

Amita Desai & Co., Company Secretaries, Mumbai

Circular dated May 20, 2021 – CSR- Clarification on offsetting the excess CSR spent for in FY 2019-20 – reg .

MCA has on May 20, 2021 issued a Circular clarifying on offsetting the excess CSR spent for FY 2019-20 (the subject seems to be stating any spend made on 30th March 2020 in FY 2019-20 which is in excess can be set off against the mandatory spent in FY 2020-21)

- (a) On March 30, 2020 Indian Government had made an Appeal to MDs/CEOs of top 1000 companies in terms of market capitalization, to contribute generously to “Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund” (PM CARES Fund) for Covid related use.
- (b) In the appeal, it was mentioned that such contribution may, inter-alia, include the unspent CSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, which can later be offset against the CSR obligation arising in subsequent **financial years.**
- (c) In pursuance to the said appeal, certain companies claimed to have contributed CSR funds to the ‘PM CARES Fund’ over and above their prescribed CSR amount for FY 2019-20.
- (d) It is clarified by Circular dated 20th May 2021 that where a company has contributed any amount to ‘PM CARES Fund’ on 31.03.2020, in terms of the aforementioned appeal and which is over and above the minimum amount it has to spend on CSR (***2% of Average Net Profits of past three years***) for FY 2019-20 then such excess amount or part thereof is offset against the requirement of a company for mandatory CSR spend in FY 2020-21, then the same shall not be viewed as a violation subject to following three conditions.
1. the amount offset as such shall have **factored the unspent CSR amount for previous financial years**, if any;
 2. the **Chief Financial Officer** shall certify that the contribution to “PM-CARES Fund” was indeed made on 31st March 2020 in pursuance of the appeal and the same shall also be so certified by the **Statutory Auditor** of the company; and
 3. the details of such contribution shall be **disclosed separately in the Annual Report on CSR** as well as in the **Board’s Report for FY 2020-21** in terms of section 134 (3) (o) of the Companies Act, 2013 with respect to CSR.

Off: 1005, Solaris Hubtown, Prof N S Phadke Marg, Andheri East, Mumbai-400 069

Tel : 91 22 26845919/20/21 Cell 09820177691

Website:www.amitadesai.com E-mail: info@amitadesai.com

Amita Desai & Co., Company Secretaries, Mumbai

Few lacuna in this circular

1. The subject of the Circular should be **Clarification on offsetting the excess CSR spent for in FY 2019-20 – reg .**
2. In Appeal dt 30.03.2020 , Government had requested Corporate to contribute generously to “Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund” (PM CARES Fund) and that such contribution may, inter-alia, include the unspent CSR amount, if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, which can later be offset against the CSR obligation arising in **subsequent financial years**. Subsequent **FY should have been three years** as per third proviso under section 135 (5) read with Rule 7 (3) of Co (CSR Policy) Rules, 2014 , both amended on 22 January 2021.
3. **Certain more details on PMCARES Fund-** *Source : The Indian Express*
 1. PM CARES Fund was set up on March 27, 2020 in the wake of spread of Covid 19 in India.
 2. PM CARES Fund is a Trust which was created to have financial assistance from people across the country and overseas to provide relief to those affected by the COVID-19 pandemic.
 3. Prime Minister is the Ex-Officio Chairman of the PM Cares Fund. Defense Minister, Home Minister and Finance Minister are Ex-officio Trustees of the Fund.
 4. PM-CARES does not come under the RTI act because it receives funds from private sources.
 5. No CAG Audit require for this Trust
 6. India’s annual Rs 15,000-crore CSR budget, over one-third went to the PM CARES Fund.
 7. Top 300 companies contribute two-thirds of CSR budget that is approx. Rs 10,000 crore
 8. A total of 101 Public Sector Undertaking (PSUs) have contributed Rs 155 crore from employees’ salaries to the PM CARES, Fund. Oil and Natural Gas Corporation made the highest contribution of Rs 29.06 crore from its staff salaries. Bharat Sanchar Nigam Limited (BSNL) contributed Rs 11.43 crore.
 9. PSU collectively have an average annual CSR budget of Rs 3,000 crore have donated Rs 2,507 crore to PM-Cares and private companies that typically have an average annual CSR budget of Rs 12,000 crore have donated around Rs 2,817 crore to PM-Cares.

Off: 1005, Solaris Hubtown, Prof N S Phadke Marg, Andheri East, Mumbai-400 069

Tel : 91 22 26845919/20/21 Cell 09820177691

Website:www.amitadesai.com E-mail: info@amitadesai.com