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MMJCINSIGHTS
AUGUST 20, 2023

INDEX

CSR: Compassionate Sustenance and Responsibility – Assessing Needs for a better tomorrow.

Introduction:

Corporate Social Responsibility popularly known as "CSR" can be a game changer by becoming a powerful mechanism to contribute positively to the upliftment of the society or the nation as a whole in various parameters. Although the Companies Act, 2013 creates a regulatory mandate on certain eligible Companies to mandatorily spend 2% of their profits on CSR, the question which looms is whether the spending is meticulously planned or even if they are planned are they even channelled in areas or sectors where the need really pertains to.

Considering the CSR amount involved, its necessary to plan and identify appropriate project that are relevant to the need of the beneficiaries. Need assessment in CSR programme planning is the process of identification of discrepancies between the present state of community and where it aspires to be. It is a systematic set of procedures which identifies the needs, examines their nature, and helps the CSR programme planners to identify and select the best area or activity in which companies' resources can be deployed with an intent to achieve the maximum possible impact on the society.

Need Assessment and its role as a Support system:

It needs to be understood that the decisions on CSR spending cannot be taken just to satisfy regulatory requirements. Many times, interventions are designed and implemented without seeking adequate input from the community. At the end of the intervention, people/community does not recognise or acknowledge the impact created through the intervention. Research driven CSR Need Assessment can help organisations to identify the areas that require critical attention and support. By carefully understanding the structure of the target area and having fruitful conversations with the stakeholders and locals of the target area, corporates can ascertain or determine the most relevant social, medical, or economic challenges faced which needs resources in the form of CSR.

Understanding the realities of national issues is as important as having Business Sense:

Organisations grow tremendously when their leaders have strong business acumen, similarly, the growth of any nation is largely influenced by Corporates who are able to identify specific social and environmental challenges faced by the nation. This allows corporates to automatically deploy their spending in areas where there is a strong dearth of resources. When CSR initiatives align with the nation's needs, they create shared value for both the Company and society.

For making a sustainable change, Targeted Approach is a must:

Certain initiatives may yield visible results immediately or in a short span of time. Addressing deeply rooted issues requires strategic planning and a commitment to sustainability. In order to sustainably address social issues through CSR initiatives, it is important for corporates to conduct a need assessment to identify the root causes of these issues. By understanding the underlying factors that contribute to social problems, companies can develop more effective and impactful CSR strategies that address these issues at their core. Each area can be divided into smaller micro areas and corporates must ensure the deployment of CSR funds in such specific micro areas only to strengthen the impact. There is thus a need that the entire issue to be resolved over a planned period of time which shall require attention to that specific area over a continuous period of time.

From good intentions to real impact: The role of need assessment in CSR

A need assessment can help companies understand the social and environmental issues they are trying to address as well as the needs and perspectives of the communities they are working with. By identifying the root causes of social and environmental issues, companies can create initiatives that address these issues at their core. This can lead to more sustainable and long-lasting impact, as well as greater engagement and support from stakeholders. Another benefit of conducting a need assessment is that it can help companies avoid unintended negative consequences. A Company might launch a CSR initiative that is well-intentioned but ultimately ineffective because it does not address the root causes of the issue. There are lot of examples where the CSR spendings are transferred to Schedule VII funds instead of deploying it in a planned manner in Schedule VII activities. Companies with genuine intent to create impact via their CSR activities shall always endeavour to undertake the need assessment of their proposed CSR initiatives. It can be said that the future investors shall not only value stable financial position of the company but also to what extent such company is creating an impact to uplift the nation as a whole.

Conclusion:

CSR can be said to have tremendous potential by playing the role of a transformative force in uplifting the society and the nation as a whole. Further, though CSR is a mandatory requirement as per the Companies Act, 2013 the real game changing impact which can be achieved lies in proper need assessments to strategically channel these resources. In the world of CSR, a need assessment is like a compass that helps guide us towards effective and impactful initiatives.

CSR initiatives can be a real game-changer when it comes to making a positive impact on the world around us. In order to create the desired impact, we need to understand the needs of the communities and environment that we are trying to help. That is where a need assessment comes in. By using data-driven insights to inform our strategies, we can create initiatives that are both effective and sustainable.

Moreover, the genuine intent towards CSR significantly enhances the corporate reputation, attracting socially conscious investors and stakeholders. The function of need assessment though a voluntary requirement to fulfil the regulatory requirement of CSR spending can help corporates to align their CSR activities with the actual and real needs of the society, they thus can become catalysts for positive impact which creates an inclusive, prosperous and sustainable future for the entire nation.

