Chapter-V

Corporate Social Responsibility

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5.1 Introduction

Corporate Social Responsibility (CSR) is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the local community at large. It recognises the interests of its stakeholders and the general community at large by covering sustainability, social impact and ethics. The concept of CSR rests on the ideology of give and take. Companies take resources in the form of raw materials, human resources *etc.* from the society. By performing the task of CSR activities, the companies are giving something back to the society. The inclusion of CSR mandate under the Companies Act, 2013 is an attempt to supplement the Government's efforts of equitably delivering the benefits of growth and engage the corporate world with country's development agenda.

Legal Framework: Section 135 of the Companies Act, 2013 (hereafter referred to as the Act), deals with the subject of Corporate Social Responsibility and lays down the qualifying criteria based on net worth, turnover and net profit during any financial year for companies which are required to undertake CSR activities and specifies the broad modalities of selection, implementation and monitoring of the CSR activities by the Board of Directors of the Company. The activities which may be included by the companies in their CSR policies are listed in Schedule VII of the Act. The provisions of Section 135 of the Act and Schedule VII of the Act are applicable to all companies including SPSEs.

The Act makes it mandatory for any company to spend, annually at least two *per cent* of average net profit (calculated as per section 198 of the Act) of three immediate preceding financial years towards CSR activities. In February 2014, Ministry of Corporate Affairs (MCA) issued Companies (Corporate Social Responsibility Policy) Rules, 2014 made applicable to all companies including SPSEs w.e.f. 1 April 2014. Accordingly, the compliance of the provisions of CSR under the Act *i.e.* constitution of CSR Committee, formulation of CSR Policy and spending of prescribed amount on CSR activities came into force from April, 2014.

5.2 Audit objective

Audit objective of assessment of CSR activities of SPSEs was to ascertain whether:

- the provisions relating to constitution of the CSR Committee, formulation and compliance of policy, planning stages of execution have been complied with;
- the provisions relating to prescribed amount to be spent on specified activities have been complied with; and

- the provisions relating to implementation and reporting have been complied with.

5.3 Audit scope and coverage

As per criterion specified under section 135 (1) of the Act, out of 25 working State Public Sector Enterprises (SPSEs) in 2018-19, 10 SPSEs (***Appendix V A***) were required to undertake CSR activities. Audit reviewed the CSR activities carried out by all these 10 SPSEs during the year 2019-20. Out of 10 SPSEs, only seven SPSEs had provided budget for CSR activities and incurred expenditure during the year 2019-20.

5.4 Audit criteria

Audit analysis was carried out against following criteria:

- Provisions contained in Section 135 and Schedule VII of the Act; and
- Provisions of Companies (Corporate Social Responsibility Policy) Rules, 2014.

5.5 Audit findings

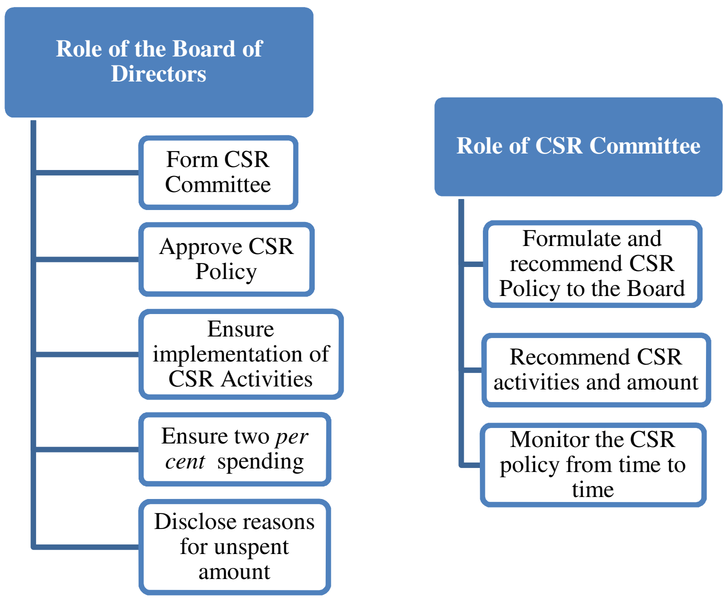
Audit findings on extent of compliance with the provisions of the Act with regard to constitution of CSR Committee, formulation and compliance of policy, planning & execution of CSR activities and monitoring & reporting thereof by the SPSEs are given in the following paragraphs.

