

**Corporate Social Responsibility (CSR)
under section 135 of the Companies Act,
2013**



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30th June, 2017

KNOWLEDGE THAT MATTERS. EXPERIENCE THAT COUNTS.

WHAT ARE WE COVERING TODAY

- Definition
- Applicability
- Disclosures
- Activities to be included under CSR (Schedule VII)
- Computation of CSR
- Accounting
- Analysis
- Conclusion

DEFINITION OF CORPORATE SOCIAL RESPONSIBILITIES (CSR)

The Act does not define the term CSR. As per rule 2(c) of the CSR Rules “Corporate Social Responsibility means and includes but is not limited to:

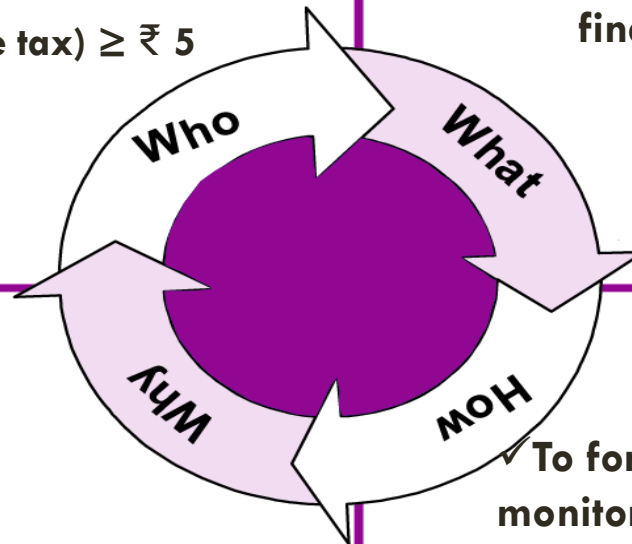
- Projects or programs relating to activities specified in Schedule VII of the Act; or
- Projects or programs relating to activities undertaken by the Board of Directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover the subjects enumerated in Schedule VII of the Act.”

APPLICABILITY

- ✓ **Networth \geq ₹ 500 crores or**
- ✓ **Turnover \geq ₹ 1000 crores or**
- ✓ **Net Profits (before tax) \geq ₹ 5 crores**

- ✓ **CSR spend of at least 2% of average net-profits (before tax) made during 3 immediately preceding financial years**

- ✓ **W.e.f F.Y. beginning 1st April, 2014**



- ✓ **To promote welfare initiatives. [Areas / Activities specified in Schedule VII]**

✓ **To formulate, recommend & monitor CSR policy.**

- ✓ **CSR Committee to be constituted (include at least 1 ID in case of listed company)**

➤ **APPLICABILITY TO HOLDING AND SUBSIDIARY COMPANIES**

Rule 3(1) provides that CSR is applicable to

- Every company including its holding or subsidiary; and in case where the company fulfills the below specified criteria

- ✓ **Networth \geq ₹ 500 crores or**
- ✓ **Turnover \geq ₹ 1000 crores or**
- ✓ **Net Profits (before tax) \geq ₹ 5 crores**

➤ **APPLICABILITY TO FOREIGN COMPANY**

- A foreign company having its branch office or project office in India which fulfills the below specified criteria

- ✓ **Networth \geq ₹ 500 crores or**
- ✓ **Turnover \geq ₹ 1000 crores or**
- ✓ **Net Profits (before tax) \geq ₹ 5 crores**

CONTINUED...

- Rule 3(2) of Companies (Corporate Social Responsibility) Rules, 2014 provides that in case a company ceases to be covered under section 135(1) for three consecutive financial years, it shall not be required to constitute a CSR Committee and comply with provisions thereof.

ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES (SCHEDULE VII)

- Eradicating hunger, poverty and malnutrition, (promoting health care including preventive health care) and sanitation (including contribution to Swach Bharat Kosh set up by the Central Government for the promotion of sanitation)and making available safe drinking water;
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- 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.

CONTINUED.....

