

**CORPORATE SOCIAL RESPONSIBILITY IN SELECT CENTRAL PUBLIC SECTOR
UNDERTAKINGS (CPSUs)**

**MINISTRY OF CORPORATE AFFAIRS AND
MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES
(DEPARTMENT OF PUBLIC ENTERPRISES)**

**COMMITTEE ON PUBLIC UNDERTAKINGS
(2016-2017)**

FOURTEENTH REPORT

(SIXTEENTH LOK SABHA)



LOK SABHA SECRETARIAT

NEW DELHI

CORPORATE SOCIAL RESPONSIBILITY IN SELECT CENTRAL PUBLIC SECTOR UNDERTAKINGS (CPSUs)

(Action taken by the Government on the Observations / Recommendations contained in the Eighth Report of the Committee on Public Undertakings on Corporate Social Responsibility in select Central Public Sector Undertakings (CPSUs))



25 November, 2016/4 Agrahayana, 1938 (Saka)

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COMPOSITION OF COMMITTEE ON PUBLIC UNDERTAKINGS (2016-17)

Shri Shanta Kumar - Chairperson

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3. Shri Ramesh Bais
4. Shri Biren Sing Engti
5. Dr. Khambhampati Haribabu
6. Shri Kristappa Nimmala
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| 1. | Smt. Sudesh Luthra | - | Joint Secretary |
| 2. | Smt. Anita B. Panda | - | Director |
| 3. | Shri G.C. Prasad | - | Deputy Secretary |

INTRODUCTION

I, the Chairperson, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Fourteenth Report on Action Taken by the Government on the Observations/Recommendations contained in the Eighth Report of the Committee on Public Undertakings (Sixteenth Lok Sabha) on Corporate Social Responsibility in select Central Public Sector Undertakings (CPSUs).

2. The Eighth Report of the Committee on Public Undertakings (2015-16) was presented to Lok Sabha and laid on the Table of Rajya Sabha on 04 December, 2015. The Action taken Replies to all the 31 recommendations contained in the Report were received from the Department of Public Enterprises on 8 June, 2016 and from the Ministry of Corporate Affairs on 10 June, 2016.

3. The Committee considered and adopted the draft Report at their sitting held on 2 September, 2016.

4. An analysis of the action taken by the Government on the Observations/Recommendations contained in the Eighth Report of the Committee (2016-2017) is given in Appendix II.

New Delhi
23 November, 2016
2 Agrahayana, 1938(S)

SHANTA KUMAR
Chairperson,
Committee on Public Undertakings.

REPORT

CHAPTER I

This Report of the Committee deals with the action taken by the Government on the observations/recommendations contained in the Eighth Report (Sixteenth Lok Sabha) of the Committee on Public Undertakings (2015-16) on "Corporate Social Responsibility in select Central Public Sector Undertakings (CPSUs)". The Report was presented to the Parliament on the 4th December, 2015. It contained thirty-one observations/recommendations.

2. Section 135 of Companies Act, 2013 which is administered by the Ministry of Corporate Affairs deals with the Corporate Social Responsibility. The Department of Public Enterprises under the Ministry of Heavy Industries and Public Enterprises is the nodal department in the Government of India to provide an overview of the financial and physical performance of CPSUs. Hence the observations/recommendations of the Committee contained in the report were required to be acted upon both by the Department of Public Enterprises (Ministry of Heavy Industries and Public Enterprises) and Ministry of Corporate Affairs, the report was forwarded to both the Ministries. Action Taken notes have been received from both the Department of Public Enterprises (Ministry of Heavy Industries and Public Enterprises) and Ministry of Corporate Affairs in respect of all thirty-one observations/recommendations contained in the Report. These have been categorized as follows:

- (i) Observations/Recommendations which have been accepted by the Government (Chapter II)
Sl. Nos. 6, 12, 13, 16, 20, 25, 26, 29 and 31 (Total 9)
- (ii) Observation/Recommendation which the Committee do not desire to pursue in view of the Government's replies (Chapter III)
Sl. Nos. 10, 22 and 30 (Total 3)
- (iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee (Chapter IV)
Sl. Nos. 1, 2, 3, 4, 5, 7, 8, 9, 11, 14, 15, 17, 18, 19, 21, 23, 24 and 27 (Total 18)
- (iv) Observations/Recommendations to which the Government have furnished interim replies (Chapter V)
Sl. No. 28 (Total 1)

3. **The Committee desire that final reply on the observation/recommendation to which interim reply has been furnished should be expedited. They also desire**

that response to their comments in Chapter I of the Report should be furnished to them expeditiously.

4. The Committee will now deal with the action taken by the Government on some of the observations/recommendations in the succeeding paragraphs.

Compilation of data with regard to CSR spending by CPSUs and private companies

Recommendation SI. No. 1

5. The Committee, in their Eighth Report, had recommended the following with regard to the data regarding allocations made under CSR by CPSUs :-

"The Committee note that with the notification of Section 135 of the Companies Act, 2013, containing CSR provisions, which came into effect from the 1st April, 2014, CSR for Companies has been made legally binding. With the enactment of Section 135 of the Companies Act, 2013 relating to CSR, India has, perhaps become the first country in the world bringing CSR provisions within the Statute. As per Section 135 of the Companies Act, 2013, Companies crossing a threshold limit i.e. net worth of ₹ 500 crore or more; or turnover of ₹ 1000 crore or more; or net profit of ₹ 5 crore or more, have to spend at least two per cent of their average net profit made during three immediately preceding financial years, on CSR activities every year.

The Companies including Public Sector Enterprises have been taking initiatives since long to fulfill their Social Responsibilities so as to promote socio-economic and environmental changes in the lives of the poor people in the country. The Committee are concerned to note that the Ministry of Corporate Affairs (MCA) and the Department of Public Enterprises (DPE) have not bothered to maintain data with regard to amount spent so far on CSR by CPSUs as well as private Companies. DPE has, however, furnished the estimated amount likely to be spent on CSR during the year 2013-14. It has been stated that as per the data

furnished in the Public Enterprises Survey 2013-14, two per cent of average net profit in the three immediately preceding years, in respect of 131 CPSEs which exceeds the threshold limit for undertaking CSR, comes to ₹ 3683.73 crore. With regard to private Companies, the information given at official site of MCA indicates that as on the 28th February, 2015, the total number of private Companies is 952892 with authorized capital of ₹ 14,76,339.28 crore. There are 21,429 Companies having net profit of above ₹ 5 crore i.e. they cross the threshold limit for spending the requisite amount on CSR. Thus, it can very well be presumed that a huge amount of money under CSR would be available which in the opinion of the Committee, if utilized properly, can contribute in bringing a visible change in the lives of the poor people in the country. The Committee also feel that a huge amount would have been spent on CSR by Companies during the first year of implementation i.e. 2014-15, as per the statutory provisions. Now when Companies would be making report about the policy developed and implemented on Corporate Social Responsibility initiatives taken for the year 2014-15 as per Section 134 (o) read with Section 135 of the Companies Act, 2013, the Committee would like to be apprised about the total allocations made under CSR by CPSUs as well private Companies, as and when the data is compiled by MCA."

6. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"DPE deals with CPSEs (298 in 2014-15). Information relating to total allocation made under CSR by CPSEs eligible for CSR expenditure has been uploaded by CPSEs on the website of the Ministry of Corporate Affairs (MCA). DPE has collected information separately in this regard for 2014-15. 110 CPSEs have spent ₹ 2441.01 crore under CSR in 2014-15. A statement showing details of 2 percent allocated for CSR and expenditure made during 2014-15 by these CPSEs is enclosed. (*Annexure-I*)"

7. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Corporate Social Responsibility (CSR) expenditure of 460 listed companies, which have placed their annual reports on their websites, indicates that 51 Public Sector Undertakings (PSUs) and 409 private sector companies together spent about ₹ 6337 crore on CSR during 2014-15, as tabulated below:

₹In crore

Sl. No	Company Type	No. of Companies	Actual CSR Expenditure	Mandated CSR Expenditure	Percentage utilization
1	PSUs	51	2386.60	3359.84	71.03
2	Private Sector Companies	409	3950.76	4987.63	79.21
	Total	460	6337.36	8347.47	75.92

8. The Committee note from the data with regard to CSR spending by CPSUs for the year 2014-15, as furnished by DPE, that during the year 2014-15, out of the 298 CPSUs, which the Department deals with, 110 CPSUs have spent ₹ 2441.01 crore from the available amount of ₹ 3489.26 crore meant for CSR. The DPE have not clarified the status of the remaining 188 CPSUs as to how many of those CPSUs were qualified to incur CSR expenditure under the Companies Act. The MCA on the other hand have furnished the data in respect of only 51 CPSUs indicating that out of the ₹ 3359.84 crore mandated CSR expenditure, those could spend only ₹ 2386.60 crore. On analysis of the data furnished by DPE and MCA, there appears to be no clarity on the available mandated CSR expenditure and the actual CSR expenditure even by the CPSUs. Also the number of CPSUs varies considerably in both the replies. While MCA has stated that ₹2386.60 crore was spent on CSR by 51 CPSUs, the DPE has stated that ₹2441.01 crore was spent by 110 CPSUs in 2014-15.

9. With regard to private companies, MCA has furnished the data in respect of CSR spending during the year 2014-15 for only 409 private companies, out of 21429 private companies having net profits above ₹5 crore and eligible for CSR spending, as noted by the Committee in the original report. So far as the status of spending by these 409 private companies is concerned, the data of MCA

indicates that an amount of ₹3950.76 crore out of ₹.4987.63 crore of mandated expenditure could be spent. Besides it appears to the Committee that MCA has collected the data from the Annual Reports of the 51 CPSUs available on their website and not from the annual reporting format which is required to be furnished by the CPSUs to the MCA as per the provisions of the Companies Act. Even in the time period of six months available with MCA to furnish the action taken replies, this exercise was not done, to the utter disappointment of the Committee.

10. From the aforesaid scenario, the Committee conclude that data regarding availability and utilisation of funds meant for CSR in respect of more than 65% of the CPSUs and thousands of private companies was not maintained by the Government, which even by a rough estimate, must have reached beyond thousands of crores of rupees. The Committee feel that unless data on CSR budget and expenditure is properly maintained, it is virtually impossible to assess the impact of CSR activities on the lives of the poor people of the country. The Committee are particularly unhappy with the casual approach of the Ministry of Corporate Affairs in implementing CSR provisions on private companies and hence reiterate that the Government should maintain proper data in respect of all the eligible CPSUs and private companies to make an objective assessment of the CSR budgetary resources available and its spending. They therefore, reiterate their earlier recommendation and desire to be apprised about the total allocations made under CSR during the year 2014-15 by all the CPSUs as well as private companies by DPE and MCA respectively.

Need to define CSR

Recommendation SI. No. 2

11. With regard to need to define CSR, the Committee in their Eighth Report, had recommended as follows :-

"The Committee note that the guiding principles for CSR funding is inclusive growth i.e. to include those sections of the society in the growth process, which

had hitherto remained excluded from the mainstream of development. Here, the Committee cannot but recall the great words of the Father of the Nation Mahatma Gandhi, who believed that development is “Sarvodaya” through “Antodaya”, implying the welfare of all by serving the last man in the queue i.e. the “poorest among the poor”. The Committee firmly believe that the spirit of CSR should be serving the interest of the “most marginalized sections of the society” in line with Antyodaya philosophy. As such CSR is not mere charity/donation but is a concept which reiterates the responsibility towards the society and commitment to integrate social, environmental and human development concerns in the entire value chain of corporate business.

The Committee further note that India's Human Index Value (HDI) for 2013 is 0.586, positioning the country at 135 out of 187 countries and territories- the lowest among the BRICS countries, with Russia at 57, Brazil at 79, China at 91, and South Africa at 118, and slightly ahead of Bangladesh and Pakistan. Significantly, while China improved its ranking by ten places between 2008 and 2013, India's position improved by just one rank as mentioned in the Economic Survey 2014-15. Thus a lot needs to be done to bridge the gap for which focused attention needs to be given to poor and marginalized sections of society as well as backward areas. The Committee find that the term ‘Corporate Social Responsibility’ has not been defined in the enactment/ Rules. The Committee's examination of the subject has revealed that although a lot of initiative are being taken with regard to CSR by various CPSUs, the pattern of expenditure so far shows that it is not always targeted to the poorest of the poor/ backward areas of the country. The Committee, therefore, recommend that CSR should be clearly defined in the Act itself. The definition should cover the broader principles of CSR spending as elaborated above so as to ensure that CSR allocations are spent for the specified activities targeting poor and backward areas. They feel that the concerns expressed by them may necessitate suitable amendments in the Act and desire that action may be taken expeditiously on the same."

12. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"The action for modifications in the Companies Act, 2013, Companies (CSR Policy) Rules, 2014 and the Schedule-VII, including definition of CSR falls within the purview of MCA. These Act and Rules are applicable to the CPSEs and they will be advised for implementation of any changes made therein by MCA."

13. The Ministry of Corporate Affairs in their action taken reply have stated as follows:-

"Schedule VII of the Act enlists the activities that can be undertaken by companies under their CSR policies, primarily aiming at :

- i. eradicating hunger, poverty and malnutrition; promoting health care including preventive health care and sanitation including contribution to the 'Swachh Bharat Kosh' set-up by the Central Government for the promotion of sanitation and making available safe drinking water; and
- ii. Promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

These activities primarily target the poor and weaker sections which have a direct bearing on improving human development."

14. The Committee, in their original report, had noticed that CSR activities by the CPSUs did not always target the poorest of the poor and the most backward areas of the Country and hence emphasised upon the urgent need to define the term 'Corporate Social Responsibility' in the Act itself through necessary suitable amendments covering the broader principles of CSR so that the companies could focus on the particularly vulnerable sections of the society. Citing Indian's poor HDI score in the past years, the Committee had desired that CSR should essentially target the poorest of the poor and the most backward areas of the Country in tune with the Gandhian concept of 'Antyodaya'. The DPE, in their

reply, have rightly stated that the action for modifications in the Companies Act, 2013, Companies (CSR Policy) Rules, 2014 and the Schedule – VII, including definition of CSR falls within the purview of MCA. However, the MCA in their action taken reply have chosen to skirt the issue of defining CSR and instead, have just quoted some provisions from Schedule VII of the Companies Act to prove the point that the activities from the Companies Act are meant to target the poor and weaker sections. The Committee are aware that Schedule VII of the Act enlists all the activities in broader terms that can be taken under the CSR Policy. However, since the actual implementation of CSR activities is not always targeted towards the poorest, they had desired that an appropriate definition of CSR can be incorporated in the Act. The purpose of the Committee's original recommendation was to bring better clarity and direction about CSR in the Act and thus have the requisite thrust on the welfare and upliftment of the poorest of the poor and the most backward classes. In this backdrop the reply of the Government is not categorical. The Committee, therefore, reiterate that necessary amendment be made in the Act to include a proper definition of CSR so that CPSUs could focus their CSR activities on these sections of the society.

Amending Section 135 of the Companies Act and laying of Annual Report on CSR in Parliament

Recommendation Sl. No. 3

15. With regard to amending Section 135 of the Companies Act, 2013, the Committee in their Eighth Report, had recommended as follows :-

"MCA/DPE have apprised the Committee that CSR expenditure which was hitherto a voluntary initiative, has been made compulsory with the enactment of Section 135 of the Companies Act, 2013. Although the word 'shall' has been used in sub-section 5 of Section 135 for making CSR expenditure, second proviso to this sub-section dilutes the spirit of making the provision mandatory. The second proviso provides that if the Company fails to spend specified amount

under CSR, the Board shall in its report specify the reasons for not spending the amount. The Committee strongly feel that the whole purpose of making the CSR spending as mandatory is defeated by the second proviso as a Company can get away easily by simply stating the reasons for not spending prescribed CSR allocations.

