

Computation of profits for the purposes of Managerial Remuneration & CSR - issues



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- In a company, there can be many types of directors such as Managing Director, Whole-time Director, Part-time Directors and managers.
- Though the remuneration payable to the directors is a contract between the company and such director, the remuneration has to be paid to the directors in accordance with provisions of sections 197 of the Companies Act, 2013. [corresponding to Sections 198, 309 etc of the Companies Act, 1956.

Definitions



- “Manager” [Section 2(53) of the Companies Act, 2013] is defined as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.
- ‘Managing Director’ [Section 2(54) of the Companies Act, 2013] stipulates that a “Managing Director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management

Definitions



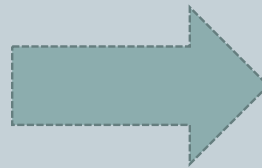
- Whole Time Director Section 2 (94) :“whole-time director” includes a director in the whole-time employment of the company.
- Remuneration [Sec 2 (78)] :“Remuneration” means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income tax Act, 1961. (Effective From 12.09.2013)
- Managerial Remuneration : To extract the best from the Managerial personnel, remuneration paid to them plays an important role. In a fiercely competitive corporate environment, managerial remuneration is vital to incentivize the workforce performing the challenging role of managing companies. However it is equally important not to go overboard with the perks and the pay and squander the profits in payment of managerial remuneration. In India, to keep a check on unnecessary profit squandering by companies and, at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act.

Appointment of Managerial Personnel- Section 196



No company shall appoint a Managing Director and a Manager at the same time

No company shall appoint or re-appoint an MD/ WTD/ Manager for a term exceeding 5 years at a time



No re-appointment shall be made earlier than one year before the expiry of term

APPOINTMENT OF MANAGERIAL PERSONNEL- Section 196

No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

is below the age of 21 years or has attained the age of 70

is an undischarged insolvent or has at any time been adjudged as an insolvent

has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them

has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

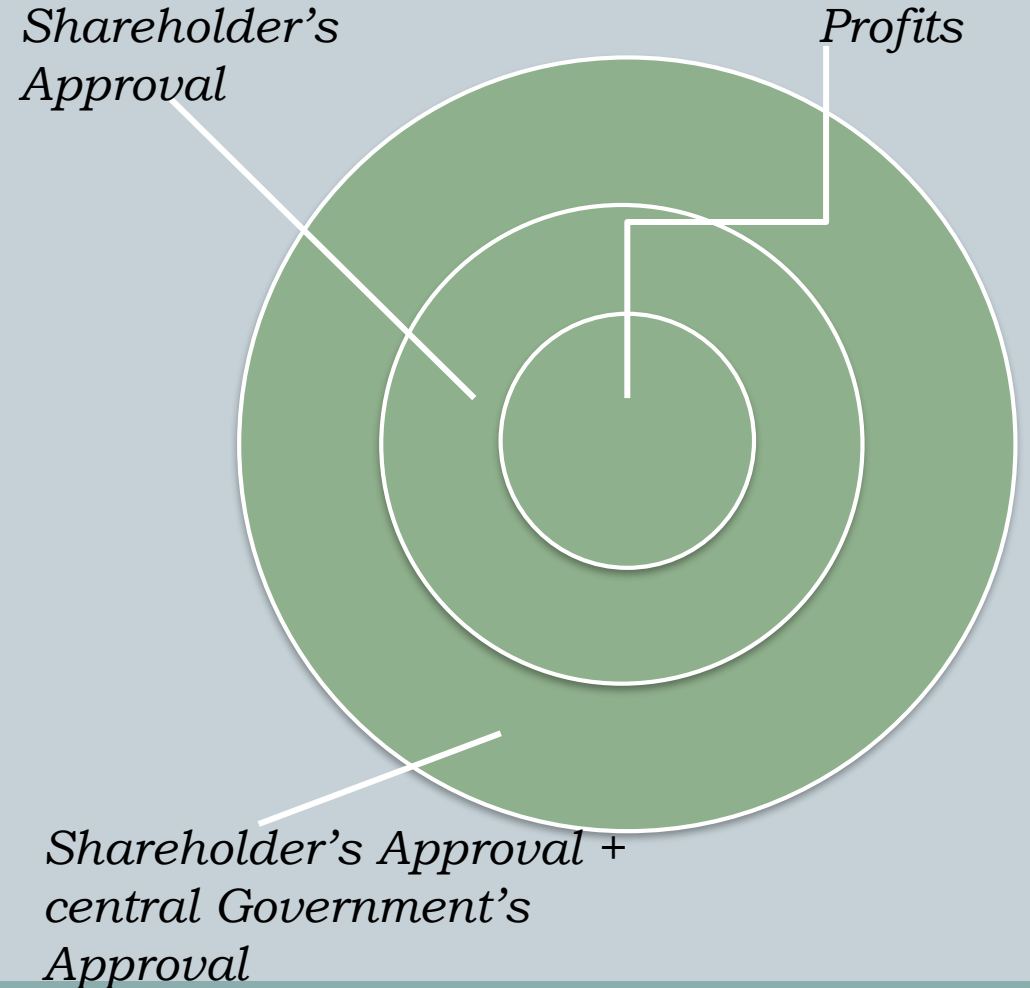
OR

Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Remuneration of Managerial Personnel – Sec 197

THREE WAYS TO MANAGERIAL REMUNERATION *:

- ❖ Automatic Route by Profits within the limits prescribed.
 - ❖ Shareholders' Approval Route for more.
 - ❖ Shareholders' and Central Government if there is variance in the conditions specified in Schedule V
- ❖ * Applicable only to public companies