- Protection of National Heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- Measure for the benefit of armed force veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympics 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 the Scheduled Castes, the Schedule Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- Rural development projects.
- Slum area development.

ACTIVITIES WHICH ARE NOT INCLUDED IN CSR

- The CSR Projects or Programs or activities that benefits only the employee of the Company and their families.
- One-off events such as marathons/ awards/ charitable contribution/ advertisements/ Sponsorship of TV programmes etc.
- Expenses incurred by the Companies for the fulfillment of any other Act or Statute or regulation.
- Contribution of any amount directly or indirectly to any political party.
- Activities undertaken by the Company in pursuance of its normal course of business
- The Projects or programmes or activities undertaken by outside India.

CONSTITUTION OF CSR COMMITTEE

- Corporate Social Responsibility Committee shall have three or more directors, out of which at least one Independent Director (if a company has).
- In case of private company need not have an independent director.
- A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- In case of a foreign company, the CSR Committee shall comprise of at least two persons, of which one person shall be resident in India, who is authorized to accept any notices or documents required to be served on the Company and another person shall be nominated by the foreign company.

FUNCTIONS OF CSR COMMITTEE

- To formulate and recommend to the Board, a CSR Policy which would indicate the activities to be undertaken as specified in Schedule VII of the Act.
- To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy.
- To institute a transparent monitor mechanism for implementation of the CSR projects or programs or activities to be undertaken by the company.
- To monitor the CSR policy of the company from time to time.

CONTINUED....

- The Committee may form and delegate authority to subcommittees when it deem appropriate.
- The Committee shall regularly report to the Board.
- The Committee shall review and reassess the adequacy of CSR Policy annually and recommend any proposed changes to the Board for approval. The Committee shall have access to any internal information necessary to fulfil its role.
- The Committee shall also have authority to obtain advice and assistance from internal or external legal, accounting or other advisors.

BOARD'S RESPONSIBILITY TOWARDS CSR

- To approve the CSR Policy after taking into account the recommendations made by CSR Committee.
- To ensure that the activities that are included in the CSR Policy are undertaken by the company and are in accordance with Schedule VII of the Act.
- To ensure that the company spends at least 2% of the average net profits in pursuance of its CSR Policy.
- To disclose the composition of CSR Committee in the Board's Report.
- To disclose the details of the CSR Policy developed and implemented by the company in CSR in Board's Report (clause (o) of the sub-section (1) of the section 134).
- The content of the policy and CSR activities are to be placed on the company's website (Rule 9).

MODE OF IMPLEMENTING CSR INITIATIVES

Option 1

- Through a designated CSR department

Option 2

- Through a registered Trust, Society or section 8 Company established by the Company

Option 3

- Through an external Trust, Society or section 8 Company having track record of minimum 3 years

Option 4

- Collaborate with other Companies

DISCLOSURE AS PER RULE 9 OF THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY) RULES, 2014

- The Annual report on CSR Activities to be included in Board's Report
 - A brief outline of the company's CSR policy including web-link to CSR Policy and Projects or Programs.
 - Composition of CSR committee
 - Average net profit of the company for last 3 years for the purpose of computation of CSR
 - Prescribed CSR expenditure
 - Details of CSR spent during the financial year
 - Reasons for unspent amount
 - Declaration that CSR policy is complied.
- Disclosure of CSR policy on company's website (if any).
- Business responsibility report [for listed companies] includes snapshot of CSR
- Failure to report the reasons for not spending would attract penalty u/s 134(8) on the company of maximum INR 25 Lakh or imprisonment of officer which may extend to 3 years

OTHER DISCLOSURES

Income earned on CSR project whether classified as 'other income' or other operating income'

GN is silent on the above treatment

Our view - Other income

Short fall in CSR due to excess spending in previous year

Our view - Directors report can include this reason for unspent amount

Break up nature of CSR expenses

Relevant note should disclose the break-up of various heads of expenses included in the line item 'CSR expenditure

OTHER DISCLOSURES (CONTD.)

