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THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2022 – OVERVIEW AND CRITICAL ANALYSIS

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ABSTRACT

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (2022 Amendment Rules) in the place of Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules) were issued recently by the Ministry of Corporate Affairs. Recommendations were put forward by the Competition Commission of India, Ministry of Corporate Affairs, Competition Law Review Committee (CLRC), and other stakeholders, researchers, FICCI, etc. in the report¹ of The Joint Parliamentary Committee on Finance on 14-12-2021. As of now, the Amendment Rules will be in effect in a prospective nature. Discussing Corporate Social Responsibility following corporate governance, the laws related to CSR in India include Section 135² and Schedule VII³ of the Companies Act, 2013 along with the CSR Rules. In the scenario of the recent amendment, the Ministry of Corporate Affairs also amended the Companies (Accounts) Rules 2022 to provide a new Form CSR-2 (*Report on Corporate Social Responsibility (CSR)*). In this article, we will discuss The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022, key changes introduced, and also the robust nature of Corporate governance, i.e. Corporate Social Responsibility rules.

KEYWORDS: corporate governance, Company, corporate social responsibility, Company law, *economics, social goals.*

INTRODUCTION

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (2022 Amendment Rules) aimed to make changes in the Competition Act, 2002⁴ which directly going to affect mergers and acquisitions to a greater extent with include transactions above 2000 cr

¹ Joint Parliamentary Standing Committee on Finance, Report on Competition (Amendment) Bill, 2022, <https://164.100.47.193/lsscommittee/Finance/17_Finance_52.pdf>.

² Companies Act 2013, s.135

³ Companies Act 2013, schedule VII

⁴ Competition Act 2002

would require CCI approval with a notion to reduce the time frame and also before amendment legal entities like individuals or organisations were considered parties to anti-competitive agreements. Through this bill, there was a conscious effort to broaden the organisations or individuals that may be partied of those agreements. Also, attempt to stop the misuse of the dominant position were taken seriously by offering a structure for agreements and inquiries related to reports must be hastened.

According to the bill, the evaluation of the deals must use the value of the transaction in case of acquisition of firms dealing in digital markets⁵. This is because they might not come under standard assets since their valuation deeply depends on specific business innovations. The Bill requires an amount to be deposited along appeal against the order of CCI before NCLT. The amount is specified as 25% of the amount imposed by CCI. Furthermore, defense in the name of Intellectual property rights can be used often but this defense can't be used in case of abuse of dominant position. But here the ambiguous nature in the case of the meaning of direct, indirect, and deferred consideration exists and also there doesn't exist a proper guide on how the deal value is to be calculated⁶ in the definition of the transaction.

CORPORATE SOCIAL RESPONSIBILITY

CSR (Corporate Social Responsibility) is a responsibility that the business world assumes following their operations on every shareholder, consumer, community, etc. The Corporate social responsibility concept in one way or another benefits all the above-mentioned sectors of entities as it includes treating the stakeholders ethically in a responsible manner under international standards, in addition that defines how corporations run their business which results in a good overall impact on society as a whole.

The definition of Corporate social responsibility comes under *Section 135 of the Companies Act, 2013*⁷. Under this act, it states that,

(1) Every company having a net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or a net profit of rupees five crores or more during three

⁵ Pavan Burugula, "Anti-trust Regulator to get a Say in Global Digital M&As", *The Economic Times* (8-8-2022), <<https://economictimes.indiatimes.com/tech/technology/global-digital-ma-set-to-come-under-the-purview-of-anti-trust-regulator/articleshow/93413829.cms?from=mdr>>.

⁶ Pavan Burugula, "India Inc Worried over Lower Deal Value Limit under Competition Bill", *The Economic Times* (26-11-2022), <<https://economictimes.indiatimes.com/news/india/india-inc-worried-over-lower-deal-value-limit-under-competition-bill/articleshow/95773652.cms?from=mdr>>.

