

CSR- Recent Amendment vide Companies (Amendment) Act, 2019

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CSR (Corporate Social Responsibility) is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practice within the firm, create wealth and improve society. CSR is also called Corporate Citizenship or Corporate Responsibility.

As per Section 135 of **Companies Act, 2013** read with **Companies (Corporate Social Responsibility Policy) Rules, 2014**;

Every Company irrespective of its status (Private, Public or Listed, Unlisted) having:

- (i) Net Worth of rupees five hundred crore or more; or
- (ii) Turnover of rupees one thousand crore or more; or
- (iii) Net profit of rupees five crore or more

During the immediately preceding 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.

“Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.”

The Board of every company referred to above, 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. While spending such amount under CSR Obligation Company should give preference to local areas and areas around which it operates.

Recently, the Ministry of Law and Justice passes a bill which gets the president assent on July 31, 2019 and becomes an act called Companies (Amendment) Act, 2019 in which following amendments took place;

- (i) In sub-section (5), —

(For Companies not completed the period of three financial years)

After the words “three immediately preceding financial years,” the words “or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,” shall be inserted;

- (ii) After sub-section (5), the following sub-sections shall be inserted, namely:

(Transfer of Unspent CSR Amount to Government Fund)

Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account.

such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Earlier before introduction of Companies (Amendment) Act, 2019 where the company fails to spend any amount 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.

In my personal view such option was a very easy way for a company compares to the penalties and punishments specified in Companies (Amendment) Act, 2019.

Penalties and Punishment for Contravention of Sub Section (5) and (6) of Section 135 under Companies (Amendment) Act, 2019.

(a) For Companies: 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

(b) For Officer in default: Every officer of such 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.

Please Note that the amended provisions of Section 135 specified under Companies (Amendment) Act, 2019 shall come into effect from 2nd day of November, 2018.

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