Additional disclosure required as per GN

Gross amount required to be spent during the year

Amount spent during the year on construction / acquisition of any asset and other expenses

Amount paid in cash and closing liability.

Related party disclosure.

To include details of CSR contribution to a trust controlled by the KMP of the company

Disclosure of closing liability in balance sheet

Bifurcate into current / non-current liability and movement of provision should also be disclosed in notes.

COMPUTATION OF CSR AMOUNT

QUALIFYING CRITERIA VS COMPUTATION OF CSR

Qualifying criteria u/s 135(1) for Indian company – ‘net profit’	
Net profit before tax as per financials prepared under the Companies Act, 2013 / 1956	XX
Less - Any profit arising from any overseas branch whether operated as a separate company or otherwise	(x)
Less - Any dividend received from other companies in India complying with CSR provisions	(x)
Net profit before tax for deciding the CSR criteria	X

Note - ‘Net profit’ for foreign company as per section 198 of the Companies Act, 2013.

Computation of CSR spend u/s 135(5) is 2% of average net profit as per section 198 (**BEFORE TAX**). Further the above two deduction of profit from overseas branch and dividend from other companies in India complying with CSR provision should also be reduced for calculating CSR to be spent.

MCA has clarified that Net Profit under section 135 has to be profit before tax.

COMPUTATION OF CSR [ILLUSTRATIVE]

Description	Amounts
Profit after tax as per books	XXX
Add:	
Income Tax	X
Loss on sale of items of a capital nature including sale of undertakings	X
Provision for doubtful debts / advances (reversal thereof)	X
Less:	
Profits of a capital nature including profit from the sale of the undertaking	(x)
Profit on sale of fixed assets to the extent it is more than the original cost	(x)
Adjustment for fair value measurements directly effected in reserves	(x)
Profit under section 198 of Companies Act 2013	XX
Less profit arising from any overseas branch	(x)
Less dividend received from other companies in India complying with CSR provisions*	(x)
Profit for computing CSR spent	X

QUESTIONS ON COMPUTATION OF CSR

Accumulated losses of period earlier than three years

- Loss of period prior to three years not allowed to be set-off
- Loss within last 3 years to be included for computing average net profit

Dividend income from Indian Company

- Excluded from profit to calculate CSR spend if that company is complying with CSR provision

Whether profit / loss of overseas branch to be included for CSR spend

- Income earned outside India to be excluded from profit to calculate CSR spent

ACCOUNTING OF CSR EXPENDITURE

RECOGNITION OF CSR EXPENDITURE AND INCOME

Disclosure of accounting policy for CSR

Not required to be disclosed [voluntarily, company like Hindustan Copper Limited has disclosed]

Whether charge to P&L or appropriation (Revenue expenditure)

Charge to Statement of Profit and Loss

Whether charge to P&L or capitalized (Capital expenditure)

Charge to Statement of Profit and Loss

Income earned from CSR project

Not to be treated as business income but credited to P&L and equivalent CSR provision to be made [hence no impact on average profit of 3 years]

QUESTIONS ON CSR ACCOUNTING – GN & FAQ

Accounting treatment for unspent amount

- No provision required unless there is contractual commitment (provision only to the extent of CSR activity work completed)

Accounting for excess amount spent

- Prepaid expenses cannot be accounted

Grant received

- CSR expenditure to be net of grant received

Functional classification of CSR expenditure

- CSR amount to be shown as separate line item in statement of P&L (however Schedule III does provide for this)

Supply of company's goods or service for CSR

- Principles of AS 2 to be followed and recorded as CSR expenses when goods / services are delivered

FOOD FOR THOUGHT

Whether CSR Audit is required ?

- Escrow account for utilization of funds which are contributed by the company
- Diversion of CSR funds to other company / promoters through trust

Practical difficulty in spending CSR

- Market prices of land are high in Mumbai
- Yearly CSR limit is not sufficient for company's CSR policy say constructing building for poor's
- CSR activity beyond Schedule VII

Structuring

- CSR payments are structured for claiming expenses / deductions under income tax
- Create LLP / firm to avoid CSR obligation

CLARIFICATIONS FROM MCA

FEW CLARIFICATIONS FROM MCA

What tax benefits can be availed under CSR?

