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CSR & Covid - 19 measures for Indian Corporates

The Indian Government has undertaken various measures to tackle the spread of and loss caused by Covid-19. One of it being the recent steps taken by the Ministry of Corporate Affairs (MCA) in issuing amendments / clarifications to Corporate Social Responsibility (CSR) provisions under section 135 of the Companies Act, 2013 (“Companies Act”) towards encouraging corporates in fulfilling their social responsibility amidst the pandemic, and achieving a win win situation for both the companies and the beneficiaries of CSR funds. Among the various clarifications / amendments issued, the clarification on spending of Corporate Social Responsibility funds for Covid 19 stating that the amount spent on Covid-19 by companies will count towards CSR spending is a timely and a welcome step.

Let's evaluate the measures undertaken.

If it's for Covid 19 – Go ahead and spend it!

The first such measure was announced on 23 March 2020 wherein the MCA clarified that spending of CSR Funds for Covid 19 is an eligible CSR activity under CSR law. It expanded the scope of contribution towards CSR activity for Covid 19 by reiterating that the eligible CSR activities under Schedule VII of the Companies Act are ‘broad based’ and may be ‘interpreted liberally’.

The clarification is aimed at encouraging companies to meet their CSR obligations by contributing their CSR allocated funds towards the battle against the Covid-19 more particularly on activities *inter alia* relating to “disaster management, including relief, rehabilitation and reconstruction activities” and “eradicating hunger, poverty and malnutrition and promoting health care”.

Any company engaged in research and development (R&D)

activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 as an eligible CSR activity subject to certain conditions.

PM Cares (Fund) – So should Corporates!

Subsequently, on 28 March 2020, the MCA further clarified that any contribution made to the Prime Minister's Citizen's Assistance and Relief in Emergency Situations Fund (PM CARES Fund) by a company shall qualify as a CSR expenditure under the Companies Act and on 26 May 2020, amended Schedule VII of the Companies Act to give effect to such change with retrospective effect from 28 March 2020. A 100% tax exemption under the Income Tax Act is also made available.

The PM CARES Fund was setup on 28 March 2020 with the primary objective of tackling any emergency or distress situation such as the one posed by the COVID-19.

It was clarified that contributions made to 'Chief Minister's Relief Fund' or any 'State Relief Fund' for COVID-19 shall not qualify as admissible CSR expenditure. However, contributions to the State Disaster Management Authority to combat Covid 19 shall qualify as CSR expenditure.

What else is eligible CSR Spends?

In order to clear ambiguities around the eligibility of CSR expenditure related to Covid 19, MCA issued FAQs for better understanding of the stakeholders. Among other clarifications, it was clarified that payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure, however any ex-gratia payment made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19 shall be admissible towards CSR expenditure as a one time exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

If it's a normal course of business – We allow it!

In another and the latest effort to help combat COVID-19, MCA vide two Notifications dated 24 August 2020 has amended the CSR Rules and

Schedule VII, wherein it is clarified that any company engaged in research and development (R&D) activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 as an eligible CSR activity subject to certain conditions that, such research and development activities shall be carried out in collaboration with the public funded institutes or organisations mentioned in item (ix) of Schedule VII and the details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report. This will encourage the pharmaceutical companies engaged in R&D activity of new vaccine, drugs and medical devices to collaborate and work together with the public funded institutes or organizations for Covid 19.

Further, the companies may now contribute the CSR amount towards (i) R & D projects in the field of Science, technology, engineering and medicine funded by the Central Government or State Government or any agency or PSU of the Central Government or State Government; and (ii) autonomous bodies established by the department of pharmaceuticals and Ministry of AYUSH.

It is important to note that this relaxation is only for companies engaged in research and development activity of a new vaccine, drugs or medical devices and for financial years 2020 – 21, 2021 – 22 and 2022 – 23. The restrictions on incurring CSR expenditure in activities (other than mentioned herein) which are in the normal course of business of the company shall continue, as it is.

As in all cases the above eligibility comes with certain conditions discussed above, and in view thereof, it is advisable to seek further professional advice before deciding if a particular expense will qualify for eligible CSR expenditure and also the terms of collaboration with the institutions needs to be crafted thoughtfully.

Conclusion

While the Government of India has already committed to spend large amounts towards strengthening the healthcare infrastructure and training caregivers across the country, the burning question on everyone's mind still remains; will it all be enough? And given the contagiousness and the exponential spread of COVID-19, such questions seem to be well

founded. The recent steps by the MCA directing the funds towards the prevention and controlling Covid 19 by allowing corporates to claim such expenditure as CSR expenditure is a welcome move and is an effective and timely step, that enables the companies to actively contribute their CSR funds for COVID-19 related relief efforts and at the same time direct additional funding for this much needed cause. Further, vide Press Release dated 17 May 2020, the Finance Minister has also clarified that any violations involving minor technical and procedural defaults such as shortcomings in CSR reporting shall not be penalized. This again is a welcome move.

If the ultimate goal of providing relief and assistance to COVID-19 victims in these difficult times is achieved by companies through such measures, then it would indeed be a major contribution in the fight against COVID-19 and would be in its true spirit achieve a Corporate's Social Responsibility.

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