

# CSR a Leap of Faith for Us

Corporate affairs minister **Sachin Pilot** says the perception that India Inc is up in arms against mandatory spend on corporate social responsibility is highly misplaced. Pilot, among the younger lot in the Union council of ministers, steered the Companies Bill in parliament within seven weeks of assuming independent charge of the ministry. In an exclusive interview with **Vinay Pandey & Soma Banerjee** a day after Lok Sabha passed the bill, Pilot explains why he preferred to take corporates on board instead of wielding a stick and how CSR is a leap of faith for the government. Edited excerpts:

## Much of the discussion in Lok Sabha was on the corporate social responsibility (CSR). Could you explain its nuances?

We are perhaps going to be the first country in the world that will have corporate social responsibility in the statute. Only certain companies will qualify for CSR—those that have a turnover of over ₹1,000 crore, value of ₹500 crore and average net profit of ₹5 crore in the preceding three years. These companies have to give 2% of their profits, and when I say give, I do not mean to the government. There is lot of scepticism that if the government gets involved, then the outcome is not perhaps as tangible, control of the money corporates give is not that secure. We have said the government will keep out of it. It is your money, your choice what you do with it, but you have to do it. If you don't spend that money, you have to report why you did not. If you don't spend and don't report, then we will invoke Section 134, which means you will be penalised, fined, etc.

## There is scepticism if companies will actually adopt CSR the way the government wants them to...

This is an evolving concept in India and, I will be very honest, that lots of corporates that I met are very keen (on it). So, all this perception that the corporate world is up in arms is misplaced. Every large corporate understands they have got to build bridges with rural India, among communities their companies operate. We have a suggestive list of 10 items in the bill on which companies can spend funds including vocational skills and

environment sustainability. But, we have left it open for corporates to decide—what fits in with your philosophy, what's your passion. I am making this legislation in good faith. I am not working with this mindset 'oh these guys are going to try and circumvent it, so let me plug all the loopholes in the law'. I am going into this assuming that all of us believe this country is ours. So, the corporate sector, I hope in my heart and mind, is on the same page. I am looking forward to doing this as opposed to us wielding the stick. The idea is to have the consciousness to give something back to the community. We will see for the first few years and if something needs to be tweaked, we will do it to make it more effective. I can't legislate for all eventualities. It's a leap of faith for us.

## What are the other provisions in the Bill that take the framework for regulation of companies forward?

The SFIO will get statutory powers to make it more effective. We are also creating a national financial reporting authority. It will be a quasi-judicial body that can take punitive action against auditors. We are also looking to create an employee welfare trust where the money will be used to buy ESOPs. We also have a provision that guarantees two years' salary and wages in companies that are winding up, and this will supersede even secured creditors. In India, people say it is easy to open a company but difficult to close it down. We have now the National Company Law Tribunal that can take decision to liquidate companies. We also have a mechanism for a kind of out-of-court settlement.

## How does the new law address concerns over corporate governance, audit quality and role of independent directors?

Independent directors (IDs) are now mandatory for certain class of companies, but not for private firms. So if you don't have government funding, or no public money, then you don't need IDs. IDs play an important role, and for large companies, one third of IDs have to be there. We are also enforcing boards to have an audit committee, a CSR committee, and a remuneration committee. Nowadays, the remuneration people get is

quite exorbitant. The cap of 5% of net profit is still here, but we have asked that the board should put down in writing the talents that the promoter has shown and how they have benefited the company. Companies will also have to disclose the median income of the employees. We just want more transparency. Auditors cannot audit for more than five years. We are also making it mandatory for certain class of companies to have at least one woman director. It will probably be bigger companies. We are also giving a pool of directors. We also have provisions to protect whistle-blowers. Minority shareholders can exit when they want to. There is provision to have a representative as a director of minority shareholders.

## Is there any provision to deal with corruption?

We have a knee-jerk reaction every time we detect a fraud, and then every agency comes down on that. But by then the money is lost and people have suffered.

The idea now is to detect fraud before it happens. I have asked the department to keep a look out for certain red flags: If the shareholding changes too often; if there are lots of transactions; if profits go up or down too much. I should be able to detect and sort

of mitigate the loss much before it happens. Under SFIO, we have this intelligence unit that is working on this.

The Bill provided for transparency in corporate structures in terms of limiting subsidiaries. What does it say on that issue?

Sometimes there are instances where people have opened one subsidiary and then a second one—you have a grandfather, great grandfather and all that. I think there is a limit of two direct subsidiaries, but laterally you can have as many companies as you want. Sometimes people try and hide their investments in multiple layers, so we are trying to unpeel the onion so that we have more transparency. Also a person cannot be director of more than 20 companies.

## If a Satyam-like fraud were to happen, how would the new law deal with it?

If we have responsible corporate governance, the system will not foster such events. I don't see it happening, but the idea is to nab on to it before it happens. I am sure there are black sheep and people who will try and misuse the loopholes, but we have to ensure that we are able to recover assets and monies fraudulently acquired. When litigations are on, companies are being scrutinised, people (may be) trying to flog off the assets then

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through the tribunal we are able to attach property. For any company registered in India, at least one director has to be Indian.

## What is your take on lobbying? Will the government consider legalising it?

I think wherever there is ambiguity, there are questions raised. I think that if we are clear in categorisation of what is done and what is not done. It is either legal or illegal. There is nothing half legal or half illegal. But I think it is wrong to assume that lobbying equals bribery. We in India, as a government, engage many lobbying firms to talk about our interests in foreign lands. It is done on a professional basis and there are very reputed companies. And when we hire such companies, I think we are asking them to do advocacy. And I think the reverse must also apply. It is time for us to have very clear views on what is permissible and what is not.

## Is there any thinking on the issue?

I don't know if there is any official initiation on this, but because this has come to the forefront, we must have a debate on whether we need to, as a government, as a political class, as a society, as a country, have globally-accepted norms to be allowed to be functioning here, or then say no. The choice is ours.