- No specific tax exemptions have been extended to CSR per se. However benefit under section 80G / section 35 as applicable would be available

Whether excess CSR spend can be c/f to next year to offset 2% requirement?

- No. It cannot be carried forward to subsequent years.

Can the unspent amount be carried forward to next year?

- The board is free to decide on the same.

FEW CLARIFICATIONS FROM MCA

Whether provisions of CSR are applicable to Section 8 Companies?

- No exemption has been granted to section 8 Companies.

Can contribution in kind be monetized?

- No. Company needs to spend.

Who is appropriate authority for approving and implementation of the CSR Programmes/Projects of the Company? What is Government's role in this regards?

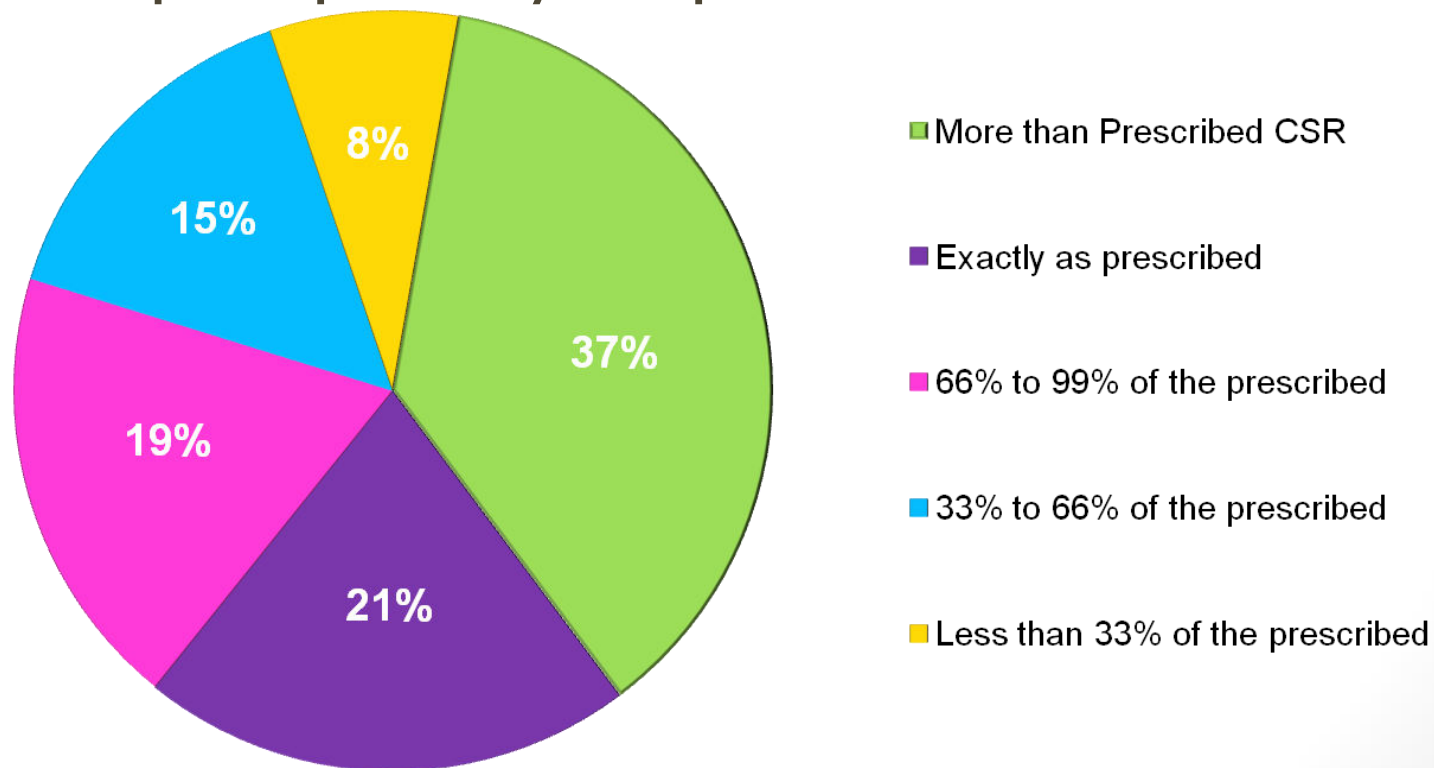
- Government has no role to play in this regards.
- All the CSR Programmes/projects should be approved by the Board on the recommendations of their CSR Committee.