This article is published in Taxmann. The link to the same can be accessed at:
https://www.taxmann.com/research/company-and-sebi/top-tory/105010000000023151/csr-compassionate-sustenance-and-responsibility-%E2%80%93-assessing-needs-for-a-better-tomorrow-experts-opinion
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Tech-CSR: Where Innovation complements Responsibilities

Introduction

In the ever-evolving landscape of business, corporate houses are increasingly recognizing the importance of incorporating social responsibility into their core strategies and technology is playing a key role in making this possible. Corporate Social Responsibility (CSR) is no longer just a buzzword, it has become a business imperative. And with technology evolving at lightning speed, companies have more tools than ever to make a positive impact on the world.

In recent years, the interplay between CSR and technology has emerged as a driving force behind innovative solutions for social and environmental challenges. By leveraging technology, companies can more effectively **track and report** on their CSR initiatives, which can help them to **identify areas for improvement** and optimize their sustainability efforts.

This article explores the symbiotic relationship between CSR and technology, highlighting how technology can help effective and seamless implementation and monitoring of CSR to create a brighter, more sustainable future."

1. Leveraging Technology for Sustainable Practices

Technology has opened new avenues for businesses to address environmental concerns and societal challenges more effectively. It has become an increasingly important tool for companies looking to make a positive impact. As companies continue to prioritize their social and environmental responsibilities, technology has become an increasingly important tool for **designing, monitoring and implementing** CSR programs. By anchoraging technology, companies can more effectively address social and environmental concerns, while also improving their own operations and reputation.

2. Enhancing Transparency and Accountability

Transparency and accountability are critical pillars of CSR. These two helps to build trust with stakeholders and demonstrate a company's commitment to social and environmental responsibility. By leveraging digital platforms, companies can more easily communicate with stakeholders and respond to their concerns. Social media, for example, has become a powerful tool for companies to engage with customers and address their concerns in real time.

It is also advisable for companies to provide photographs and geographical tagging of its projects to provide greater transparency to ensure visibility of CSR initiatives to the stakeholders. This level of transparency fosters trust and credibility among regulators and other stakeholders.

3. Empowering Social Impact through Digital Inclusion

Digital inclusion is an important issue that affects many people around the world. Lack of access to technology and digital skills can create significant barriers to social and economic opportunities. Whether it's through providing access to technology, digital skills training, promoting digital literacy, or supporting digital entrepreneurship, there are many ways that companies are using to create a positive social impact through digital inclusion.

Moreover, partnerships between tech companies can lead to the development of innovative solutions to tackle social issues such as poverty, inequality, and healthcare disparities. Additionally, technology can be used to create more inclusive workplaces, by providing accommodations for employees with disabilities and promoting diversity and inclusion.

4. Innovative solutions lead to social impact

From renewable energy solutions to water purification technologies, businesses are leveraging their technological expertise to create products and services that have a positive impact on society. Companies can use digital platforms to raise awareness about social and environmental issues and engage with customers and stakeholders. For instance, companies are developing apps and platforms that connect people with essential services, such as healthcare, education, and financial services. These technologies are helping to bridge the digital divide and create more opportunities for people around the world. Startups and established tech companies alike are increasingly focusing on social entrepreneurship and investing in ventures that align with CSR objectives.

Technology – Leveraging it in Monitoring Mechanism

Technology in today's time can monitor Corporate Social Responsibility (CSR) projects.

- **Data collection:** Technology can be used to collect data on the effectiveness and implementation of a CSR program. For example, companies can use surveys, questionnaires, and other data collection tools to gather feedback from stakeholders on the impact of their CSR programs.

- **Data analysis:** Technology can also be used to analyse the data collected on the effectiveness and implementation of a CSR program. For example, companies can use data analysis tools to identify trends, patterns, and areas for improvement in their CSR programs.

- **Real-Time Data and Insights** - One of the most significant advantages of technology in CSR monitoring is the ability to capture real-time data and insights. With the integration of IoT devices, data sensors, and cloud-based platforms, companies can gather data on various aspects of their CSR projects instantly. From monitoring environmental parameters to tracking project progress and community engagement, real-time data empowers decision-makers to make timely interventions and optimize resource allocation for maximum impact.

- **Risk Management and Mitigation** - CSR projects can encounter various risks, such as environmental hazards, supply chain disruptions, or reputational issues. Technology-driven monitoring provides early warnings on potential risks, facilitating proactive risk management and mitigation strategies. This initiative-taking approach safeguards both the company's interests and the well-being of the communities involved.

The same offers several significant advantages for businesses and stakeholders involved in these initiatives. Some being as follows: -

- **Data-Driven Decision Making**: Monitoring technology provides valuable data and insights into the progress and impact of CSR projects. This data enables businesses to make informed decisions, adjust strategies, and focus on areas that yield the most significant social and environmental benefits.

- **Efficiency and Resource Optimization**: Technology streamlines the monitoring process, reducing administrative burden and manual efforts. Automated data collection and analysis save time and resources, allowing companies to optimize their CSR initiatives efficiently.