Not only that, there is utter confusion about carrying forward of unspent amount allocated in a year under CSR with MCA/DPE. While placing the legal position before the Committee, the Secretary, MCA during the course of deposition stated that the CSR Budget has to be spent within a year, if it is not spent, then it would lapse as far as normal Companies are concerned. On the other hand, as per DPE guidelines, in case of CPSEs, mere reporting and explaining the reasons for not spending this amount in a particular year would not suffice and the unspent CSR amount in a particular year would not lapse. It would instead be carried forward to the next year for utilization for the purpose for which it was allocated. Rural Electrification Corporation Limited (REC) in this regard has observed that CPSEs are at a relative disadvantage viz a viz private sector Companies governed under same Act on this issue. The Committee wonder how two sets of Rules can be applicable to private Companies and CPSEs, making unspent funds for one (private Companies) in a year as lapsable and for the other (CPSEs) making as non-lapsable. The Committee observe that CSR spending has been made mandatory as per Section 135 (5) of the Act. As such the Companies have to allocate and spend the prescribed allocations under CSR in a year. The Committee, therefore, strongly recommend to review sub-section 5 of Section 135 of the Act and make suitable amendments in line with spirit of mandatory allocation to be made under CSR by the Companies."

16. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"The rules regarding CSR are laid down by MCA under the Companies Act, 2013 and these are followed by CPSEs. The guidelines issued by DPE are advisory in nature and complements the provisions of the Act in this regard. Since CPSEs are

administered by the Government the expenditure on CSR for the benefit of the society is being ensured by the Government"

17. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Section 135(5) of the Act along with second proviso to this sub-section was included in the statute at the instance of the Standing Committee on Finance on Demand for Grants in its 21st Report. While the law does not provide for mandatory carry-forward of unspent CSR amount, MCA has clarified that companies may carry-forward such amount so that the spirit of CSR spending is achieved."

Recommendation Sl. No.4

18. With regard to role & responsibilities of MCA & DPE, the Committee in their Eighth Report, had recommended as follows :-

"The Committee find that as per Companies Act, 2013 and Rules, the onus for ensuring expenditure as per the prescribed allocations under CSR has been laid on the Board of every Company as per sub-Section 5 of Section 135 of the Companies Act. There is no clarity about the roles and responsibilities of MCA and DPE in implementation of CSR provisions. In the Committee's opinion, MCA has a greater role for implementation of CSR provisions as the Act and Rules are being administered by them. Besides DPE being the coordinating Department for CPSUs, which has issued certain Guidelines with regard to implementation of CSR provision, remains coordinating Department for CPSUs. The year 2014-15 being the first year of implementation of CSR statutory provisions, MCA and DPE have an important role to play. In this scenario, the Committee are of the view that merely collating and compiling the information on CSR expenditure by MCA would not be sufficient. The MCA has to oversee the implementation of CSR so as to ensure that the allocations are spent in the true spirit of CSR for which the data needs to be analyzed for identifying loopholes and providing solutions through necessary directions/guidelines to Companies. The Committee also opine that DPE, being the nodal department for CPSUs, has to coordinate with

MCA and oversee the implementation of CSR provisions by CPSUs. Here the Committee would strongly like to recommend that in line with ensuring executive accountability to Parliament, an Annual Report containing data/ inputs, as collated and analysed, should be laid in Parliament by MCA. The Committee would also like to emphasize that the role and responsibilities of the administrative Ministry of the concerned CPSU, MCA and DPE should be clearly spelt out in unambiguous terms so as to avoid confusion and duplication."

19. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"Being the custodian of the Companies Act, 2013 and CSR Rules, the responsibility for ensuring its implementation primarily vest with the MCA. As far as CPSEs are concerned, DPE has started the process of separately collecting data and information on CSR and these will be included in the Public Enterprises Survey Report from 2015-16 onwards. This report is tabled by DPE on annual basis in both houses of Parliament."

20. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Under extant rules and provisions of the Companies Act, mandatory disclosure on CSR by companies is sufficient safeguard for ensuring compliance. The observation has been made by Standing Committee on Finance on Demand for Grants in its 21st Report; and CSR came under the statute at the instance of this report of the Standing Committee on Finance.

Law does not provide for monitoring of implementation of CSR policies of companies by Government. The HLC, which has submitted its report in September, 2015 has also endorsed this view by reiterating the provisions of the law.

The MCA's role is (i) to ensure compliance of provisions under Section 135 of the Companies Act, 2013, and take action against non-compliant companies; (ii) to make amendments to the Act and the rules as and when necessary; and (iii) to issue clarification if required, for facilitating the compliance of Section 135. The applicability of

the provisions of Company Law is uniform across all companies – including PSUs. There is no overlap of roles and responsibilities with DPE."

Recommendation Sl. No.7

21. The Committee in their Eighth Report had recommended as follows :-

"The Committee take note of the constraints expressed by Rural Electrification Corporation Limited that planned disbursements against sanctioned project may not take place in a particular year due to reasons beyond their control. The Committee also note that the statutory provisions made with regard to CSR spending will provide continuity to CSR funding and expenditure. With increased CSR allocations, there is huge scope to give emphasis on durable projects having long gestation period. The Committee, therefore, recommend that a small percentage of allocations, for a specific continuing project, can be permitted strictly under justifiable reasons to be carried forward to the next year. After completion of three years in a row, the unspent amount can be pooled together which can be used by the Government for various poverty alleviations and social sector schemes meant for the poor and backward areas as covered under the activities specified in Schedule-VII. However, the corpus of unspent amount should be accounted for separately. The Committee also recommend that the necessary modifications in the statute and Rules may accordingly be made."

22. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"The recommendation may require amendments in the Companies Act, 2013 and Companies (CSR Policy) Rules, 2014 and it would be for MCA to furnish reply."

23. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"The considered view of the Ministry is that, the requirement of mandatory transferring of unspent amount of CSR at the end of three years to a specific fund would go against the principle of "comply or explain" enshrined in Section 135.

In view of this it is submitted that the current provision may be continued."

24. The Committee, in their original report, had observed that the second proviso of sub section 5 of Section 135 of the Act enabled companies failing to spend specified amount under CSR, to justify the same by simply stating reasons therefore, and hence recommended for review of sub-section 5. As is noted from the action take replies, the MCA have taken refuge under the fact that the said proviso was included as per the recommendation of the Standing Committee on Finance. The Committee find that the said Standing Committee had observed that the step will be a 'sufficient check on non-compliance' but the actual scenario does not reflect so, as is visible from the lack of availability of complete data of CSR spending with the DPE as well as MCA and huge under spending on CSR as per the available data. To cite few instances, in the information provided by DPE* glaring cases of huge underspending have been noted. Coal India Limited has spent only ₹ 24.72 crore out of ₹ 229.06 crore, GAIL (India) Limited has spent only ₹ 71.89 crore out of ₹ 118.67 crore, NHDC Limited has spent only ₹ 2.95 crore out of ₹ 19.60 crore and PFC has spent only ₹ 49.88 crore out of ₹ 117.53 crore available for CSR spending. The Committee are convinced that there are many more such cases and hence reiterate their original recommendation.

In this regard, the Committee's observation in the original recommendation with regard to two sets of practices, one making unspent funds under CSR lapsable for private companies and the other unspent funds treated as non-lapsable and therefore, carried forward in case of CPSUs, as per

the clarifications given at that time by MCA and DPE respectively, is noteworthy. On this issue, MCA now in the action taken reply has stated that while the law does not provide for mandatory carry-forward of unspent CSR amount, companies may carry-forward such amount so that the spirit of CSR spending is

achieved. The Committee fail to understand as to how two per cent spending of the average net profit of a company on CSR can be ensured by leaving it to the wisdom of a private company to decide whether to carry-forward or not to carry-forward the unspent amount in a year to the following year and with the existing provision whereby specifying the reasons for not spending the amount would be sufficient for a company to get away with the mandatory allocations to be made under CSR. The Committee, therefore, while reiterating their recommendation, emphasise upon plugging the existing loopholes/deficiencies and revisit Section 135 of the Companies Act in the true spirit of law, which mandates two per cent of profit of a company to be spent on CSR.

25. On the recommendation of the Committee to lay an Annual Report, containing data/inputs on CSR spending as collated and analysed in Parliament, while DPE has stated that it will be included in Public Enterprises Survey Report from 2015-16 onwards, MCA has not responded at all to the recommendation of the Committee in this regard. As observed in the original report, the Committee on Public Undertakings has the mandate to examine CPSUs, however, since the provisions relating to CSR Act and Rules are applicable to all companies, the recommendations of the Committee may equally be applicable to private companies too. With regard to the recommendation of the Committee on laying of Annual Report in Parliament, the Committee are unhappy to note the way MCA has tried to avoid the same. While appreciating DPE's assurance to include the data of CSR in the Public Enterprises Survey, the Committee are of the view that there is a need to lay in Parliament a comprehensive Annual Report containing the data and analysis of CSR spending both with regard to CPSUs and private companies at one place so as to ensure executive accountability to Parliament. The Committee, therefore, while reiterating their earlier recommendation, would like MCA to take the action in this regard after coordinating with DPE for their inputs and analysis of CSR spending by the CPSUs.

26. On another recommendation contained in their earlier report, of the Committee for pooling together unspent amount under CSR after completion of three years in a row which can be used by the Government for various poverty

alleviation and social sector schemes meant for the poor and backward areas as covered under the activities specified in Schedule-VII, the Committee are unhappy to note the way both DPE and MCA have tried to side-track the issue. Whereas DPE has tried to shift the matter to MCA, MCA has stated that the recommendation of the Committee would go against the principle of “comply or explain’ as enshrined in Section 135. The Committee wonder how the MCA/DPE fail to appreciate the spirit of Section 135 which makes two per cent of allocation spending for CSR as mandatory. The Committee, therefore, reiterate their earlier recommendation and would like a categorical response from DPE and MCA.

Underspending of CSR allocations

Recommendation Sl. No. 5

27. The Committee in their Report, had recommended the following with regard to underspending of CSR allocations :-

"The analysis of the data furnished by 13 CPSUs, as examined by the Committee, indicates that these 13 CPSUs allocated ₹ 2139.75 crore during the year 2014-15 under CSR which included carry forward amount of unspent amount of previous years, out of which Rs 1020.44 crore was spent thereby leaving ₹ 1119.31 crore as unspent amount. Not only that carry forward amount under CSR by some of the CPSUs like ONGC, NHPC, are greater than the annual allocations. The Committee feel that the figure of unspent funds would be manifold if CSR allocations of all eligible CPSUs, private Companies etc. are taken into account, and desire to be apprised of the same. The Committee express serious concern over more than 50 per cent of the allocations remaining unspent with these CPSUs, particularly when they have been implementing CSR for long and have experience and expertise in the field and thus, they would like to be apprised of the reasons for huge under spending in this regard."

28. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"From the year 2014-15, DPE has started collecting data and information from CPSEs, mandated to incur CSR expenditure. As per the reports received so far, 110 CPSEs have incurred ₹ 2441.01 crore on CSR during 2014-15. This constitutes 70 percent of their total CSR fund leaving unspent balance of ₹ 1145.97 crore and of 110 CPSEs, 37 CPSEs had spent more than their 2 percent of average PBT of three immediately preceding financial years. An analysis of 13 CPSEs referred by the Committee indicates that they have spent ₹ 1019.65 crore (72.26 percent) out of ₹ 1411.06 crore for 2014-15. This includes unspent amount of ₹ 394.50 crore in respect of 10 CPSEs out of 13 CPSEs and excess CSR spending of ₹ 3.09 crore by 3 CPSEs. There are only 3 CPSEs namely, Bharat Petroleum Corporation Ltd, Power Finance Corporation Ltd and Steel Authority of India Ltd which have more than 50 percent unspent CSR balance at their end. The Companies Act does not bar any company for spending in excess of 2 percent of average PBT of three immediately preceding financial years and as far CPSEs are concerned a view on the backlog of CSR fund can be taken."

29. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"This is an observation only. No action is required by MCA."

30. In their original observation, the Committee had noted that huge amount of CSR funds were lying unspent by CPSUs and in several cases the carry forward unspent amount was more than their annual CSR allocation. The Committee had therefore desired to be apprised of the reasons for such huge under spending. The MCA in their reply have shown an indifferent and casual approach while stating that it was just an observation of the Committee and no action was required by the Government. However, the DPE in their Action Taken reply, has accepted that 30 percent of the CSR funds did lie unspent by 110 CPSUs. Out of the 13 CPSUs examined by the Committee, 3 CPSUs viz. Bharat Petroleum Corporation Limited, Power Finance Corporation Limited and Steel Authority of India Limited had unspent balance of more than 50 percent under CSR during 2014-15. However, no reasons have been given as to why underspending for CSR

persists with these CPSUs despite those having long experience and expertise in the field of CSR. The unspent amount under CSR by 110 CPSUs during 2014-15 is stated to be ₹1145.97 crore, which is very huge. Hence, the observation of the Committee in their original report that the unspent CSR funds of the remaining CPSUs and the private companies could be running into thousands of crores is noteworthy. In fact, the DPE has agreed that a view on the backlog of CSR could be taken by the Government. However, in the reply, the Government have not indicated the reasons for underspending which are required to be disclosed by the companies and thus act as sufficient check on non-compliance as per the provisions of the Act. The Government have also not stated if any further action was taken by MCA as a follow up of companies not disclosing the reasons which indicates that the CPSUs and the companies are not serious about the mandated provisions of the Act. Therefore, the Committee are of the firm opinion that the issue needs to be looked into urgently. They reiterate that the Committee should be kept informed about the reasons for such huge underspending. Further, the genuine problems faced by CPSUs and private companies in incurring CSR expenditure, if any, should also be analysed and addressed by the Government so that they are encouraged to spend the mandated expenditure in the designated year itself. The Committee desire to be kept apprised of the action taken in this regard.

Revision of reporting format

Recommendation Sl. No.8

31. With regard to need to revise proforma, the Committee, in their Eighth Report, had recommended as follows :-

“The Committee find that CPSUs are not reflecting carry forward amount in a year clearly in the maintained data. In this regard, as per Rule 8 of CSR Rules, the Report of the Company’s Board covered under these Rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an Annual Report on CSR containing particulars specified in Annexure. In column

5(c) of the format as given in the Annexure, the manner in which the amount is spent is given. There are eight separate columns for giving the information by the Company. The Committee recommend that 2 more columns i.e. column 9 relating to unspent amount and column 10 about reasons for under spending should also be added in the format. Further in column 5, amount outlay (budget) project or program wise is to be given. The Committee recommend that two sub-columns under column 5 should be added to indicate the carry forward unspent amount and the total available outlay under CSR in a year. The necessary action in this regard should be taken by MCA/ DPE and the Committee apprised accordingly.”

32. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"The format for annual disclosure on CSR by CPSEs has been prescribed as Annexure in the Companies (CSR Policy) Rules, 2014 notified by the Ministry of Corporate Affairs. Any amendment for insertion of any extra column(s) in the format to indicate the carry forward of unspent amount etc. needs to be carried out by the MCA."

33. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"The prescribed format for reporting CSR expenditure of a company during the year, includes reporting on unspent amount and reasons for not spending/underspending at point No. 5B and 6 respectively of the prescribed format which is enclosed as an annexure to Companies (CSR Policy Rules), 2014."

34. The Committee had desired that three columns viz. (a) Unspent carry forward amount of previous years ; (b) the budget resources available for expenditure under CSR during the current financial year ; and (c) the total actual budget (a+b) provided under CSR for the current financial year should be reflected in the CSR reporting format being submitted by the Companies. After careful examination of the points 5B & 6 of the said format, the Committee recommended that point 5B may be bifurcated into 2 subsections for reflecting

the carry forward amount and the total amount available respectively. The intention of reflecting such data separately is to keep a check on such CPSUs and companies whose carry forward unspent amount was found to be higher than the budget provisions as was noted by the Committee in their original report. The Committee reiterate that the relevant columns be included in the format.