- Overall maximum managerial remuneration payable by a public company to its directors, MD, WTD or Manager in respect of any financial year shall not exceed 11% of the net profits as computed in the manner laid down in Section 198.
- Shareholders may authorize higher payment subject to the provisions of Schedule V. No effect to the resolution unless conditions contained therein are complied/satisfied. In case of any default of payment to the bank or financial institution or non-convertible debenture holders or any other secured creditors, their prior approval is required.
- Maximum payment to MD/WTD/Manager shall not exceed 5% of the net profits(10% of the net profits in case of more than one MD/WTD/Manager)
- Maximum payment to other Directors shall not exceed
 - ✦ 1% of the net profits if there is a MD/WTD/Manager
 - ✦ 3% of the net profits in any other case.
- Shareholders may authorize by special resolution at a general meeting for making higher payment



- Limits applicable to Nidhi company subject to the following –
 - ✦ Payment to a director not being a MD/WTD/Manager on monthly basis for special services will be allowed subject to the Articles of Association of the company, provisions of Section 197 and the approval of the shareholders at its general meeting.
 - ✦ No such approval required if
 - The company does not have a MD/WTD/Manager
 - The remuneration for the financial year payable to all the directors does not exceed 10% of the net profits or Rs. 15,00,000/-, whichever is less. Provided approved by a special resolution by the members.

Managerial Remuneration :



- The percentages as regards overall managerial remuneration is exclusive of any fees payable to directors for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.
- The remuneration may be paid in such manner, whether monthly or otherwise, as may be agreed to mutually.
- If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.
- The company shall not waive the recovery of any sum refundable to it under subsection (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable. In case of default, prior approval of the bank or financial institution or non-convertible debenture-holder or any other secured creditor.
- Insurance for indemnifying against any liability in respect of negligence, default, misfeasance, breach of duty/trust shall be considered as part of his/her remuneration, only if such director is held guilty.

Remuneration Payable By Companies Having Profits (Sec 197)



- MD/ WTD who is receiving any commission from the company shall not be disqualified from receiving any remuneration or commission from holding / subsidiary of such company, provided the same is disclosed in the Board's report of Co.
- Penalty for default of Sec 197 - If any person makes any default, he shall be liable to a penalty of Rs.1 lakh and where any default has been made by a company, the company shall be liable to a penalty of Rs.5 lakhs.
- Auditors shall in his report, make a statement on whether the payment of remuneration is in conformity with the provisions of the Act

Remuneration Payable By Companies Having Profits (Sec 197)



SITTING FEE: .

- A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount as may be prescribed.
 - Rule 4 of Companies (Appointment and Remuneration of Managerial Personnel) rules, 2014 prescribes the maximum Rs.1 lakh per meeting of Board or Committee
- The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.
- Sitting fee of Independent Director and Woman Director shall not be less than fee payable to other directors

Disclosure in Board's Report



- Ratio of remuneration of each director to median remuneration of employees and other details as specified under Rules.
- Statement on top 10 employees in terms of remuneration drawn and employees who were in receipt of Rs. 102 lakhs through out the FY or Rs.8.50 lakhs per month.

Disparity in payment of remuneration

The Annual Reports reveal an enormous disparity between the remuneration paid to the top management personnel and the average remuneration (median salary) of permanent employees (Pay Ratio).


- **Highest** : Hero Motocorp – 1:752
- **Lowest** : Maruti Suzuki - 1:039

Pay ratio of highest paid employee to median remuneration

Company	Person	Pay ratio	Remuneration (in cr) ¹
Hero Motocorp	Pawan Munjal	752	84.6
Shree Cements	HM Bangur	659.8	41.75
Tech Mahindra	C.P. Gurnani	618.46	3.56
Bajaj Auto	Rajiv Bajaj	600	39.86
JSW Steel	Sajjan Jindal	581	39.11
Hindalco Inds.	Satish Pai	520.56	31.9
Infosys	Salil Parikh	502	17.23
Wipro	Abidali Neemuchwala	495	16.83
Bharti Airtel	Sunil Bharti Mittal	428.94	30.13
Eicher Motors	Vinod K. Dasari	398.8	24.61
Cipla	Umang Vohra	378	10.96

Company	Person	Pay ratio	Remuneration (in cr) ¹
Bajaj Finance	Rajeev Jain	373.22	17.5
Larsen & Toubro	S.N. Subrahmanyam	316.85	27.18
Brittania Inds.	Varun Berry	288.79	9.79
Dr Reddy's Laboratories	G.V. Prasad	283	14.38
HDFC Bank	Aditya Puri	282	18.92
UPL	Rajnikant Shroff	235	13.7
UltraTech Cement	K. K. Maheshwari	217.2 ²	20.83
TCS	Rajesh Gopinathan	214.65	13.37
Tata Motors	Guenter Butschek	198.77	16.44
Grasim Inds.	Dilip Gaur	169.63	7.48
ITC	S. Puri	168	7.58
Asian Paints	KBS Anand	160.96	14.4 - 20.77 ³
Hindustan Unilever	Sanjiv Mehta	151	16.22
Nestle India	Suresh Narayanan	140	16.17
Adani Ports SEZ	Malay Mahadevia	134.4	11.2
IndusInd Bank	Romesh Sobti	130	5.65
HDFC	Keki M. Mistry	127	15.4
Bharti Infratel	Akhil Gupta	124.98	8.9
Sun Pharma	Kalyanasundaram Subramanian	121.86	6.05
M&M	Pawan Goenka	111.44	10.03
ICICI Bank	Sandeep Bakhshi	111	5.7
Tata Steel	TV Narendran	105.1	11.22
HDFC Life Insurance	Vibha Padalkar	99.91	4.94
Axis Bank	Amitabh Chaudhry	92.2	6
Titan Company	Bhaskar Bhat	86.65	6.23
Zee Entertainment	Punit Goenka	78.42	9.02
HCL Tech	Shiv Nadar	46.86	4.73
Bajaj Finserv	Sanjiv Bajaj	46.28	10.82
Kotak Bank	Uday Kotak	42.68	2.65
Maruti Suzuki	Kenichi Ayukawa	39.07	4.67
RIL	Nikhil & Hital Meswani	Not reported	24.00

Net Profit Calculation for Managerial Remuneration as well as CSR– Section 198



- As per Companies Act, the net profit we arrive at in financial statements say statement of financial performance (P&L statement) should not be used for calculating the remuneration payable to directors. Now the Companies Act 2013 made it mandatory to consider the net profit calculated u/s 198 of the Act for CSR also.