ANALYSIS FROM LISTED COMPANIES

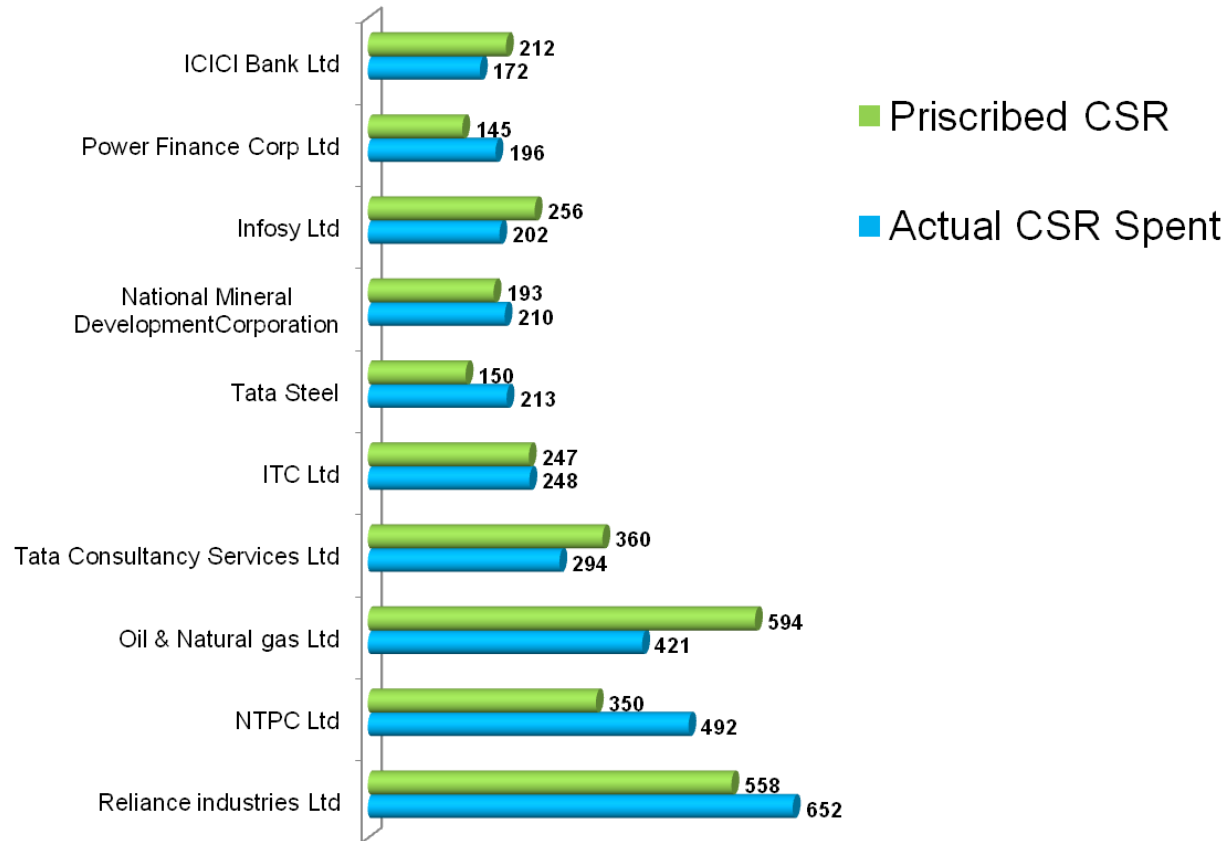
FACTS AND FIGURES – EYE OPENER

ACTUAL CSR SPENT [250 BSE COMPANIES - F. Y. 2015-16]

Almost one third of the companies spent more than the prescribed CSR while one fifth of the companies spent exactly as the prescribed CSR.

