He had suggested that while formulating the CSR policies, it should be ensured that there is a close linkage between such policies and the vision and mission statement of the company. He had appreciated the mandating of the CSR activities for the companies but had also expressed the view that very few companies out of the huge number of companies in India were covered. He was of the view that this was just the beginning and in future more and more companies might be covered. Gradually, there would be a mindset change in the top corporate managers towards growing need of social awareness and CSR law would yield more benefits in the years to come.

Singh Narendra and Arpita Banerjee (2013) referred to section 135 of the Companies Act, 2013 which mandated the companies having net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profits of Rs. 5 crore or more to incur at least 2 % of their net profits upon CSR activities mentioned in Schedule VII to the said Act which, inter alia, included contribution or funds provided to technology incubators located within academic institutions approved by the Central government. Section 35. Of the Income Tax Act, inter alia, allowed deduction of 125 % of the sum contributed to an approved research association having objective of research in social science or statistical research or to a university, college or other institutions to be used for research in social science or statistical research. Such association or university or college should be approved by the I.T. department of Government of India. Thus, in their opinion, spending on scientific research appeared to be one of such areas which would give the companies dual benefits of complying with the requirements of the Companies Act, 2013 and availing appropriate benefits under the I.T. Act. Hence, companies would tend

to allocate certain part of the CSR amount on scientific research which could become a boon for the specified institutions/universities/college engaged in scientific research. Finally, they were of the view that spending on scientific research would also immensely benefit Indian companies and they would have competitive edge globally.

Pandey, T.N.. (2013) mainly dealt with the point whether the concept of Corporate Social Responsibility under the Companies Act, 2013 was well-conceived or not from the point of view of legislators. The author, with reference to the provisions of section 135 of the Companies Act, 2013 read with schedule VII to the said Act, had pointed out that because of the high criteria given in the Act, a few companies i.e. only 8000 companies out of 13.29 lakh of companies were expected to be covered under CSR mandate. He had also pointed out that if the CSR spending was allowed as one of the deductions under section 11 to 13 of the I.T. Act, 1961, it might encourage such spending. The recommendation of the preference to local area for CSR spending would lead to compromise with the interest of the country as a whole. There would be a problem if the CSR spending was not one of the objects in the Company's MOA. He also pointed out that there was no clarity as to the use of unspent amount from CSR. The author had, therefore, suggested that the companies should undertake CSR activities in a systematic manner for the good of the general public which would enhance their image and thus their competitive edge. In his opinion, Companies should be given CSR credit on the criteria fixed in advance like carbon credit and such credit should be non-transferrable. He also suggested that more companies should be covered under the criteria by lowering down the same under section 135 of the companies Act. He suggested for a special CSR audit and the audit report should include a mention of CSR and this would avoid superficial approaches of companies towards CSR. He also suggested that a committee of in-house officers of the MCA should be framed for implementation of the CSR scheme.

Kaufmann, Dd. Dipl.-Vw. and Olaru Marieta. (2012) had in their research paper made an effort to find out whether the impact of corporate social responsibility on the business performance could be measured or not. The authors had tried to suggest as to how the impact of CSR activities on the business performance could be measured. They had dealt with the newer trends of business performance showing that one can observe a shift from the classical short term analysis with particular focus on the indicators like shareholder value, revenue and market share towards soft indicators like employee and customer satisfaction that contribute to the long term success of the company. The author had based his criteria to measure the impact on business performance based on the European Foundation of Quality Management

(EFQM) criteria. The paper also dealt with the latest trends in the field of CSR and offered a possible way to measure the business performance based on stakeholder concept.

Kesri, Gyanendra Kumar (2014) in their article referred to the statement made by Mr. Sai Venkateswaran, Partner and Head of Accounting Advisory Services at KPMG India that India was the only country in the world to legislate on the CSR. Mr. Venkateswaran had also said the amount of spending will be from 10000 crore to Rs. 15000 crore. He further said that Some issues related to taxation had to be resolved. Mr. Kesri also referred to the statement made by Mr. Siddharth Birla, President of FICCI who said that the industry would by and large welcome CSR provisions but some issues regarding the implementation of CSR and taxation had to be resolved. He had expressed a hope that Ministry of Finance should come up with a clarification about tax aspect of CSR spending. Mr. Kesri had expressed the view that CSR amount can't be allowed as deduction under I.T. Act, 1961 because it is not the spending in the course of business.