- **Timely Intervention and Risk Management**: With real-time monitoring, companies can identify potential issues or risks in CSR projects early on. This enables timely intervention and mitigation strategies to ensure project success and prevent negative impacts.

- **Improved Stakeholder Engagement:** Technology facilitates better communication and engagement with stakeholders, including employees, communities, NGOs, and customers. Regular updates on project progress and outcomes build trust and foster stronger relationships with these stakeholders.

- **Demonstration of Impact:** Monitoring technology enables companies to quantify and showcase the positive impact of their CSR projects. Demonstrating tangible results attracts investors, customers, and partners who align with the company's values and goals.

- **Adaptability and Flexibility:** In a rapidly changing world, CSR priorities and challenges can shift. Technology allows companies to adapt quickly to new circumstances, pivot their strategies, and address emerging issues effectively.

- **Compliance and Reporting:** Many companies have reporting requirements for their CSR initiatives, either from regulatory bodies or as part of their sustainability commitments. Technology streamlines the data collection and reporting process, ensuring compliance with reporting obligations.

- **Benchmarking and Learning**: By monitoring various CSR projects and their outcomes, companies can benchmark their performance against industry standards and best practices. This learning process fosters continuous improvement and innovation in CSR efforts.

- **Global Reach**: Technology facilitates remote monitoring and data collection, enabling companies to extend their CSR projects' reach to different geographical locations. This global impact can address social and environmental challenges on a broader scale.

Technology plays a pivotal role in shaping corporate social responsibility (CSR) by revolutionizing the way companies engage with their stakeholders, address environmental and social issues, and enhance transparency. Through innovative digital platforms and data analytics, businesses can gather real-time insights into their operations, supply chains, and customer feedback, enabling them to identify areas of improvement and prioritize sustainable practices. Additionally, technology fosters greater collaboration and communication between companies and the communities they serve, empowering the public to voice their concerns and expectations. Digital media and social networking platforms allow for more transparent reporting and sharing of CSR initiatives, helping businesses build trust and credibility with consumers. Moreover, emerging technologies like artificial intelligence and blockchain can aid in traceability and accountability, ensuring fair labour practices and ethical sourcing of materials. Overall, technology not only amplifies a company's impact on society but also acts as a catalyst for transformative change, driving businesses towards a more responsible and sustainable future.

Conclusion

As the world grapples with numerous social and environmental challenges, the interplay between corporate social responsibility and technology offers a ray of hope for a better future. Technology has become a game-changer for companies looking to make a positive impact through their corporate social responsibility (CSR) practices. From promoting sustainability to driving accountability and transparency, technology has helped businesses address social and environmental concerns in innovative and effective ways.

By using technology to think outside the box, companies can create win-win situations, promoting sustainability and driving social impact. From cutting-edge innovations to simplified solutions, technology is helping businesses can create a ripple effect of positive change, driving innovation and social impact. As technology continues to evolve, so too will its impact on CSR, and businesses must remain agile, adaptive, and committed to their social responsibilities to thrive in this dynamic landscape.

This article is published in Taxmann. The link to the same is: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023176/tech-csr-where-innovation-complements-responsibilities-experts-opinion

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From Corporate Responsibility to classroom readiness: How CSR helps build a better future

Introduction:

“The highest education is that which does not merely give us information but makes our life in Harmony with all existence."- Rabindranath Tagore

In today's world, education is more important than ever, especially in rural areas where it is difficult for children to access quality education. Many children in rural areas lack access to quality education due to various challenges such as poverty, lack of infrastructure, and inadequate resources. As per a recent survey, India ranked 32 in the world on the education index. This is where Corporate Social Responsibility (CSR) programs can play a vital role in supporting primary education and helping build a better future for these children. CSR is a driving force behind positive change, and when it intersects with primary education, the results can be truly transformative. This article focuses on the transformation that CSR can bring to the field of education.

By investing in education infrastructure, providing resources, and training to teachers, and supporting schools, corporates can help improve the quality of education in rural areas. These initiatives have left an indelible mark on the lives of children, teachers, and communities, fueling a wave of progress and productivity. Additionally, CSR activities can help create awareness about the importance of education and encourage more people to support educational initiatives.

India has utilised the highest share of its mandated Corporate Social Responsibility (CSR) fund in the education sector, between FY16-17 and FY20-21, During these five financial years, the education sector received ₹29,918 crore in CSR fund, including CSR Spent on vocational training.

Rural Education: Inequalities, Inadequate resources and lack of skills

The main challenges facing primary education in rural areas include a lack of funding and resources, inadequate infrastructure, and a shortage of trained teachers. These challenges can be especially difficult for girls residing in rural areas whose education is often neglected due to cultural and economic factors, which can make it difficult for them to complete their education or pursue higher education. Recognizing the pivotal role of education in shaping the future of individuals and societies, CSR interventions have become a catalyst for change and productivity enhancement.