Penal provisions and fixing of accountability

Recommendation Sl. No.9

35. Regarding penalty and fixing accountability, the Committee in their report, had recommended as follows :-

"Section 134 (8) of the Companies Act states about the penalties for non-compliance of provisions relating to only Section 134, that too with regard to only clause (o) applicable to CSR which states about the details of the policy developed and implemented by the Company on CSR initiatives taken during the year. Thus the Company can only be penalized for not filing of details regarding CSR policy as implemented by the Company, and not for non-compliance of the provisions relating to CSR. Hence a Company can easily get away with filing of requisite details without properly spending on CSR. The Committee find this inadequate to meet the objective of mandatory expenditure under CSR as per the new statutory provisions and strongly recommend for making non-compliance of spending of prescribed allocations on the admissible activities in the prescribed manner a punishable offence and for making suitable provisions in this regard."

36. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"Under the extant provisions of Companies Act, 2013, annual disclosures by the Board of company on CSR expenditure is the only condition for ensuring compliance. This is for MCA to consider the recommendation for amendments in the provisions on CSR in the Act and the CSR Rules notified thereunder."

37. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Under the extant provision of the Law, annual disclosure of CSR expenditure by the Board of the Company is sufficient for compliance. CSR expenditure on admissible activities by companies is subject to auditor's observation. The underlining spirit is that the Board of the company which is responsible for following due diligence in spending 100 percent of its expenditure budget can follow the same procedure in spending this 2 percent of their profit amount also."

38. The Committee, in their original report, had observed that under the Companies Act, although there were penal provisions for non-filing of details regarding CSR policy as implemented by CPSUs or companies, there was no penal provisions for non-compliance of the provisions relating to CSR. The DPE has accepted that apart from filing of annual disclosures by the CPSUs or the companies, there were no other provisions provided in the Companies Act for ensuring compliance. The Committee had made the recommendation after making an indepth study of the various penal provisions of the Act. However, MCA has perhaps, failed to appreciate the spirit behind the recommendation and hence, insisted that the CSR expenditure on admissible activities by CPSUs and companies was subject to auditor's observation and that annual disclosure of CSR expenditure by the Board of the Company was sufficient for ensuring compliance. The Committee are disappointed by the casual approach of the MCA on CSR provisions, which is substantiated by their reply to an earlier recommendation that showed that the MCA, which is responsible for the compliance of the CSR provisions in the Companies Act, did not bother to collect complete data on CSSR expenditure by the companies. It had obtained the data of only 51 CPSUs out of 298 CPSUs which was primarily collected through the annual reports of CPSUs placed on their website. Further, data in respect of only 409 companies out of the eligible 21429 listed companies was furnished to the Committee which seem to have been collected through the Annual Reports placed by the companies on their website and not through the mandatory annual

disclosure as provided under the Act. The Committee are therefore convinced that the provisions in the Act concerning annual CSR disclosures by the companies under the Act are insufficient for ensuring compliance and reiterate for making non-compliance of spending of prescribed allocations on the admissible activities in the prescribed manner a punishable offence and for making suitable provisions in this regard.

CSR Spending on ineligible activities

Recommendation Sl. No.11

39. On the issue of CSR allocations being spent on ineligible activities by CPSUs, the Committee, in their Eighth Report, had further recommended as follows :-

"The analysis of the data furnished by 13 CPSUs examined by the Committee indicates that some of the CPSUs have spent CSR allocations on ineligible activities. For instance, SJVN Limited has made CSR allocations for Support to Municipal Corporation Shimla for Infra work/ Beautification of Shimla and Social studies/ publication of articles/ reports of journals. IOCL has allocated some outlay under CSR for Nomination fee for CSR for Think Media Inc.; Consultation and estimate preparation at schools, Balasore, Odisha; Stakeholder meeting at Tinsukia, Assam; Purchase of Green Board, Office Furniture, Utensils etc. Its subsidiary CPCL had incurred CSR expenditure on salary to PTA teachers of Government Higher Secondary School in Tiruvallur, Tamil Nadu. RVNL has allocated CSR outlay for Training of RVNL officials in Sustainability and

conducting promotional activities with executing contractors at work sites, which in Committee's opinion do not come under the purview of CSR. MCA has also stated that the aforesaid activities may not qualify as CSR. Further, as per the clarifications issued by MCA, one-off events such as marathons/ awards/ charitable contributions/ advertisement/ sponsorship of TV programmes etc. would not qualify as part of CSR expenditure. The Committee's examination has revealed that such activities are a common feature in the CSR spending by CPSUs as per the data furnished by them to the Committee.

Some of the PSUs have indicated the heads/ activities in a vague manner e.g. NHPC in the data furnished to the Committee has mentioned broad areas like Health and Sanitation, Rural Development instead of specifying the activity undertaken in the specific area. Besides, some of the CPSUs in the data furnished to the Committee have just mentioned the name of some of the individuals without indicating the specific purpose for which CSR allocation is being made.

The Committee express strong concern over the way CSR outlay is spent by some of the CPSUs, which apparently does not qualify as CSR. The Committee strongly recommend that such violation of Rules/ Guidelines should be taken up with the concerned administrative Ministry and CPSUs and the Committee apprised about the action taken in this regard. It is also emphasized to analyse the data carefully to ensure that the CSR allocations are spent on eligible activities in the true spirit of CSR. The Committee would also like to recommend that concerned CPSU should be instructed to allocate an equal amount to the allocation made for an activity found inadmissible on CSR, which may be reflected separately in the carry forward amount. The necessary action on the desired lines should be taken by the Ministry.

Rail Vikas Nigam Limited, which is under the administrative control of the Ministry of Railways, has in the information furnished to the Committee stated that the Ministry of Railways has assigned targets for upgradation of passenger amenities through CSR. Not only that, Railway Board has given similar targets to other CPSUs under its administrative control. The Committee in this regard recommend that under the 'enhanced railways amenities' activities under CSR, emphasis should be given to disabled and elderly-friendly infrastructure, for instance escalators/ ramps and other modified public utilities, at Railway stations."

40. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"After coming into force the provisions on CSR in the Companies Act, 2013, effective from 1st April, 2014, CPSEs are mandated to select activities/ projects as per the activities listed in Schedule-VII of the Act. Administrative Ministries/ Departments concerned with CPSEs identified by COPU have been requested to take appropriate action as advised by the Committee. As regards, provision for allocation of equal amount to the allocation made for an activity inadmissible on CSR, issue needs to be examined by MCA as CSR provisions are applicable to all companies, including CPSEs."

41. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Upgradation of passenger amenities is part of the primary responsibilities of Ministry of Railways. Further, provision of infrastructure for the elderly and disabled persons at the railway stations also remains the primary responsibility of the Railways authority. CSR spend should not be utilised to fund statutory obligations."

42. The Committee find from the action taken notes that instructions have been issued to the concerned CPSUs identified during the course of examination for spending CSR outlay for ineligible activities. The Committee are of the view that there may be more such instances of spending on ineligible activities by CPSUs for which detailed analysis of the data is required by the administrative Ministry/DPE. On the observation of the Committee for mentioning heads/activities by some of the Ministries/Departments in a vague manner, nothing has been mentioned in the action taken notes. The Committee, therefore, reiterate their concern and desire that instructions should be issued to CPSUs and administrative Ministries in this regard. Besides, the guidelines/instructions should be uploaded on the website of both DPE as well as MCA for taking note by CPSUs as well as private companies.

43. On the recommendation of the Committee to allocate an equal amount of allocation made by a CPSUs for an inadmissible activity under CSR, DPE, instead of instructing the concerned CPSUs through the administrative Ministry, has tried

to shift the responsibility to MCA by stating that issue needs to be examined by MCA. The Committee emphasise that asking such CPSUs to make the equal allocation under CSR, would result in such CPSUs/companies becoming more vigilant while allocating outlay for CSR and help in effective implementation of CSR provisions. The Committee, therefore, desire that action in the true spirit of the recommendation should be taken by DPE and the Committee apprised accordingly.

Defining 'local area'

Recommendation Sl. Nos.14 & 15

44. The Committee, in their Eighth report, had recommended the following with regard to Local area/PAN India approach :-

"First proviso to Section 135 (5) of the Companies Act provides that the Company shall give preference to local areas and areas around it where it operates, for spending the amount earmarked for CSR activities. The data furnished by the CPSUs indicates that some of the CPSUs like Power Finance Corporation have no specific geographical area of commercial operations and hence may take up CSR activities/ projects at any location. With regard to CPSUs having specific geographical area of commercial operation, some of the CPSUs have allocated percentage of allocations for CSR, like CONCOR, is endeavoring to ensure that 80 per cent of CSR initiatives are carried out in the local area. RVNL on the other hand has not undertaken CSR activities in other areas where it does not have its presence/ operations. In some other CPSUs, like REC, no specific budget is allocated for carrying out activities in the local areas. The Committee, while appreciating the concept of local area and the flexibility given to the companies, within the provisions made under the Act, believe that a minimum amount needs to be spent under CSR in areas outside the local area of operation by a Company so as to ensure PAN India impact of CSR. The Committee, therefore, would like to recommend that companies need to give adequate emphasis on spending CSR allocation on other than the local areas which besides ensuring PAN India impact of CSR, would also make the

presence of the Company felt throughout the country. Necessary provisions should accordingly be made in the Act/ Rules/ Guidelines.”

45. In the subsequent recommendation, the Committee further stated as under :-

"The Committee further note that 'local area' has not been defined in the Act/ Rules. The Committee find from the information made available by some of the CPSUs, that 'local area' has not been spelt out by the companies too. However in case of CONCOR, the local area has been defined as an area within the radius of 200 Kms. of the Company's facilities/units. The Committee recommend that the term 'local area' should be clearly defined so as to have uniform pattern of spending made on CSR by companies in the local areas of their operations. The necessary action in this regard should be taken by MCA, and the Committee apprised accordingly."

46. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"The first Proviso to Section 135 (5) of the Companies Act, 2013 reads:

"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"

This provision provides for preference to be given to local area. Companies have enough flexibility to allot CSR funds for activities to be undertaken beyond local area. Any proposal to define the term 'local area' besides the provision contained in the first proviso to Section 135 of the Companies Act, 2013, has to be considered by MCA."

47. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"The first Proviso to Section 135 (5) of the Companies Act, 2013 reads: *"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." It is submitted that this provision is unambiguous and provides for preference to be given to local area. Companies have enough flexibility to allot CSR funds for activities to be undertaken beyond local area."

Action taken reply to the recommendation no.15 is as under :-

"It is submitted that, it would be extremely difficult to provide a definition of '**local area**' in the statute; since spatial spread of 'local area' can vary from industry to industry, company to company on the basis of their business object. Besides, local area for service sector companies which have PAN India presence will be even difficult to define. In view of this, it is submitted that status quo be maintained."

48. With a view to ensure PAN India impact of CSR the Committee, in their earlier recommendation, had emphasized upon spending CSR allocations by companies beyond the local areas. Taking note from CONCOR which has defined local area, the Committee had also recommended to define 'local area' in the Act/Rules. MCA, in this regard, is in the favour of maintaining status quo, as according to them, spatial spread of 'local area' can vary from company to company and local area for service sector companies which have PAN India presence will be even difficult to define. While taking note of the constraints expressed by MCA, the Committee still are of the view that CSR activities need to be carried on by companies in places other than their local area too so as to have PAN India impact and the existing provisions, which are for giving preference to the local areas and areas around it, are not adequate. Something needs to be done to motivate/make companies to have at least some of the CSR projects in other than local area/areas around it. MCA/DPE may accordingly devise some mechanism in this regard in the true spirit of the recommendation of the Committee and apprise accordingly.

Involvement of local/ public representatives & local administration

Recommendation Sl. No.17

49. With regard to involvement of local/ public representatives & local administration, the Committee, in their Eighth Report, had recommended as follows :-

"The Committee observe that the essence of CSR lies in greater public participation so as to achieve the goal of inclusive growth. Hence, they are of the view that local MPs/ MLAs and elected representatives of local bodies should be involved more effectively for selection / finalization of projects as they are in a better position to identify the problems/ necessity of poor people in the area they represent. The Committee would also like that while selecting activities/ projects under CSR, Panchayats, District administrations and the State Governments should also be consulted for effective implementation as well as to avoid duplication of resources for same project/ activity. Above all, there should be mechanism to involve the local masses who are the beneficiary for the project/ activity at the larger scale as their active participation would certainly give a feeling of ownership which would solve the problem of maintenance. The Committee emphasize that suitable provisions in the Rules/ Guidelines should be made in this regard and the Committee apprised, accordingly."

50. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"While selecting activities under CSR and allocation of funds accordingly, management of CPSEs are supposed to conduct need assessment survey with the involvement of local area people and the local body/ local district authorities/ Local MP/ MLA. This will help in identifying the problems / needs of poor people in the area for the purpose of selecting right activities/ projects under CSR to avoid any duplication of resources for the same project, address issues of maintenance and in deciding whether it should be taken up in project mode."

51. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"Rule 4 of Companies CSR Policy Rules, 2014 prescribes programme/project mode of implementing CSR by companies for ensuring sustainability of the

benefits/impact. As such project mode of implementation pre-supposes a need assessment survey, and involvement of local masses / potential beneficiaries ought to be an integral part of such surveys. It is the Board of the Company, which is empowered to take a call on this. Through various sensitisation workshops conducted by DPE/IICA, corporates are encouraged to involve the local bodies/beneficiaries."

52. The Committee note from the replies of the Government that although need assessment survey is an exercise to be taken up by the companies before undertaking any CSR project to ensure larger public participation, it is the Board of the Company which is empowered to take a call on this. The Government have not stated whether larger public participation and involvement of local MP/MLA was being ensured before undertaking any CSR project. The Committee would like the Ministry/Department to furnish a categorical reply on this issue.

Coordination of various CSR activities and programmes

Recommendation SI. No.18

53. The Committee, in their Eighth Report regarding CSR activities under various Government programmes & schemes, had recommended as follows :-

"As regards the CSR activity concerning construction of toilets, the Committee note that all the 13 CPSUs examined by them had spent substantial CSR funds on construction of toilets in their local areas of operations. The CPSUs have also informed the Committee that their administrative Ministries were given certain targets by the Ministry of Human Resource Development under the 'Swachh Bharat Swachh Vidyalaya Programme' for construction of toilets. However the Committee are surprised that neither MCA nor DPE are aware of any such targets given to CPSUs. Despite the Committee's inquiry, none of them bothered to approach the Ministry of Human Resource Development to get any clarification on this aspect. Later in response to a specific query, the Department of School Education and Literacy, Ministry of Human Resource Development in the written replies informed that they launched the Swachh Vidyalaya initiative, in response

to the national call given by the Prime Minister on 15 August 2014, that within one year, there should be no school in India without separate toilets for girls and boys. Under this initiative, the MCA and DPE were approached, among all other Central Ministries, on 1 September, 2014, by them to persuade the CPSUs under them to participate in the same. The Committee were further informed that 64 CPSUs participated in the Swachh Vidyalaya initiative, which reported construction of 1.41 lakh toilets on the Swachh Vidyalaya portal. The Committee cannot but express their disappointment at the ignorance of the representatives of MCA and DPE displayed at the time of evidence and caution them to answer queries of the Committee with requisite seriousness. Further, the Committee were also apprehensive about overlapping/ duplication on this particular scheme since the Central Government and State Governments are also involved in implementation of the same. They failed to get any clear view on the matter and thus desire that there is a need to develop appropriate coordination mechanism to avoid duplication and overlapping. As the CPSUs may be involved in the implementation of national priority programmes in future too, they recommend that the DPE must ensure that all administrative Ministries of CPSUs report to MCA/ DPE about any directions given to them to undertake CSR activities through their CPSEs in connection with a Central Sector Scheme."

54. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"DPE has issued an advisory to the administrative Ministries/ Departments concerned with CPSEs to the effect that any specific direction given by the Ministries/ Departments to the CPSEs under their administrative control to undertake major CSR activities under Central Sector Scheme or National Priority Programme should be informed to DPE."

55. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"DPE to respond".

56. The Committee note that the Government has issued an advisory to all the administrative Ministries/Departments and CPSUs that DPE and MCA should be informed of any specific direction given by the concerned Ministries/Department for undertaking any specific CSR project by the CPSUs under their administrative control. However, the DPE and MCA have chosen not to respond to the part of the recommendation for having a coordination mechanism to avoid duplication and overlapping of various CSR projects being carried out by different CPSUs in the same area so that resources could be optimally utilised. The Committee desire that action in this regard should be taken and the Committee apprised accordingly.

Issue of directions and guidelines in the policy for ensuring quality of assets

Recommendation Sl. No.19

57. On the issue of monitoring and ensuring durable quality assets, the Committee, in their Eighth report, had recommended as follows :-

"The Committee note that a large number of assets / infrastructure are being created under CSR activities and endorse it as they opine that the emphasis of CSR should be on establishing assets for long-time use. The quality & durability of these assets is a major area of concern and needs to be ensured for long term use of the beneficiaries. The Committee feel that keeping a thorough check on credentials of the vender including inspection of processes of vendor during execution of the project, carrying out quality audits by a certified 3rd party, warrantees/ guarantees against defects in the contract, regular monitoring and inspection of the projects, etc. will help in ensuring the quality and durability of the assets/ infrastructure created under CSR activities. The Committee desire that suitable directions in Guidelines be incorporated to be followed by CPSUs/ Implementing agencies in this regard."

58. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"Provisions of Act on CSR and the CSR Policy Rules as notified by MCA are equally applicable to all Corporates, including CPSEs. Due diligence, including checking on credentials of the vendor, inspection of processes of vendor during execution of the project, carrying out quality audits by certified 3rd party, regular monitoring and inspection of the projects, is to be done basically by the management of respective CPSEs. As far as CPSEs are concerned, DPE will continue to build awareness and sensitize them to ensure proper implementation and follow up actions."

59. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"MCA is responsible for administering the Companies Act, 2013 and ensuring compliance of various provisions of the Act including those under Section 135. Implementation of CSR policy of a company, including selection of vendor, quality audits by the third party if any, and monitoring of the project etc. is the responsibility of the Board of the Company."

60. The Committee had recommended the Government to issue suitable directions/guidelines of CSR Policy to keep a thorough check on credentials of a vendor including inspection of their projects during execution of the project, carrying out quality audits by a certified third party and warranties/guarantees against defects in the contract so that quality and durability of assets created under CSR is ensured. The Government, in their replies, have diluted the issue by stating that implementation of CSR policy of a company, including selection of vendor, quality audits by the third party, if any, and monitoring of the project etc. is the responsibility of the Board of the company. The Committee are aware of Board's responsibilities and feel that suitable directions in the Guidelines can still be issued as this would bring more transparency and uniformity in the quality standards of assets across all CPSUs. The Committee reiterate that suitable directions be issued and they be apprised accordingly.

Involvement of local bodies and social audit

Recommendation Sl. No. 21

61. The Committee, in their Eighth Report, regarding involvement of local bodies in implementation of CSR activities, had recommended as follows :-

"While emphasizing again for the involvement of local bodies i.e. Gram Panchayat and Municipalities in the implementation and monitoring of CSR activities, the Committee would like to recommend that the mechanism of social audit may be introduced for the larger involvement of public in the monitoring of CSR activities. Suitable provisions in this regard should be made in the Rules/ Guidelines."

62. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"Provisions on CSR in the Companies Act, 2013 and the CSR Rules notified by MCA provide that the entire information relating to CSR activities/ expenditure by all corporates, including CPSEs will be in public domain. This gives ample opportunity to the society and community at large to judge the CSR agenda and execution of the same. Since it is the beginning of the implementation of CSR by companies, it is still in the learning stage. A view in this regard may be taken by MCA."

63. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"It is submitted that CSR is meant for larger social benefit and hence be left to the society and community to judge. Since the entire information relating to CSR activities / expenditure by companies will be in the public domain by way of mandatory disclosure by the Board of the company, it will automatically lead to such social audit."

64. The Committee, in their earlier recommendation, had stressed to frame a mechanism for larger involvement of public in the monitoring of CSR activities through social audit. However, the Government have not agreed to the recommendation on the basis of the argument that since the entire information

relating to CSR activities / expenditure by companies is in the public domain by way of mandatory disclosure by the Board of the company, it automatically leads to social audit. The Committee, while appreciating the uploading of more and more information in public domain, still feel that social audit is a tool to ensure transparency by providing an interface of the public/users of services with the implementing agencies/district level authorities. The Committee, therefore, reiterate that an appropriate social audit mechanism for CSR assets/activities be established by the Government so that larger public involvement is ensured.

Maintenance of assets created under CSR activities

Recommendation Sl. No.23

65. With regard to arrangements made for the maintenance of assets/equipment, the Committee, in their Eighth Report, had recommended as follows :-

"The Committee were also not convinced about arrangements made for the maintenance of the toilets and their structures, once constructed and equipment e.g. solar lights, etc., once installed. Though certain CPSUs had stated during examination that they maintain their assets initially and hand it over to the local body afterwards, the practice is not followed uniformly. Besides, the Committee opine that as maintenance of durable assets is a must for their optimal utilization, fool-proof mechanism and funding needs to be established for the same in coordination with the local body of the area. Some Guidelines for maintenance of durable assets created under CSR need to be issued by the MCA too which may make it mandatory for the implementing CPSU to maintain their assets for minimum period of three years followed by handing over maintenance responsibility to the local bodies/ users, during which the local bodies/ users may be actively involved, which would ultimately make the handing over of the assets, an easier task. The Committee also suggest to explore the possibility of creation of a project specific sustainability fund with contribution from users and laying down procedures for operating the fund to meet maintenance need and other contingencies. They also desire that adequate awareness campaigns by the concerned authorities need to be arranged so that people are able to utilize such

assets optimally. Particularly with regard to toilets being constructed under Swachh Bharat Abhiyan, the Committee may like to emphasize for educating the children about the bad effects of open defecation so as to encourage them and their families through them, to use the toilets. Not only that, before taking up a project under CSR, the issue of maintenance including adequate water supply to toilets needs to be settled with the local bodies/ users. The Committee applaud the efforts made by some of the CPSUs like ONGC, NFL which have taken/ are taking the issue of maintenance with Sulabh/ District Education Department etc. In case of CONCOR, all MoUs signed with the users/ beneficiaries have clauses clearly stating that the onus of maintenance and sustainability of assets/ infrastructure lies with the user/ beneficiaries. The Committee recommend that the necessary guidelines/ directions on the lines of the suggestions made by the Committee should be framed and circulated to the companies for compliance."

66. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"Any direction/ guidelines in the matter of maintenance of assets created by CPSEs under CSR and handing over maintenance responsibility thereof to the local bodies/ users and creation of a project specific sustainability fund with contribution from users are to be considered by MCA. Under the MoU guidelines for 2016-17 DPE has included compliance of CSR by CPSEs as provided under the Companies Act, 2013 and Rules for obtaining higher MoU ratings."

67. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"The suggestion provided by Hon'ble committee regarding maintenance of durable assets is encouraging and has been taken up by the Ministry as one of the important elements on various workshops organised for facilitating CSR implementation by companies.

The spirit of CSR legislation is to involve corporates in the inclusive development process by building upon corporate innovation and corporate management

practices. Instruction by Government in implementation of CSR is not envisaged under the law. Being the initial year of CSR implementation by companies, it is desirable that the issue of asset creation and maintenance thereof under CSR be left to the Board's discretion (CSR Committee / Board)."

68. The Committee, in their original report, had expressed their concern over the maintenance of assets and infrastructure created under CSR. In order to ensure the quality and durability of assets through proper maintenance, the Committee had also suggested certain measures viz (i) framing of Guidelines for CPSU to take up maintenance of assets for a minimum period of three years before handing them over to the local bodies/users (ii) creation of a project specific sustainability fund with contribution from users and laying down procedures for operating the fund (iii) educating the children about the bad effects of open defecation so as to encourage them and their families through them to use the toilets and taking up the issue of maintenance of toilets with Sulabh /District Education Department; and (iv) signing of MOUs with the users/beneficiaries stating that the onus of the maintenance and sustainability of assets/infrastructure would lie with the user/beneficiaries. The Committee had desired that necessary guidelines/directions on these lines may be framed and circulated to the companies for compliance. The action taken replies however indicate that apart from organising workshops to facilitate CSR implementation by the companies, nothing substantial seems to have been done. Instead the MCA and DPE have taken the stand that it is desirable to leave the issue of asset creation and maintenance thereof under CSR to the Board's discretion (CSR Committee/ Board). The Committee are not convinced with the replies. They are of the opinion that ensuring the quality of assets and maintenance of assets is the key to its durability. Unless these issues are addressed, huge amount of funds spent on CSR would be wasted, as practical experience suggests that many assets created under CSR are not utilised optimally due to quality and maintenance issues. Although, quality could be ensured through various measures prior to taking up the projects, CPSUs may tend to lose focus on the

maintenance aspect once the assets/infrastructure are completed under the CSR provisions. The Committee would therefore, like to stress that unless the responsibility of maintenance is taken up by an agency/ local body/ user, the durability of the structures would be at risk. The Committee, therefore, reiterate that necessary guidelines/directions based on their recommendation should be framed by the Government and circulated to the companies for compliance.

Use of technology for monitoring CSR projects

Recommendation Sl. No.24

69. The Committee further recommended in their Report regarding use of geo-tagging by all CPSUs :-

"In this era of technological innovation, new technological solutions are emerging for phase-wise monitoring of assets being created on the ground. Geo-tagging software for photographic evidence is one such technique which can be used easily with a smart phone having GPS coordinates for online monitoring of assets created under CSR. Though certain CPSUs like CONCOR and PFC have made a beginning in this area, the Committee recommend for such geo-tagging to be done by all CPSUs, wherever feasible and the actual site pictures of the assets so created through the technology, may be uploaded on the website of CPSUs/ private companies."

70. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"CSR provisions under the Companies Act, 2013 and Rules are applicable to all companies and hence this may be considered by MCA for uniform applicability to all."

71. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"DPE to respond."

72. The Committee are perturbed to note the way MCA and DPE have responded to their recommendation to use new and latest technology like geo-tagging software for monitoring of projects being undertaken by the companies under CSR. Instead of taking action on the desired lines, both DPE and MCA have tried to shift the matter to each other. The Committee again emphasize the need for taking benefit of the latest technological tools/devices for monitoring of CSR projects and would like to reiterate their recommendation for use of geo-tagging in this regard.

Awards for excellence in CSR activities

Recommendation Sl. No. 27

73. With regard to awarding PSUs for excellence under CSR, the Committee in their Eighth report, had recommended as follows :-

"The Committee note that neither MCA nor DPE has instituted any award to be given to the best performing PSUs by their administrative Ministries to further motivate them to carry out CSR activities in the best possible manner. In the Committee's view, any commendable CSR work which makes a major difference in the lives of the poor/ backward regions, needs to be recognized as well as propagated to keep the motivation level high. Hence they recommend that an award may be instituted by the MCA for the same. Also, as all CSR activities are decided upon and implemented by the work force of a CPSU, the Committee feel that each CPSU must identify and award an employee annually who does exceptional work in the field of CSR. The Committee further desire that success stories of PSUs in the area of CSR need to be posted on the web too to serve as guiding force. They urge the MCA and DPE to initiate positive action on the matter and report action taken on the same expeditiously."

74. The Department of Public Enterprises, in their action taken reply, have stated as follows :-

"DPE already has an Excellence Award for CPSEs under the MoU system assessing a wide area of their performance including CSR activity."

75. The Ministry of Corporate Affairs, in their action taken reply, have stated as follows:-

"In principle approval for institution of CSR Award in the Ministry has been obtained. This would also include best CSR Awards to CPSUs. CPSUs can institute awards for their employees, if they so desire."

76. The Committee appreciate the action taken by MCA and DPE for instituting the CSR award and desire that such an award for CPSUs should be instituted at the National level giving wider recognition for their CSR activities. As no reply has been furnished on the Committee's other recommendation to post success stories of their CSR activities on their websites for further appreciation and encouragement, the Committee reiterate the same and desire to be apprised of the action taken in this regard.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNEMENT

Recommendation (Sl. No.6)

The Committee observe that with the mandatory two percent of the net profit of allocations under CSR by companies, huge resources would be allocated by companies under CSR. Thus to ensure cent percent utilization of scarce resources, the companies have to augment their capacities by taking certain initiatives. On the part of the concerned administrative Ministry, (in case of a CPSU) MCA and DPE, they have to guide and support the companies. Besides with uploading of audited Annual Reports by companies, a lot of data have to be collated and analyzed by MCA for which adequate logistic support would be required for which MCA may consider to set up dedicated cell. They desire the Ministry to apprise them of action taken in the matter.

Reply of Department of Public Enterprises

After coming into force of the provisions of Companies Act, 2013 on CSR, DPE has taken initiatives to provide guidance to the senior executives of CPSEs handling implementation of CSR in CPSEs by organizing regional CSR Conclave, Seminar and Workshop on CSR. These events have been participated by a large number of CPSE executives concerned with CSR in CPSEs. As regard CPSEs, DPE has started collection of data on CSR expenditure from 2014-15. 110 CPSEs for which data have been collected, are required to incur expenditure on CSR amounting to ₹3489.26 crore for 2014-15 have reported expenditure of ₹ 2441.01 crore.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

A CSR Cell has been set up in the Ministry vide Office Order No A-45011/9/2014-Ad.I dated 09.05.2014 contemplating the following role for the Cell :-(i) To examine references form Industry Association, IICA, companies, experts and other

stakeholders seeking clarifications on CSR provisions, Schedule VII of the Companies (CSR Policy) Rules, 2014, and issue of relevant clarifications, circulars, (ii) To coordinate with various agencies viz. Industry Associations, Professional Institutes, IICA, International Bodies, on policy issues, (iii) To interact with other Ministries / Departments on CSR issues, including attending meetings on the subject.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.12)

The Committee note that CSR Rules provide for the negative list of CSR which clearly exclude CSR projects benefitting only the employees of the companies and their families and contribution of any amount directly or indirectly to any Political Party as well as activities under taken in pursuance of normal course of business by a company. Besides MCA has also issued a set of clarifications whereby it is stated that the expenses incurred by companies for the fulfillment of any Act/ Statue would not count as CSR expenditure. In addition one-off events such as marathons/ awards/ charitable/ contribution/ advertisement/ sponsorships of TV programmes etc. would not qualify as part of CSR expenditure. The Committee recommend that the negative list of activities as given in the Rules/ Clarifications of MCA/ DPE Guidelines should be compiled and uploaded on MCA website with clear cut directions for compliance by the companies including CPSUs.

Reply of Department of Public Enterprises

Action as recommended by the Committee in this regard needs to be taken by MCA by issuing another General Circular reiterating the Frequently Asked Questions (FAQs) underlining the activities which do not fall within the items listed in Schedule-VII of the Act.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Action has been taken by way of issuing Frequently Asked Questions (FAQs) dated 12th January, 2016 and the same is placed in the public domain (www.mca.nic.in)

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.13)

With allocation of two per cent of the average net profit of the Company during the three immediately preceding financial years for CSR, the allocations for CSR by a PSU would increase considerably. The Committee's examination of the data given by CPSUs indicates that resources are being spread thinly on diversified activities. The Committee find that in the clarifications issued by the Ministry of Corporate Affairs, it is stated that CSR activities should be undertaken by the companies in project/ programme mode. Some of the PSUs examined by the Committee have given suggestions to give emphasis on long-term and sustainable benefits for the communities, on creating durable assets and choosing fewer activities with concentrated efforts on projects. The Committee, while agreeing with the suggestions given by CPSUs, would like to recommend for prioritizing the activities by the nodal Ministry i.e. MCA as per the priority of the Government. CPSUs examined by the Committee have stated that they enjoy full autonomy in selection/ finalization of CSR activities. While appreciating the autonomy of CPSUs, the Committee recommend that the respective administrative Ministries/ CPSUs may be sensitized to give more emphasis on creating durable assets, having long-term planning and prioritizing activities in line with the policy of the Government so as to have an impact on the lives of the targeted masses/ areas.