RESEARCH METHODOLOGY

The study was begun primarily based on the content analysis of various provisions of the Companies Act, 2013. During this course, it was found that section 135 of the companies Act 2013 specifically dealt with the corporate social responsibility as rules have been framed recently and highly debatable. It was further found that the companies (Corporate Social Responsibility) Rules 2014 had also been dealing with various procedural provisions related to CSR and Schedule VII to the companies Act 2013 had been dealing with the various kinds of activities which could be undertaken for the purpose of CSR. To interpret the provisions of Companies Act, 2013 related to CSR in right direction, various articles published in the newspapers, 'Chartered Secretary' and research study of ICSI was undertaken. The semi-structured interviews with experts, academicians and practitioners have also been made with their prior approval in the month of September, 2014 to have their observations on the newly enacted provisions of CSR. An effort has also been made to find out the deficiencies mainly in the regulatory provisions so as to recommend ways and means to make the CSR provisions more effective as intended by the legislature.

ANALYSIS AND DISCUSSION

Analysis of the provisions of the Companies Act, 2013 read with Schedule VII to the Act

and the Companies (Corporate Social Responsibility) Rules, 2014: These provisions may be analyzed and criticized under the following main points:

Companies covered under section 135 for CSR: Such companies (either public or private) are those which have either (a) net worth of Rs. 500 crore or more or (b) turnover of Rs. 1000 crore or more or (c) net profit of Rs. 5 crore or more. It means that the company fulfilling any of the above three criteria will have to fulfill the obligations of CSR. However, first, there seems to be no justification for excluding business organizations other than the companies under the Companies Act, 2013 from incurring expenditure on CSR activities. It has been contended that *company uses the resources belonging to the society* and hence, by spending the amount on CSR, it should return a part of what it has gained by the use of such resources of the society. On the same ground, other business organizations like partnership firms and sole proprietorship concerns etc. doing business for their benefit *also use the resources belonging to the society* and hence it should be made mandatory for them also to return to the society a part of what they have gained through the use of resources of the society. But such organizations have not been mandated to do so by a regulatory provision and therefore, this may be said to be a type of discrimination, whether deliberate or indeliberate, based on the type of business organization.

Secondly, there also seems to be no justification behind not mandating individuals having income above a ceiling limit (popularly called High net worth individuals i.e. HNI) to incur certain specified amount of their earning on CSR activities. CSR expenses are incurred for the benefit of the individuals in the society. There are many individuals in the society who are so wealthy based on their high earnings (popularly called high net worth individuals) that they can maintain a number of families while, on the other hand, there are individuals in the same society who are not able to fulfill their bare basic needs even. In such a situation, is it not the responsibility of such individuals that they help the latter types of individuals at least to fulfill their bare basic needs? But, unfortunately, in case of maximum individuals if not all, Indian mindset is such that unless they are mandated to part with a part of their resources by law, they will never do so on their own.

Lastly, there is a coverage of lesser number of companies: As per the estimate as in the article in the Business standard and the Economic Times, only 8000 companies are expected to be covered under the mandatory provisions of CSR which is less than even one-half percent of the total number of companies in India mainly because of the high limit of turnover/net worth/net profit set for coverage of companies under the Act

Constitution of CSR committee: Every company falling under any of the criteria under 5.1.1 above will have to constitute a CSR committee which shall consist of minimum 3 directors out of which at least 1 director shall be an independent director. But as per rule 5(1), an unlisted public company which is not required to appoint an independent director shall also constitute such CSR committee with minimum 3 directors without any of such directors being independent. Further, a private company will also constitute a CSR committee of 3 directors in case they have 3 or more directors but if the private company has only 2 directors, such directors will be the members of CSR committee also. However, it may be thought that in the case of a private company, where there are only two directors, both the directors will form the membership of the CSR committee and of the Board of directors also, no practical purpose seems to be served by forming a CSR committee with the same individuals who are the members of the Board.