Companies are working to improve education in rural areas. With the involvement of technology in their CSR practices, companies are promoting the use of technology in education to help address the challenges and improve access to education in rural areas. By harnessing the power of technology, companies bridge the gap between urban and rural areas and ensure that every child has access to the education they need to succeed.

Primary education is crucial for people residing in rural parts of the Country because it possesses the potential to lift people from poverty and improve their quality of life. By providing children with a solid foundation in the initial years of their education help them develop the skills they require to succeed in life and pursue desired careers. CSR interventions can help improve primary education by providing the required funding, resources, and support to schools and teachers.

Investing in Minds: Business care for primary education

1. **From ABC to PhDs: Primary education enhances educational opportunities:**

   CSR interventions in primary education increase access to educational opportunities for disadvantaged children. By partnering with local schools and non-profit organizations, businesses have been able to improve infrastructure, provide learning materials, and offer scholarships. These initiatives have opened doors for children who had limited access to education, empowering them to become productive contributors to society.

   In remote areas where formal schooling might not be feasible, innovative CSR initiatives have implemented mobile classrooms or remote learning programs using technology. From mobile apps that help students learn on the go to virtual reality tools that bring lessons to life, technology is transforming the way we think about education in rural areas. This approach has not only widened access to quality education but also ensured a continuous flow of knowledge to areas lacking educational infrastructure.

2. **Digital Transformation in Education:**

   Where infrastructure for basic education is lacking, digital literacy is a challenge. Corporates, Governments, and NGOs have been working to bring technology to rural areas of the Country. With the rapid advancement of technology, digital transformation has become a significant aspect of CSR interventions in primary education. Initiatives like the Integration of technology in classrooms, providing access to computers, tablets, and improved internet connectivity in some parts have improved the quality of education remarkably. This digital revolution has enriched the learning experience for students and enhanced their digital literacy skills, which are essential for a productive workforce in the modern era. This has also helped in developing interest in learning and improving attendance rates.

   In a world where technology has become the heartbeat of progress, CSR interventions are not far behind. Classrooms are evolving into spaces of boundless creativity and innovation. Additionally, Digital education has emerged as a powerful catalyst for effecting change, faster communication, and networking. CSR programs that provide holistic educational support, including digital literacy encourage students to pursue higher education, even in areas where affordability is a challenge.

3. **Infrastructure development in Primary schools**

   Infrastructure is essential for the delivery of quality primary education. The infrastructure condition of the schools in rural areas is an important issue that needs to be addressed. Many schools in rural areas lack basic facilities like clean drinking water, toilets, and electricity. This makes it difficult for students to get a quality education and for teachers to provide one.

   Well-maintained schools with good infrastructure provide a more comfortable and conducive learning environment for students, which can lead to improved academic performance. Companies can invest in building and improving school infrastructure, such as constructing classrooms, providing clean drinking water, and installing toilets. Additionally, companies can provide resources like textbooks, teaching materials, and technology to help enhance the learning experience for students and teachers.

Investing in school infrastructure in rural areas can be a crucial CSR intervention for companies that can help in addressing social and environmental challenges, promote sustainable development, and create positive social impact. These interventions can help reduce poverty, promote economic growth, and create a more equitable society.

4. **Quality Education: Influence multiple SDGs resulting in holistic development:**

An innovative aspect of CSR interventions in primary education is the focus on holistic development. Achievement of Sustainable Development Goal (SDG) 4 relating to quality education can help take important steps towards other SDGs like no poverty, gender equality, reducing inequalities, Good Health and well-being.

Apart from academic excellence, support is being provided to extracurricular activities, sports, arts, and cultural activities to promote well-rounded development. Such initiatives enhance students' creativity, problem-solving abilities, and overall personality, making them more productive and confident individuals in the long run. Gone are the days when education was just about textbooks and exams. The new era supports and promotes skills that are shaping tomorrow's workforce. Education goes beyond textbooks and grades, and CSR initiatives know it all too well.

Conclusion: -

CSR intervention in primary education has proven to be a transformative force in driving productivity and sustainable development. By investing in primary education, companies help create a brighter tomorrow for all. Through innovations in teaching methodologies, technology integration, teacher training, and holistic development, CSR initiatives empower young minds and create a competent and productive workforce for the future.

It's a smart investment that pays dividends for years to come. Not only does it help create a more educated and skilled workforce, but it also helps companies build strong relationships with communities, which can help them create a positive brand image and enhance their reputation. As businesses continue to embrace CSR in primary education, they move closer to building a brighter and more equitable future for generations to come. Despite the challenges faced by corporations in assessing the needs of society and the actual benefits reaped by beneficiaries from the aforementioned - programs, they continue to work tirelessly to make a meaningful change in society. They are driven by their vision and mission to change the way education is delivered in the modern era.

