AS INTRODUCED IN LOK SABHA

Bill No. 224 of 2022

THE COMPANIES (AMENDMENT) BILL, 2022

By

DR. KRISHNAPAL SINGH YADAV, M.P.

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BILL

further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:–

1. (*1*) This Act may be called the Companies (Amendment) Act, 2022. Short title and commencement.

(*2*) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 135.

2. In section 135 of the Companies Act,–

(a) in sub-section (*1*), for the words "three or more directors", the words "three or more directors and a Corporate Social Responsibility professional" shall be substituted; and

(b) in sub-section (*5*), for the first proviso, the following proviso shall be substituted, namely:–

"Provided that it shall be mandatory for the company to give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities."

STATEMENT OF OBJECTS AND REASONS

The last two decades have seen significant economic growth and integration into the global economy, resulting in several changes in the business landscape. The role of businesses within the larger society has come under intense scrutiny by several stakeholders. Governments across the world have been using different forms of regulation to shape corporate behaviour with calls for increased accountability, disclosures and actions from them. India's progress on corporate governance and the Companies Act, 2013 (Act) needs to be viewed within this larger discourse.

The primary objective of Corporate Social Responsibility (CSR) was not to mobilize resources for Government to bridge resource gap in meeting Sustainable Development Goals (SDGs). The primary objective is to promote responsible and sustainable business philosophy at a broad level and encourage companies to come up with innovative ideas and robust management systems to address social and environmental concerns of the local area and other needy areas in the country.

However, even after the mandatory provision in the act various companies failed to perform their prescribed duty. The Government has sanctioned prosecution proceedings against 284 companies and sent 5,382 notices to companies that have not fulfilled the mandatory CSR expenditure norms. Thus in order to robust the mechanism a High Level Committee (HLC) was incorporated by the Government to suggest substantial changes to get rid of any lacuna under the act. In furtherance to that, the Committee has noted that HLC-2015 suggested that CSR provisions also be made applicable to profit making entities not incorporated under Company Law, but operating under other specific statutes on *mutatis mutandis* basis. The Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises (CPSEs) issued by the Department of Public Enterprises (DPE) in October 2014, also prescribed/advised that CPSEs which are statutory corporations also comply with CSR provisions.

An analysis of the CSR data from FY 2014-15 to FY 2017-18, reveals an acute concentration of CSR funds in a few geographical areas to the exclusion of the rest. There is a skew in favour of industrialised States such that the least developed States receive the least funds. This skew may have been caused, *inter alia*, by the clause on local area preference. Not only that, upon a bare perusal of Section 135, at the first blush it may seem that by incorporating the term "shall" before the terms, "preference" and "local areas", the Act intended that it is mandatory to comply with CSR obligations within a geographical/ territorial area limitation.

Further, the amendment also seek to the presence of a CSR professional in the CSR committee because it is often seen that the committee are not at par with the practicality and not at the centre-stage while planning and approving the CSR projects due to lack of technical expertise. Thus to get rid of this problem it is imperative to have a presence of professional in the committee.

Hence this Bill.

NEW DELHI;
23 *November*, 2022.

KRISHNAPAL SINGH YADAV

ANNEXURE

EXTRACTS FROM THE COMPANIES ACT, 2013.

(ACT NO. 18 OF 2013)

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135. *(1)* 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.

Corporate Social Responsibility.

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(5) The Board of every company referred to in sub-section (*1*), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that 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.

Explanation.—For the purposes of this section – average net profit shall be calculated in accordance with the provisions of section 198.

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