Functions of CSR committee: To formulate a CSR policy containing the activity/activities referred to in schedule VII and recommend the same to the Board; to recommend the amount of expenditure to be incurred on the activity/activities mentioned above; to monitor the CSR policy from time to time; and to submit a responsibility statement: The CSR committee shall also submit a responsibility statement in the annual report on the CSR to be included in the Board's report that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Functions and responsibilities of the Board of directors in relation to CSR: Approval of the CSR policy: The Board shall approve the CSR policy for the company *taking into account the recommendations* of the CSR committee. The Board shall disclose the contents of the CSR policy approved by it in the Board report and shall also place the same on the website, if any, maintained by the company. It is the responsibility of the Board to ensure that the activity/activities included in the CSR policy are undertaken by the company. The Board shall also ensure that the company spends minimum 2 % of the average net profit of the company during the 3 immediately preceding financial years on the activity/activities in the CSR policy. While spending the amount aforesaid, the company shall give preference to the local areas and areas around it.

If the company fails to spend minimum 2 % as aforesaid, the Board shall disclose the *reasons* for spending no amount or for spending fewer amounts in its Report. This indirectly compels a company to spend the amount of minimum 2 % of the average net profit because if the Board does not so spend the amount, it will have to consider

seriously as to what reasons should be included in the Board's report which should be valid in the eyes of the public. Further, even if the excuses are found for one or two years for no spending at all or for less spending, these can't be so found for all time in future because if it is so done, it will endanger the image of the company in the eyes of the public which will, in all probability, seriously damage the business of the company.

However, there is no clarity as to what should be the valid reasons for non-spending or less spending the amount on CSR: If the companies do not want to spend the amount or want to spend less amount on CSR as per section 135, they have to specify the reasons for the same. It means that there are two ways out of which the company can choose the one i.e. either to spend the amount or to spend no amount. Obviously, the Indian companies which do not want to spend the amount on CSR can find a number of reasons for not spending the amount. There is no specification in the Act or in the rules as to what kind of valid reasons can be given by the companies for not spending/less spending the amount.

Precautions to be taken in spending the amount on CSR policy: The company must take care that the amount is not spent *only for the benefit of the employees and their family members* because in such a case, the amount spent will not be considered as the amount spent on CSR policy. Impliedly, therefore, if the amount is spent on the members of the society including the employees and their family members also, the whole amount, including the amount spent on the employees and their family members, will be considered as the amount spent on the CSR policy. Further, the amount must be spent on the CSR activities in India only otherwise; the expenditure incurred will disqualify for the purposes of section 135. The amount of contribution for/to political purposes/political parties under section 182 will not qualify for the purpose of spending under section 135. The CSR activities do not include the activities undertaken in pursuance of the normal course of business of a company.

Manner of spending the amount: The amount as per section 135 of the Act should be spent through *registered trust or registered society or a company established by the company or its holding company or its subsidiary company or an associate company under section 8* of the Act. If the company does not so spend the amount i.e. it itself spends the said amount, it must have an established track record of undertaking such activities for a minimum period of 3 years.

However, there is no guidance to establish the fact that the company has an established track record: With reference to point 5.1.6, it is clear that there is no guidance in the rules

as to how to prove whether the company has an established track record of undertaking similar activities for a minimum period of 3 years so that it can itself spend the CSR amount. This may create disputes between the regulatory authorities and the company while establishing whether the provisions of CSR have been complied with or not.

Calculation of the net profit for the purpose of section 135 : The net profit shall be calculated as (a) If the company is an Indian company: The net profit shall be calculated as per section 198 of the Act but the *income received by the company from the overseas branches* whether operated through the medium of a company or otherwise and the *dividend received from a company covered under section 135* shall be excluded. (b) If the company is a foreign company: The net profit shall be calculated as per section 381(1) (a) read with section 198 of the Act. It has been provided that the amount unspent as per the rules shall not be treated as the business profits of the company. However, actually, there is no mention in the Act that while calculating the amount of net profit for CSR purposes, the amount to be spent on CSR should be considered as an expense to be deducted. It means that the company has to first compute the net profit without considering the amount to be spent on CSR as deduction. Thus, CSR should be out of the net profit just like an appropriation of profit.

Prescription under section 135(4) (a) of the Act: Section 135 (4)(a) of the Act states that the Board shall approve the CSR policy and shall disclose the contents of the CSR policy in its Board Report and shall also place the same on the website, if any, of the company in the prescribed manner. The Government has prescribed a format of such contents containing 8 columns through an annexure to the rules.