Reply of Department of Public Enterprises

Regarding sensitization of senior level CPSE executives engaged in implementation of CSR in the CPSEs, DPE has organized four regional Conclave/

Workshop/ Seminar on CSR during the year 2015-16. Officers concerned with CSR were invited to participate in these events. Such events are organized by DPE associating officers from MCA. As regards sensitizing the respective Ministry/ CPSE regarding creating durable assets, having long term planning, all the administrative Ministries have been advised suitably.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Schedule VII of the Companies Act provides a list of items which can be undertaken as eligible CSR activities by companies. The General Circular issued on 18th June, 2014, suggests liberal interpretation of these items so that a wide range of activities having implication for inclusive development can be undertaken by the companies. Prioritization of CSR fund allocation by companies for long term project or otherwise, is within the decision making power of the Company's Board under the Law.

As regards sensitizing the administrative ministries and CPSUs, the Department of Public Enterprises being the nodal Ministry for CPSUs organize the same. MCA also participates in this DPE's initiative.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.16)

Collaboration with other companies for undertaking CSR projects

The Committee note that although Rules 4(3) of CSR Rules provides that a company may collaborate with other companies for undertaking CSR projects, very few such collaborations were quoted by CPSUs when information was specifically sought by the Committee. The Committee feel that there is a need to pool together the thin resources of the companies on major activities/ programmes so as to have impact on the ground. In case of pooling of resources by two or more CPSUs, the issues relating to reporting of expenditure need to be dealt with. The concerns expressed by the

Committee in this regard has been appropriately communicated to the concerned administrative Ministries and CPSUs.

Reply of Department of Public Enterprises

Such provisions for pooling of resources by two or more CPSEs and separate accounting and independent reporting already exist in the Companies Act, Companies (CSR Policy) Rules. All the administrative Ministries/ Departments concerned with CPSEs have been advised suitably in this regard.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The provision of *pooling the resource by two or more companies and separate accounting and independent reporting thereof* already exists in the Companies CSR Policy Rules, 2014 under the Act. Ministry has issued clarification in the form of FAQs on 12th January, 2016 to reiterate the same. This has been placed in the public domain (www.mca.nic.in).

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.20)

The Committee would also like to emphasize that whenever an asset is created by a CPSU under CSR, a display board may be erected at the site specifying name of implementing agency, cost of construction, likely date for completion of the project alongwith the telephone number of the officer of CPSU/ administrative Ministry who may be contacted by the public for any query/ complaint. The Committee also suggest that MCA should develop a distinct uniform size, color scheme and content for such board. Such a mechanism, besides making people aware of CSR programme, would also act as an effective monitoring mechanism.

Reply of Department of Public Enterprises

This is for MCA to consider.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The recommendation, if accepted, can promote efficient implementation and in-built community monitoring of the project. It is implicit that the Company / Implementing agencies will put a display Board in their own interest. This can be best handled through sensitization workshop.DPE conducts such workshops in which MCA also participates.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.25)

Skill Development and Employability

The Committee note that Skill Development is being taken up by many CPSUs as a major part of their CSR activities. However, many CPSUs were found not to be maintaining any data on the number of persons to which skill development training was provided as well as the number of persons provided placement/ employment subsequent to the skill development training. Further, most of the CPSUs examined by the Committee were found to be not preferring such candidates in their recruitment process except GAIL. The Committee note that placement of persons after providing skill development training is a vital area of concern otherwise the very purpose of providing skill development training would get defeated. The Committee, therefore, desire that CPSUs should, at first instance, maintain a data on the persons who are given skill development training and those gainfully employed, subsequent to the training, in order to have an assessment of the number of persons who have actually benefited from the training under CSR. Further, the CPSUs should devise courses and

impart training in those fields which are vital in their own functioning so as to subsequently absorb the trainees.

Reply of Department of Public Enterprises

Skill Development is one of the activities listed in Schedule VII of the Companies Act, 2013 and can be considered for implementation as a CSR activity by CPSEs. DPE has issued an advisory to the CPSEs to maintain data on the persons who are given skill development training for assessment and devise suitable courses and impart training in those fields which are most suitable to the functioning of the CPSE concerned.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

DPE to respond.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.26)

CSR for critically ill people

The Committee are pained to see the ever-increasing incidence of critical/ life-threatening diseases among the poor population particularly when the affected person/ family are not in a position to bear the cost of treatment of such ailments. Equally disturbing is inadequate and decreasing allocation for health care as is evident from the budgetary allocation made by the Ministry of Health and Family Welfare during the year 2015-16. Not only that budgetary allocation for some of the critical health care programmes like cancer, stroke, cardio vascular diseases, etc. during the current year are nil or negligible. The Committee are aware of the fact that the poor are forced to turn towards the moneylenders, pawnbrokers and other undesirable, elements of society for financial help to cover the cost of treatment. Hence, assistance provided to the poor under CSR can be of some help to them at a time the poor and their families are fighting

against critical health and life threatening ailments. They feel that Companies do their bit under CSR, to mitigate their suffering under CSR. However, as admitted by the representative of IOCL, the Companies hardly monitor as to whether the CSR funds given by them to hospitals actually benefit the poor patients. In this connection, the Committee appreciate that the PMO, if approached by a serious patient through a detailed proforma certified by the treating hospital for funds to bear the cost of treatment, sends their contribution directly to the hospital itself from the Prime Minister's Relief Fund. The Committee are of the strong view that such humanitarian practices can be replicated by Companies under CSR too so that poor people suffering from terminal illnesses could get some relief through CSR. Hence, they recommend DPE to include this activity in the list of activities under CSR.

The Committee also recommend that a separate cell in Ministry of Health and Family Welfare should be setup to assist and monitor the grant provided to these affected persons through PSUs CSR budget on the pattern of Prime Minister's Relief Fund where relief for treatment is provided to the patient through hospital only. The said cell in the Ministry can also regulate CSR allocations and its utilization by the PSUs and Private Companies for providing health related equipment and infrastructural support to the various health institutions particularly in remote, hilly and backward areas of the country. After identifying the hospitals and medical institutions in the relevant areas, this cell can coordinate, monitor and provide assistance from PSUs and private Companies to these institutions for building up strong infrastructural support/ critical medical equipment for super specialty assistance in health care in rural and backward areas of the country.

Reply of Department of Public Enterprises

A provision for taking up these activities under CSR already exists in Item (i) of Schedule-VII of the Act. The MCA is the custodian of Companies Act, 2013 and Rules. Amendment of the Act and Rules falls within the purview of MCA.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

This recommendation was referred to Ministry of Health & Family Welfare. The Ministry of Health & Family Welfare has responded as under :-

“The Ministry of Health & Family Welfare has set up an autonomous Society namely; Rashtriya ArogyaNidhi (RAN) in the year 1997 to provide financial assistance to the patients living below poverty line and who are suffering from major life threatening diseases like Heart, Kidney, Liver, Cancer etc. to receive medical treatment at any of the Government hospital including Super Speciality Government Hospital / Institutes. Further, Health Minister’s Cancer Patient Fund (HMCPF) has also been set up under RAN for providing financial assistance to the poor patients suffering from cancer.

Ministry of Health & Family Welfare has also made available a platform to tap resources available under Corporate Social Responsibility (CSR) to engage with organisations / institutions desirous of contributing financial assistance towards health care under their CSR initiative. Accordingly, HMCPF-CSR account has been created. The first contribution of ₹ 6 crore has been received from IFFCL, a Government of India PSU. Both the funds i.e. (RAN & HMCPF are managed by the Management Committee headed by Union Health Minister. There is a Technical Committee to advice the Managing Committee on technical matters. These accounts are audited by Chartered Accountants and C&AG as well. The audit report of the C&AG is included in the Annual Report of RAN and laid on the Table of both the Houses of Parliament.”

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.29)

As regards, the ceiling on administrative overhead cost by the CPSE in the implementation of CSR activities, the Committee notice that the said High Level Committee had recommended that the same should be increased from the present five

percent to not more than ten percent of the CSR expenditure of the Company for which amendment to the Companies Act and /or CSR policy rules 2014 would be required. However, the Committee are not in favour of increasing the percentage from current five percent as ceiling on administrative cost. Therefore, they recommend that the ceiling should remain as not more than five percent of the CSR expenditure of the Company. They also feel that said expenditure on administrative costs must be properly accounted for

Reply of Department of Public Enterprises

This is for the MCA to reply.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Accepted.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.31)

Professionalism and Expertise in CSR implementation

The Committee on Public Undertakings have the mandate to examine CPSUs. The provisions relating to CSR made in the Act and Rules pertaining to CSR are applicable to all the Companies registered under the Companies Act, 2013, which include CPSUs. Hence some of the general recommendations made by the Committee, particularly where the Committee have suggested for review of Act/ Rules, may equally be applicable to private Companies too. The Committee are also conscious of the fact that Companies have their core area of activity to concentrate on. The Committee hope and trust that the Companies would bring professionalism and expertise in the CSR implementation, which would translate into better participation of all sections of society into the overall development process. The Committee emphasize for the expeditious action on the recommendations of the Committee.

Reply of Department of Public Enterprises

It is submitted that action on the recommendations of the Committee with regard to reviewing provisions of Companies Act, 2013 on CSR and CSR Rules notified thereunder has to be considered by M/o Corporate Affairs(MCA) being the regulatory Ministry for the Companies Act, 2013 and the CSR Rules. Any decision taken by MCA in this regard shall be equally applicable to all corporates, including CPSEs and DPE will take necessary follow up action for CPSEs.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Action Taken Report is submitted herewith.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

Recommendation (Sl. No.10)

Further, the MCA has apprised the Committee that the Registrar of Companies is the implementing Authority for the purpose of Section 134 (8) of the Act. The Committee find that as per sub-section 5 of Section 135 of the Act, the Board of the Company has been made responsible to ensure that the Company spends the requisite amount under CSR. Besides MCA being the administrative Ministry for the purpose of CSR spending, is responsible for overall compliance of CSR provisions and would be collating and compiling the data about CSR allocations as apprised to the Committee. With regard to CPSUs, DPE being the nodal Department, has also the responsibility to ensure compliance of CSR provisions. There is no clarity with regard to modalities of fixing accountability and imposing penalty by Registrar of Companies who is stated to be the implementing authority for the purposes of Section 134 (8) of the Act. The Committee, therefore, recommend that modalities in this regard should be worked out and incorporated suitably in the Act/ Rules/ Guidelines and the Committee apprised accordingly.

Reply of Department of Public Enterprises

This is for MCA to consider the recommendation of the Committee. As far CPSEs are concerned, DPE is using the MoU mechanism to ensure compliance of CSR provisions by CPSEs.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

ROCs are empowered to initiate action against non-compliant companies under Section 206 of Companies Act, 2013. Modalities for initiating action against companies

for contravention of any provisions of the Act (which includes Section 135) remains same for the entire Companies Act, 2013.

No separate modality of fixing of responsibility has been spelt out for contravention of Section 134 (8). Modalities for initiating action for non-compliance of the provisions of the Companies Act, 2013 are as follows :

Step 1: Registrar of Companies to check compliance of section 135 of the Act read with section 134 of the Act (by viewing e-form AOC-4). This can be done suo motu by ROC or on receipt of complaints by stakeholders. ROC may issue Show Cause Notice to the company and all its officers in default.

Step 2: ROC shall send its findings to Ministry of Corporate Affairs for seeking approval to file the prosecution, if any, against the companies and all its officers in default.

Step 3: On issue of Ministry's permission, ROC to proceed for prosecution.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.22)

ISO-26000:2010

The Committee note that the ISO-26000:2010 standard shares best practices relating to social responsibility globally, and thus, could be a good source of guidance to all Government departments in formulating/ enhancing/ improving standards and guidelines for undertaking social responsibility. The Committee have been informed by the MCA that they do not propose to do the same. They find such an approach regressive and feel that the MCA must study these guidelines to familiarize themselves with best global CSR practices and improve their efforts to ensure compliance of CSR legislation in the best possible manner.

Reply of Department of Public Enterprises

This is for MCA to consider.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

IICA was requested to make a study on this. The summary findings of the study is as under :

‘A close analysis of the ‘**Indian CSR legislation**’ and ‘**ISO: 26000**’reveals that while there are some similarities of issues between Indian CSR legislation and ISO 26000:2010, there is a divergence on many issues between them. There is also a divergence of purpose between these two. Indian CSR legislation is more geared towards invoking certain sections of Corporate houses to contribute towards social and environmental issues and subjects and not substitute Govt. efforts in this direction, while ISO 26000:2010 is more oriented towards making companies more compliant towards social and environmental standards thereby leading towards their sustainability within this complex economic scenario and be more responsive to global challenges. The ambit of ISO 26000 is far wider and leaning more towards “Sustainability” issues of the corporate rather than discharging their social responsibility to the Society and Environment where they exist.

There are also some clauses in ISO 26000 related to Human Rights and Labour issues, which are not in consonance with Indian laws. As a result, even Indian Ministry of Commerce has objected to making ISO 26000:2010 as the standard for corporate Social responsibility in India and has requested Bureau of Indian Standards (BIS) to adapt to Indian situation’.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.30)

CSR Hub under TISS & selection of implementing agencies

The Committee note that the DPE has set up a National CSR Hub, located within the Tata Institute of Social Sciences, on 21.3.2011 to facilitate the CSR activities of

PSE. In this connection, the DPE has informed that the said hub at TISS is for facilitating CPSEs to utilize their services and that of the 422 implementing agencies empanelled with the Hub for undertaking their CSR activities/ projects. The Committee further note that CPSEs are at liberty to undertake their activities/ projects approved by their Board either through a registered trust or a registered society or a company established by the Company or its holdings or subsidiary or associate company under section 8 of the Companies Act. During their examination of various CPSEs the Committee have noticed that for selecting implementing agencies, different practices are being followed. Also, while some of these have established a foundation to carry out their CSR activities, some have entrusted the task to an NGO from the list of 422 agencies empanelled with TISS. The Committee feel that so far as NGOs are concerned, there should be a mechanism to evaluate their expertise and credibility on a regular basis by the Government. Therefore, they desire that the administrative Ministries/ MCA/ DPE should take action on the matter. Further, the Committee appreciate that the CSR Hub has prepared a strategic CSR Framework and uploaded it on their webpage. The Committee desires to be apprised of the contribution of the CSR Hub so far in the task mandated for it.

Reply of Department of Public Enterprises

CPSEs while making selection of implementing agencies/ NGOs are required to practice due diligence and to look into the experience and track record of these agencies. They are required to follow the provisions contained in Companies (CSR Policy) Rules, 2014. Further, CPSEs are not mandated to avail CSR framework of National CSR Hub at Tata Institute of Social Sciences (TISS), Mumbai. National CSR Hub was created as per DPE Guidelines on CSR (applicable till 31st March, 2013) in the initial years to facilitate CPSEs in undertaking their CSR activities/ projects, selection of implementing agencies, impact assessment and evaluation, etc. Now CSR Hub is an independent body finds no mention neither in the CSR provisions of Section-135 of Companies Act, 2013 on CSR, nor the Companies (CSR Policy) Rules, 2014 notified thereunder by MCA. CPSEs are free to engage any expert implementing agency as per

the provisions contained in the Companies (CSR Policy) Rules, 2014 to handle their CSR projects. DPE while issuing guidelines on CSR and Sustainability, 2014 has clearly stated that the earlier guidelines/ circulars/ instructions issued by DPE on the subject of CSR and Sustainability have been superseded.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

DPE to respond. The Ministry of Corporate Affairs does not have the expertise or domain knowledge to evaluate the credentials of Implementing Agencies. The Companies Act provides that the Board of the concerned company is empowered to evaluate and engage implementing agency as per their choice and requirements.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

CHAPTER IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Sl. No.1)

Allocations made under CSR by CPSUs

The Committee note that with the notification of Section 135 of the Companies Act, 2013, containing CSR provisions, which came into effect from the 27th February, 2014, CSR for Companies has been made legally binding. With the enactment of Section 135 of the Companies Act, 2013 relating to CSR, India has, perhaps become the first country in the world bringing CSR provisions within the Statute. As per Section 135 of the Companies Act, 2013, Companies crossing a threshold limit i.e. net worth of ₹ 500 crore or more; or turnover of ₹ 1000 crore or more; or net profit of ₹ 5 crore or more, have to spend at least two per cent of their average net profit made during three immediately preceding financial years, on CSR activities every year.