Calculation of profits : sec 198



- After calculating the profit as said above the limits specified in the act in respect of managerial remuneration can be applied to know the maximum allowable remuneration.
- If the actual remuneration is more than maximum allowable remuneration then the permission of Central Government is now not required to be obtained. A special resolution of the members will suffice
- In computing the net profits of a company in any financial year for the purpose of section 197,—
 - (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
 - (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs. [Section 198(2)]

Calculation of profits : Section 198



- [Section 198(3)] In making the computation aforesaid, credit shall not be given for the following sums, namely:—
 - (a) profits, by way of **premium on shares** unless the company is an investment company as referred to in clause (a) of the Explanation to section 186
 - (b) **profits on** sales by the company of **forfeited shares**;
 - (c) **profits of a capital nature** including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
 - (d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:
Provided that **where** the amount for which **any fixed asset is sold** exceeds the written-down value thereof, credit shall be given for **so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value**;
 - (e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
 - (f) any amount representing **unrealised gains, notional gains or revaluation of assets**.

Calculation of profits : Section 198



[Section 198(4)] In making the computation aforesaid, the following sums shall be deducted, namely:—

- (a) all the **usual working charges**;
- (b) **directors' remuneration** ;
- (c) **bonus or commission** paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a **tax on excess or abnormal profits**;
- (e) **any tax on business profits imposed for special reasons or in special circumstances** and notified by the Central Government in this behalf;
- (f) **interest on debenture** issued by the company;
- (g) **interest on mortgages** executed by the company **and on loans and advances** secured by a charge on its fixed or floating assets;

Calculation of profits : Section 198

- (h) **interest on unsecured loans and advances;**
- (i) **expenses on repairs**, whether to immovable or to movable property, provided the repairs are **not of a capital nature**;
- (j) outgoings inclusive of **charitable contributions** made under section 181;
- (k) **depreciation** to the extent specified in section 123;
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- (m) **any compensation or damages** to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- (n) any sum paid by way of **insurance** against the risk of meeting any liability such as is referred to in clause (m);
- (o) **debts considered bad and written off or adjusted** during the year of account.

Calculation of profits : Section 198(5)



- In making the computation aforesaid, the following sums shall not be deducted, namely:—
- (a) **income-tax and super-tax** payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
- (b) **any compensation, damages or payments made voluntarily**, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
- (c) **loss of a capital nature** including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
- (d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Profit before tax as per P&L Statement	XXXXXXXX
Add the following items if debited to P&L Statement before arriving profit before tax	XXXX
Managerial remuneration	XXXX
Provision forBad doubtful debts	XXXX
Loss on sale/disposal/discarding of assets.	XXXX
Loss on sale of investments	XXXX
Provision for diminution in the value of investments	XXXX
fixed assets written off	XXXX
Fall in the value of foreign currency monetary assets	XXXX
Loss on cancellation of foreign exchange contracts	XXXX
Write off of investments	
Provision for contingencies and unascertained liabilities	XXXX
Lease premium written off	XXXX
Provision for warranty spares/supplies	XXXX
Infructuous project expenses written off	XXXX
Provision for anticipated loss in case of contracts	XXXX
Loss on sale of undertaking	XXXX
Provision for wealth tax	XXXX
compensation paid under VRS	XXXX

Less the following if credited to P&L statement for arriving at profit before tax:	XXXXX
Capital profit on sale/disposal of fixed assets(the same should be added if the co., business comprimeses of buying & selling any such property or asset) and revenue profit (difference between original cost and WDV should not be deducted)	XXXXX
Profit on sale of any undertaking or its part	XXXXX
Profit on buy back of shares	XXXXX
Profit/discount on redemption of shares or debentures	XXXXX
Profit on sale of investments	XXXXX
Compensation received on non-compete agreements	XXXXX
Write back of provision for doubtful debts	XXXXX
Write back of provision for doubtful advances	XXXXX
Appreciation in value of any investments	XXXXX
Compensation received on surrender of tenancy rights	XXXXX
Profit on sale of undertaking	XXXXX
Write back of provision for diminution in the value of investments	XXXXX
Profit on sale of forfeited shares & shares of subsidiary/associated companies	XXXXX

Remuneration payable by companies having no profit or inadequate profit (Section II of Schedule V)



Effective Date of the Notification : 01.04.2014

Schedule V :

- Generally the company has to pay managerial remuneration as per Section 197 of the Companies Act, 2013. However if the company has inadequate profits/no profits in any financial year then the managerial remuneration payment should be made on complying with Schedule V of the Companies Act,2013.
- The Schedule consists of four parts and are as follows:

Part I	Conditions to be fulfilled for the Appointment of a Managing or Whole-Time Director or A Manager without the approval of the Central Government appointments
Part II	Remuneration
Part III	Provisions applicable to Parts I and II of this Schedule
Part IV	Central Government power to exempt class of Companies

Schedule V



- Part I – Conditions to be fulfilled for the Appointment of MD/WTD or Manager without the approval of the Central Government
- Part II – Remuneration
- Part III – Provisions Applicable to Parts I and II above namely approval by shareholders' resolution and certificate from Auditor/Company Secretary that requirement of this Schedule have been complied
- Part IV – Empowerment of Central Government to exempt any class or classes of companies from any of the requirements in this Schedule