CSR activities covered under Schedule VII of the Act to be undertaken by corporates as (a) Eradicating hunger, poverty and malnutrition, healthcare including preventive health care and sanitation and making available safe drinking water; (b) Promoting education, including special education and employment enhancing vocational skills, especially among children, women, elderly, and the differently abled and livelihood enhancement projects; (c) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old age homes, day care centre and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups; (d) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources, and maintaining quality of soil, air and water;(e) Protection of

national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicraft;(f) Measures for the benefits of armed forces veterans, war widows and their dependents;(vii) Training to promote rural sports, nationally recognized sports, Paralympic sports, and Olympic sports;(g) Contribution to the PM's National Relief Fund or any other fund set up by the Central government for socio-economic development and relief and funds for the welfare of SCs, STs, OBCs, minorities and women;(h) Contribution or funds provided to technology incubators located within academic institutions which are approved by the Central government;(i) Rural Development projects. *However, first, there seems to be no justification for mandating expenses on the above activities:* As per the fundamental principles of corporate laws, a company can use its funds only for the purposes for which it has been incorporated and not otherwise. The purpose for which the company has been incorporated is given in the objects clause in the Memorandum of Association of the company. If the object clause of the company does not include, as one of its objects, the spending of the amount as per section 135 on CSR activities given in schedule VII, will it still be justified for the company to spend the said amount on CSR? The answer is certainly in the negative but, this provision compels the companies to use the funds for the purpose which is ultra vires as per the Memorandum of Association of the company.

Secondly, *nature of activities mentioned above being is very vague and ambiguous:* Under clause (ii), the expression "Promoting education, including special education" is very ambiguous because education and special education, unless clarified objectively, may lead to an avoidable dispute. Under clause (iii), the expression "Promoting gender equality and empowering women" is also ambiguous as to the nature of activities that can be said to promote gender equality and empowerment of women. Similarly, under this clause, the expression "Measures for reducing inequalities faced by the socially and economically backward groups" is also vague as to the nature of specific activities which would fall under such measures. Under clause (iv), it is not clear as to what activities can be said to be the ones to ensure environmental sustainability and ecological balance. Under clause (vii), the rural sports have not been clearly specified. Under the original schedule (vii) to the Act, the funds set up by the state governments were also included but under clause (viii) of the revised schedule VII, the same has been excluded for which the reasons are not clear. Under clause(x), the expression "Rural Development projects" have not been clarified. Under the original Schedule VII, there was a residuary clause (X) under which some more activities as deemed desirable by the Central

Government in future could have been prescribed but there is no such residuary clause under the revised Schedule VII.

An interview was held with Mr. Nesar Ahmed, Past President of the Institute of Company Secretaries of India and a Practicing company Secretary based in Delhi. He was of the opinion that the clarity about the deduction of the expenditure on corporate social Responsibility expenditure is not there at all and this matter should be resolved immediately by the Ministry of Finance. Further, another interview was also conducted with Mr. Hemant Singh, a Practcing Comapmy Secretary in Delhi and he was of the opinion that the clarity must be brought in the nature of activities mentioned in the Schedule VII to be be undertaken by the company.

CONCLUSION

Corporate organizations are mandated to incur minimum 2 % of their net profits on CSR activities on the rationale, inter alia, that they use the resources belonging to the society and hence, they should return back to the society a certain portion thereof. CSR activities are not charities. By spending amount on CSR activities, corporates become popular in the community which helps them in getting more business from the community and this can be taken as an alternative to marketing through advertisements on which they incur expenditure. European Foundation of Quality Management (EFQM) provides an ideal framework for the measurement of CSR activities and their influence on business performance. Section 135 of the Companies Act, 2013 states that a 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 should spend at least 2 % of their average net profit for 3 financial years failing which they have to disclose the reasons in the Board's report. Schedule VII to the Act specifies ten clauses regarding the nature of CSR activities on which expenditure can be incurred. In the case of an Indian company, net profit for this purpose should be computed as per section 198 of the Act barring two types of incomes specified in the rules. In the case of a foreign company, net profit for this purpose should be computed as per section 381(1) (a) read with section 198 of the Act. But, the provisions may be severely criticized on some of the grounds as elaborated above. There are several drawbacks of the regulatory provisions as indicated above in the point 5.2. The effect of CSR activities on the business performance should be assessed as indicated under Point 5 above.