This article is published in Taxmann. The link to the same is: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023193/from-corporate-responsibility-to-classroom-readiness-how-csr-helps-build-a-better-future-experts-opinion

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ARE START-UP COMPANIES AND SMALL COMPANIES SUBJECT TO LESSER PENALTIES?

Background:

1. Recently, under the ROC Adjudication mechanism we have seen adjudication orders being passed with respect to start-up and small companies. In one such case, Registrar of Companies Tamil Nadu -Coimbatore ('ROC') passed an order against M/s. Konwert India Motors Private Limited ('Company'/'Konwert') on May 18, 2023.
2. In this case, the Company was in violation of section 42(3) of the Companies Act, 2013 ['the Act'] read with Rule 14(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
3. Section 42(3) of the Act read with Rule 14(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 states that companies making private placement under section 42 of the Act shall, before circulating the private placement offer letter i.e., PAS-4 to the identified persons, file the MGT-14 with ROC.
4. In the aforesaid case, the Company had circulated the private placement offer letter on April 24, 2021 but it filed form MGT-14 with the ROC on August 24, 2021, thus it was a case wherein the Company issued the PAS-4 to identified persons before filing relevant special resolution in form MGT-14. Hence the Company had violated Section 42 (3) read with Rule 14 (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
5. Penalty for violation of section 42 (3) of the Act is specified under section 42(10) of the Act. However, since Konwert was a small company as well as registered on Start-up India Portal, the relaxations in penal provision provided under section 446B of the Act were made applicable for purpose of levying of penalty.

Penal provisions for Small & Start-up companies

6. In this regard first let us understand meaning of Small Company and Start Up Company.

<u>Small Company</u> is defined under section 2(85) of the Act.

Small Company means a company, other than a public company whose:

(i) paid up share capital of which does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees, and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to:

(A) A holding company or a subsidiary company;

(B) A company registered under section 8; or

(C) A company or body corporate governed by any special act.

Start Up Company: The term 'start-up company' has been defined in various sections and Rules under the Act with minor modifications in wordings, but conveying the same meaning. As per the Explanation given under section 446B (which is the most relevant section in the context of this article), *Start-up Company means a private company incorporated under this Act or under the Companies Act, 1956 and recognised as start up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal trade('DPIIT').*

7. Konwert was having a paid-up capital of Rs.1,00,000. It was incorporated in the year 2019 and was registered on the start-up portal provided by DPIIT. Hence the Company was considered as small company and start-up company.

8. Now going ahead further let us look at how penalties are applied to small companies and start-up companies under the Act. section 446B of the Act speaks about lesser penalties for one person companies, start-up companies, producer companies and small companies. section 446B states as follows:
"*Notwithstanding anything contained in this act, if penalty is payable for non-compliance of any of the provisions of this act by a one person company, small company ,start-up company, or producer company or by any of its officer in default or any other person , as the case may be , shall be liable to a penalty which shall not be more one half of the penalty specified in such provision subject to maximum of two lakhs rupees in case of company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.*"

9. The section starts with the wording, "notwithstanding anything contained in this act", the meaning of this clause is that the provision is added in order to uphold its enforceability over another provision that is contradictory to it. This is considered as non-obstante clause. Hon'ble Delhi High Court had stated that, "*A non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in some enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.*"[i]

10. In this context we would now see difference in penalties levied for violation of section 42 by a small company or start-up company and rest of the companies.

11. Let us understand what is the penalty mentioned under section 42(10)
Section 42(10) prescribes penalty as: "*If a company makes an offer or accepts monies in contravention of section, the company ,its promoters and directors shall be liable for penalty which may extend to the amount raised through the private placement or two crore rupees , whichever is lower and the company shall also refund all monies with interest as specified under section 42(6)to subscribers within a period of thirty days of the order imposing the penalty.*"

12. In cases where section 446B was not applicable the penalty was imposed as per section 42(10) which was much higher as the companies were neither small companies nor start-up companies.

13. Some of the orders passed in case of companies where penalty was imposed under section 42(10) of the Act were as follows:

Date of Order	Name of the Company	ROC	Violation of Section	Penalty
November 24, 2021	Valley Monks Private Limited.	ROC Bengaluru	42 r/w Rule 14 (8)	On Company: Rs 50,00,000/- On 2 directors: Rs 50,00,000/- each Also ordered to refund Rs 50,00,000/- i.e., the Amount which was raised.
May 15, 2023	Payswiff Technologies Private ltd.	ROC, Hyderabad	42(4) & 42(6)	On company- 80,00,000/- On Managing director- 20,00,000/- On 5 Directors- 20,00,000 /- each Also directed to refund all money accepted in contravention of section 42(6) along with interest.
September 5, 2022	Herb Nutra. Lab Private ltd	ROC,Tamil Nadu	42 r/w 62	On Company-9,00,000 On 3 Officers in default:9,00,000 each

As seen above, the relaxation in penalties for small and start up entities is provided under Section 446B of the Act. Accordingly, penalty levied on the Konwert was Rs.2,00,000/- and on two Directors cum promoter of Rs.1,00,000 each. [i.e., total penalty levied was Rs 4,00,000/-.]. Hence it can be seen that maximum penalty prescribed under section 446B of the Act has an overriding effect over the penalty prescribed under section 42(10) of the Act.

