

VMB & Associates
VM Bhuvaneesvari, M.Com, CWAI, ACS
Practicing Company Secretary

To
M. Rajagopalan
President
Hosur Industries Association
(Regd 7/1981)
Plot No 159-A, Sipcot Industrial Complex
Hosur-653126.

DATE: 20.08.2018
PLACE: CHENNAI

Sub: Legal Opinion on Admissibility of Contribution by Limited Companies to the CSR Corpus created by a Registered Society as CSR Expenditure – Regarding

Introduction

Contribution by member companies to the corpus of registered society "The Hosur Industries Association". The Hosur Industries Association, an Industry body consisting of 126 medium and large-scale industries was constituted and registered as a Society under the Tamil Nadu Societies Registration Act, 1975. The registration was obtained in the year 1981. The association is a non-profit organization and any surplus arising from its activities are retained as part of the corpus for promoting the interests of the Community in which it operates

Brief background of Activities of HIA

- I. To protect and promote the interests of industrial establishments located in and around Hosur.
- II. To collect and disseminate information of technical and general interests to its members as a whole or to a group of members.
- III. To encourage close interaction between members.
- IV. To initiate and maintain close liaison with government and its agencies and local bodies with a view to ensuring growth of industries.
- V. To undertake representation to government and its agencies, local bodies in regard to matters affecting the growth of industries in Hosur area. These may cover, among others, supply of raw materials, transport, power, industrial relations and other infrastructure needs of industries.

- VI. To initiate and support legal action on its own and on behalf of members jointly or severally in any judicial/ quasi-judicial forum, whether upon authorization by its own members or on its own initiative, on all matters affecting members or an individual or a group of them.
- VII. To seek representation on official or non-official bodies/committees with a view to promoting interest of members.
- VIII. To purchase, build or otherwise acquire property for the use of association.
- IX. To affiliate with other associations of industry and abide by the rules of such bodies.
- X. Evolve a rational wage structure and a uniform policy concerning benefits to be provided to workers of the members.
- XI. To represent members and negotiate on their behalf with all agencies, including trade unions.
- XII. To encourage healthy industrial relations in the industries functioning in the area.
- XIII. To provide housing and necessary support facilities like schooling, medical, recreation, etc. for the employees of member units.
- XIV. To do all such other lawful acts incidental or conducive to the attainment of the objects, which have been listed above.

Proposed Activity or projects

The Association has now planned to put up a multi-storied building towards furthering the interests of the Industries and the community at large. The proposed building will house the following facilities:

- a) Skill building center which will promote education in the field of technical trades such as welding, machining, tailoring etc and commercial education like Tally, Computer proficiency etc. The training will be open to all members of the general public.
- b) Conference hall with a seating capacity of 200 people. The town has very few conference facilities and HIA felt the need for putting up a facility which could be used by companies in hosur, associations such as local chartered accountants body, HR association etc for their conferences, seminars etc.
- c) Office of the Association – To carry out its functions effectively, HIA is in need of a more spacious office. Part of the building will be used to house the offices of the Association.

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Utility of funding

The funds so raised will be used for the following purposes:

1. Construction of the building including furnishings and fixtures. – Approx – 6.68 crores, which will house Skill Building Centre, Conference Hall and Office of the Association
2. Setting up the Skill building centre – Approx – 1.38 Crores (machinery, computers etc, other than building and fixtures), which will promote education in the field of technical trade and commercial education as specified herein above.

Means of financing

Contribution to be raised from member Companies, and use it for the project that is meant for the welfare of the local community at large.

Facts of the issue

Can member company's contribution towards the corpus of the society be considered as CSR Expenditure if the Corpus is to a project relatable with the activities given under schedule VII of the companies act 2013, pursuant to the provisions of the companies act 2013 read with The Companies (corporate social responsibility rules, 2014) including notifications and clarifications thereof as it stands

Status of the ACT

Corporate Social Responsibility (CSR), is, as a concept been introduced with the promulgation of companies act 2013, the erstwhile companies act 1956, did not contain mandatory provisions for the same. Section 135 of the companies act 2013 got notified on 1st April 2014 and every company to which the provision of this Act becomes applicable, should spend, in every financial year, at least 2% (two per cent) of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate

Social Responsibility Policy.

Net profit for this purpose should be calculated in accordance with the provisions of section 198 of the companies act.

Applicability of Sec 135 to Companies

CSR provisions are to be mandatorily to be complied with by every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more

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Areas of Spending as given under the Act

A company to which the provisions of section 135, becomes applicable should constitute CSR committee and draw up CSR policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business in line with the activities laid down under Schedule VII of the companies act 2013

Whether CSR can be carried out by the entity/ or through other entities/ or by pooling the resources

- I. Yes, the company on its own
- II. Or by establishing a section 8 company, by registered trust, or society, on its own or along with other companies
- III. Or through a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :
- IV. Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in (ii) above, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism"Based on Rule 4(2) of CSR Rules
- V.

Vide General Circular 21/2014 dated 18th June 2014, ministry has clarified that

That while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.

Schedule VII

Activities, which may be included by companies in their Corporate Social Responsibility Policies Activities relating to

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- (i) Eradicating hunger, poverty and malnutrition, ["promoting health care including preventive health care"] and sanitation [including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water [including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports
- (viii) contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (ix) Contributions or funds provided to technology incubators located within academic institutions, which are approved by the central govt.
- (x) rural development projects]
- (xi) Slum area development.

