# Deccan herald: “COMPULSORY PHILANTHROPY”

BY S L Rao

 After many years of drafting, discussion and debate the comprehensively revised Indian companies Act looks set to be passed in the coming winter session of Parliament(or soon thereafter). **Corporate Social Responsibility (CSR) is incorporated in this revised Indian Companies Act (under clause 135).**

Every Company with a net worth of Rs 500 crores or more or turnover of Rs 1000 crores or more or net profit of Rs 5 Crores or more is to have a Board committee for CSR. These companies shall aim to spend at least 2% of the net profit based on three years’ average towards discharging their corporate social responsibility. If the expenditure is not incurred the company’s annual report to shareholders should give the reasons. Each such company must have a Board CSR Committee with at least one independent director. It shall formulate the company policy for CSR. The activities under CSR shall cover those listed out in Schedule VII of the Bill. It will also recommend the expenditure to be incurred for CSR activities and monitor it.

It is impossible to be specific about which activities would qualify. So Schedule VII does so in very general terms. This is going to make companies running to the Ministry to check what can be counted as CSR and what expenditures cannot. What is spent on employees appears to be excluded. Hence companies that spend on employees’ literacy and higher education, housing loans, family planning, etc, cannot count such expenditures as CSR.

Can a company that spends on building schools in its neighborhood, providing medical facilities, or planting trees around factories, include these in CSR? These activities are indeed important. A company setting up a power plant in a remote area might spend large amounts on providing schools, entertainment, etc, apart from housing and health care for their employees. These would also be available to others in the area. The distinction between what is CSR and what is not is difficult in such situations.

A firm’s responsibility towards society might be defined as comprising its responsibility in the workplace, the marketplace, the environment and in its communities. Such holistic thinking and understanding about the responsibility of businesses towards society is crucial now, not only among firms but equally within the government and other key stakeholders. Must a company separate the proportionate benefits that are availed by employees and count as CSR only those availed by non-employees?

That CSR is not made mandatory in the Bill is welcome. But the provision of CSR under Section 135 imposes an obligation on companies that might have been avoided. It amounts to a lot of money that could have gone into investment or dividends. It requires companies to perform tasks that belong to government. After all companies pay taxes and other charges for that purpose. What they might do as concerned citizens is now being made almost compulsory. Which company wants to explain why it has not spent what government wants? What guarantee is there that this will not soon become mandatory? So most will try to spend on CSR, some wisely and many in an unplanned manner. This spending will be another tax the government imposes on them.

Interpretation of what constitutes CSR expenditure and what does not will increase the regulatory pressures on companies. It is also not clear how discretionary interpretations by individual government officers can be avoided. Such discretion will, as has been seen with all discretionary powers, subject to abuse by the discretionary officers.

Companies could also misuse interpretations. How will it be ensured that the expenditures are genuinely for the community and not for favoured groups in it, are actually spent and unlike so much social welfare expenditure of government, pocketed?

 Some companies might decide to manage these large expenditures by themselves, adding to their staff costs, which presumably will not be deducted from the 2% that must be spent. The wiser course for companies is not to divert attention from their core business objectives. They must however, clearly define the specific ways in which they want to help the community. They must then identify non-governmental organizations engaged in such activity, evaluate them, and select the most efficient working in that field, to spend the money n the companies’ behalf.

This raises further issues. The company must spend on manpower to ensure that the ngo is actually doing the job it is given the funds for. It is also not clear from the Bill whether handing over the funds to an ngo will be counted towards the required 2%.

TATA companies give 2% of their net profit to the TATA foundations that manage their charities. Would such contributions be counted towards an individual company’s CSR obligation under the law?

 Let us assume that the Ministry of Company Affairs will recognize such expenditures. There is still the question of the ethical soundness of the ngo and of the company. Can a company’s donations to NGO’s that help LTTE widows or Khalistani widows count such donations as CSR?

There are some NGO’s that are jealous of their reputations and will noy take money from companies that have some rumours or charges against them. They may not want to work with Vedanta, Monsanto, Dow Chemicals, and other such companies who are perceived to have exploited tribals, polluted the environment, adversely affected people’s health, or have developed unsavory reputations for sleaze. There are NGO’s who do not care for the source as long as the money is available. Some also might be careless of the way they function. Such companies that are blackballed by some NGO’s will have to make do with the reaminder or do it themselves.

Companies will also have to undertake due diligence to ensure that the NGO’s they give money to are “kosher”-above board in their accounts, in the way they treat employees, in the integrity of their work, etc. This is another burden on companies.

If government insists on companies spending on community service through CSR, perhaps it might be better if the money was collected and channeled through a public foundation with reputed and independent Trustees who will distribute funds for good causes to private organizations.

It is sad that we have to make philanthropy a duty for companies than a voluntary effort. Many companies have found (TATA, Infoys) that good philanthropy also improves the corporate image and improves share values. Over time more companies will discover the value of CSR to their bottom line. Legal force is not the way to do it. (1104)