Planning

5.5.1 Constitution of CSR Committee

Role of the Board and CSR Committee as per section 135 (1) and (3) of the Act is depicted in the chart 5.1 below:

Chart 5.1



As per section 135 (1) of the Act, every company having a net worth of ₹ 500 crore or more; or turnover of ₹ 1,000 core or more; or a net profit of ₹ 5 crore or more during any financial year shall constitute a Corporate Social Responsibility (CSR) committee of the Board consisting of three or more Directors.

Audit noticed that eight out of 10 SPSEs had constituted CSR committees. Of these eight SPSEs, two SPSEs [Haryana State Roads and Bridges Development Corporation Limited (HSRDC) and Haryana Agro Industries Corporation Limited (HAIC)] had constituted their CSR committee during 2019-20 [1] only. Other two SPSEs [Haryana Backward Classes and Economically Weaker Section Kalyan Nigam Limited (HBCKN) and Haryana Scheduled Castes and Finance Development Corporation Limited (HSFDC)] had not constituted CSR committee though these SPSEs met the required criteria under section 135 (1) *i.e.* earning profits more than ₹ 5 crore during 2016-17 and 2017-18 respectively. However, the financial Statements of these SPSEs for the year 2018-19 onwards had not been finalised as yet (March 2021).

In reply, HBCKN stated (May 2021) that 100 *per cent* of its activities were towards eradication of poverty only and no activity is commercial. There was no source of income as all expenditure was borne by the Government of Haryana in the form of administrative subsidy and that its income was exempt from Income Tax due to these facts. Therefore, CSR was not applicable on the Nigam.

The reply was not acceptable as MCA vide their circular no. 01/2016 dated 12 January 2016 clarified that there was no exemption to any kind of companies. For calculation of profits as per Section 198 of the Act, Administrative subsidy received from Government and income tax is not deductible from profits, therefore Management contention that Nigam income is exempt from income tax is not an acceptable reason to not to undertake CSR activities even after earning profits more than of ₹ 5 crore in preceding financial years. Further, the central PSUs viz. National Backward Classes Finance & Development Corporation and National Handicapped Finance & Development Corporation carrying out similar activities, are also spending part of their profits under CSR activities. Therefore, HBCKN is not exempted from applicability of CSR provisions.

5.5.2 Independent Directors in Committee

As per section 135 (1) of the Act, the CSR committee shall have at least one independent director. Out of eight SPSEs where CSR committees were formed, six SPSEs {except HVPNL and Haryana State Electronics Development Corporation Limited (HARTRON)[2]} had complied with the rule of having at least one Independent Director in the committee. Three SPSEs

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1 HSRDC on 24 April 2019 and HAIC on 20 February 2020.

2 As per Rule 4 (2) of Companies (Appointment and Qualification of Director) Amendment Rules 2017, HARTRON was not required to have an Independent Director.

(UHBVNL, DHBVNL and HAIC) had more than one Independent Directors on their CSR Committees.

In reply, HVPNL provided (May 2021) the composition of its CSR committee consisting of Independent Directors without mentioning their date of appointment. We observed that they were appointed during Financial Year (FY) 2020-21. Thus, HVPNL was not compliant with the rule during FY 2019-20.

5.5.3 Framing of CSR policy

Section 135 (3) of the Act requires that Company's CSR Committee shall formulate and recommend to the Board, a CSR Policy. It was seen that out of ten SPSEs, six SPSEs said that their CSR policy was framed based on recommendation of the CSR Committee while another three SPSEs[3] (Haryana Agro Industries Corporation Limited, Haryana Backward Classes and Economically Weaker Sections Kalyan Nigam Private Limited and Haryana Scheduled Castes and Finance Development Corporation Limited) did not have CSR policy in place. In one SPSE (Haryana State Roads and Bridges Development Corporation Limited), CSR policy was framed (May 2019) on the recommendation of the CSR Committee but it was not approved by the Board, hence it did not undertake CSR activities prior to 2018-19, even though it was required to do so since 2015-16. The requirements of Rule 6 – Compliances required by a person eligible and willing to be appointed as an independent director – were fulfilled in all the seven SPSEs.