Part I - Conditions to be fulfilled



- a) MD/WTD or Manager should not have been sentenced to imprisonment for any period or to a fine exceeding Rs. 1,000/- under any of the specified laws.
- b) He should not have been detained for any period under law relating to Conservation of Foreign exchange or Prevention of Smuggling Activities.
- c) He is within the age band of 21 to 70 years
- d) He is resident of India – resident in India includes a person who has been staying in India for a continuous period of twelve months immediately prior to the date of his/her appointment as a managerial position and who has come to stay India for taking up employment or carrying on a business or vocation in India

Part II - Remuneration



- Section I – Remuneration payable by companies having profits :- Can pay managerial remuneration not exceeding the limits specified in Section 197.
- Section II – Remuneration payable by companies having no profits or inadequate profits.
- Section III – Remuneration payable by companies having no profits or inadequate profits, in certain special circumstances
- Section IV – Perquisites not included in managerial remuneration
- Section V – Remuneration payable to a managerial person in two companies :- Managerial remuneration from both companies not to exceed the higher maximum limit admissible from any one of the companies, where he is employed.

Part II Section II: Payment of Managerial Remuneration where there are no profits or its profits are inadequate

Where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person or other director not exceeding, the limits under (A) and (B) given below:.

Sr. No	Effective Capital (in Rupees)	Limit of yearly remuneration payable shall not exceed in case of Managerial Person	Limit of yearly remuneration payable shall not exceed in case of Director
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:

Effective Capital:



- For the purposes of Section II of this Part, “effective capital” means the aggregate of the **paid-up share capital** (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of **share premium account; reserves and surplus (excluding revaluation reserve); long term loans and deposits** repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short term arrangements) as reduced by the **aggregate of any investments (except in case of investment by an investment company** whose principal business is acquisition of shares, stock, debentures or other securities), **accumulated losses and preliminary expenses not written off.**

Part II Section II: Payment of Managerial Remuneration where there are no profits or its profits are inadequate

- B. In case of a managerial person or other director who is functioning in a professional capacity, remuneration as per item (A) [Table given in previous slide] may be paid, if such managerial person or other director is not having any *interest in the capital* of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, *direct or indirect interest or related to the directors or promoters* of the company or its holding company or any of its subsidiaries at any time during the *last two years before or on or after the date of appointment* and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:
- Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company;

Part II Section II: Payment of Managerial Remuneration where there are no profits or its profits are inadequate - Other conditions



- Approved by Board resolution
- Company has not committed any default
- Approval by Ordinary/Special resolution at the general meeting
- Specific information provided in the notice as to general information, information about the appointee and other information as may be prescribed
- Disclosures in the Corporate Governance Report of the Board

Section III :- Remuneration payable by companies having no profit or inadequate profit in certain special circumstances:



In the following circumstances a company may pay remuneration to a managerial person or other director in excess of the amounts provided in Section II above

- a) where the remuneration in excess of the limits is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons or other directors including such amount or amounts is within permissible limits under section 197.
- b) where the company—
 - i. is a newly incorporated company, for a period of seven years from the date of its incorporation, or
 - ii. is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or
 - iii. is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay any remuneration to its managerial persons or other directors.

Remuneration payable by companies having no profit or inadequate profit in certain special circumstances:

- c) where remuneration of a managerial person or other director exceeds the limits in (ii) but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified in (ii) and the following additional conditions:—

- (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
- (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person or other director as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
- (iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

Section IV – Perquisites not included in managerial remuneration



- Contribution to provident fund, superannuation fund or annuity, whether singly or in aggregate to the extent not taxable under Income Tax Act, 1961.
- Childrens' Education allowance – subject to a maximum of Rs. 12,000 per child per month in respect of maximum two children
- Holiday passage for children studying outside India or family staying abroad – once a year in economy class or once in two years in first class to children/members of family subject to conditions
- Leave travel concession – Return passage for self and family to home country.

RELIANCE INDUSTRIES LTD.



Reliance Industries Annual Report (p. 219) states :

“Disclosures relating to remuneration and other details as required under Section 197(12) of the Act read with Rule 5(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 forms part of this Report. Having regard to the provisions of the second proviso to Section 136(1) of the Act and as advised, the Annual Report excluding the aforesaid information is being sent to the members of the Company. The said information is available for inspection on all working days, during business hours, at the Registered Office of the Company. Any member interested in obtaining such information may write to the Company Secretary and the same will be furnished on request.”

TATA MOTORS LTD.



During the FY20, Tata Motors paid CEO Guenter Butschek, a German national, total remuneration Rs 19.27 crore. The company suffered a loss of nearly Rs 7,500 crore (Rs 7,083 crore as per Section 198 of the Companies Act). So when the rule is applied, Butschek is eligible for only Rs 7.45 crore. The excess of Rs 11.82 crore is what Tata Motors wants to ratify through a special resolution.

“Pursuant to the provisions of Section 197, in respect of the payment of managerial remuneration in case of no profits or inadequacy of profits, the company may pay such remuneration over the ceiling limit, provided the members’ approval by way of a special resolution has been taken for payment of the minimum remuneration for a period not exceeding three years.” - Source Tata Motors FY19-20 annual report.

HISTORY

- The company failed to secure the required 75 percent votes in a postal ballot to compensate the then three senior executives in excess of the limits for the year that ended in March 2014. Tata Motors had sought a shareholder’s approval and won it at the time of the appointment of CEO in 2016 for three years.

COMPUTATION OF PROFITS FOR THE PURPOSES OF CSR ISSUES





- The concept of CSR was introduced by the government because it wants corporations of our country **to become more responsible towards the society and towards its stakeholders** simultaneously. Companies and corporations are social entities so they must take care of all stakeholders as it is vital for them to take charge of such responsibility that lies on their shoulders in an efficient manner such that all the participants of the company feel satisfied. Today, many large corporations are taking steps towards improving their environmental and social performance by the means of using voluntary initiatives such as environmental certification and reporting, fair trading schemes, social audits, code of conduct and various social investment programmes.
- Only if the corporations and the government work together can they bring about dramatic changes in the welfare schemes of India.

