



Statement of the Finance Minister - “No provision of CSR consultant in the Companies Act”

Somesh Menon, a key editorial member of the team at ‘TheCSRUniverse.com’, has on 9th March 2021 reported that Finance Minister, Nirmala Sitharaman has confirmed in Parliament that there is “no provision of CSR consultant in the Companies Act”. This reportedly was in response to a query asked by Sanjeev Kumar Singari, a parliamentarian representing Kurnool of Andhra Pradesh on March 8.

In the Finance Minister’s words, “*Section 135 read with Rule 4 of the Companies (CSR Policy) Rules, 2014 prescribes that the Board of the company is empowered to undertake its CSR activities either by itself or through implementing agencies as mentioned in the said rule. There is no provision for CSR consultants in the legal framework of CSR provided in Section 135 of the Act and rules made thereunder.*”

The Report can be read at: <https://thecsruniverse.com/no-provision-of-csr-consultant-in-companies-act-nirmala-sitharaman-confirms-in-parliament/>

Is this remark something to feel concerned about?

The fact is ever since CSR became mandatory for certain companies (from 1st April 2014), neither Section 135 of the Indian Companies Act nor the Rules had any specific provision for “CSR Consultants”. Therefore, what the finance minister has stated is nothing new.

As she herself explains, “*the Government provides the broad framework for Corporate Social Responsibility (CSR) through Section 135 of the Companies Act, 2013 (‘Act’), Schedule VII of the Act and Companies (CSR Policy) Rules, 2014. **CSR is a Board driven process and the Board of the company is empowered to plan, decide, execute and monitor the CSR activities of the company based on the recommendation of its CSR Committee.** Section 135 read with Rule 4 of the Companies (CSR Policy) Rules, 2014 prescribes that the Board of **the company is empowered to undertake its CSR activities either by itself or through implementing agencies as mentioned in the said rule.***”

What the finance minister means is “**CSR consultants” cannot be considered as CSR “implementing agencies” nor can “CSR consultants” carry out CSR Activities as implementing agencies.**

As per Rule (4)(1) of Companies (CSR Policy) Amendment Rules 2021:

The Board shall ensure that the CSR activities are **undertaken by the company itself** or through:

- (a) a company established under **section 8** of the Act, or a **registered public trust** or a **registered society, registered under section 12A and 80 G** of the Income Tax Act, 1961, **established by the company, either singly or along with any other company,** or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or



- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) **a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.**

Thus, a company cannot undertake CSR activities through a “CSR consultant”. It must be carried out by the company either on its own or through agencies a) to d) described above.

Role of professional agencies

Now, if a company decides to undertake CSR on its own, can it engage the professional services of a “CSR consultant”? Here, the Finance Minister herself has said that CSR is a Board driven process and the Board of the company is empowered to plan, decide, execute and monitor the CSR activities of the company based on the recommendation of its CSR Committee.

Case No.1: A nuts & bolts manufacturing company decides to undertake CSR project on its own and build a hospital for the community around the factory. Does the company have the expertise or experience to undertake this project of constructing a hospital? Will there be NGOs with the experience and experience to do this? Under the circumstances would it not be prudent for the company to engage the professional services of a hospital consulting agency to help the company plan, decide, execute and monitor the CSR activity of the company (the hospital) based on the recommendation of its CSR Committee? And would not professional fees paid be legitimate CSR expenditure?

Case No.2: An automobile company decides to undertake CSR project on its own and build a school for the community around the factory. Does the company have the expertise or experience to undertake this project of constructing a school? Will there be NGOs with the experience and experience to construct the school? Under the circumstances would it not be prudent for the company to engage the professional services of a consulting agency to help the company plan, decide, execute and monitor the CSR activity of the company (the school) based on the recommendation of its CSR Committee? And would not professional fees paid be legitimate CSR expenditure?

Professional fees

Now the moot question is whether such professional fees should be considered as “administrated overheads” and therefore cannot exceed five percent of total CSR expenditure of the company for the financial year? We think not!

While **Rule 7 states:** “The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year”; as per Rule 2(b) of Company (CSR Policy) Amendment Rules 2021 **“Administrative overheads” means:** “the expenses incurred **by the company** for ‘general management and administration’ of CSR functions **in the company, BUT, but**



shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme.

Thus, expenses directly incurred by the company (including paying professional fees to an agency specializing in a certain discipline), for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme would not fall under “administrative overheads” and neither would the cap of five per cent be applicable.

Of course, such professional fees would not be given as a CSR grant but as professional fees for expert services rendered by the agency and TDS u/s 194J as also GST would be applicable.

Also, a professional (specialty) consulting agency would not be an entity, covered under Rule 4(1), which intends to **undertake any CSR activity** and therefore not required to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021.

Thus, in our opinion, we see no real cause for concern in the statement made by the Finance Minister in response to a question asked to her in Parliament.

Conclusion

1. To reiterate, “CSR consultants” cannot be considered as CSR “implementing agencies” nor can “CSR consultants” carry out CSR Activities as implementing agencies.
2. However, if a company decides to undertake CSR on its own, it may engage the professional services of an expert “CSR consultant” or “consulting agency” to help the company decide, execute and monitor the chosen CSR activities of the company based on the recommendation of its CSR Committee.

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