Corporate Social Responsibility

- The Concept of CSR in Indian Context
- Analysis of relevant provisions under Companies Act in respect of CSR

CORPORATE SOCIAL RESPONSIBILITY THE NEW GAME CHANGER

Introduction

- The essence of giving had moved from charity to philanthropy and the Responsible citizenship in order to sustain business and maintain the social as well as environmental capacity
- Businesses were concentrating more on the best way to conduct itself while balancing all available resources that were common
- CSR evolved out of this process implicating successful business with:

-society that was satisfied

-an environment that was taken care of and

-the fact that the earth was to be handled down over generation not to be exhausted and exploited

Evolution of CSR

- First formal engagement of the corporate sector in India may have started with the CSR seminars in 1965-66,
- but it was in December 2009 that the first set of guidelines was introduced by the MCA,
- This was followed by the release of the Department of Public Enterprises (DPE) Guidelines on 1st April 2010.
- 8th July 2011 saw the release of the NVGs – National Voluntary Guidelines – by the MCA
- The process of responsible corporate governance through CSR was finally enshrined into law when the Companies Act 2013 was enacted by Indian Parliament in 2013.
- The Bill was earlier passed by the Lok Sabha on 18th December 2012 and the Rajya Sabha on 8th August 2013. The Act was notified in the Gazette of India on 30th August 2013.
- Rules notified on 27th Feb 2014, effective from 1st April 2014.

MILESTONES IN CSR

The New Companies Act 2013

18 Dec 2012

- Companies Bill 2013 Approved by the Lok Sabha

08 Aug 2013

- Companies Bill 2013 approved by the Rajya Sabha

30 Aug 2013

- Gazette notification of the New Companies Act 2013

27 Feb 2014

- Rules on Section 135 notified on MCA's Website

CSR PROVISIONS of the COMPANIES ACT 2013

SECTION 135

- **Every company having a net worth of rupees five hundred crore or more**
- **or a turnover of rupees one thousand crore or more**
- **or a net profit of rupees five crore or more during any financial year**

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. The Board's report shall disclose the composition of the Corporate Social Responsibility Committee

SECTION 135 {CONTD.}

The Corporate Social Responsibility Committee shall,

A. formulate and recommend to the Board, 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 referred to in clause (a); and

C. monitor the implementation of Corporate Social Responsibility Policy of the company from time to time

SECTION 135 {CONTD.}

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

After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose the 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; and

ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

SECTION 135 {CONTD.}

The Board of every company referred to in sub-section (1), shall 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 Corporate Social Responsibility Policy.

Net Profit according to Section 198

Total Revenue of the company

Less: if following are including in total revenue

1. **Profit from premium of shares/Debentures**
2. **Profit from sales of Forfeited shares**
3. **Profit in terms of capital natures (in terms of undertaking of company or any part of thereof)**
4. **Profit from the sale of immovable property/fixed assets/any capital nature**
5. **Any surplus change in carrying amount of an assets or liability recognized in equity reserves**

Total revenue after extraordinary income

Less: Total Expenditure including Operating Expenses
(i.e. Raw material, wages, stock adjustments, selling and admin expenses)