1. In our present example of adjudication order of Konwert we can see that the ROC also upheld that provision of section 446B gives overriding effect over section 42(10) of the Act since the Company, though contravened provisions of section 42 and was otherwise liable to be penalised under section 42(10), but was subjected to the relaxation being provided under section 446B in penalty for being start up and small company, which in turn lead to a lower penalty on the company. Therefore, it can be said that small companies and start-up companies are subject to lesser penalties as compared to other companies.

2. This was just one instance where we made a comparison between the penalty provisions provided for under section 42 (10) with the penal provision provided for in Section 446B. But it must be noted that the relaxation in penal provisions provided for in section 446B shall have overriding effect over all other penalty provisions provided for in the entire Act

if the defaulting company is one within the classes of companies as prescribed for in section 446B i.e., if the defaulting company is a one person company, small company, start-up company or producer company.

CONCLUSION

To conclude it can be said that the above orders indicate that if any Company is classified under Start-up Company, Small Company and such other companies as mentioned in section 446B only then the penalty levied is lesser compared to other companies. Thus, though the Act provides for penalties depending upon the type of violation in various sections or where no such penalty is prescribed for general penalty is levied under section 450, it also takes into account the probable difficulties in getting professional guidance etc., which may be faced by certain categories of companies and thus even in case of violations being committed by such companies, there is a limit being set on the maximum penalty which can be imposed on such category of companies. Hence it can be said that the relaxations given in Section 446B should be looked at as a warning given by the Regulator, instead of levying heavy penalty prescribed in the relevant provision of the Act, and irrespective of how small a company is, it must ensure to comply with all the applicable provisions of the Act, in law and spirit!!!

This article is published in taxmann. The link for the same is: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023186/are-start-up-companies-and-small-companies-subject-to-lesser-penalties-experts-opinion

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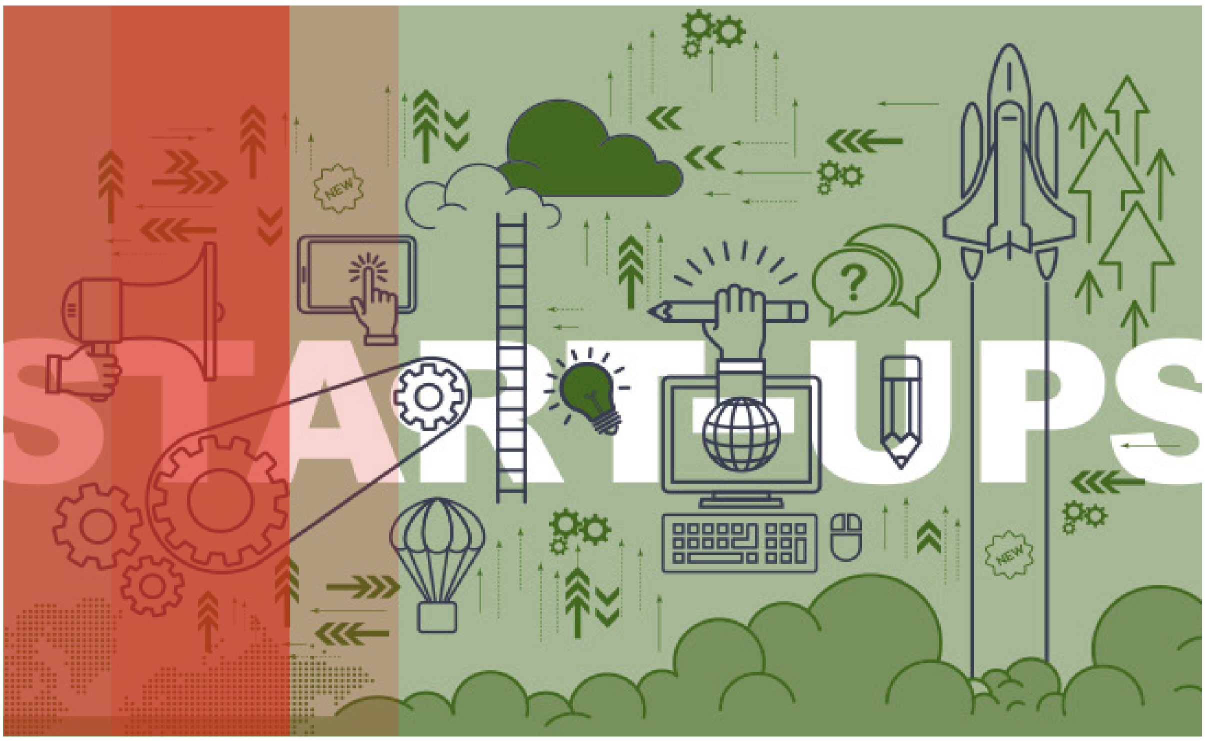
[i] Kishori Lal and Mukat Behari Lal... vs Siri Krishan, S.N. Nigam and Anr on 26th February,1996: 63 (1996) DLT 577.