⁷ Companies Act, 2013, s. 135

shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Sub-section 3 of section 134⁸ of the Act, states that CSR committee composition must be disclosed mandatorily. Also, the recommendations, and reports given by the company must be taken seriously. CSR policy must be approved by the Board of the company and all relevant information; policies must be displayed on the company's official website. Also, diligence performance must be frequently confirmed and any variation from CSR policy must be strictly corrected immediately and also reasons for such non-performance must be stated. The calculation of average net profit required for the above is calculated according to Section 198 of the Companies Act, 2013⁹ Furthermore, the CSR committee composition consists of three or more directors with at least one independent director, and they have the responsibility of regulating all policies related to CSR annually. Also, they must revise the policy and further put forward the recommendations to the company annually related CSR activities and also supervise the CSR policy of the company. Contributions to a charitable trust or undertaking such socio innovative project can be considered as such a socio-impact initiative towards spending CSR amount. It can happen in the name of the company, or through its unit or such project activity can happen through non-governmental organisations(NGOs).¹⁰

Discussing exactly in numbers, as per CSR laws companies are necessitated to be part of CSR activities, and also 2% of their average net profit from the three fiscal years before the current one need to spend on CSR initiatives.

A Company with Rs 500 crore or more net worth, Rs 1000 crore or more turnover, and Rs 5 crore net profit or more must act according to the CSR provisions. Also in the case of foreign branches those who have a branch in India must comply with CSR provisions if they match the above number criteria. Furthermore, activities that are only beneficial for employees, taken as a part of the course of business, sponsorship, political contributions, and spending on statutory obligations outside India can't be included as a part of proper CSR spending of the company. There is an exclusion of the above said in case of money spend on training sports entities.

⁸ Companies Act, 2013, s. 134

⁹ Companies Act, s.198

¹⁰ Nilesh Vasa and Anindita Sarkar, *A taxing "Corporate Social Responsibility for Companies under GST?"* dated 14-5-2018 published in LSI LawStreetIndia.

EVOLUTION OF CSR LAW

Evolutionarily we could see 5 phases of CSR development in India. Initially in 1914 CSR was recognized as a charity scheme. Afterward the arrival of British people and further colonization, industrialization made significant changes in CSR too. Major entities that had a part in the economy and considered economic factors were TATA, Godrej, Bajaj, Birla, etc. Nevertheless, those initiatives taken by entities were a result of government interests. Pre-independence movement just rocketed phase II of CSR development. The need to build a healthy relationship between consumers and stakeholders also assisted this process. Phase III of CSR evolution was more uprooted in increasing transparency, to improve social accountability, and that happened in the Post-independence era, where many public sector undertakings came up, and CSR law emerged at the same time. To increase transparency, there were workshops conducted, the aim was to improve corporate governance and thereby reduce corporate malpractices. But the workshops weren't a huge success. Phase IV was characterized by replacing conventional methods of CSR with sustainable business policies. This came along with an economic hike and also Globalization, Privatization, and Liberalization. Many government initiatives and policies helped the business firms to flourish at this time so they were able to contribute to social needs thereby creating a social balance. These contributions hustled the government the action to formulate CSR laws. After all this again globalization was at its peak, and the country received magnificent investments from overseas markets leading to more need to draft the CSR law. During the 4th phase, there was an initiative from part of the government that some firms were made to spend CSR mandatorily. Phase V was characterized by Intellectual and social capital initiatives. This made an effect on the product manufacturing strategy which enhanced the sustainability of corporate along with human capital, along to grew to a stage where it could be a substitute to enhance fair practices. Altogether Phase V aimed at society wellness and restructuring the business. This was a sustainability-promoting phase and helped to know the positive impacts of industrialization in society.

ACTIVITIES THAT CAN NOW BE INCLUDED AS CSR AS PER THE NEW AMENDMENT:

Until the financial year 2022-2023, Covid related activities which include the company's working on medical services, equipment, masks, and vaccines can include those expenditures in CSR. However, in their annual sum up/ journal, there needs to be a separate disclosure, and also such

activities must be in collaboration with the institute specified in Schedule VII of act.¹¹

The organizations, self-help groups, and public organisations must own the assets and projects which utilized the CSR fund.

