IP Hotline

May 08, 2019

EXPORT OF PATENTED PRODUCT BY A NON-PATENTEE FOR OBTAINING REGULATORY APPROVAL ALLOWED: DELHI HIGH COURT

The Ministry of Corporate Affairs in exercise of its powers under Section 467(1) of the Companies Act, 2013 ("**Companies Act**") has further amended Schedule VII ("**Schedule VII**") of the Companies Act. The said amendment shall come into force on the date of its publication in the Official Gazette.

BACKGROUND

Per Section 135 of the Companies Act ("**CSR provisions**"), every company with net worth of INR 500 crore, or turnover of INR 1000 crore or more or net profit of 5 crore or more is mandated to spend 2% of average net profit of the preceding three (3) years on corporate social responsibilities/CSR activities.

Since the time CSR provisions were first introduced, the list of CSR activities enumerated under Schedule VII of the Companies Act have been amended by the government from time to time. Most of the items enumerated under Schedule VII since its inception has been framed around activities pertaining to social welfare and charitable activities with key focus on eradicating extreme hunger and poverty, promotion of education, gender equality and empowering women, reducing child mortality, improving maternal health, ensuring environmental sustainability and protection of national heritage amongst others.

For instance, the pre-amended item (ix) under Schedule VII of the Companies Act pertained to contributions and funds that could be made to technology incubators located within academic institutions.

EXPANSION OF SCHEDULE VII

Vide the recent amendment, item (ix) of Schedule VII has been further expanded and substituted with earlier entries as follows:

i. Incubators funded by the Central Government or State Government or any agency or
ii. Public Sector Undertakings ("PSUs") of Central Government or State Government, and
iii. Public funded universities such as Indian Institute of Technology (IITs), National Laboratories and
iv. Autonomous Bodies which have been established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), council of Scientific and Industrial Research (CSIR) Department of Economic Research (DAE), Defense Research and Development Organization (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology.

Further, the incubators, agencies, PSUs, universities and autonomous bodies should primarily be engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

ANALYSIS

Since the commencement of the CSR provisions, India Inc. has cumulatively spent close to 7B$ on legally mandated CSR activities under the provisions of the Companies Act. The spending for listed companies on CSR accounted for 2/3rd of the entire available CSR pool while unlisted companies accounted for the remaining part.

For instance, since the inception of CSR provisions, CSR expenditure by Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) listed companies have witnessed a steady expenditure growth in percentage points. However, CSR expenditure were still more directed towards charitable activities like education, health, vocational training with few items under Schedule VII getting more precedence over others. While education and vocational training have traditionally been more preferred, CSR expenditure towards sanitation, yoga, disaster relief, sports and community development etc. have also seen a steady rise.

However, contributions or funds received by technology incubators under CSR provisions has not received much traction. At closer look at India's budgetary norms indicate that government's spending on R&D in terms of percentage of GDP has largely been stagnant at 0.7%[1] which pales in comparison to industrialized economies across the globe.

Private sector has traditionally lacked behind public sector in terms of investments or support in R&D in India. However, there has been a growing concern that without private sector's increased participation, R&D in the field of science and technology, medicine, engineering might not entirely take-off.

Vide the recent amendment, it can be seen that the focus of the government has shifted from solely promoting welfare projects to research in technology, medicine and other sectors. The recent initiative seems to also be aimed at increasing collaborative research of private companies in conjunction with publicly funded institutions. Additionally, it would "open up a substantial corpus of funds for state-sponsored incubators and start-ups currently

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being mentored" by them in not only technological sector as contemplated by the previous norms but also in a variety of sectors now[2].Increased funding in research is expected to lead to technological advancement and propel the growth of start – up ecosystem in India.

CONCLUSION

While a few companies have made contributions into government-affiliated technology business incubation ("**TBIs**") centres as part of their CSR mandate in the past, time is right to allow more public-private participation in R&D. And with the recent amendment, the scope and potential impact of private participation in R&D using CSR funds certainly looks encouraging.

The amendment is a step in the right direction, and particularly in recognizing private sector's role in spurring innovation in the field of science & technology and allied areas. Increased private participation in R&D will certainly spur growth in the economy. It is quite obvious that the government is aiming to streamline the processes which contribute to economic growth, and by allowing CSR contributions towards market-led R&D, the government seems to acknowledge the endogenous growth theory which lays emphasis on R&D and improvements in human capital accumulation as important determinants in shaping up long-term economic growth.

– Rahul Rishi & Dr.Milind Antani
You can direct your queries or comments to the authors

[1] India's R&D spend stagnant for 20 years at 0.7% of GDP, The Economic Times, January 29, 2018
[2] *Incubators Get a Shot in Arm*, Indian Express, 21st September 2019. Available here.

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