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ANALYSIS OF THE COMPANIES ACT, 2013 IN CONTEXT OF CORPORATE SOCIAL RESPONSIBILITY POLICY

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Abstract:

The sixty years old Companies Act, 1956 has been replaced by new Companies Act, 2013 recently from 29th August, 2013.This new Companies Act has included section 135 and schedule VII which emphasizes on Corporate Social Responsibility Policy guidelines and made its implementation mandatory for giant profitable companies. In old companies Act, 1956 such legal guidelines were lacking and thus CSR was purely voluntary upon them. This paper is an attempt to analyze the CSR Policy guidelines given in the new Companies Act. 2013. The paper's major focus is on the salient features of the CSR Policy. The paper is descriptive and based on relevant literature review such as hand book on CSR Policy, articles from the newspaper, internet and research papers. It concludes on a positive note by stating that this policy will lead to popularize the concept; corporate citizenship and ensure inclusive growth and sustainable development through better corporate support to the government.

Key words: Corporate social responsibility, CSR Policy, CSR Committee, CSR activities

Objective:

The objective of this paper is to elaborate upon the salient features of CSR Policy introduced in the new Companies Act, 2013 under section 135

Methodology:

The paper is descriptive and based on my conceptual understanding about the CSR and its related articles.

Defining Corporate Social Responsibility

The Corporate Social Responsibility (CSR) is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the work force, their families as well as of the local community and society at large.The well accepted definition of CSR is not a common term; MNCs prefer sustainable development or sustainable business while several Indian companies talk about responsible business or Triple P (People, Planet, and Profit).

It is important to note that Indian companies and stakeholders give a broader definition of CSR than MNC and stakeholders. According to the Indian Corporate: “Sustainable development implies optimizing financial position, while not depleting social and environmental aspects and CSR implies supporting issues related to children, women and environment”.

An Overview of the Companies Act, 2013

The Companies Act, 2013 (‘2013 Act’), under the initiative of the Ministry of Corporate Affairs, was passed by both Houses of the Parliament, and had received the assent of the President of India on 29th August, 2013. This Act has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legalise the role of whistle-blowers. The new law will replace the nearly 60-year-old Companies Act, 1956 (‘1956 Act’).

The 2013 Act provides an opportunity to catch up and make our corporate regulations more contemporary, as also potentially to make our corporate regulatory framework a model to emulate for other economies with similar characteristics. The 2013 Act is more of a rule-based legislation containing only 470 sections, which means that the substantial part of the legislation will be in the form of rules. There are over 180 sections in the 2013 Act where rules have been prescribed and the draft rules were released by the MCA in three batches. It is widely expected that the 2013 Act and indeed the rules will provide for phased implementation of the provisions and in line with this, 98 sections of the 2013 Act have been notified and consequently the corresponding section of the 1956 Act cease to be in force.

CSR Policy Rules & Companies Act, 2013

The 2013 Act has introduced several provisions which would change the way Indian corporate do business and one such provision is spending on Corporate Social Responsibility (CSR) activities. CSR, has largely been voluntary contribution by corporate, has now been included in law and made it mandatory to certain companies. Under Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 has come into effect from April 1, 2014.

Salient Features of CSR Policy

1. Applicable to Companies

The CSR provisions within the Act is applicable to companies with
- an annual turnover of 1,000 crore INR and more, or
-a net worth of 500 crore INR and more, or
- a net profit of five crore INR and more.

Foreign companies covered under CSR provisions. Foreign companies to contribute to CSR based on the profits of their Indian business operations.The new rules will be applicable from fiscal year 2014-15 onwards.

2. Role of the Board

As per CSR Rules, Board of directors is required to constitute CSR committee consisting board members, including at least one independent director. However, CSR Rules exempts unlisted public companies, private companies' private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee. Board is also required to approve the CSR policy framed and recommended by the committee. It also has to monitor CSR activities being implemented and to ensure that minimum 2% amount of net profit before tax has been spent. Board is also responsible to disclose reasons if the minimum amount has not been spent by the company.

3. CSR Committee

CSR Committee will be responsible for preparing a detailed plan on CSR activities, including the expenditure, the type of activities, roles and responsibilities of various stakeholders and a monitoring mechanism for such activities. Committee is required to send plan of CSR activities and expenditure to the board for approval. Committee can also ensure that all the kinds of income accrued to the company by way of CSR activities should be credited back to the community or CSR corpus.

4. Spending Obligation

The Act encourages companies to spend at least 2% of their average net profit in the previous three years on CSR activities. Net profit means net profit as per the financial statements of the Company and excludes profits generated outside India through overseas branches or subsidiaries and any dividend received from other companies in India that are complying with the CSR provisions. This could provide relief to companies by avoiding any cascading effect of CSR spending on up-streaming of dividends

5. Capacity building costs

Companies may spend on building CSR capacity of their own personnel or of their implementation agencies. However, the total expenditure should not exceed 5% of the total CSR expenditure in that year.

6. Political contribution excluded from CSR expenditure

Contribution, directly or indirectly, to any political party shall not be considered as CSR expenditure.

7. Surplus from CSR activities not business profits of company

The CSR policy shall specify that the surplus arising from CSR activities are not to be considered as business profits of the company. Such surplus may therefore need to be ploughed back into CSR activities.

8. **Nature of CSR activities**

The Act lists out a set of activities eligible under CSR. Companies may implement these activities taking into account the local conditions after seeking board approval. The activities that can be undertaken by a company to fulfill its CSR obligations have been specified under Schedule VII of the Act include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality, setting up homes for women, orphans and the senior citizens, measures for reducing inequalities faced by socially and economically backward groups, ensuring environmental sustainability and ecological balance, animal welfare, protection of national heritage and art and culture, measures for the benefit of armed forces veterans, war widows and their dependents, training to promote rural, nationally recognized, Paralympics or Olympic sports, contribution to the prime minister's national relief fund or any other fund set up by the Central Government for socio economic development and relief and welfare of SC, ST, OBCs, minorities and women, contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects.

The CSR activities should not be undertaken in the normal course of business. Only activities in India would be considered for computing CSR expenditure.

9. Methods of implementation

The company can implement its CSR activities through the following methods:

- Directly on its own
- Through its own non-profit foundation set up so as to facilitate this initiative.
- Through independently registered non-profit organizations that have a record of at least three years in similar such related activities

10. Group CSR projects or joint CSR projects Permitted

Companies belonging to the same group can setup a registered trust or a registered society or a company established under section 8 of the Act, to undertake CSR activities. Companies can also join hands with other companies to undertake projects jointly, in such a manner that such companies can report separately on such projects. This is a positive development as it would allow groups and companies operating in an area to come together and undertake projects of a larger scale.

11. CSR policy and activities reporting

The new Act requires that the board should disclose CSR policy and projects undertaken and amount spent in the Board Report and also publish the details on the company's official website in such manner as may be prescribed. If the company fails to spend the prescribed amount, the board, in its report, shall specify the reasons.

Conclusion

The new Companies Act, 2013 has enacted by UPA Government is indeed a positive and revolutionary step towards recognition of corporate as a sensitive citizens while legalizing corporate social responsibility. This will not only help them in enhancing their societal reputation, goodwill and company's brand building but also ensure ethical and sustainable business which will support to inclusive growth the country. Sustainable development will be given a boost because the types of activities in the scope of CSR include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality, ensuring environmental sustainability and ecological balance, animal welfare etc. This will automatically lead to socio-economic and environmental sustainability. It will also set a trend for upcoming corporate giants to perform a role of corporate citizenship with government towards good nation building in the years to come.

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