Until the financial year 2022-2023, Covid related activities which include the company's working on medical services, equipment, masks, and vaccines can include those expenditures in CSR. However, in their annual sum up/ journal, there needs to be a separate disclosure and also such activities must be in collaboration with the institute specified in Schedule VII of act¹² within 30 days (like PM National Relief Fund, PM Cares Fund etc. Furthermore if the reallocation of funds happens to any CSR project, the within 6 months of the end of the financial year, all unspent money has to be transferred to any Schedule VII¹³ specified funds. Additionally in case any surplus amount of CSR activities, then could spend on same project, transferred to an unspent CSR account and also could transfer to the funds in Schedule VII of act.¹⁴

Also if a company ceases to be a company under section 135(1) of the companies act¹⁵ for a period of three consecutive financial years, then no need to comply with CSR mandatory provisions.¹⁶

On harmonious reading of Section 135(1) and Rule 3(2), we get to know that: For initiating the application of the CSR scheme we need to read Section 135(1) and Rule (3) gives an idea of till which financial year CSR applicability exists. There is an important point to add here, i.e. for any one financial year, if a company doesn't meet the criteria mentioned under sec 135(1) doesn't exclude it from CSR-related activities. Therefore the word 'three consecutive financial years' has its significance. Always there was an ambiguity related to rule 3(2) and now it's been omitted accordingly.

NEW FORMAT OF ANNUAL REPORT ON CSR

The government has released a new modified format for the annual report on CSR-related activities. This new format seems to be more comprehensive and also synced with newly

¹¹ Companies Act 2013, schedule VII

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Companies Act 2013, sec 135(1)

¹⁶ Companies (Corporate Social Responsibility Policy) Rules 2022, Rule 3(2)

introduced changes in CSR rules. The disclosure amount has been reduced dramatically. Now there is no obligation to provide CSR project-specific information in detail. This relaxation will help corporates to go on with their business in an easy manner and to oblige the CSR provisions properly. Additionally, the CSR committee composition is required to provide a summary of CSR projects carried out and hyperlinks to CSR initiatives implemented. Also in the annual report, there need to publish the CSR amount allocated to ongoing projects, also information regarding excess or unspent CSR amount if any for the preceding three financial years. Also, details of assets brought by CSR amount need to be disclosed in the new format of the report. Additionally if the company in the three preceding financial years fails to spend 2% of average net profits, reasons for such a failure must be provided in the report.

INTERNATIONAL ORGANISATION'S AID PROVISION

In the history of CSR rules, the First time amendment allowed corporates to receive assistance from international organisations and thereby allowing them to play a role in the corporate governance ecosystem. The definition of an international organization is defined under the United Nations (Privileges and Immunities) Act, 1947.¹⁷ Thus this covers entities like ILO, UNESCO, WHO, the Food and Agriculture, etc.¹⁸ under this newly added rule provision companies can appoint an international organization for evaluating CSR projects, supervising same as per its policy. However, there is a cap of five percent, if it is related to general management area and administration of CSR functions, on administrative overheads.

CASE STUDY: HOW HAVE CSR PRACTICES IMPACTED THE COMPANIES BOOST OPPORTUNITIES

CSR has attracted new business opportunities and created job opportunities. In this section, we are going to discuss the positive social impact of CSR and also the business aspect of CSR through two case studies.

In the year 1921 Nestle started their business and they had their major activities in developed foreign countries. Nestle was established as one of the world's largest renowned food and beverage companies. Around the 1960s Nestle attempted to enter the Indian market. At that time India was facing severe poverty and economic disaster. Nestle contributed to Indian Economy through CSR

¹⁷ The United Nations (Privileges and Immunities) Act 1947.