ESG



- **ESG** stands for Environmental, Social, and Governance. Investors are increasingly applying these non-financial factors as part of their analysis process to identify material risks and growth opportunities.
- The Environmental Social and Governance factors are a subset of non-financial performance indicators which include ethical, sustainable and corporate government issues such as making sure there are systems in place to ensure accountability and managing the corporation's carbon footprint.
 - Environmental, social, and governance (ESG) criteria are an increasingly popular way for investors to evaluate companies in which they might want to invest.
 - Many mutual funds, brokerage firms, and robo-advisors now offer products that employ ESG criteria.
 - ESG criteria can also help investors avoid companies that might pose a greater financial risk due to their environmental or other practices.



- **Environmental** criteria, which examines how a business performs as a steward of our natural environment, focusing on: *waste and pollution; resource depletion; greenhouse gas emission; deforestation; climate change*
- **Social** criteria, which looks at how the company treats people, and concentrates on: *employee relations & diversity; working conditions, including child labor and slavery; local communities; seeks explicitly to fund projects or institutions that will serve poor and underserved communities globally; health and safety; conflict*
- **Governance** criteria, which examines how a corporation polices itself – how the company is governed, and focuses on: *tax strategy; executive remuneration; donations and political lobbying; corruption and bribery; board diversity and structure*

Rule 2(d) - Corporate Social Responsibility (CSR)



- CSR means the activities undertaken by a company in pursuance of its statutory obligation laid down in Section 135 of the Act in accordance with the provisions contained in the rules, but shall not include the following, namely –
 - Normal business activities of the company except any company engaged in R&D activity of new vaccine drugs/medical devices as their normal business activity subject to certain conditions.
 - Activity undertaken outside India for training of sports personnel.
 - Contribution, whether directly or indirectly, to political party.
 - Activities benefitting employees of the company
 - activities supported on sponsorship basis for deriving marketing benefits.
 - Activities carried out for fulfilment of any statutory obligations under any law in force in India

Applicability



135. Corporate Social Responsibility.

- (1) Every company having
 - networth of rupees **five hundred crore** (Rs. 500,00,00,000) or more, or
 - turnover of rupees **one thousand crore** (Rs. 1,000,00,00,000) or more or
 - a net profit of rupees **five crore** (Rs. 5,00,00,000) 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 149(4), it shall have in its Corporate Social Responsibility Committee two or more directors.



- Establish Working Group, reporting to the CSR Committee
- Define roles and responsibilities of concerned personnel of the CSR Committee and the Working Groups to ensure effective implementation of the CSR Rules

Some relaxations as regards the constitution of CSR Committee, have however been provided for private or public listed companies –

- A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- An unlisted public company covered under this section is not required to appoint an independent director and can have its CSR Committee without such director

Rule 5 – Constitution of the CSR Committee



- Every company to which CSR criteria is applicable shall constitute a Corporate Social Responsibility Committee of the Board (i.e. CSR Committee).
- Constitution - Minimum 3 or more directors of which, at least 1 director must be an independent director.
- An unlisted public company or a private company shall have its CSR Committee without any independent director if an independent director is not required to be so appointed.
- In case of a foreign company, the CSR Committee shall comprise of at least 2 persons of which one person shall be a person resident in India authorized to accept on behalf of the foreign company – the services of notices and other documents. The other person may be nominated by the foreign company.

Section 135 (3) of Companies Act 2013 and Rules



Section 135 (3) of Companies Act 2013 and Rule # 5, 6 and 9 of CSR Rules 2014 CSR Committee shall:

- **Formulate and recommend** to the Board a **CSR Policy**, which shall indicate activities to be undertaken by the company as areas or subject specified in Schedule VII
- **Recommend the amount of expenditure** to be incurred on the CSR activities identified
- Institute a **transparent monitoring mechanism** for implementation of the CSR projects or programs or activities undertaken by the company and monitor the CSR Policy from time to time

CSR Policy



- CSR Policy means a statement containing the approach and direction given by the board of a company taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Rule 6 – Companies (CSR Policy Rules)



- CSR Policy of the company shall inter-alia include the following:-
 - A list of CSR projects or programs which a company plans to undertake *areas or subjects** in Schedule VII of the Act, specifying modalities of execution of such projects or programs and implementation schedules for the same; and
 - Monitoring process of such projects and programs
 - Specify that the surplus, if any arising out of CSR activities shall not form part of the business profit
- * The Board of Directors shall ensure that activities included by a company in its CSR Policy are related to the areas and subjects specified in Schedule VII of the Act

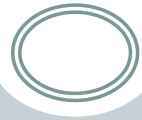
Section 135 (3) of Companies Act 2013 and Rules



The Company should have a CSR Policy, ensuring that

- A thorough Stakeholder Consultation has been conducted for identifying appropriate CSR projects primarily in alignment with activities defined in Schedule VII
- CSR activities to preferably benefit stakeholders around areas where Company operates
- Specifies modalities of execution/implementation schedules of projects
- Mentions no reverse flow of income from the projects back to Company
- Defines the monitoring process of the CSR programs undertaken
- It is displayed on the Company's official website
- Identification of Mechanism and Implementing Partners to execute CSR Projects and for Implementation and Monitoring of the CSR programs/projects
- Institutionalizations of an effective Management Information System to ensure effective management, monitoring and evaluation of the CSR programs, supported by forms, formats, frameworks, SOPs, Objectives, Targets, Programs and Strategies with a focus on high Environmental and Social Returns on Investment for the impacted community

Rule 8 and 9 – CSR Reporting and Display



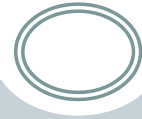
- With respect to CSR Reporting, the provisions are as follows :
- The Board's Report referring to any financial year initiating on or after the 1st day of April 2014 shall include an annual report on CSR.
- In the case of a foreign company, the balance sheet filed shall contain an Annexure regarding a report on CSR.
- The BoD shall disclose contents of CSR policy in its report and the same shall be displayed on the company's website, if any.