5.5.4 Annual CSR Plan and Budget

Role of the CSR Committee is to recommend to the Board, the CSR activities and the amount to be spent in the financial year. The Board has to ensure implementation of the CSR activities. The proposed CSR projects and the budget for the ensuing financial year should be presented to the Board for approval before the start of the new financial year or at the earliest so as to avoid rush of expenditure to exhaust the funds at the end of the year and the funds are spent evenly all over the year.

We observed for seven SPSEs[4] ***(Appendix V B)***, one SPSE (HSRDC), got the CSR budget approved in Quarter 1, three SPSEs (HPGCL, DHBVNL and HSIIDC) in Quarter 2 and two SPSEs (HVPNL and UHBVNL) in Quarter 3. HARTRON had not got its CSR budget approved for 2019-20.

HVPNL accepted and stated (May 2021) that their budget for utilising CSR funds was approved in the CSR committee meeting held in third quarter, in November 2019.

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3 As these SPSEs had neither formed CSR Committee nor framed CSR policy, these have not been considered for analysis.

4 Out of seven SPSEs two SPSEs *i.e.* HSRDC and HSIIDC got provisional CSR budgets approved for 2019-20 as their financial statements for 2018-19 had not been prepared.

5.6 Financial component

5.6.1 Allocation of funds

Section 135 (5) of the Act makes it mandatory for any company to spend, annually, at least two *per cent* of average net profit of three immediate preceding financial years (calculated under section 198 of the Act).

The two *per cent* of average net profit, so calculated, by seven out of 10 SPSEs aggregated to ₹ 17.50 crore. The SPSEs allocated ₹ 28.66 crore including carryover of ₹ 11.16 crore for previous years (***Appendix V B***).

We observed that:

- Three SPSEs had allocated in 2019-20 for carry forward of unspent CSR of the previous year 2018-19.
- Ministry of Corporate Affairs (MCA), Government of India vide its general circular no. 01/2016 dated 12 January 2016 has clarified that, *"Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which primarily is net profit before tax."* Audit noticed that HVPNL and HPGCL had not considered profit before tax for calculation of average profit as required under section 198. The average net profits before tax of HVPNL and HPGCL as per MCA's clarification were ₹ 457.76 crore and ₹ 353.95 crore respectively against ₹ 138.42 crore and (-) ₹ 1.48 crore calculated by the companies (***Appendix V C***). This resulted in under provisioning of CSR funds of ₹ 6.39 crore and ₹ 7.08 crore by HVPNL and HPGCL respectively.

HPGCL stated (May 2021) that the difference was due to non-considering 'Other Comprehensive Income' (OCI) *i.e.* actuarial loss, by the audit. Further, Income tax office treats actuarial loss classified under OCI as allowable expenditure. HVPNL stated (May 2021) that audit had not considered the impact of OCI *i.e.* the actuarial loss (Pension plan losses) for computing provisioning of CSR expenditure and added that in case of revision in figures, if any, found later on in the provision on CSR Activities, the same would be considered in the current financial year.

HPGCL and HVPNL replies were not acceptable as OCI was not to be deducted from the profit before tax as per the requirement of the Act. Further, the expenditure to be incurred for CSR is governed under Companies Act, 2013 and allowing of deduction for OCI under Income Tax Act is an another matter.

5.6.2 Utilisation of Funds

Section 135 (5) of the Act states that Board shall ensure that the company spends two *per cent* of average net profit of preceding three years. Audit observed that against the required spending of ₹ 28.66 crore by seven SPSEs, the actual spending was ₹ 21.37 crore leaving unspent amount of ₹ 7.87 crore by five SPSEs (***Appendix V B***). HPGCL fully utilised the unspent balance of previous years and HSRDC fully utilised the CSR Funds allocated during

2019-20. MCA clarified (12 January 2016) that, *"Expenses incurred by the Companies for fulfilment of any other Act/ Statute of regulations (Labour laws, Land Acquisition Act and Apprentice Act, 1961 etc.) would not be covered under CSR"*. It was, however, noticed that HVPNL and HPGCL incurred expenditure of ₹ 1.99 crore and ₹ 0.40 crore, respectively during 2019-20 on apprentices appointed under Apprentices Act, 1961 but claimed the same under CSR activities.