¹⁸ The United Nations (Privileges and Immunities) Act 1947, sec 3

provision. Furthermore indulging in that activity Nestle helped the farmers, peasants, and dairy sector. CSR increased the reputation of companies and at the same time created a sense of trust among the consumers and stakeholders, also helped to boost the Indian economy by creating job opportunities. As time passed business flourished, supply and chain management got strengthened, more foreign investments came also the ratio of charitable contributions also increased. We could conclude 3 types of hypotheses from the above case study regarding CSR policy. The first one is the sustainable business model put forward by Nestle, which helped all level employers in the long run. Secondly, the value creation model was rooted in loyalty towards enterprise from employees and consumers. Also, the surplus made by the enterprise was equally shared among underprivileged people through this policy, gradient among customer trust, satisfied employees, and market shares were steady. Thirdly, to implement CSR and thereby build True value for the enterprise, the major driving forces are increased market share and satisfied customers. These are all conclusions we could drive from above and also the benefits of implementing CSR policy.

In *Polycab Wires (P.) Ltd., In re*,¹⁹ here the applicant, who is a dealer in electrical goods, had supplied electrical items to Kerala State Electricity Board (KSEB) through its distributors spread across the State in connection with reinstating connectivity as a part of the 'mission connectivity'. The applicant also distributed cables, fans, etc. without collecting money under CSR expenses to the people of flood-affected areas. Afterward in the invoice issued, the distributor valued the goods and it was shown as a 100% discount. In the preliminary ruling, it was required to "Determine the GST liability of free supplies to KSEB by the petitioner's distributors for restoration of connectivity in flood-affected areas and admissibility of the input tax credit on the purchase of such goods. Thus, under Section 17(5)(h)²⁰ of the applicability of CSR expenditure under the KSGST Act and the CGST Act²¹ under which no ITC can be claimed.

The expenses incurred as a result of CSR will not be considered in the "furtherance of business". This can be concluded from GST provisions. But CSR boosts the business profitability and also thereby increases the corporate financial performance. Thus we could say in a matter that say that CSR expenses are "in furtherance of business". But as far as we consider the laws and related provisions, CSR expenses are still not seen in a business profitability aspect.

¹⁹ *Polycab Wires (P.) Ltd., In re*, 2019 SCC OnLine Ker AAR-GST 1

²⁰ Kerala General Sales Tax Act 1963, sec 17(5)(h)

²¹ Central Goods and Service Act 2017

CONCLUSION

To strengthen the CSR regime in India the 2022 Amendment Rules are very essential. 2022 Amendment rules include a broader spectrum of entities. After this more corporates were eligible for CSR activities and related project implementation. There have been enormous changes in the role of the business sector worldwide. The growth of poor nations has taken a major turn on financing and new businesses. The organisations of the 21st century will have no real option except to follow CSR. CSR policies become increasingly crucial for whatever business's existence as a result of globalization and liberalization. Additionally, existing key requirements like the CSR committee constitution, the format of reporting, CSR expenditure norms, etc were more justified and explained due to Amended CSR rules.

However, some drawbacks need to be discussed which include the new format of CSR being made applicable for the financial year commencing on or after 1,2020 instead of on or after April 1, 2022, itself creates an impression of inadequate drafting by the Ministry of Corporate Affairs. Additionally releasing a new format of CSR REPORT on 2022 says its implementation from financial year 2020 itself drew the practical difficulty in implementation. Furthermore, Rule 3 was omitted and the effect of this deletion includes that suppose if a company's net worth was more than Rs 5 crores as per financials of FY 2020-21 but if the company didn't fulfill the criteria of turnover and net profit in the financial year 2021-22, then company don't need to comply with the CSR provisions in the financial year 2022-23. This implies that on yearly basis applicability of CSR provisions may keep on changing. Therefore there has to be more clarification, excellent drafting, and provide appropriate time to constitute the CSR committee. Also, Ministry needs to make sure that supervisory activities, management activities, composition, constitution, and election of CSR committee members happen judicially.