Fair Practices Code: Safeguarding Stakeholder Interests in NBFCs

Why the Fair Practices Code?

The primary business activity of a Non-Banking Financial Company (NBFC) is to grant loans to its customers. NBFCs and other financial institutions adopt different means to attract the borrowers to scale up their business. With a view to protect the rights of the borrowers and to ensure proper conduct of business, the Reserve Bank of India (RBI) has issued Fair Practices Code (hereinafter referred to as "Code").

RBI vide its circular dated 5th May 2003 had issued guidelines on the Code. Thereafter, numerous modifications have been carried out in the guidelines issued in this regard keeping in mind the need to protect the interests of the borrowers and to ensure transparency while dealing with the customers so that no undue advantage is taken, and customers are able to take a well-informed decision.

Items covered under Fair Practices Code:

RBI has issued its updated circular on Fair Practices Code on 1st July 2015[1]. The Code covers the various aspects of loan lending process as follows:

- **Applications for loans and their processing:**
  All the communications to the borrower shall be in vernacular language or a language as understood by the borrower. The loan application shall set forth all the terms and conditions and all the information that would affect the interest of the borrowers in a transparent manner so that the borrowers can take a well-informed decision. Also, the acknowledgement on receipt of the loan application and the timeframe for disposal shall be given.

- **Loan appraisal and terms/conditions**
  The sanction letter shall specify all details regarding the loan sectioned including annualized rate of interest so that the borrower is aware of the exact rates that would be charged to the account, the approach for gradations of risk and rationale for charging different rate of interest to various categories of borrowers. Further, the penal interest charged for late repayment shall be mentioned in bold in the loan agreement. Also, a copy of the loan agreement along with a copy of each of all enclosures quoted in the loan agreement at the time of sanction / disbursement of loans shall be given to the borrower.

- **Disbursement of loans including changes in terms and conditions**
  A notice shall be given to the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. Further, changes in interest rates and charges should be effected only prospectively and suitable conditions in this regard should be incorporated in the loan agreement.

In case of loan taken against securities, the NBFC shall release all securities on repayment of all dues or on realization of the outstanding amount of loan subject to any legitimate right or lien for any other claim the NBFC may have against the borrower. Further, a notice must be given if such right of set off is to be exercised, specifying the remaining loan amount and the conditions under which the NBFC is entitled to retain the securities till the relevant loan amount is settled/ paid.

- **General Conditions**

At the time of recovery of loans, the NBFCs should not resort to undue harassment viz; persistently bothering the borrowers at odd hours, use muscle power for recovery of loans etc. The people dealing with the customers of the NBFC, including the staff, selling agents and recovery agents appointed should be trained to deal with the customers in a proper manner. Also, no discrimination should be done based on gender, caste, or religion.

Duties of the Board

Now, having understood the wide coverage, it would be pertinent to know the duty that is cast upon the Board in this regard.

Although NBFCs have the freedom of drafting the Code, the Board shall satisfy itself that the Code is aligned with the RBI guidelines issued for Fair Practices Code. Once the Board approves it, the same shall be disclosed on the website of the Company, if any.

Further, a grievance redressal mechanism shall be set up within the organization and a periodical review with respect to the compliance and functioning of the grievances` redressal mechanism shall be carried out by the Board to ensure that all disputes are heard and resolved efficiently.

Grievance Redressal Mechanism

The name and contact details of the Grievance Redressal Officer responsible for resolving customer complaints shall be displayed at the respective branches of the NBFC. Further, If the complaint / dispute is not redressed within a period of one month, the customer may appeal to the Officer-in-Charge of the Regional Office of DNBS of RBI, under whose jurisdiction the registered office of the NBFC falls. The details of such RBI Officer-in-Charge shall also be displayed at the respective branches of the NBFC.

Consequences of non-compliance

Under the Code, there is no specific penalty provision mentioned for violation of the Code. However, RBI is empowered to impose a penalty under provisions of section 58G (1)(b) read with sub-section 5(aa) of section 58B of the RBI Act, 1934 for failure to comply with the provisions applicable to NBFCs.