Operating Profit

Less: Interest

PBDT

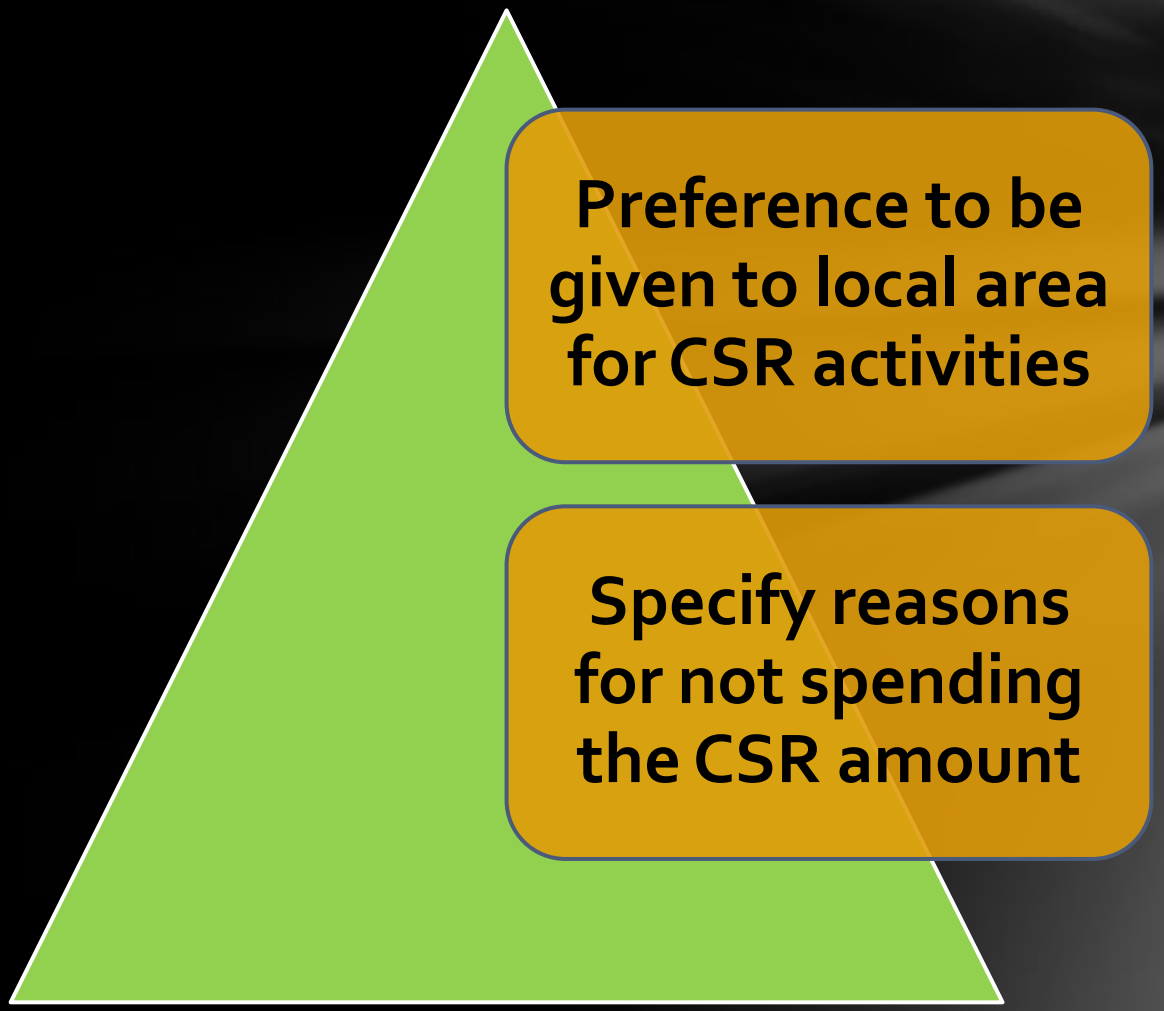
Less: Depreciation

Profit before Tax

Add: if following are including in total expenditure

1. **Income tax and any other tax**
2. **Compensation, damages or other payments made voluntarily**
3. **Loss of capital natures including loss on sale of undertaking of company or any part of thereof**
4. **Any transfer to assets/liabilities revaluation reserves**

Section 135 (Contd.)



Areas on which CSR needs to be spent (Schedule VII)

(i)eradicating hunger, poverty and malnutrition; promoting health care including preventive health care and sanitation including contribution to *"Swachh Bharat Kosh"* and making available safe drinking water including contribution to *Clean Ganga Fund*;

(ii) promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

Areas on which CSR needs to be spent

(iii) promoting gender equality and empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

(iv) 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;

Areas on which CSR needs to be spent

(v) Protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(vi)measures for the benefit of armed forces veterans, war widows and their dependents;

(vii) training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;

Areas on which CSR needs to be spent

(viii) 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 the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(x) rural development projects.

(xi) Slum area development

Sub Section (8) of Section 134

- If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 450

❖If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restrictions subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

ROLE OF THE CSR COMMITTEE

CSR Committee

- Three or more directors with at least one independent
- Formulate and recommend a CSR policy to the board
- Recommend activities and the amount of expenditure to be incurred
- Monitor the CSR policy

Role of the Board

- Form a CSR Committee
- Approve the CSR Policy, disclose its contents in the Board's Report and place it on the company's website
- Ensure Implementation of CSR activities
- Ensure at least 2% spend
- Disclose reasons for not spending under clause (o) of sub - section (3) of Section 134

- The Board's report shall disclose the composition of the Corporate Social Responsibility Committee;

- *Amount to be spent* - at least two per cent of the average net profits of the company made during the three immediately preceding FYs;

- For CSR activities company shall give preference to the local area/areas around where it operates.

SIGNIFICANT ASPECTS OF THE RULES

- Rules effective from 1st April, 2014;
- Provisions apply to every Indian company including its holding company or subsidiary company;
- Surplus arising out of the CSR Projects or programs or activities shall not form part of the business profit of a company;
- CSR projects or programs or activities undertaken in India only shall amount to CSR Expenditure.

PROVISIONS for FOREIGN COMPANIES

- Section 135 applies to foreign companies having their branches or project offices in India;

- Net profit of such companies shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013;

- CSR Committees of such companies shall comprise of at least two persons of which one shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person to be nominated by the foreign company.