Section 135(5) Expenditure on CSR



- How much to spend – In every financial year, at least 2% of the **average net profit** of the company made during the three years immediately preceding financial years, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial year(s) in pursuance of its CSR Policy. Even if for two consecutive years, the company has been in loss, but on an average, the company has been in profit since the last 3 years, then the company would be required to spend 2% of the average profit on the stipulated CSR projects. For the purposes of this section “net profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of Section 198.
- Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities. It shall include all expenditure including contribution to corpus for CSR activities but does not include on an item not in conformity/line with areas/subjects in Schedule VII.

Net profit considered for CSR spending



Net Profit means the net profit of a company as per its financial statement prepared in accordance with Section 198 of the Act, but shall not include the following, namely: -

- Any profit arising from any overseas workshop or branches of the company, whether operated as a separate company or otherwise.
- Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.
- Profit from premium of shares/Debt securities.
- Profit from sales of Forfeited share.
- Profit in terms of wanted natures (in terms of undertaking of company or any part of thereof).
- Profit from the sale of immovable property/fixed assets/any wanted nature.
- Any surplus transpiration in delivering value of an resources or liability recognized in probity reserves.

Net profit considered for CSR spending



Following shall not be considered as expenditure:

- Income tax and any other tax on income
- Compensation, damages or other payments made voluntarily
- Loss of wanted natures including loss on sale of undertaking of company or any part of thereof
- Any transfer to assets/liabilities revaluation/equity reserves.

Qualifying criteria u/s 135(1) for Indian company – ‘net profit’	
Net profit before tax as per financials prepared under the Companies Act, 2013	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’ as per section 198 of the Companies Act, 2013 for a foreign company .

Recent amendments to regulate CSR activities



- From 1 April 2021, Entities carrying out CSR activities are required to file with the Central government, an e-form namely CSR -1 to **generate Unique registration number**.
- **Mandatory transfer of unspent CSR** amount is required to be transferred after 3 years to funds specified in Schedule VII within specified time.
- **Board shall be responsible** to satisfy itself that the funds so disbursed have been utilized for the purposes and in the manner as approved by it. monitor the implementation of the project with reference to the approved timelines **CFO** or the person **responsible for financial management** shall certify to the effect.

Recent amendments to regulate CSR activities



- The CSR Committee shall formulate and recommend to the Board, an annual action plan which shall include:
 - List of CSR Projects approved
 - Manner of execution
 - modalities of utilisation of funds and implementation schedules
 - monitoring and reporting mechanism
- New Disclosure on Website, if any –
 - CSR Committee composition,
 - CSR Projects approved.
 - CSR policy

Contents of Annual Report



- 1. Brief outline of CSR policy
- 2. Composition of CSR Committee
- 3. Prescribed CSR expenditure
- 4. Reason if the company fails to spend 2% of net profits as obligation
- 5. Web-link of the website where CSR Committee, CSR policy and CSR projects are disclosed
- 6. Details of amount available for set-off (financial year wise), if any
- 7. Details of CSR amount spend to be categorised in “ongoing projects” and other than ongoing projects”
- 8. Details of Unspent CSR amount for 3 preceding F.Y
- 9. Details of CSR amount spent in F.Y for “ongoing projects” of the preceding F.Y’s.

Non-compliance



- If company fails to:
 - 1. Disclose unspent amount in Annual Report on CSR
 - 2. Transfer Unspent Amount relating to other than ongoing project in Fund Specified in Schedule VII Within Specified Time
 - 3. Transfer unspent amount relating to ongoing project into unspent CSR account within specified time.

Section 135(7) – Penalty amount for non-transfer of unspent CSR amount



- If a company is in default in complying with the provisions of sub-section (5) or sub-section (6):-
 - **the company** : a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less; and
 - **every officer of the company** who is in default : a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

Section 135(5) – Failure to spend on CSR activities



- If the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section 134(3), specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.
- If the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Section 135(6) - Unspent amount of CSR (ongoing project)



- 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 in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and 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.

Ongoing project



- *Ongoing project* means a multi-year project undertaken by a company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.
- *Administrative overheads* means expense incurred by the company for general management and administration of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring and evaluation of a particular Corporate Social Responsibility project or programme

Section 135 (8) & (9) of Companies Act 2013



- The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.
- Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

List of Approved CSR Activities Under Schedule VII



Activities specified in Schedule VII



In their Corporate Social Responsibility Policies, the company may include the following activities relating to:—

- **Eradicating hunger, poverty and malnutrition**, ²["promoting health care including preventive health care"] and sanitation ⁴[including contribution to the Swachh 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 ⁴[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].

Activities specified in Schedule VII (Contd.)



In their Corporate Social Responsibility Policies, the company may include the following activities relating to (Contd.):—

- **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 art and handicrafts;
- **measures for the benefit of armed forces veterans, war widows and their dependents,** ⁹[Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows];
- **training to promote rural sports, nationally recognised sports, paralympic sports and Olympics sports**
- **contribution to the prime minister's national relief fund** ⁸[or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. **for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;**

Activities specified in Schedule VII (Contd.)