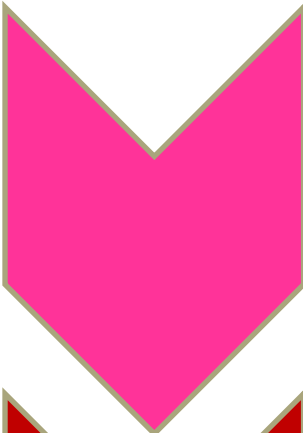


Top 10 Companies- By Actual CSR Spend (INR Cr.)




These 10 companies together spent INR 3350 Cr in CSR while their prescribed CSR was INR 3064 Cr. This is almost 9% more than what the Section 135 asks for.

FACTS AND FIGURES OF NIFTY COMPANIES

- 
- 79% [Rs. 3,989 crore] of the amount mandated was spent by Nifty Companies.

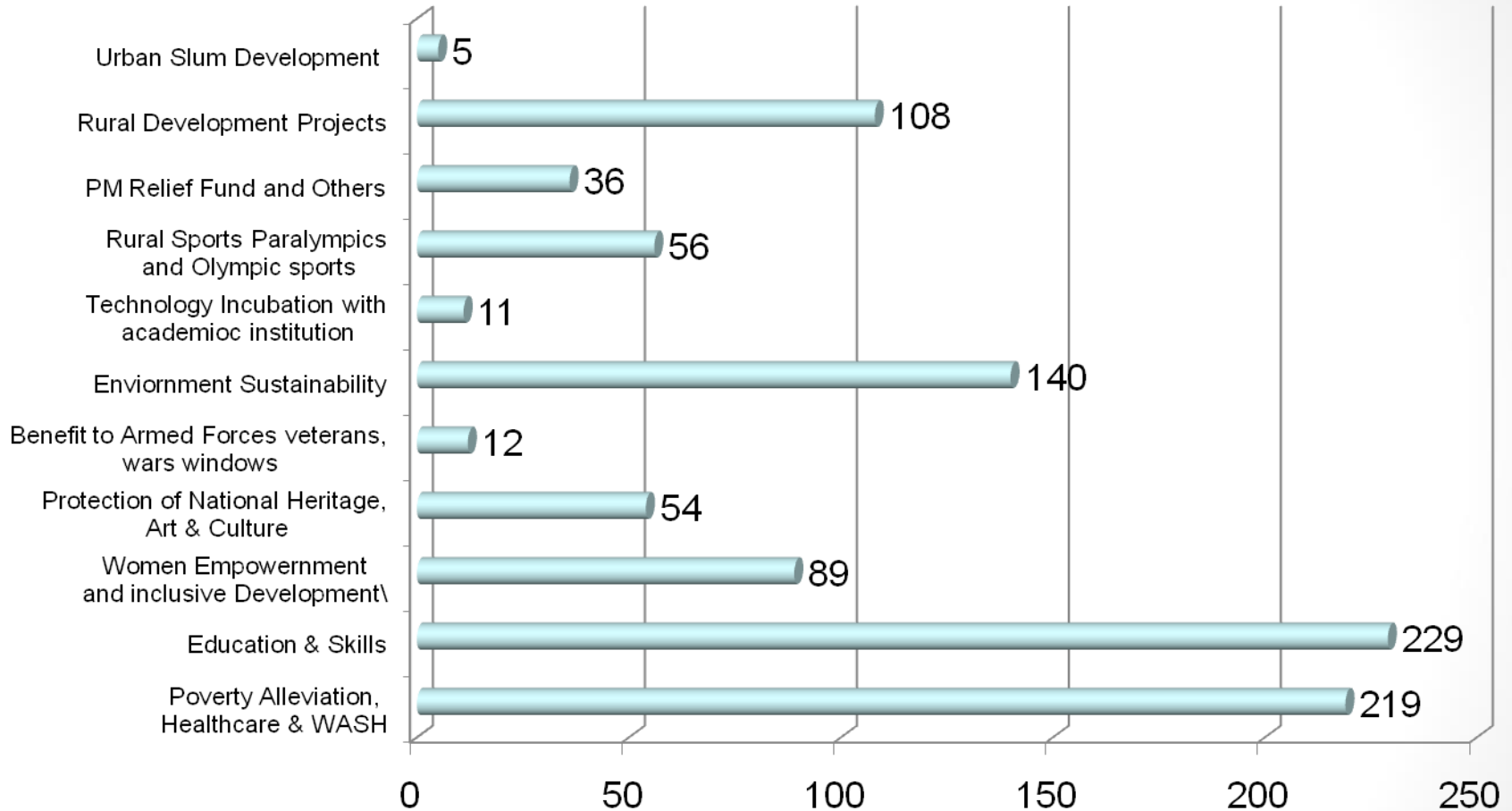
- 
- 32 (64%) of the Nifty companies did not spend the mandated amount on CSR.