HSRDC allocated ₹ 38 lakh for tree plantation on roadsides through Horticulture Division, PWD (B&R), Gurugram for environmental sustainability and paid ₹ 6.43 lakh on demand of Horticulture Division. We, however, observed that these tree plantation works were already covered under contract agreements for construction of concerned roads. The Company decided (January 2020) to exclude the remaining tree plantation works from CSR activities.

5.6.3 Quarter wise spend

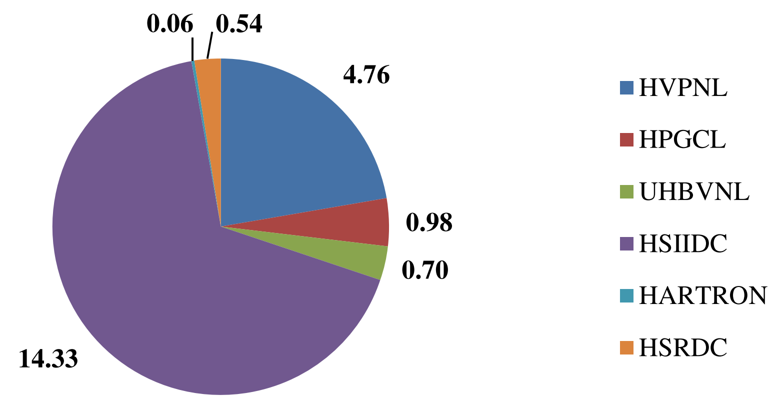
Total spend against CSR during 2019-20 by seven SPSEs was ₹ 21.37 crore. There was rush in CSR spend in last quarter. UHBVNL and HSIIDC had spent major portion of their CSR funds (₹ 0.70 crore and ₹ 12.97 crore respectively) in the fourth quarter.

HSIIDC stated (May 2021) that the amount spent was scattered over the four quarters but due to commitment, it had spent ₹ 12.20 crore for Indian Institute of Information Technology projects in the fourth quarter.

5.6.4 Top spenders

Total spend on CSR activities by SPSEs is depicted in chart 5.2 below:

Chart 5.2 : CSR Spend (₹ in crore)



The top spender was HSIIDC at ₹ 14.33 crore (67 *per cent* of total CSR spend) followed by HVPNL at ₹ 4.76 crore (22 *per cent*).

5.6.5 District wise CSR spend

Four SPSEs (HSIIDC, HSRDC, HVPNL and HPGCL) had undertaken CSR activities in more than one District of the State. Two SPSEs (HVPNL and HPGCL) engaged apprentices across Haryana, however, district wise expenditure was neither disclosed in Annual Report of CSR Activities for the year 2019-20, nor was made available to Audit. HSIIDC incurred ₹ 12.22 crore (85.24 *per cent* of its total CSR spend) in Sonepat district only and HSRDC incurred ₹ 0.48 crore (89 *per cent* of its total CSR spend) in Panchkula district only. HARTRON incurred entire CSR expenditure in Panchkula district. UHBVNL spent all its CSR funds by transferring to PM Care Funds and DHBVNL did not incur any expenditure during 2019-20.

5.6.6 Administrative overheads

As per CSR Rule 4 (6), Administrative Overheads (OH) are to be restricted to five *per cent* of overall CSR funds. The OH to be disclosed separately should include baseline studies, capacity building and other overheads. Audit, however, observed that CSR expenditure by six SPSEs did not include any amount on account of administrative overheads.

5.6.7 Surplus from CSR project

As per CSR Rule 6(2), any surplus arising from CSR projects shall not form part of business profit of the company. None of the SPSEs under review reported any surplus from CSR projects.

5.7 Project implementation

5.7.1 Selection of CSR projects/activities

None of the SPSEs, which were required to incur CSR expenditure, conducted any separate baseline survey or need assessment study for implementation of their CSR projects.