The Companies including Public Sector Undertakings and Enterprises have been taking initiatives since long to fulfill their Social Responsibilities so as to promote socio-economic and environmental changes in the lives of the poor people in the country. The Committee are concerned to note that the Ministry of Corporate Affairs (MCA) and the Department of Public Enterprises (DPE) have not bothered to maintain data with regard to amount spent so far on CSR by CPSUs as well as private Companies. DPE has, however, furnished the estimated amount likely to be spent on CSR during the year 2013-14. It has been stated that as per the data furnished in the Public Enterprises Survey 2013-14, two per cent of average net profit in the three immediately preceding years, in respect of 131 CPSEs which exceeds the threshold limit for undertaking CSR, comes to ₹ 3683.73 crore. With regard to private Companies, the information given at official site of MCA indicates that as on the 28th February, 2015, the total number of private Companies is 952892 with authorized capital of ₹ 1,476,339.28 crore. There are 21,429 Companies having net profit of above ₹ 5 crore i.e. they cross the threshold limit for spending the requisite amount on CSR. Thus, it can very well be presumed that a

huge amount of money under CSR would be available which in the opinion of the Committee, if utilized properly, can contribute in bringing a visible change in the lives of the poor people in the country. The Committee also feel that a huge amount would have been spent on CSR by Companies during the first year of implementation i.e. 2014-15, as per the statutory provisions. Now when Companies would be making report about the policy developed and implemented on Corporate Social Responsibility initiatives taken for the year 2014-15 as per Section 134 (o) read with Section 135 of the Companies Act, 2013, the Committee would like to be apprised about the total allocations made under CSR by CPSUs as well private Companies, as and when the data is compiled by MCA.

Reply of Department of Public Enterprises

DPE deals with CPSEs (298 in 2014-15). Information relating to total allocation made under CSR by CPSEs eligible for CSR expenditure has been uploaded by CPSEs on the website of M/o Corporate Affairs (MCA). DPE has collected information separately in this regard for 2014-15. 110 CPSEs have spent ₹ 2441.01 crore under CSR in 2014-15. A statement showing details of 2% allocated for CSR and expenditure made during 2014-15 by these CPSEs is enclosed.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Corporate Social Responsibility (CSR) expenditure of 460 listed companies, which have placed their annual reports on their websites, indicates that 51 Public Sector Undertakings (PSUs) and 409 private sector companies together spent about ₹ 6337 crores on CSR during 2014-15, as tabulated below:

Sl. No	Company Type	No. of Companies	Actual CSR Expenditure	Mandated CSR Expenditure	Percentage utilization
1	PSUs	51	2386.60	3359.84	71.03
2	Private Sector Companies	409	3950.76	4987.63	79.21
	Total	460	6337.36	8347.47	75.92

Recommendation (Sl. No.2)

Need to define CSR

The Committee note that the guiding principles for CSR funding is inclusive growth i.e. to include those sections of the society in the growth process, which had hitherto remained excluded from the mainstream of development. Here, the Committee cannot but recall the great words of the Father of the Nation Mahatma Gandhi, who believed that development is “Sarvodaya” through “Antodaya”, implying the welfare of all by serving the last man in the queue i.e. the “poorest among the poor”. The Committee firmly believe that the spirit of CSR should be serving the interest of the “most marginalized sections of the society” in line with Antyodaya philosophy. As such CSR is not mere charity/donation but is a concept which reiterates the responsibility towards the society and commitment to integrate social, environmental and human development concerns in the entire value chain of corporate business.

The Committee further note that India's Human Index Value (HDI) for 2013 is 0.586, positioning the country at 135 out of 187 countries and territories- the lowest among the BRICS countries, with Russia at 57, Brazil at 79, China at 91, and South Africa at 118, and slightly ahead of Bangladesh and Pakistan. Significantly, while China improved its ranking by ten places between 2008 and 2013, India's position improved by just one rank as mentioned in the Economic Survey 2014-15. Thus a lot needs to be done to bridge the gap for which focused attention needs to be given to poor and marginalized sections of society as well as backward areas. The committee find that the term ‘Corporate Social Responsibility’ has not been defined in the enactment/ Rules. The Committee's examination of the subject has revealed that although a lot of initiative are being taken with regard to CSR by various CPSUs, the pattern of expenditure so far shows that it is not always targeted to the poorest of the poor/ backward areas of the country. The Committee, therefore, recommend that CSR should be clearly defined in the Act itself. The definition should cover the broader principles of CSR spending as elaborated above so as to ensure that CSR allocations are spent for the specified

activities targeting poor and backward areas. They feel that the concerns expressed by them may necessitate suitable amendments in the Act and desire that action may be taken expeditiously on the same.

Reply of Department of Public Enterprises

The action for modifications in the Companies Act, 2013, Companies (CSR Policy) Rules, 2014 and the Schedule-VII, including definition of CSR falls within the purview of MCA. These Act and Rules are applicable to the CPSEs and they will be advised for implementation of any changes made therein by MCA.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Schedule VII of the Act enlists the activities that can be undertaken by companies under their CSR policies, primarily aiming at :

- i. eradicating hunger, poverty and malnutrition; **promoting health care including preventive health care** and sanitation **including contribution to the ‘Swachh Bharat Kosh’ set-up by the Central Government for the promotion of sanitation** and making available safe drinking water; and
- ii. Promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;

These activities primarily target the poor and weaker sections which have a direct bearing on improving human development.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.3)

Amending Section 135 of the Companies Act, 2013

MCA/DPE have apprised the Committee that CSR expenditure which was hitherto a voluntary initiative, has been made compulsory with the enactment of Section 135 of the Companies Act, 2013. Although the word 'shall' has been used in sub-section 5 of Section 135 for making CSR expenditure, second proviso to this sub-section dilutes the spirit of making the provision mandatory. The second proviso provides that if the Company fails to spend specified amount under CSR, the Board shall in its report specify the reasons for not spending the amount. The Committee strongly feel that the whole purpose of making the CSR spending as mandatory is defeated by the second proviso as a Company can get away easily by simply stating the reasons for not spending prescribed CSR allocations.

Not only that, there is utter confusion about carrying forward of unspent amount allocated in a year under CSR with MCA/DPE. While placing the legal position before the Committee, the Secretary, MCA during the course of deposition stated that the CSR Budget has to be spent within a year, if it is not spent, then it would lapse as far as normal Companies are concerned. On the other hand, as per DPE guidelines, in case of CPSEs, mere reporting and explaining the reasons for not spending this amount in a particular year would not suffice and the unspent CSR amount in a particular year would not lapse. It would instead be carried forward to the next year for utilization for the purpose for which it was allocated. Rural Electrification Corporation Limited (REC) in this regard has observed that CPSEs are at a relative disadvantage viz a viz private sector Companies governed under same Act on this issue. The Committee wonder how two sets of Rules can be applicable to private Companies and CPSEs, making unspent funds for one (private Companies) in a year as lapsable and for the other (CPSEs) making as non-lapsable. The Committee observe that CSR spending has been made mandatory as per Section 135 (5) of the Act. As such the Companies have to allocate and spend the prescribed allocations under CSR in a year. The Committee, therefore, strongly recommend to review sub-section 5 of Section 135 of the Act and make

suitable amendments in line with spirit of mandatory allocation to be made under CSR by the Companies.

Reply of Department of Public Enterprises

The rules regarding CSR are laid down by MCA under the Companies Act, 2013 and these are followed by CPSEs. The guidelines issued by DPE are advisory in nature and complements the provisions of the Act in this regard. Since CPSEs are administered by Govt. the expenditure on CSR for the benefit of the society is being ensured by the Govt.

[Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Section 135(5) of the Act along with second proviso to this subsection was included in the statute at the instance of the Standing Committee on Finance on Demand for Grants in its 21st Report. While the law does not provide for mandatory carry-forward of unspent CSR amount, MCA has clarified that companies may carry-forward such amount so that the spirit of CSR spending is achieved.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.4)

MCA & DPE : ROLE & RESPONSIBILITIES

The Committee find that as per CSR Act and Rules, the onus for ensuring expenditure as per the prescribed allocations under CSR has been laid on the Board of every Company as per sub-Section 5 of Section 135 of the Companies Act. There is no clarity about the roles and responsibilities of MCA and DPE in implementation of CSR provisions. In the Committee's opinion, MCA has a greater role for implementation of CSR provisions as the Act and Rules are being administered by them. Besides DPE being the coordinating Department for CPSUs, which has issued certain Guidelines with regard to implementation of CSR provision, remains coordinating Department for CPSUs. The year 2014-15 being the first year of implementation of CSR statutory

provisions, MCA and DPE have an important role to play. In this scenario, the Committee are of the view that merely collating and compiling the information on CSR expenditure by MCA would not be sufficient. The MCA has to oversee the implementation of CSR so as to ensure that the allocations are spent in the true spirit of CSR for which the data needs to be analyzed for identifying loopholes and providing solutions through necessary directions/guidelines to companies. The Committee also opine that DPE, being the nodal department for CPSUs, has to coordinate with MCA and oversee the implementation of CSR provisions by CPSUs. Here the Committee would strongly like to recommend that in line with ensuring executive accountability to Parliament, an Annual Report containing data/ inputs, as collated and analysed, should be laid in Parliament by MCA. The Committee would also like to emphasize that the role and responsibilities of the administrative Ministry of the concerned CPSU, MCA and DPE should be clearly spelt out in unambiguous terms so as to avoid confusion and duplication.

Reply of Department of Public Enterprises

Being the custodian of the Companies Act, 2013 and CSR Rules, the responsibility for ensuring its implementation primarily vest with the MCA. As far as CPSEs are concerned, DPE has started the process of separately collecting data and information on CSR and these will be included in the Public Enterprises Survey Report from 2015-16 onwards. This report is tabled by DPE on annual basis in both houses of Parliament.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Under extant rules and provisions of the Companies Act, mandatory disclosure on CSR by companies is sufficient safeguard for ensuring compliance. The observation has been made by Standing Committee on Finance on Demand for Grants in its 21st Report; and CSR came under the statute at the instance of this report of the Standing Committee on Finance.

Law does not provide for monitoring of implementation of CSR policies of companies by Government. The HLC, which has submitted its report in September, 2015 has also endorsed this view by reiterating the provisions of the law.

The MCA's role is (i) to ensure compliance of provisions under Section 135 of the Companies Act, 2013, and take action against non-complaint companies; (ii) to make amendments to the Act and the rules as and when necessary; and (iii) to issue clarification if required, for facilitating the compliance of Section 135. The applicability of the provisions of Company Law is uniform across all companies – including PSUs. There is no overlap of roles and responsibilities with DPE.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.5)

Underspending of CSR allocations

The analysis of the data furnished by 13 CPSUs, as examined by the Committee, indicates that these 13 CPSUs allocated ₹ 2139.75 crore during the year 2014-15 under CSR which included carry forward amount of unspent amount of previous years, out of which ₹ 1020.44 crore was spent thereby leaving ₹ 1119.31 crore as unspent amount. Not only that carry forward amount under CSR by some of the CPSUs like ONGC, NHPC, are greater than the annual allocations. The Committee felt that the figure of unspent funds would be manifold if CSR allocations of all eligible CPSUs, private Companies etc. are taken into account, and desire to be apprised of the same. The Committee express serious concern over more than 50 per cent of the allocations remaining unspent with these CPSUs, particularly when they have been implementing CSR for long and have experience and expertise in the field and thus, they would like to be apprised of the reasons for huge under spending in this regard.

Reply of Department of Public Enterprises

From the year 2014-15, DPE has started collecting data and information from CPSEs, mandated to incur CSR expenditure. As per the reports received so far, 110 CPSEs have incurred ₹ 2441.01 crore on CSR during 2014-15. This constitutes 70% of

their total CSR fund leaving unspent balance of ₹ 1145.97 crore and of 110 CPSEs, 37 CPSEs had spent more than their 2% of average PBT of three immediately preceding financial years. An analysis of 13 CPSEs referred by the Committee indicates that they have spent ₹ 1019.65 crore (72.26%) out of ₹ 1411.06 crore for 2014-15. This includes unspent amount of ₹ 394.50 crore in respect of 10 CPSEs out of 13 CPSEs and excess CSR spending of ₹ 3.09 crore by 3 CPSEs. There are only 3 CPSEs namely, Bharat Petroleum Corporation Ltd, Power Finance Corporation Ltd and Steel Authority of India Ltd which have more than 50% unspent CSR balance at their end. The Companies Act does not bar any company for spending in excess of 2% of average PBT of three immediately preceding financial years and as far CPSEs are concerned a view on the backlog of CSR fund can be taken.

[Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

This is an observation only. No action is required by MCA.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.7)

The Committee take note of the constraints expressed by Rural Electrification Corporation Limited that planned disbursements against sanctioned project may not take place in a particular year due to reasons beyond their control. The Committee also note that the statutory provisions made with regard to CSR spending will provide continuity to CSR funding and expenditure. With increased CSR allocations, there is huge scope to give emphasis on durable projects having long gestation period. The Committee, therefore, recommend that a small percentage of allocations, for a specific continuing project, can be permitted strictly under justifiable reasons to be carried forward to the next year. After completion of three years in a row, the unspent amount can be pooled together which can be used by the Government for various poverty

alleviations and social sector schemes meant for the poor and backward areas as covered under the activities specified in Schedule-VII. However, the corpus of unspent amount should be accounted for separately. The Committee also recommend that the necessary modifications in the statute and Rules may accordingly be made.

Reply of Department of Public Enterprises

The recommendation may require amendments in the Companies Act, 2013 and Companies (CSR Policy) Rules, 2014 and it would be before MCA to furnish reply.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The considered view of the Ministry is that, the requirement of mandatory transferring of unspent amount of CSR at the end of three years to a specific fund would go against the principle of “comply or explain” enshrined in Section 135.

In view of this it is submitted that the current provision may be continued.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.8)

Need to revise Proforma

The Committee find that CPSUs are not reflecting carry forward amount in a year clearly in the maintained data. In this regard, as per Rule 8 of CSR Rules, the Report of the Company's Board covered under these Rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an Annual Report on CSR containing particulars specified in Annexure. In column 5(c) of the format as given in the Annexure, the manner in which the amount is spent is given. There are eight separate columns for giving the information by the Company. The Committee recommend that 2 more columns i.e. column 9 relating to unspent amount and column 10 about reasons for under spending should also be added in the format. Further in

column 5, amount outlay (budget) project or program wise is to be given. The Committee recommend that two sub-columns under column 5 should be added to indicate the carry forward unspent amount and the total available outlay under CSR in a year. The necessary action in this regard should be taken by MCA/ DPE and the Committee apprised accordingly.

