Companies may face penalty for not meeting CSR spending

This article explains the "Corporate Social responsibility" and impact of Companies (Amendment) Bill, 2019 which seeks to introduce penalty, imprisonment (Officer in default) for not meeting CSR spend targets. The Lok Sabha on 26.07.19 passed the Companies (Amendment) Bill, 2019. India has become the first country to make social responsibility for corporate spending mandatory through Companies Act. The introduction of penalty on companies not meeting CSR spending is due to 40% of the companies is not fulfilling the obligation of CSR spending targets.

As per Section 135 of Companies Act 2013 every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any 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.

In case the company fulfils the above requirement then it needs to constitute "Corporate Social responsibility committee" and policies would be formulated, there should be at least 2% spending in every financial year of the average net profits of the company made during the three immediate preceding financial years.

Before Companies (Amendment) Bill, 2019

As per second proviso to subsection 5 of Section 135, if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount.

As per the above provision if a company fails to spend the target amount of CSR spending then it needs to specify in the "Boards report" for non fulfilment of the above provision. This is the main reason why amendment was brought in so that companies can be made compliant of the CSR.

After Companies (Amendment) Bill, 2019

As per the amendment bill which shall be brought in Section 135 of Companies Act 2013. If companies are not able to spend the desired amount, then they are required to contribute the unspent money to the Funds mentioned in Scheduled VII of the 2013 Act.

The Bill inserts a new sub-section (6), which provides that any amount remaining unspent pursuant to any ongoing project, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from the end of the financial year to a special account, named as "**Unspent Corporate Social Responsibility Account**". Further, the said amount shall be spent within next 3 years, and if not spent, shall be transferred to the Funds mentioned in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Lastly, the Amendment Bill seeks to insert a new sub-section (7), i.e. penal provisions relating to non-compliance of the aforesaid provisions. Accordingly, the company shall be

punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Penalties for Non compliance

- **Companies – Fine for the Company Rs. 50,000 to Rs.25,00,000**
- **Officer in Default – Fine for the Officer Rs.5,000 to Rs.50,000 and imprisonment for a term which may extend to 3 Years or Both.**