CSR POLICY

- The policy shall include a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such projects or programs and implementation schedules for the same;

- It will also elaborate the Monitoring process for such projects or programs.

CSR COMMITTEE

- An unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;

- A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

CSR EXPENDITURE

- CSR expenditure shall include all expenditure including contribution to corpuses of trusts/societies/section 8 companies which are created exclusively for undertaking CSR activities or for purposes directly relatable to a subject covered in Schedule VII;

- A company cannot make any contribution to any political party or political purpose.

- For building CSR capacities of their own personnel as well as of those of their implementing agencies, companies may incur expenditure up to 5 per cent of their CSR budgets. This must be done through institutions with established track records of at least 3 years;
- Activities undertaken in pursuance of the normal course of business of the company will not count as CSR;
- CSR Projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities.

- The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act;

- If such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar projects or programs.

REPORTING TEMPLATE

1. Sr No.	2. CSR project/activity identified	3. Sector in which the project is covered	4. Projects/Programmes 1. Local areas/others 2. Specify the state/district	5. Amount outlay (budget) project/programme wise	6. Amount spent on the programme/project Subheads 1. Direct expenditure on projects 2. Overheads	7. Cumulative spend upto the reporting period	8. Amount spent Direct or through implementing agency*

* Give details of Implementing Agency

What is CSR and what is not?

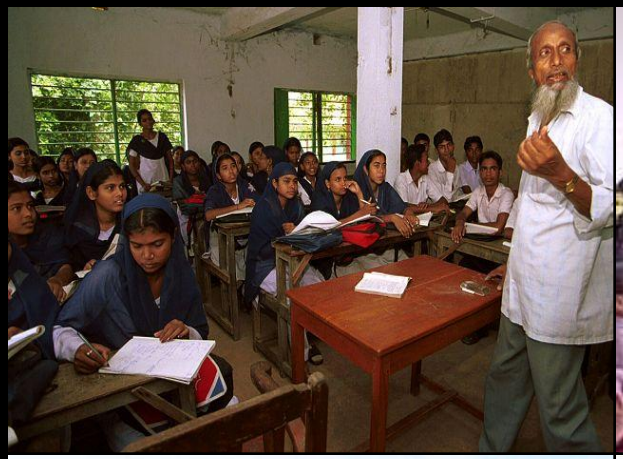
What is CSR?	What is not CSR?
It should be rupee measurable;	That which is not rupee measurable is not a CSR activity;
It must bring direct benefits to marginalized , disadvantaged, poor or deprived sections of the community;	If it does not benefit the poor & backward sections of the community it is not a CSR activity;
It should not benefit only the employees of the company & their families;	Employee benefits will not count as CSR;

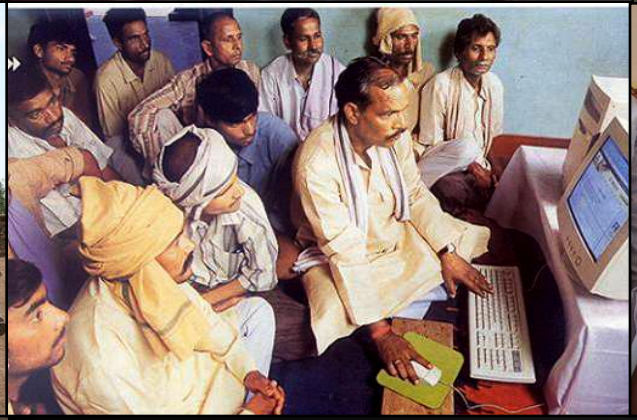
What is CSR?	What is not CSR?
CSR activities must be in the form of projects/programmes. Thus CSR activities should be projectivized ; Components of a project are as follows: •Need Based Assessment/Baseline Survey/Study •Clearly identified time frame •Specific annual financial allocation •Clearly identified milestones •Clearly identified & measurable objectives /goals •Robust & periodic review & monitoring •Evaluation & Assessment (Where possible, by third party)	Pure philanthropy or mere donations will not count as CSR

What is CSR	What is not CSR?
Corporate are expected to fund projects from their own accounts through implementing agencies; Government programmes/initiatives can be complemented/supplemented Programmes/projects must be within India;	Funds/moneys deposited in Central or Government accounts will not count as CSR; Government programmes/initiatives should not be duplicated. Programmes/projects undertaken outside India will not count as CSR;

What is CSR	What is not CSR?
It should be independent of compliance with any regulation or law;	Activities which are in compliance with any regulation or law will not count as CSR;
	Activities undertaken in pursuance of normal course of business of a company.

Let us show that we do care…..





and together we make a difference!!

THANK YOU