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Covid pandemic: Understanding Corporate Social Responsibility and what the government allows

At a time when India needs corporate India to play their part, there are still some areas under CSR rules that are ambiguous in nature. This is an attempt to shed some light and offer clarifications.



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By Rajat Mohan

The COVID-19 pandemic has upended life as we know it. It has now become the moral responsibility of corporates to come forward and contribute to rebuilding India in this hour of need.

Covid-19 related expenses that qualify as CSR spend under the Indian corporate law are as follows:

- * Contribution to PM CARES FUND
- * Contribution to State Disaster Management Authority to combat COVID 19
- * Creation of health infrastructure for Covid care
- * Establishment of medical oxygen generation and storage plants
- * Manufacturing and supply of oxygen concentrators, ventilators, cylinders, and other medical equipment for countering Covid-19
- * Setting up of a makeshift hospital or temporary Covid care facility
- * Eradicating hunger, poverty and malnutrition, promoting healthcare including preventive healthcare and sanitation via also contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and for making

available safe drinking water

* Disaster management, including relief, rehabilitation, and reconstruction activities

The Ministry of Corporate Affairs circular dated June 18, 2014 stated that items in Schedule VII are broad-based and may be interpreted liberally.

To encourage Covid spending by corporates, the Ministry of Corporate Affairs has come up with various initiatives in order to allow expenditure made by the companies to be termed as CSR expenditure. However, there are still some areas that are ambiguous in nature.

Let's shed some light on them.

Does salary paid during lockdown qualify as CSR spend?

During the pandemic, a lot of people have lost their jobs leading to high unemployment. Also, where the jobs aren't lost, they are facing salary deductions. The Ministry of Corporate Affairs has specifically stated that payment of salary or wages is a contractual obligation of the company. Similarly, payment of salary or wages to employees and workers even during the lockdown period is a moral obligation of the employers that will not qualify as permissible CSR expenditure. However, to incentivise employers to retain their workforce at the same pay scale the government may come up with special packages for select industries like tourism, aviation, etc. Payment of emoluments in these industries could be counted as CSR expenses. The government may build proper checks and balances around the same.

Donation of money to a trust or an NGO

The Companies Act has been amended to include a few entities to whom payments made will be categorized as a CSR expenditure. The entities include companies registered under Section 8 of the Companies Act, a registered public trust, a registered society, or any entity established under an Act of Parliament or State legislature. However, any donations made to unregistered NGOs or trusts will not be considered as a CSR activity under the legislation.

Thereby, it is suggested that before making any donation under CSR to a trust or an NGO, one needs to confirm its registrations under the various specified legislations.

Expenses incurred to provide free resources

As we know, the Companies Act obligates certain companies to spend money on CSR activities. Now with the introduction of new provisions, there was ambiguity on whether the company needs to spend the amount in cash or kind. There is no restriction on spending in cash or kind, but the prime importance is given to the word 'spend'.

The government clarified that any donation made by the company out of free company resources already held by them cannot be termed as a CSR expenditure. Actual spending is required for it to qualify as CSR expenditure.

Let's take an example to understand it better.

A company is donating clothes to poor people. The clothes were obtained free of cost by the company through some other means. Here, as the clothes have been obtained free of cost by the company, it cannot be termed a CSR expenditure under corporate laws.

However, if the company is incurring some incidental expenses on the distribution of clothes, it might claim this up to 5% of their total CSR expenditure.

The legislation allows manufacturing and supply of specified medical equipments as a CSR activity in the recent amendments. Thereby, if the supply of such products is made, it would be construed as a CSR activity.

Administrative expenditure

Under the amended rules, administrative expenses are only allowed to the extent of 5% of the total CSR expenditure of the company for the financial year.

Administrative overheads have been defined as expenses directly incurred by the company on 'general management and administration' of CSR functions in the company. Also, the expenses incurred by the company on designing,

implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project will not be included as part of the administrative overheads but as a CSR expenditure.

Let's understand the issue with a few examples.

A company used its factory premises to build a temporary Covid care facility. During this period, it incurs overhead expenses like rent, electricity, water expenses, etc. Such payments fall in the nature of general management and administration.

A company can utilize up to 5% of the total expenditure in CSR (other than the overheads) as administrative expenses. Although 5% expenditure is allowed, authorities might still disagree on the fixed expenses as CSR expense as it is not a CSR specific expense but a regular business expense.

Salary paid to employees and directors on duty at the care facilities is also a contractual and statutory obligation. As the employees are dependent on the company for their day-to-day expenses, it becomes a moral responsibility as well. Thereby payment of such salaries too may not be construed as a CSR expenditure even when the salary is paid for the care facility.

The company hires new doctors, consultants and other medical staff in order to take care of the patients. If emoluments to these employees are being exclusively paid for the implementation and monitoring of the CSR project; it would be allowed as CSR expenditure.

R&D spend on vaccines, medicines and medical equipment

Expenditures in the normal course of businesses are excluded from the scope of CSR activities.

However, any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to Covid-19 for financial years 2020-21, 2021-22, 2022-23 provided such research is carried out in collaboration with any institute or organization mentioned in Schedule VII and separately disclosed in the Board's Report.

But now, research and development of vaccines, etc., have almost come to the completion stage, and not much expenditure will be incurred in FY 2021-22 and 2022-23. It is suggested that government should allow a weighted deduction for FY 2020-21 in order to benefit the companies already in business.

Many corporates have already risen to the occasion and are helping the country in these desperate times of need. Thereby, the amendments in the rules are a welcome move. This will allow the companies to invest in healthcare and other related areas while complying with corporate social responsibility requirements.

However, the government can be a little more liberal and permit the above activities as part of CSR. Government clarifications of all doubts on CSR spending will be a great initiative, and it can encourage many more corporates to join the movement.

Rajat Mohan is Senior Partner, AMRG & Associates

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