- In their CSR Policies, the company may include the following activities relating to (Contd.):—
- **Contribution to incubators or research and development projects** in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and
- **Contributions to public funded Universities**; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]
- **rural development projects**
- **slum area development.**
- **Disaster management including relief, rehabilitation and reconstruction activities**

Recent Notification



General Circular No 10 2020 dated 23rd March 2020

- Keeping in view the spread of the Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organisation (WHO) and decision of the Government of India to treat this as a notified disaster, the Ministry of Corporate Affairs vide its General Circular No. 10/2020 dated 23rd March 2020 has clarified that spending of CSR funds for COVID-19 shall be considered as an eligible CSR activity.
- As per the circular, funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June 2014, items in Schedule VII are broad based and maybe interpreted liberally for this purpose

Recent Notification



Clarification on contribution to PM CARES Fund as eligible CSR activity under item no. (viii) of the Schedule VII of Companies Act, 2013.

- The Government of India has set up the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) with the primary objective of dealing with any kind of emergency or distress situation such as that posed by COVID 19 pandemic.
- Item no. (viii) of the Schedule VII of the Companies Act, 2013, which enumerates activities that may be undertaken by companies in discharge of their CSR obligations, inter alia provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure. The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013. 3. This issues with the approval of competent authority.

Recent Notification



- General Circular No. 05/2021
- It is further clarified that spending of CSR Funds *for setting up makeshift hospitals and temporary COVID care facilities* is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the said Act relating to promotion of health care, including preventive health care , and disaster management respectively.
- The companies may undertake the aforesaid activities in consultation with State Governments subject to compliance with Companies (CSR Policy) Rules, 2014 and circulars related to CSR issued by the ministry.

Recent Notification



The MCA wide circular E-file no. CSR-01/4/2021-CSR-MCA dated 20/05/2021 clarified that where a company has contributed any amount to 'PM CARES Fund' on 31.03.2020, which is over and above the minimum amount as prescribed under section 135(5) of the Companies Act, 2013 ("Act") for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) for FY 2020-21, then the same shall not be viewed as a violation subject to the conditions that :

- The amount offset as such shall have factored the unspent CSR amount for previous financial years, if any
- The Chief Financial Officer shall certify that the contribution to "PM-CARES Fund" was indeed made on 31st March 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company; and
- The details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of section 134 (3) (o) of the Act.

EXISTING CSR ACTIVITIES OF SOME COMPANIES



1. TATA Group - Various CSR projects is carried out by the Tata group conglomerate in India most of which are **poverty alleviation and community improvement** Programs. By the means of self-help groups, it has also engaged in **women empowerment activities, rural community development**, income generation along with **other social welfare programs**. In the Education sector, the Tata group provides **endowments and scholarships for various institutions**. The group further engages in healthcare projects such as the **creation of awareness of AIDS** and **facilitation of child education and immunization**. It also **contributes in providing economic empowerment** through environment protection programs, agricultural programs, providing sports scholarships, infrastructure development such as research centers, hospitals, educational institutions, cultural centers and sports academy.

EXISTING CSR ACTIVITIES OF SOME COMPANIES



2. Ultratech Cement - Being the biggest cement company it is involved in social work across 407 villages in India that aims to create self-reliance and sustainability. Its CSR activities mainly focus on **family welfare programs**, healthcare, infrastructure, environment, education, social welfare and sustainable livelihood. Over the years it has organized various **medical camps, sanitization programs, plantation drives, school enrolment, immunization programs, industrial training, water conservation programmes as well as organic farming programmes.**

3. Mahindra & Mahindra - The primary field that the company focuses on is the education sector by assisting the socially and economically disadvantaged communities. It also runs programs such as **Nanhi Kali** which focuses on education for girls, *Mahindra Private Schools* which incorporates industrial training, **Mahindra Hariyali** under which over 1 million trees have been planted across our country eventually increasing the country's green cover and **Lifeline Express** for healthcare services in remote areas. The company has also **launched a unique kind of ESOPs** – Employs Social Option that enables Mahindra employees to involve themselves in various socially responsible activities depending on their choice.

EXISTING CSR ACTIVITIES OF SOME COMPANIES



- 4. Infosys** – As a leading software company it aims at providing language and computer education. The company has developed **special programmes** primarily **for the underprivileged children** by the means of which the company teaches them various skills and aims at changing their outlook too. Company also donates chess boards, chocolates, carom boards etc to the needy ones. Various CSR activities that the company indulges in include **blood donation camps, environment preservation, social rehabilitation** and the **Infosys Foundation has also been working in the sectors of education and healthcare.**
- 5. Gail Ltd.** is one of the largest state-owned natural gas distribution and processing company. It strongly contributes towards the corpus of ***GAIL charitable and education trust, SC/ST minority's population and natural disaster or calamities.***

QUESTIONABLE CSR PROJECTS



1. Bharat Heavy Electricals Limited:

On December 1, 2019, Bharat Heavy Electricals Ltd inaugurated a toy train at the Nehru Zoological Park in Hyderabad as part of the 55th Zoo Day celebrations. In their monthly newsletter (November 2019), BHEL mentioned that the **repairing work for the toy train “was completed with CSR Funds”** (Pepnews, 2019, p. 6).

According to the New Indian Express, BHEL utilised Rs 4 lakh to complete this renovation work (Express News Service, 2019). This CSR project comes as a baffling decision because this step is not outlined in any of the categories under Schedule VII of the Companies Act, 2013 and cannot even be classified as a heritage site.

2. REC Limited :

REC Ltd, a Navratna CPSE, partnered with Population Foundation of India (PFI), a research organization to sponsor the third season of an ‘edutainment show’ Main Kuch Bhi Kar Sakti Hoon in 2018-19.

The Memorandum of Agreement was signed off at Rs 10 crore with funds being spent as part of CSR expenditure (Rec Ltd, 2018). However, the MCA Circular of June 18, 2014 clearly mentions “**One-off events such as... sponsorships of TV programmes etc would not be qualified as part of CSR expenditure**”. Moreover, the exact impact of this CSR project is under-researched and hence shrouded in doubt.