There have been cases where concerns have been raised by the customers relating to mis-selling, breach of confidentiality and security of customer information, charging exorbitant interest rates and harassment by recovery agents. To avoid such issues RBI has taken strict action against those who have violated the code.

In April 2017[2], RBI had imposed a monetary penalty of Rs. 5 lakhs on an NBFC as it was observed that charging of interest and its communication to the customers was not done in a transparent manner, which was in violation of the Code. RBI further imposed a penalty of Rs. 20 lakhs on another NBFC for violation of various provisions of the Code.

In January 2019[3] RBI had imposed a monetary penalty of Rs. 1 crore on an NBFC which is a major market player for violation of the Code.

In February 2023[4] RBI had imposed a penalty of Rs. 42.48 lakhs on a NBFC, as the company failed to ensure that its recovery agents did not resort to harassment or intimidation of customers as part of its debt collection efforts and thereby fail to adhere to the Code. There were also persistent/repeat complaints about harassment of customers due to the recovery and collection methods adopted by the company.

Way Forward

When it comes to following the Code, NBFCs need to take care that it is adhered to not only in letter but also in spirit. The penal action taken by RBI not only damages the brand image of the NBFC, but also affects the confidence and the trust that the customers have in the Company, which would in turn drastically affect the business of the Company. The success of a business depends on its customers as without customers there is no business and therefore, Companies should ensure that their business practices are ethical and are customer driven.

[1] Source: Master circular on Fair Practices Code issued by RBI vide notification dated DNBR (PD) CC.No.054/03.10.119/2015-16
https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9823&Mode=0

[2] RBI press release 2016-2017/2742 and 2016-2017/2741 dated 11 April 2017
https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=40119
https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=40120

[3] RBI press release 2018-2019/1645 dated 14 January 2019
https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=46003

[4] RBI press release 2022-2023/1662 dated 03 February, 2023
https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=55160

The Article is published in Taxmann and the same can be accessed on the following link:
https://www.taxmann.com/research/fema-banking-insurance/top-story/105010000000023175/fair-practices-code-safeguarding-stakeholder-interests-in-nbfcs-experts-opinion

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Corporate Insolvency Resolution Process (CIRP) can be initiated against a Corporate Guarantor in the principal borrower becomes the NPA?
In the matter of Intec Capital Limited (Appellant) Vs Shwet Biotech Private Limited (Respondent) at National Company Law Appellate Tribunal (NCLAT), New Delhi order dated 21 July 2023.

Facts of the case:

- Intec Capital Limited **-** the Appellant and the Financial Creditor (FC) was a Non- Banking Finance Company (NBFC), registered with the Reserve Bank of India.
- On 31 December, 2013 – a Loan Agreement was executed between Shwet Realtors Private Limited and Intec Capital Limited for a Financial Loan facility of Rs.3,57,14,286/- for the purpose of business expansion in which Corporate Guarantee was furnished by the CD/Respondent i.e. M/s Shwet Biotech Private Limited.
- Further, the Loan was sanctioned vide letter dated 16 December 2013 and was disbursed on 31 December 2013 to the Shwet Realtors Private Limited.
- The FC submitted that, the Legal Notice was sent on 7 April 2015 to the Corporate Guarantor ie., CD., invoking the arbitration proceedings and an award dated 14 August 2015 was passed in the arbitral proceedings.
- Shwet Realtors Private Limited became a NPA on 30 June 2016. Further, settlement agreement was executed between FC and CD on 20 January 2018. However, CD failed to make a payment as per agreed repayment scheduled between the parties.
- On default in repayment of debt by the CD, an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) was filed by the FC which was dismissed by the National Company Law Tribunal (NCLT) on the sole ground that the application filed by the appellant was not maintainable because it was of the view that an application u/s 7 of the IBC can be filed only against the Corporate Debtor and not the Corporate Guarantor.
- Aggrieved by the order of NCLT, the appellant filed an appeal at NCLAT.
- The Appellant relied upon a decision of the 'Hon'ble Supreme Court' in the case of *K Paramasivam vs. The Karur Vysya Bank Ltd. and Anr* highlighted that :
  "Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor."
- It was noted that neither one has put in appearance on behalf of the Respondent nor one has filed application for recalling of the order in order to participate in these proceedings or has challenged the order passed by NCLT despite service. Hence, the NCLAT proceeded the ex parte arguments for the Appellant.
- NCLAT observed that the issued raised in the appeal is no more *res integra* as it is covered by the aforesaid decision of the 'Hon'ble Supreme Court' in K.Paramasivam (supra).
- It was held that order passed by the NCLT was illegal as it was contrary to the law laid down by the 'Hon'ble Supreme Court' in the case of K Paramasivam (supra). The appeal was allowed and impugned order was set aside. The matter was remanded back to the NCLT to decide the application in accordance with law.

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