Reply of Department of Public Enterprises

The format for annual disclosure on CSR by CPSEs has been prescribed as Annexure in the Companies (CSR Policy) Rules, 2014 notified by the Ministry of Corporate Affairs. Any amendment for insertion of any extra column(s) in the format to indicate the carry forward of unspent amount etc. needs to be carried out by the MCA.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The prescribed format for reporting CSR expenditure of a company during the year, includes reporting on unspent amount and reasons for not spending/underspending at point No. 5B and 6 respectively of the prescribed format which is enclosed as an annexure to Companies (CSR Policy Rules),2014.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.9)

Penalty & Fixing Accountability

Section 134 (8) of the Companies Act states about the penalties for non-compliance of provisions relating to only Section 134, that too with regard to only clause (o) applicable to CSR which states about the details of the policy developed and implemented by the Company on CSR initiatives taken during the year. Thus the Company can only be penalized for not filing of details regarding CSR policy as implemented by the Company, and not for non-compliance of the provisions relating to

CSR. Hence a Company can easily get away with filing of requisite details without properly spending on CSR. The Committee find this inadequate to meet the objective of mandatory expenditure under CSR as per the new statutory provisions and strongly recommend for making non-compliance of spending of prescribed allocations on the admissible activities in the prescribed manner a punishable offence and for making suitable provisions in this regard.

Reply of Department of Public Enterprises

Under the extant provisions of Companies Act, 2013, annual disclosures by the Board of company on CSR expenditure is the only condition for ensuring compliance. This is for MCA to consider the recommendation for amendments in the provisions on CSR in the Act and the CSR Rules notified thereunder.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Under the extant provision of the Law, annual disclosure of CSR expenditure by the Board of the Company is sufficient for compliance. CSR expenditure on admissible activities by companies is subject to auditor's observation. The underlining spirit is that the Board of the company which is responsible for following due diligence in spending 100% of its expenditure budget can follow the same procedure in spending this 2% of their profit amount also.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.11)

CSR allocations being spent on ineligible activities by CPSUs

The analysis of the data furnished by 13 CPSUs examined by the Committee indicates that some of the CPSUs have spent CSR allocations on ineligible activities.

For instance, SJVN Limited has made CSR allocations for Support to Municipal Corporation Shimla for Infra work/ Beautification of Shimla and Social studies/ publication of articles/ reports of journals. IOCL has allocated some outlay under CSR for Nomination fee for CSR for Think Media Inc.; Consultation and estimate preparation at schools, Balasore, Odisha; Stakeholder meeting at Tinsukia, Assam; Purchase of Green Board, Office Furniture, Utensils etc. Its subsidiary CPCL had incurred CSR expenditure on salary to PTA teachers of Government Higher Secondary School in Tiruvallur, Tamil Nadu. RVNL has allocated CSR outlay for Training of RVNL officials in Sustainability and conducting promotional activities with executing contractors at work sites, which in Committee's opinion do not come under the purview of CSR. MCA has also stated that the aforesaid activities may not qualify as CSR. Further, as per the clarifications issued by MCA, one-off events such as marathons/ awards/ charitable contributions/ advertisement/ sponsorship of TV programmes etc. would not qualify as part of CSR expenditure. The Committee's examination has revealed that such activities are a common feature in the CSR spending by CPSUs as per the data furnished by them to the Committee.

Some of the PSUs have indicated the heads/ activities in a vague manner e.g. NHPC in the data furnished to the Committee has mentioned broad areas like Health and Sanitation, Rural Development instead of specifying the activity undertaken in the specific area. Besides, some of the CPSUs in the data furnished to the Committee have just mentioned the name of some of the individuals without indicating the specific purpose for which CSR allocation is being made.

The Committee express strong concern over the way CSR outlay is spent by some of the CPSUs, which apparently does not qualify as CSR. The Committee strongly recommend that such violation of Rules/ Guidelines should be taken up with the concerned administrative Ministry and CPSUs and the Committee apprised about the action taken in this regard. It is also emphasized to analyse the data carefully to ensure that the CSR allocations are spent on eligible activities in the true spirit of CSR. The Committee would also like to recommend that concerned CPSU should be instructed to allocate an equal amount to the allocation made for an activity found inadmissible on

CSR, which may be reflected separately in the carry forward amount. The necessary action on the desired lines should be taken by the Ministry.

Rail Vikas Nigam Limited, which is under the administrative control of the Ministry of Railways, has in the information furnished to the Committee stated that the Ministry of Railways has assigned targets for upgradation of passenger amenities through CSR. Not only that, Railway Board has given similar targets to other CPSUs under its administrative control. The Committee in this regard recommend that under the 'enhanced railways amenities' activities under CSR, emphasis should be given to disabled and elderly-friendly infrastructure, for instance escalators/ ramps and other modified public utilities, at Railway stations.

Reply of Department of Public Enterprises

After coming into force the provisions on CSR in the Companies Act, 2013, effective from 1st April, 2014, CPSEs are mandated to select activities/ projects as per the activities listed in Schedule-VII of the Act. Administrative Ministries/ Departments concerned with CPSEs identified by COPU have been requested to take appropriate action as advised by the Committee. As regards, provision for allocation of equal amount to the allocation made for an activity inadmissible on CSR, issue needs to be examined by MCA as CSR provisions are applicable to all companies, including CPSEs.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Upgradation of passenger amenities is part of the primary responsibilities of Ministry of Railways. Further, provision of infrastructure for the elderly and disabled persons at the railway stations also remains the primary responsibility of the Railways authority. CSR spend should not be utilised to fund statutory obligations.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. Nos.14 & 15)

Local area/PAN India approach

First proviso to Section 135 (5) of the Companies Act provides that the Company shall give preference to local areas and areas around it where it operates, for spending the amount earmarked for CSR activities. The data furnished by the CPSUs indicates that some of the CPSUs like Power Finance Corporation have no specific geographical area of commercial operations and hence may take up CSR activities/ projects at any location. With regard to CPSUs having specific geographical area of commercial operation, some of the CPSUs have allocated percentage of allocations for CSR, like CONCOR, is endeavoring to ensure that 80 per cent of CSR initiatives are carried out in the local area. RVNL on the other hand has not under CSR activities in other areas where it does not have its presence/ operations. In some other CPSUs, like REC, no specific budget is allocated for carrying out activities in the local areas. The Committee, while appreciating the concept of local area and the flexibility given to the companies, within the provisions made under the Act, believe that a minimum amount needs to be spent under CSR in areas outside the local area of operation by a Company so as to ensure PAN India impact of CSR.

The Committee, therefore, would like to recommend that companies need to give adequate emphasis on spending CSR allocation on other than the local areas which besides ensuring PAN India impact of CSR, would also make the presence of the Company felt throughout the country. Necessary provisions should accordingly be made in the Act/ Rules/ Guidelines.

The Committee further note that 'local area' has not been defined in the Act/ Rules. The Committee find from the information made available by some of the CPSUs, that 'local area' has not been spelt out by the companies too. However in case of CONCOR, the local areas has been defined as an area within the radius of 200 Kms. of the Company's facilities/units. The Committee recommend that the term 'local area' should be clearly defined so as to have uniform pattern of spending made on CSR by companies in the local areas of their operations. The necessary action in this regard should be taken by MCA, and the Committee apprised accordingly.

Reply of Department of Public Enterprises

The first Proviso to Section 135 (5) of the Companies Act, 2013 reads:

“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”

This provision provides for preference to be given to local area. companies have enough flexibility to allot CSR funds for activities to be undertaken beyond local area. Any proposal to define the term ‘local area’ besides the provision contained in the first proviso to Section 135 of the Companies Act, 2013, has to be considered by MCA.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The first Proviso to Section 135 (5) of the Companies Act, 2013 reads: "*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.*" It is submitted that this provision is unambiguous and provides for preference to be given to local area. Companies have enough flexibility to allot CSR funds for activities to be undertaken beyond local area.

It is submitted that, it would be extremely difficult to provide a definition of ‘**local area**’ in the statute; since spatial spread of ‘local area’ can vary from industry to industry, company to company on the basis of their business object. Besides, local area for service sector companies which have PAN India presence will be even difficult to define. In view of this, it is submitted that status quo be maintained.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.17)

Involvement of local/ public representatives & local administration

The Committee observe that the essence of CSR lies in greater public participation so as to achieve the goal of inclusive growth. Hence, they are of the view that local MPs/ MLAs and elected representatives of local bodies should be involved more effectively for selection / finalization of projects as they are in a better position to identify the problems/ necessity of poor people in the area they represent. The Committee would also like that while selecting activities/ projects under CSR, Panchayats, District administrations and the State Governments should also be consulted for effective implementation as well as to avoid duplication of resources for same project/ activity. Above all, there should be mechanism to involve the local masses who are the beneficiary for the project/ activity at the larger scale as their active participation would certainly give a feeling of ownership which would solve the problem of maintenance. The Committee emphasize that suitable provisions in the Rules/ Guidelines should be made in this regard and the Committee apprised, accordingly."

Reply of Department of Public Enterprises

While selecting activities under CSR and allocation of funds accordingly, management of CPSEs are supposed to conduct need assessment survey with the involvement of local area people and the local body/ local district authorities/ Local MP/ MLA. This will help in identifying the problems / needs of poor people in the area for the purpose of selecting right activities/ projects under CSR to avoid any duplication of resources for the same project, address issues of maintenance and in deciding whether it should be taken up in project mode.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

Rule 4 of Companies CSR Policy Rules, 2014 prescribes programme/project mode of implementing CSR by companies for ensuring sustainability of the benefits/impact. As such project mode of implementation pre-supposes a need

assessment survey, and involvement of local masses / potential beneficiaries ought to be an integral part of such surveys. It is the Board of the Company, which is empowered to take a call on this. Through various sensitisation workshops conducted by DPE/IICA, corporates are encouraged to involve the local bodies/beneficiaries.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.18)

CSR activities under various Government programmes & schemes

As regards the CSR activity concerning construction of toilets, the Committee note that all the 13 CPSUs examined by them had spent substantial CSR funds on construction of toilets in their local areas of operations. The CPSUs have also informed the Committee that their administrative Ministries were given certain targets by the Ministry of Human Resource Development under the 'Swachh Bharat Swachh Vidyalaya Programme' for construction of toilets. However the Committee are surprised that neither MCA nor DPE are aware of any such targets given to CPSUs. Despite the Committee's inquiry, none of them bothered to approach the Ministry of Human Resource Development to get any clarification on this aspect. Later in response to a specific query, the Department of School Education and Literacy, Ministry of Human Resource Development in the written replies informed that they launched the Swachh Vidyalaya initiative, in response to the national call given by the Prime Minister on 15 August 2014, that within one year, there should be no school in India without separate toilets for girls and boys. Under this initiative, the MCA and DPE were approached, among all other Central Ministries, on 1 September, 2014, by them to persuade the CPSUs under them to participate in the same. The Committee were further informed that 64 CPSUs participated in the Swachh Vidyalaya initiative, which reported construction of 1.41 lakh toilets on the Swachh Vidyalaya portal. The Committee cannot but express their disappointment at the ignorance of the representatives of MCA and DPE displayed at the time of evidence and caution them to answer queries of the Committee with requisite seriousness. Further, the Committee were also apprehensive

about overlapping/ duplication on this particular scheme since the Central Government and State Governments are also involved in implementation of the same. They failed to get any clear view on the matter and thus desire that there is a need to develop appropriate coordination mechanism to avoid duplication and overlapping. As the CPSUs may be involved in the implementation of national priority programmes in future too, they recommend that the DPE must ensure that all administrative Ministries of CPSUs report to MCA/ DPE about any directions given to them to undertake CSR activities through their CPSEs in connection with a Central Sector Scheme.

Reply of Department of Public Enterprises

DPE has issued an advisory to the administrative Ministries/ Departments concerned with CPSEs to the effect that any specific direction given by the Ministries/ Departments to the CPSEs under their administrative control to undertake major CSR activities under Central Sector Scheme or National Priority Programme should be informed to DPE.

[Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

"DPE to respond".

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.19)

Monitoring and ensuring durable quality assets

The Committee note that a large number of assets / infrastructure are being created under CSR activities and endorse it as they opine that the emphasis of CSR should be on establishing assets for long-time use. The quality & durability of these assets is a major area of concern and needs to be ensured for long term use of the beneficiaries. The Committee feel that keeping a thorough check on credentials of the vendor including inspection of processes of vendor during execution of the project, carrying out quality audits by a certified 3rd party, warranties/ guarantees against

defects in the contract, regular monitoring and inspection of the projects, etc. will help in ensuring the quality and durability of the assets/ infrastructure created under CSR activities. The Committee desire that suitable directions in Guidelines be incorporated to be followed by CPSUs/ Implementing agencies in this regard.

Reply of Department of Public Enterprises

Provisions of Act on CSR and the CSR Policy Rules as notified by MCA are equally applicable to all corporates, including CPSEs. Due diligence, including checking on credentials of the vendor, inspection of processes of vendor during execution of the project, carrying out quality audits by certified 3rd party, regular monitoring and inspection of the projects, is to be done basically by the management of respective CPSEs. As far as CPSEs are concerned, DPE will continue to build awareness and sensitize them to ensure proper implementation and follow up actions.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

MCA is responsible for administering the Companies Act, 2013 and ensuring compliance of various provisions of the Act including those under Section 135. Implementation of CSR policy of a company, including selection of vendor, quality audits by the third party if any, and monitoring of the project etc. is the responsibility of the Board of the Company.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.21)

While emphasizing again for the involvement of local bodies i.e. Gram Panchayat and Municipalities in the implementation and monitoring of CSR activities, the Committee would like to recommend that the mechanism of social audit may be introduced for the larger involvement of public in the monitoring of CSR activities. Suitable provisions in this regard should be made in the Rules/ Guidelines.

Reply of Department of Public Enterprises

Provisions on CSR in the Companies Act, 2013 and the CSR Rules notified by MCA provide that the entire information relating to CSR activities/ expenditure by all corporates, including CPSEs will be in public domain. This gives ample opportunity to the society and community at large to judge the CSR agenda and execution of the same. Since it is the beginning of the implementation of CSR by companies, it is still in the learning stage. A view in this regard may be taken by MCA.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

It is submitted that CSR is meant for larger social benefit and hence be left to the society and community to judge. Since the entire information relating to CSR activities / expenditure by companies will be in the public domain by way of mandatory disclosure by the Board of the company , it will automatically lead to such social audit.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016]]

Recommendation (Sl. No.23)

Maintenance of assets/ equipment

The Committee were also not convinced about arrangements made for the maintenance of the toilets and their structures, once constructed and equipment e.g. solar lights, etc., once installed. Though certain CPSUs had stated during examination that they maintain their assets initially and hand it over to the local body afterwards, the practice is not followed uniformly. Besides, the Committee opine that as maintenance of durable assets is a must for their optimal utilization, fool-proof mechanism and funding needs to be established for the same in coordination with the local body of the area. Some Guidelines for maintenance of durable assets created under CSR need to be issued by the MCA too which may make it mandatory for the implementing CPSU to

maintain their assets for minimum period of three years followed by handing over maintenance responsibility to the local bodies/ users, during which the local bodies/ users may be actively involved, which would ultimately make the handing over of the assets, an easier task. The Committee also suggest to explore the possibility of creation of a project specific sustainability fund with contribution from users and laying down procedures for operating the fund to meet maintenance need and other contingencies. They also desire that adequate awareness campaigns by the concerned authorities need to be arranged so that people are able to utilize such assets optimally. Particularly with regard to toilets being constructed under Swachh Bharat Abhiyan, the Committee may like to emphasize for educating the children about the bad effects of open defecation so as to encourage them and their families through them, to use the toilets. Not only that, before taking up a project under CSR, the issue of maintenance including adequate water supply to toilets needs to be settled with the local bodies/ users. The Committee applaud the efforts made by some of the CPSUs like ONGC, NFL which have taken/ are taking the issue of maintenance with Sulabh/ District Education Department etc. In case of CONCOR, all MoUs signed with the users/ beneficiaries have clauses clearly stating that the onus of maintenance and sustainability of assets/ infrastructure lies with the user/ beneficiaries. The Committee recommend that the necessary guidelines/ directions on the lines of the suggestions made by the Committee should be framed and circulated to the Companies for compliance.