LIMITATIONS OF STUDY

The study is based on the secondary material available in the Companies Act, 2013 read with Schedule VII to the Act, the Companies (Corporate Social Responsibility) Rules, 2014, the articles published in the Chartered Secretary, some reports published in the newspapers regarding the % of companies covered under CSR provisions and materials available on the websites of the MCA, SEBI, Taxmann publishers, ICSI and Shrachi Group of companies. Besides, discussion has also been made with the teachers teaching the subject of corporate laws in Delhi University and also with the practitioners in the field.

RECOMMENDATIONS

Permissibility of CSR expenditure as tax deductible expenditure: The Income Tax Act, 1961 allows tax benefits for expenditure on charitable activities vide section 11 to 13 and section 10(23C). If the expenditure on CSR activities is allowed as deduction for tax purpose, it will definitely encourage the corporates to incur such expenditure ultimately leading to a better fulfillment of the objectives desired to be achieved by the Government of India. The said expenditure may be allowed by the Income Tax Act under section 37 of the Act dealing with general deduction for other expenses incurred for the purpose of business on the ground that the expenditure on CSR activities enhances goodwill of the company in the community ultimately resulting into attraction of more customers and increase in the business of the company thereby. Hence, such expenditure can be treated as business expenditure for tax purposes.

For this purpose, the Ministry of Corporate Affairs should have sincere conversation with the Ministry of Finance so that a circular may be issued by the Central Board of Direct Taxes for declaring such expenditure as tax deductible.

Clarification on the nature of activities stated in schedule VII: As indicated above in the point No. 5.2.5 of "Criticisms of the Provisions of the Act and the rules made thereunder on the CSR", the Ministry of Corporate Affairs should invariably clarify through rules, without any further delay, the nature of the activities in a certain and objective manner otherwise it may result in a lot of avoidable litigations as to whether the expenditure incurred is on the activities stated in schedule VII to the Act or not. There is a provision in section 450 of the 2013 Act for an imposition of penalty, where no specific penalty or punishment is provided", extending up to Rs. 10,000 and with a further fine extending up

to Rs. 1,000 in case of continuing default. Needless to say that the company may be penalized under section 450 for no fault of its own i.e. in the absence of an objective clarification on the part of the Ministry of Corporate Affairs which is totally unjustified.

Inclusion of an activity under Schedule VII: Under schedule VII, one activity related to "Promotion of communal harmony" in India, which is the need of time, may be included and other activities also depending on the need in future.

Award for excellent CSR activity undertaken by companies: The Institute of Company Secretaries of India (ICSI) gives awards to the companies in the field of corporate governance based on the decision of a Jury and invites application from companies for this purpose every year. The Institute of Chartered Accountants of India (ICAI) also gives awards to the companies every year for the best presented accounts. Similarly, the Government of India should make an arrangement for the giving of awards to five to ten companies for the best work in CSR fields. This will encourage companies to undertake more and more participation in the CSR activities for the benefit of the society which will, in return, give benefit to the company in the form of enhancement of goodwill resulting into more business to the companies.

Coverage of more companies under section 135 of the Act: At present, there are around 13.50 lakh companies registered under the Companies Act in India and around 8000 companies are initially expected to be covered under section 135 which is less than even 1 % of the total number of companies. Hence, the monetary limit in terms of net worth, turnover and net profit under section 135(1) of the Act should be reduced so as to cover more and more companies under the net keeping in view the huge population and the economic position of the common mass of India.

Inclusion of the non-spending or less spending of the amount on CSR activities without any valid reason in the audit report of the companies: Section 143 of the Companies Act deals with "Powers and Duties of Auditors and Auditing Standards". Under sub-section 3 thereof, there are 10 clauses from (a) to (j) dealing with the matters which must, inter alia, be stated by the auditor's report. The 10th clause (j) is a residuary clause under which some other matters may be prescribed by the Central Government from time to time. It is thought that the Government should prescribe the matter of CSR activities as one of the matters under this residuary clause and it should also be provided that if in the opinion of the auditors, there is a deliberate default on the part of the company regarding non-spending or less spending of the amount, the auditors should be given the power to

to Rs. 1,000 in case of continuing default. Needless to say that the company may be penalized under section 450 for no fault of its own i.e. in the absence of an objective clarification on the part of the Ministry of Corporate Affairs which is totally unjustified.