- 
- Top 3 reasons for not / partial spending on CSR:
 - Capacity to spend being built
 - Implementation spilling into the next financial year
 - Multi-year project being executed

Source: Cimplifyfive's Nifty 50 Annual Reports Analysis

THEMATIC PRIORITIES IN CSR SCHEDULE VII - THEME-WISE NUMBER OF COMPANIES

ACTUAL CSR SPENT TO THE PRESCRIBED CSR



Education (including skilling) and Healthcare (including WASH) themes have been favorites of companies for implementing CSR projects.

Rural sports promotion is the new area which is gradually becoming popular in CSR projects

UNIQUE CSR

The logo for Bharti, featuring the word "bharti" in a blue, lowercase, sans-serif font.

Nyaya Bharti

- In deserving cases, it will help the under trails by paying the bail and surety amounts
- Led by retired Chief Justice AS Anand, legal support AZB and Partners



ADITYA BIRLA GROUP

E-Spousing

- Revolutionary projects undertaken-widow remarriages in UP
- Espousing dowryless marriages

The logo for E-Choupal, featuring the word "ई-चौपाल" in a stylized font with a blue bird icon above the letter 'ी'. Below the main text is the tagline "किसानों के हित में, किसानों का अपना".

किसानों के हित में, किसानों का अपना

E-Choupal

- Link directly with rural farmers via the Internet for procurement of agriculture and aquaculture products

REASON GIVEN FOR UNSPENT AMOUNT



100% unspent

- Initial year of CSR
- In process of evaluating various focus areas and consulting organizations in the area of education, health, sanitation, etc



23% unspent

Some of the large programmes such as providing hygienic sanitation facilities for girl students in schools across the country are multi-year projects



45.8% unspent

- Setting the foundation of various programs at a small scale, getting feedback and then putting an enhanced sustainable model



98% unspent

- During the year, the Company did not come across any project which reflected its CSR activities

PROFESSIONAL OPPORTUNITIES



To Conclude....

- Sachin Pilot said private companies, while maximizing their growth, also have responsibility towards society besides equitable and sustainable growth of the country
- Is it a boon to society or tax !!!! Mr. Ratan Tata recently said compulsory spending was like a tax, however Sudha Murthy chairperson of Infosys Foundation positively responded back that CSR spend is a boon.
- CSR activities will also create job opportunities
- Corporate Debate will continue !!! on voluntary vs mandatory CSR spent and concern on levy of penalty leviable on unspent amount.



Try not to become a man of success, but rather try to become a man of value.

– Albert Einstein

A top-down view of a wooden desk with a typewriter, a notebook, papers, glasses, and a pinecone. The text "Thank You" is written in large blue letters, and "For your Attention" is written in smaller yellow cursive letters below it, flanked by double yellow lines.

Thank You
== For your Attention ==