QUESTIONABLE CSR PROJECTS



3. Statue of Unity project:

The project of Statue of Unity, one of the first campaigns of Prime Minister Narendra Modi, cost Rs 2,989 crore. According to a 2018 report by the Comptroller and Auditor General of India (CAG), in the 2016-17, the project **saw a shortfall of Rs 780 crore. Five PSUs “contributed a total of Rs 146.83 crore** (ONGC Rs 50 crore, IOCL Rs 21.83 crore, BPCL, HPCL, OIL Rs 5 crore each)” (page 75).

All the PSUs rationalised the decision of funding the project under protection of national heritage of Schedule VII. However, as the report clearly mentions, *“contribution towards this project did not qualify as CSR activity as per schedule VII of the Companies Act 2013 as it was not a heritage asset”* (page 75).

When the CAG asked for a clarification regarding such CSR expenditure, BPCL, IOCL and HPCL reverted that the companies relied on the ‘liberal interpretation’ of the broad categories of Schedule VII.

In the same report, CAG (2018) also points out **welfare activities of “removal of plastic waste in and around Steel Township ...and Maintenance of BSL school buildings”** of SAIL ineligible for CSR as these **“were beneficial only to the employees of the Company and their families.”**

QUESTIONABLE CSR PROJECTS



4. Court Order Restitution:

One interesting example from T-SIG experience has been the request to facilitate court mandated restitution. A while ago, a certain trade association had been **ordered by a court to restore lakes** which had been polluted through activities of its members in Telangana.

To seek guidance from a government CSR platform, T-SIG had been approached by the association, requesting to facilitate the restoration project in a manner that the concerned money spent would be accounted as CSR expenditure for the member companies.

This is in clear violation of letter and spirit as court orders have effect of law and the MCA Circular of 2014 clearly states: “**Expenses incurred by companies for the fulfilment of any Act / Statute...would not count as CSR.**” (page 2).

METHODOLOGY OF CSR



- The CSR is a procedure for assessing an organization's impact on society and evaluating their responsibilities. It begins with an assessment of the stakeholders such as Customers; Suppliers; Environment; Communities and Employees.
- The most effective CSR plan ensures
 - A) compliance with legislation,
 - B) investments also respect the growth and development of marginalized communities and the environment.
 - C) Uphold without negatively affecting their business goals.
- Companies now have specific departments and teams that develop specific policies, strategies, and goals for their CSR programs and set separate budgets to support them. Most of the time, these programs are based on well-defined social beliefs or are carefully aligned with the companies' business domain.

CSR TRENDS IN INDIA



- CSR has changed from being merely philanthropic to being socially responsible to multi-stakeholders. **India has been named among the top ten Asian countries paying increasing importance towards corporate social responsibility.**
- Besides the public sector, private sector has started playing dominant role in CSR activities. **Corporate India has spread its CSR activities across 20 States and Union Territories.** The companies have on an aggregate identified 26 different themes for their CSR activities of which community welfare tops the list followed by education, environment and rural development.
- According to a National Geographic survey, which studies 17,000 consumers in 17 countries – **Indians are the most eco-friendly consumers in the world.**

Filing of Form CSR 1 with MCA



- Form CSR-1 and availability of Form CSR-1 on MCA Portal
- <http://www.mca.gov.in/MinistryV2/companyformsdownload.html>
- As per rules issued by MCA there is no due stage specified for filing of Form CSR-1 with MCA but from 01.04.2021 CSR Funding will be released only to that NGOs, that are registered with MCA by filing Form CSR-1.
- So, if you want CSR Funding then it is mandatory for you to get registered with MCA by Filing Form CSR-1 as soon as possible. And Form CSR-1 is now available for Filing on MCA Portal.

Eligibility for filing with MCA



Following type of NGO's are eligible to file Form CSR-1 on MCA Portal for getting CSR Funding

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or withal with any other company, or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities

Documentation



Following documents are required for filing Form CSR-1

1. Copy of PAN Card of the NGO/Entity
2. Mail ID and Mobile Number of authorised representatives of NGO
3. Details of Governing Body Members including their Name, DIN/PAN and Email ids.
4. Copy of Registration Certificate
5. Digital Signature of the Authorised Person with his DIN/PAN Number.

Please Note:

1. The Mail ID and Mobile Number of authorised representatives of NGO shall be verified by the MCA through OTP.
2. Certification of Form CSR-1 is Mandatory for all entities, either through any of practicing CA/CS/CMA.

Issues



- The shrinking role of Government – Reliance of government on legislation and regulation
- Demands for greater disclosure
- Increased consumer interest
- Growing investor pressure
- Competitive labour markets
- Supplier relations

Challenges of CSR



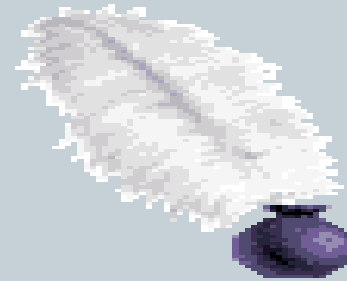
- Lack of community participation
- Need to build local capacities
- Lack of Transparency on the part of local implementing agencies
- Non-availability of well-organized non-governmental organization
- Visibility factor
- Narrow perception towards CSR initiatives
- Non-availability of Clear CSR Guidelines
- Lack of consensus on implementing CSR issues leading to unhealthy competition amongst local implementing agencies instead of being collaborative

Suggestions



- Companies can set a network of activities to be taken up in consortium to tackle major environmental issues
- Companies should provide wider professional development activities
- Companies to involve their stakeholders in order to build meaningful and long term partnerships
- Review existing policies in order to develop more meaningful visions for the companies and broaden their contributions to reach to local communities.
- Transparency and dialogue can help to make business appear more trustworthy and push up standards

Computation of profits for the purposes of managerial remuneration & CSR-issues



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