Inclusion of an activity under Schedule VII: Under schedule VII, one activity related to "Promotion of communal harmony" in India, which is the need of time, may be included and other activities also depending on the need in future.

Award for excellent CSR activity undertaken by companies: The Institute of Company Secretaries of India (ICSI) gives awards to the companies in the field of corporate governance based on the decision of a Jury and invites application from companies for this purpose every year. The Institute of Chartered Accountants of India (ICAI) also gives awards to the companies every year for the best presented accounts. Similarly, the Government of India should make an arrangement for the giving of awards to five to ten companies for the best work in CSR fields. This will encourage companies to undertake more and more participation in the CSR activities for the benefit of the society which will, in return, give benefit to the company in the form of enhancement of goodwill resulting into more business to the companies.

Coverage of more companies under section 135 of the Act: At present, there are around 13.50 lakh companies registered under the Companies Act in India and around 8000 companies are initially expected to be covered under section 135 which is less than even 1 % of the total number of companies. Hence, the monetary limit in terms of net worth, turnover and net profit under section 135(1) of the Act should be reduced so as to cover more and more companies under the net keeping in view the huge population and the economic position of the common mass of India.

Inclusion of the non-spending or less spending of the amount on CSR activities without any valid reason in the audit report of the companies: Section 143 of the Companies Act deals with "Powers and Duties of Auditors and Auditing Standards". Under sub-section 3 thereof, there are 10 clauses from (a) to (j) dealing with the matters which must, inter alia, be stated by the auditor's report. The 10th clause (j) is a residuary clause under which some other matters may be prescribed by the Central Government from time to time. It is thought that the Government should prescribe the matter of CSR activities as one of the matters under this residuary clause and it should also be provided that if in the opinion of the auditors, there is a deliberate default on the part of the company regarding non-spending or less spending of the amount, the auditors should be given the power to

qualify the audit report. If this is done, it will compel the companies to take up the CSR activities seriously which will provide the real benefit to the society as intended by the law makers. Mandating the CSR requirement is not the solution to the problem: More and more laws and regulations are followed by scams and irregularities. CSR is a responsibility that should come from within and not through regulation. Creating awareness for the need and the benefit of CSR to the corporates is the real and ultimate solution. The use or misuse of the CSR policy will be ultimately determined by the intent of companies.

REFERENCES

- Kothari, Vinod** (2014). *Taxmann's Understanding Companies Act 2013-A Comprehensive Commentary with FAQs on Selected Issues under Companies Act, 2013*. New Delhi: Taxmann Publications (P.) Ltd. p294.
- Corporate Law Adviser and ICSI (2014). *Guide to Companies Act 2013-section wise Commentary with annotations on Rules & Forms and Referencer, 2014, corporate LawAdviser: P 238,239&240*
- Team of ICSI - (2010). *Corporate Social Responsibility-A Research Study on corporate Practices in India*. New Delhi: The Institute of Company Secretaries of India. p 1,3,4,10 &13.
- Jasthi, Jawaharlal.** (2014). *Social Responsibility Versus Social Acceptability*. Chartered Secretary. XLIV (05), p 580-583.
- Banerjee, Sunil Kumar.** (2014). *Corporate Social Responsibility: Provision in the Companies Act, 2013*. Chartered Secretary. XLIV (05), 575-579.
- Singh Narendra and Arpita Banerjee.** (2013). *Corporate Social Responsibility in the Companies Act, 2013-A boon for scientific research*. *Chartered Secretary*. XLIII (10), p1187-1190.
- Pandey, T.N..** (2013). *The Concept of Corporate Social Responsibility under the Companies Act, 2013- Whether well-conceived?*. *Chartered Secretary*. XLIII (09), p 1053-1057.
- Kaufmann, Dd. Dipl.-Vw. and Olaru Marieta.** (2012). *The Impact of Corporate Social Responsibility on Business Performance-Can it be measured, if yes, How?.* The Berlin International Economics Congress. -(), p5, 6 &7.

WEBSITES

www.mca.gov.in
www.sebi.gov.in
www.corporatelaws.taxmann.com
www.shrachi.com
www.icsi.edu
www.icsi.in

STATUTE

Taxmann- (2014). *Taxmann's Companies Act 2013 with Rules*. 2nd ed., New Delhi: Taxmann Publications (P.) Ltd.. p1.120, 1.121 & 1.415.