



15th April 2020

Shri. Narendra Modi
Hon'ble Prime Minister of India
NEW DELHI

Respected Sir,

Sub: Non-inclusion of contributions to Chief Ministers Relief Funds and State Relief Funds for COVID-19 from the ambit of eligible CSR expenditure under the Companies Act 2013

The Cochin Chamber of Commerce and Industry, established in the year 1857, has completed 163 years of service to the region's commerce, industry and trade this year. This Chamber, one of the oldest in the country, is a Promoter Chamber of the Associated Chambers of Commerce and Industry of India (ASSOCHAM).

We take this opportunity to appreciate the Government of India for setting up 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) to tackle the disruptions consequent to the Covid-19 crisis. On 23rd March 2020, the Ministry of Corporate Affairs clarified that the spending of CSR funds on Covid-19 will be considered as a CSR activity under schedule VII. This clarification was expected to enable active participation from the Industry. However, the FAQs released by the Ministry of Corporate Affairs on the 10th April, 2020 have created confusion among various stakeholders. For example, with reference to the answer to FAQ number two relating to the contributions to the Chief Minister's Relief Fund. The Ministry here clarified that the 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' is not included in Schedule VII of the Companies Act and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.

Section 135 of the Companies Act 2013 relates to Corporate Social Responsibility (hereinafter referred to as 'CSR') and every company having a net worth of Rs.500 crores or more, or turnover of Rs1000 crore or more or a net profit of Rs.5 crores or more during any financial year shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of the CSR Policy. The items of expenditure / contributions which qualify as eligible as CSR for such statutory purposes is mentioned in Schedule VII of the Companies Act.

Until 27th February 2014, item (ix) of Schedule VII read as follows:

“Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Government for socio-economic development and relief and funds for the welfare of the Scheduled castes, the Scheduled tribes, other backward classes, minorities and women.”

Vide Notification dated 27th February 2014, several amendments were made to the said Schedule VII, as part of which, reference to fund set up by State Government was deleted.

However, The Ministry of Corporate Affairs (MCA), General Circular N0.21/2014 (bearing No.05/01/2014-CSR) dated 18th June 2014 had stated that the provisions of the CSR Rules 2014 are to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. Moreover, Contributions to the Corpus of an entity exclusively set up for CSR activities as per Schedule VII were also specifically eligible to qualify as CSR expenses.

Based on a liberal reading of these provisions, many legal experts had opined that the items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities; and also that the scope of various activities undertaken as part of Disaster Relief are all separately dealt with in Schedule VII – such as providing Medical aid, Food supply, Supply of water, Sanitation etc, Accordingly, the experts had also opined (during earlier situations of disasters including Okhi and floods) that contributions to the Chief Ministers Disaster Relief Fund (CMDRF) would be eligible to qualify as CSR under the Act, since the fund was specifically set up to address and help the people of the State who have been affected by the disaster and the fund was exclusively for undertaking the various disaster relief purposes covered in Schedule VII of the Act.

Further, similar to Prime Minister’s National Relief Fund and the newly set up Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM Cares Fund), donations made to the Chief Minister's Distress Relief Fund is included as an item eligible for 100% exemption from income-tax under section 80G of the Income-Tax Act, 1961, which is a benefit permitted by the Income Tax Act only for certain specified funds.

The latest Circular No CSR-01/4/2020-CSR-MCA dated 10th April 2020 issued by MCA offering COVID related FAQ on CSR has now sought to specifically exclude contributions made to Chief Ministers Relief Funds and State Relief Funds for COVID-19 from the ambit of eligible CSR expenditure under the Companies Act. As per the FAQ, apart from direct spending, only contributions to State Disaster Management Authority have been included under the ambit of eligible CSR expenses. However, in most cases contributions by companies are not directly made to such Authority and also the same is no likely to be eligible for the 100% tax deduction as specified above unlike the Chief Minister’s Relief Funds.

Having regard to the above position, a more holistic view should be taken of such provisions which are intended to benefit the lives of people affected by large scale disasters like COVID which require corporates to whole heartedly offer all possible support at both national and state levels so as to be really effective and the eligibility for CSR should be extended to at least certain specified funds at the state level such as the Chief Minister’s Disaster Relief Fund.

Here, it must be noted that most of the state level crowdfunding initiatives are routed through the Chief Minister’s Relief Fund, especially in Kerala where recurring calamities have made the fund the most popular way to support the rebuilding process. Similarly, many industrial

organisations in Kerala have pledged their support to the Chief Minister's Distress Relief Fund. At this juncture this clarification will only add pressure on the business entities that are struggling to make ends meet during the lockdown.

The non-inclusion of State Relief Fund is hampering state level crowdsourcing initiatives as represented by requests from Chief Ministers of West Bengal, Odisha, Rajasthan, Punjab, Kerala and others. On account of this ambiguity, we would therefore place for the kind consideration of Government of India the following recommendations:

1) Replace (viii) of Schedule VII with the following words (change explained in the brackets):

(vii) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

(Inserting the words "or the state governments")

OR

2) Replace (xii) of Schedule VII with the following words (change explained in brackets):

(xii) Disaster management, including relief, rehabilitation and reconstruction activities independently or through contribution to the state government's Distress Relief Fund.

(After the words "reconstruction activities", the words "independently or through contribution to the state government's Distress Relief Fund" shall be inserted.)

We also take this opportunity to reassure you about the commitment of Cochin Chamber of Commerce and Industry in all the initiatives of the Government of India to overcome the disruptions, difficulties and consequential losses caused by Covid19. Thanking you once again for your leadership and initiatives.

Yours faithfully,

VENUGOPAL

President

Cochin Chamber of Commerce and Industry