Reply of Department of Public Enterprises

Any direction/ guidelines in the matter of maintenance of assets created by CPSEs under CSR and handing over maintenance responsibility thereof to the local bodies/ users and creation of a project specific sustainability fund with contribution from users are to be considered by MCA. Under the MoU guidelines for 2016-17 DPE has included compliance of CSR by CPSEs as provided under the Companies Act, 2013 and Rules for obtaining higher MoU ratings.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The suggestion provided by Hon'ble committee regarding maintenance of durable assets is encouraging and has been taken up by the Ministry as one of the important elements on various workshops organised for facilitating CSR implementation by companies.

The spirit of CSR legislation is to involve corporates in the inclusive development process by building upon corporate innovation and corporate management practices. Instruction by Government in implementation of CSR is not envisaged under the law. Being the initial year of CSR implementation by companies, it is desirable that the issue of asset creation and maintenance thereof under CSR be left to the Board's discretion (CSR Committee / Board).

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.24)

Geo -tagging of assets/ infrastructure created under CSR

In this era of technological innovation, new technological solutions are emerging for phase-wise monitoring of assets being created on the ground. Geo-tagging software for photographic evidence is one such technique which can be used easily with a smart phone having GPS coordinates for online monitoring of assets created under CSR. Though certain CPSUs like CONCOR and PFC have made a beginning in this area, the Committee recommend for such geo-tagging to be done by all CPSUs, wherever feasible and the actual site pictures of the assets so created, through the technology may be uploaded on the website of CPSUs/ private Companies.

Reply of Department of Public Enterprises

CSR provisions under the Companies Act, 2013 and Rules are applicable to all companies and hence this may be considered by MCA for uniform applicability to all.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

DPE to respond.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]]

Recommendation (Sl. No.27)

Awards for excellence under CSR

The Committee note that neither MCA nor DPE has instituted any award to be given to the best performing PSUs by their administrative Ministries to further motivate them to carry out CSR activities in the best possible manner. In the Committee's view, any commendable CSR work which makes a major difference in the lives of the poor/ backward regions, needs to be recognized as well as propagated to keep the motivation level high. Hence they recommend that an award may be instituted by the MCA for the same. Also, as all CSR activities are decided upon and implemented by the work force of a CPSU, the Committee feel that each CPSU must identify and award an employee annually who does exceptional work in the field of CSR. The Committee further desire that success stories of PSUs in the area of CSR need to be posted on the web too to serve as guiding force. They urge the MCA and DPE to initiate positive action on the matter and report action taken on the same expeditiously.

Reply of Department of Public Enterprises

DPE already has an Excellence Award for CPSEs under the MoU system assessing a wide area of their performance including CSR activity.

[Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

In principle approval for institution of CSR Award in the Ministry has been obtained. This would also include best CSR Awards to CPSUs. CPSUs can institute awards for their employees, if they so desire.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated
10.06.2016)]

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Recommendation (Sl. No.28)

The Committee find that the High level committee on CSR, set up by MCA, has submitted their Report, which is currently under consideration. They desire to be apprised of the action taken by the Government on the recommendations of the High level Committee on CSR.

Reply of Department of Public Enterprises

This is for the MCA to reply.

[Ministry of Heavy Industries & Public Enterprises(Department of Public Enterprises)
[DPE OM No. 2(11)/2013- DPE (GM) dated 8.6.2016]]

Reply of Ministry of Corporate Affairs

The Ministry has taken inter alia the following actions on HLC recommendations:-

- (i) Report was referred to Company Law Committee(CLC).
- (ii) Some of the recommendations such as definition of any financial year, definition of Net Profit for the purpose of Section 135 and reference to Schedule VII were agreed to by the CLC and necessary amendments have been proposed in the Companies (Amendment) Bill, 2016.
- (iii) In line with HLC's recommendations, a set of FAQs in the form of Clarificatory Circular have been issued by the Ministry on 12th January, 2016.

- (iv) Issue relating to 'uniformity in tax exemption for CSR expenditure on various activities' has been referred to CBDT, Dept. of Revenue.
- (v) In principle approval has been obtained to institute 'National CSR Award'.

[Ministry of Corporate Affairs OM No. 08/55/2015-CSR (Part-II) dated 10.06.2016]

**New Delhi
23 November, 2016
2 Agrahayana, 1938(S)**

**SHANTA KUMAR
Chairperson,
Committee on Public Undertakings.**

COMMITTEE ON PUBLIC UNDERTAKINGS
(2016-2017)

MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE

The Committee sat on Friday, the 2nd September, 2016 from 1100 hrs to 1210 hrs in Committee Room "D", Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Ramesh Bais - (in the Chair)

MEMBERS

Lok Sabha

2. Shri Kristappa Nimmala
3. Shri Prahlad Patel
4. Shri Ajay Nishad
5. Shri Ram Sinh Rathwa
6. Shri Narendra Keshav Sawaikar
7. Shri Sushil Kumar Singh
8. Shri Kalikesh Narayan Singh Deo
9. Shri Rameshwar Teli

Rajya Sabha

10. Shri Narendra Budania
11. Shri Ram Narain Dudi
12. Shri Naresh Gujral
13. Shri Ram Chandra Prasad Singh

SECRETARIAT

- | | | | |
|----|---------------------|---|------------------|
| 1. | Smt. Sudesh Luthra | - | Joint Secretary |
| 2. | Smt. Anita B. Panda | - | Director |
| 3. | Shri G.C. Prasad | - | Deputy Secretary |

OFFICE OF THE C&AG

In the absence of the Hon'ble Chairperson, the Committee chose Shri Ramesh Bais, Member of the Committee, to chair the sitting in terms of rule 258(3) of the Rules of Procedure & Conduct of Business in Lok Sabha. The Hon'ble Chairperson welcomed the Members and officials of C&AG and brought to their notice Direction 55(1) in respect of confidentiality of the proceedings.

2. ***** ***** ***** *****

3. The Committee then considered and adopted the draft report on the "Action taken by the Government on the Observations/Recommendations contained in the Eighth Report (Sixteenth Lok Sabha) of the Committee on Public Undertakings (2015-16) on "Corporate Social Responsibility in select CPSUs" without any changes/modifications.

The Committee then adjourned.

APPENDIX II

(Vide para 4 of the Introduction)

Analysis of the Action Taken by Government on the Observations/ Recommendations contained in the Eighth Report of the Committee on Public Undertakings (Sixteenth Lok Sabha) on Corporate Social Responsibility in select Central Public Sector Undertakings (CPSUs)

I	Total number of recommendations		31
II	Observations/Recommendations that have been accepted by the Government [Para Nos. 6, 12, 13, 16, 20, 25, 26, 29 and 31]	Total -	09
		Percentage -	29.03
III	Observations/Recommendation which the Committee do not desire to pursue in view of Government's replies [Para Nos. 10, 22, 30]	Total -	03
		Percentage -	9.67
IV	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee [Para Nos. 1, 2, 3, 4, 5, 7, 8, 9, 11, 14, 15, 17, 18, 19, 21, 23, 24 and 27]	Total -	18
		Percentage -	58.06
V	Observations/Recommendations in respect of which Government have furnished interim replies [Para No. 28]	Total -	01
		Percentage -	3.22

ANNEXURE

Details of CSR Expenditure by 110 CSR eligible CPSEs incurred during 2014-15 (₹ in Crore)

Sl. No.	Company Name	CSR Expenditure	2% of average PBT of three preceding years
1	AIRPORTS AUTHORITY OF INDIA	25.79	36.46
2	ANDREW YULE & COMPANY LTD.	0.32	0.34
3	ANTRIX CORPORATION LTD.	0.80	5.30
4	BALMER LAWRIE & CO. LTD.	3.88	4.22
5	BHARAT COKING COAL LTD.	4.32	30.80
6	BHARAT DYNAMICS LTD.	2.17	8.51
7	BHARAT ELECTRONICS LTD.	23.04	22.43
8	BHARAT HEAVY ELECTRICALS LTD.	102.05	164.99
9	BHARAT PETROLEUM CORPN. LTD.	33.97	79.13
10	BRAITHWAITE & CO. LTD.	0.10	0.20
11	BRAITHWAITE BURN & JESSOP CONSTRUCTION COMPANY LTD.	0.69	0.89
12	BRIDGE & ROOF CO. (INDIA) LTD.	0.77	0.94
13	CEMENT CORPN. OF INDIA LTD.	0.03	0.29
14	CENTRAL COALFIELDS LTD.	48.86	47.86
15	CENTRAL MINE PLANNING & DESIGN INSTITUTE LTD.	1.81	0.63
16	CENTRAL RAILSIDE WAREHOUSE CO. LTD.	0.40	0.48
17	CENTRAL WAREHOUSING CORPN.	3.75	4.17
18	CERTIFICATION ENGINEERS INTERNATIONAL LTD.	0.35	0.24
19	COAL INDIA LTD.	24.72	229.06
20	COCHIN SHIPYARD LTD.	5.27	5.46
21	CONTAINER CORPORATION OF INDIA LTD.	20.57	24.52
22	DREDGING CORPN. OF INDIA LTD.	0.71	0.52
23	E.C.G.C. LTD.	3.37	8.11
24	EASTERN COALFIELDS LTD.	24.82	27.72
25	EdCIL (India) LTD.	0.11	0.17
26	ELECTRONICS CORPN. OF INDIA LTD.	0.71	1.03
27	ENGINEERING PROJECTS (INDIA) LTD.	0.22	0.63
28	ENGINEERS INDIA LTD.	16.83	16.69
29	FCI ARAVALI GYPSUM & MINERALS (INDIA) LTD.	0.81	0.78
30	FERRO SCRAP NIGAM LTD.	0.22	0.11

31	GAIL (INDIA) LTD.	71.89	118.67
32	GARDEN REACH SHIPBUILDERS & ENGINEERS LTD.	2.40	3.66
33	GOA SHIPYARD LTD.	0.86	0.60
34	HANDICRAFTS & HANDLOOM EXPORTS CORPN. OF INDIA LTD.	0.10	0.02
35	HINDUSTAN AERONAUTICS LTD.	46.19	69.35
36	HINDUSTAN COPPER LTD.	7.27	8.71
37	HINDUSTAN PETROLEUM CORPN. LTD.	34.07	35.40
38	HLL LIFECARE LTD.	1.31	0.70
39	HOUSING & URBAN DEV. CORPN. LTD.	3.23	20.64
40	HSCC (INDIA) LTD.	0.40	0.64
41	INDIA INFRASTRUCTURE FINANCE CO. LTD.	24.24	22.10
42	INDIA TOURISM DEV. CORPN. LTD.	0.29	0.26
43	INDIA TRADE PROMOTION ORGANISATION	0.43	3.44
44	INDIAN OIL CORPORATION LTD.	113.78	128.85
45	INDIAN RAILWAY CATERING AND TOURISM CORPN. LTD.	0.97	2.04
46	INDIAN RAILWAY FINANCE CORPORATION LTD.	26.94	26.93
47	INDIAN RARE EARTHS LTD.	2.01	3.73
48	INDIAN RENEWABLE ENERGY DEVT. AGENCY LTD.	0.63	5.33
49	IRCON INTERNATIONAL LTD.	6.73	19.11
50	KAMARAJAR PORT LTD.	3.18	4.92
51	KARNATAKA ANTIBIOTICS & PHARMACEUTICALS LTD.	0.26	0.34
52	KARNATAKA TRADE PROMOTION ORGANISATION	0.02	0.09
53	KUMARAKRUPPA FRONTIER HOTELS LTD.	0.16	0.15
54	MSTC LTD.	1.28	1.75
55	MADRAS FERTILIZERS LTD.	0.03	1.61
56	MAHANADI COALFIELDS LTD.	61.30	113.97
57	MANGALORE REFINERY & PETROCHEMICALS LTD.	4.81	8.35
58	MAZAGON DOCK SHIPBUILDERS LTD.	5.00	12.79
59	MECON LTD.	1.41	2.81
60	MINERAL EXPLORATION CORPN. LTD.	0.84	0.63
61	MISHRA DHATU NIGAM LTD.	2.27	2.25
62	MOIL LTD.	13.57	13.42
63	MUMBAI RAILWAY VIKAS CORPORATION LTD.	1.23	0.39
64	NATIONAL ALUMINIUM COMPANY LTD.	19.10	20.14
65	NATIONAL BLDG. CONSTN. CORPN. LTD.	3.96	6.20
66	NATIONAL HANDICAPPED FINANCE & DEVPT. CORPN.	0.08	0.12
67	NATIONAL HANDLOOM DEVELOPMENT CORPN. LTD.	0.74	0.22

68	NATIONAL PROJECTS CONSTRUCTION CORPN. LTD.	0.18	1.07
69	NATIONAL SCHEDULED CASTES FINANCE & DEVP. CORPN.	9.44	0.51
70	NATIONAL SEEDS CORPN. LTD.	1.23	1.28
71	NATIONAL SMALL INDUSTRIES CORPN. LTD.	1.86	1.78
72	NATIONAL TEXTILE CORPN. LTD.	0.25	0.33
73	NEPA LTD.	4.59	1.01
74	NEYVELI LIGNITE CORPN. LTD.	47.49	41.60
75	NHDC LTD.	2.95	19.60
76	NHPC LTD.	52.24	55.35
77	NMDC LTD.	188.63	199.89
78	NORTH EASTERN ELECTRIC POWER CORPORATION LTD.	8.88	5.65
79	NORTHERN COALFIELDS LTD.	61.78	80.28
80	NTPC LTD.	205.16	285.40
81	NTPC VIDYUT VYAPAR NIGAM LTD.	0.80	1.37
82	NUMALIGARH REFINERY LTD.	7.64	7.42
83	OIL & NATURAL GAS CORPORATION LTD.	495.24	664.13
84	OIL INDIA LTD.	133.31	98.64
85	ORISSA MINERAL DEVELOPMENT COMPANY LTD.	0.34	0.34
86	PEC LTD.	2.15	1.56
87	PAWAN HANS LTD.	0.44	0.74
88	PFC GREEN ENERGY LTD.	0.11	0.13
89	POWER FINANCE CORPORATION LTD.	49.88	117.53
90	POWER GRID CORPORATION OF INDIA LTD.	47.43	110.04
91	RAIL VIKAS NIGAM LTD.	4.54	3.21
92	RAILTEL CORPORATION INDIA LTD.	2.50	2.77
93	RAJASTHAN ELECTRONICS AND INSTRUMENTS LTD.	0.40	0.58
94	RASHTRIYA CHEMICALS AND FERTILIZERS LTD.	8.31	7.48
95	RASHTRIYA ISPAT NIGAM LTD.	14.04	14.57
96	REC TRANSMISSION PROJECTS CO. LTD.	0.38	0.38
97	rites LTD.	7.89	6.58
98	RURAL ELECTRIFICATION CORPN. LTD.	103.26	103.25
99	SAIL REFRACTORY COMPANY LTD.	0.31	0.26
100	SECURITY PRINTING & MINTING CORPN. INDIA LTD.	8.19	12.00
101	SJVN LTD.	24.83	25.79
102	SOUTH EASTERN COALFIELDS LTD.	40.42	129.97
103	STEEL AUTHORITY OF INDIA LTD.	35.04	77.44
104	TAMIL NADU TRADE PROMOTION ORGANISATION	0.03	0.45

105	TELECOMMUNICATIONS CONSULTANTS (INDIA) LTD.	0.30	0.39
106	THDC INDIA LTD.	29.09	13.77
107	THE JUTE CORPORATION OF INDIA LTD.	0.21	0.33
108	URANIUM CORPORATION OF INDIA LTD.	2.81	1.65
109	WAPCOS LTD.	1.85	1.76
110	WESTERN COALFIELDS LTD.	20.15	7.97
	Total :	2441.01	3489.26