5.7.2 Manner of implementation of CSR activities

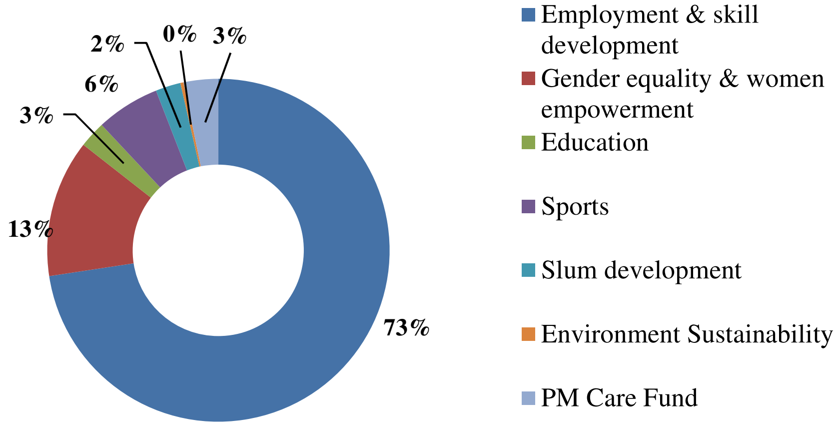
Rule 4 of Companies (CSR) Rules, 2014 exclusively deals with the manner in which the CSR activity is to be undertaken under section 135(1) of the Act. The Board may decide to undertake CSR activities as approved by CSR Committee through a registered trust/society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.

We observed that seven projects were implemented by four SPSEs directly/in house including through Foundation. Two projects by HSRDC and one project by UHBVNL were executed through Government/external agencies, NGOs, Society *etc*.

5.7.3 Focus areas

The focus areas are depicted in chart 5.3 below:

Chart 5.3: CSR Spend (₹ in crore)



As indicated above, Employment and skill development received the maximum focus (73 *per cent*) which includes spending of ₹ 12.20 crore on setting up of Indian Institute of Information Technology in Sonepat by HSIIDC. Total spend under this head was ₹ 15.51 crore. Next highest spend (₹ 2.77 crore) was in Gender Equality and Women empowerment *i.e.* 13 *per cent*. UHBVNL deposited the entire CSR amount of ₹ 0.70 crore into Prime Minister's Care Fund.

5.8 Monitoring framework

As per Rule 5(2) of CSR Rules, 2014, the CSR Committee shall institute a transparent monitoring mechanism for implementation of CSR projects/programmes/activities undertaken by the company. Audit observed that all seven SPSEs, which had framed CSR policy, had specified the monitoring mechanism in the policy.

SPSEs are required to carry out impact assessment on case to case basis depending on type of CSR project/activity. In 2019-20, five SPSEs, which incurred expenditure on CSR directly/in house or through external agencies, did not carry out impact assessment.

5.9 Reporting and disclosure

As per Section 135 (2) and (4) read with section 134 (3) (o) of the Act, a Company is required to include an annual report on CSR in their Board Report and place it on the official website. The companies have to disclose the following in the prescribed format:

- Disclose contents of CSR policy, web link of CSR policy, average net profit, composition of CSR Committee, administrative overheads, prescribed amount, unspent amount, reasons for unspent amount.

- Include a responsibility statement signed by the CSR Committee that the implementation and monitoring of CSR Policy was in compliance with the CSR objective and Policy of the Company.

Audit observed in the 10 SPSEs:

- Compliance of provisions by four SPSEs (HVPNL, HPGCL, UHBVNL and DHBVNL); and
- In six SPSEs (HARTRON, HSIIDC, HSFDC, HBCKN, HAIC and HSRDC) Annual Report for 2019-20 had not been prepared, as such, the applicable disclosure requirement could not be complied in their case.

Conclusion

Out of 10 SPSEs in Haryana, which were required to carry out CSR activities as per the Act, only seven SPSEs were compliant. The focus area of CSR spend was employment & skill development due to HSIIDC spending ₹ 12.20 crore on setting up of Indian Institute of Information Technology. The areas of education, sports, slum development and environment sustainability did not attract attention. The selection of CSR projects in all SPSEs was done without any need assessment study and reporting and disclosure requirements were not complied with in six of the ten SPSEs which met the criteria.

Recommendations

All SPSEs who met the criteria should frame CSR Policy and constitute CSR Committee in compliance of provisions of the Companies Act, 2013 and CSR Rules. CSR budget should be prepared as per section 198 of the Companies Act, 2013 and efforts may be made to spend the entire budget earmarked for the year. SPSEs should cover the focus areas as specified in schedule VII of the Act for covering sustainability and social impact for general community at large.