Explanation.- For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

Issues

Based on the background given by the querist, and understanding of provisions of the companies act, in this regard, our opinion as follows

Query 1. Whether the following activities performed for a period of more than 3 years by HIA would qualify as CSR activities as enumerated under Schedule VII of the Act considering the fact that the activities mentioned in Schedule VII are to be given wide and liberal interpretation.

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- a. Promoting the interests of the members of the association
- Any activity intended to promote the interests of the members of the association aims at the growth of member industries and will not be directly be beneficial to the society at large. Any contribution by member industry to these activity, will harness the growth of member industry in particular. Therefore will not qualify as CSR activity
 - The contribution to HIA, (without there being assigned any identified relatable CSR project or programs) being an organization created for the welfare of the industry, is one such activity ultimately aimed at the growth of that entity, which is "normal activity" of any industry, thus not qualified as CSR spent
- b. **Holding seminars, conferences, training sessions for the local populace**

This can be broadly be classified under promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently able and livelihood

enhancement projects Thus contribution towards these projects can be classified as eligible expenses of CSR

- c. **Dissemination and sharing of information and knowledge among the members.**

This does not qualify as eligible CSR spent, as its scope is restricted among members thereby aimed at harnessing the growth of the members of the society.

- d. **Promoting the welfare of the local community by activities such as lake rejuvenation, traffic management, infrastructure development etc.**

These activities can be classified under rural development and thus eligible for CSR

- e. **Assisting local police in traffic management by promoting the traffic warden scheme, providing police booths etc.**

So long it is undertaken in rural areas we can bring it under CSR umbrella, otherwise, it will be capacity building of Government or will be classified as sustainable urban development

Query 2. Whether the corpus created by HIA exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act should also be one which it is engaged in earlier?

Need not necessarily be as per the reading of rule 4(1) of the CSR rules 2014, The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), Therefore, the corpus can be created for new projects, in which it was not engaged earlier

Query 3. Based on the answers to the first two questions, whether the proposed project of HIA qualifies for CSR activities.

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i. **Construction of the building including furnishings and fixtures. – Approx – 6.68 crores, which will house Skill Building Centre, Conference Hall and Office of the Association**

The construction towards construction of building including furnishings and fixtures is a activity of capacity building and the CSR contribution towards such activity shall not exceed 5% (five percent) of total CSR expenditure of the company in one financial year including contribution towards administrative overheads.

ii. **Setting up the Skill building centre – Approx – 1.38 Crores (machinery, computers etc, other than building and fixtures), which will promote education in the field of technical trade and commercial education as specified herein above**

This activity can be classified as CSR activity, as it is relatable to activity (ii) given under schedule VII

“Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects”

Query 4. Can the Corporate members of the association who contribute towards the project of HIA, claim the same towards CSR expenditure in their books?

By referring the clarificatory General circular dated 21/2014 Project wise spending /Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as

(a) The Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or

(b) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Based on the above-mentioned circular, the project proposed by HIA to the extent it is identified exclusively with a relatable CSR activity, then the same can be claimed as CSR expenditure in their books. The limiting factor is rule 4(6) of CSR rules discussed in point 3(i) above

Here the usage of the word “exclusively” emphasizes that if the contribution is not diverted to the project directly relatable then it may not qualify as CSR expenditure

Conclusion

Based on the analysis of the given facts with the provisions of the companies act 2013 including the analysis of various amendments, notifications and clarifications issued by the Ministry of Corporate Affairs from time to time, the contribution towards projects or corpus of HIA can be claimed as CSR expenditure to the extent it is contributed towards projects relatable to CSR activities.

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By the foregoing analysis, The Contribution by the corporate members of the Hosur Industries Association (HIA) to a Corpus created by HIA, exclusively meant for carrying out the activities specified under Schedule VII of the Act, will qualify as CSR Expenditure.

This opinion is purely based on the information furnished to us. This opinion is given exclusively to address the requirements of querist and is based on the provision of the acts, rules, clarifications issued by the Ministry of Corporate Affairs from time to time. This opinion is not based on any personal judgments or of personal bias

Yours Truly



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16.08.2018.

To,

Mr. R. Rajagopalan,

President,

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(Regd No.7/1981),

Plot No.159-A, Sipcot Industrial Complex,

Hosur - 653 126.

Subject : Opinion on whether contribution of Corpus by Industries will qualify as CSR Expenses.

Dear Sir

With reference to your letter dated 01st August 2018 seeking an opinion on the above subject inter alia with other connected matters as mentioned in this opinion below we give herewith the our opinion below based on the representation and the information provided by your office

ABOUT HOSUR INDUSTRIES ASSOCIATION.(HIA)

The Hosur Industries Association, an industry body consisting of 126 medium and large scale industries was constituted and registered as a society under the Tamil Nadu Societies Registration Act, 1975. The Registration was obtained in the Year 1981. The association is a non-profit organization and any surplus arising from its activities are retained as part of the corpus for promoting the interest of the community in which it operates.



Present Activities undertaken by HIA

It is informed that the HIA is pursuing following activities as mentioned below:

- A. Promoting the interest of members of the association.
- B. Holding Seminars, Conferences, training sessions for the local populace.
- C. Dissemination and sharing of Information and knowledge among the members.
- D. Promoting the welfare of the local community by activities such as lake rejuvenation, traffic management , infrastructure development etc.
- E. Assisting local police in traffic management by promoting the traffic warden scheme, providing police booths etc,

Proposed Plan of HIA

The association has now planned to put up a multi-storied building towards furthering the interest of the Industries and the community at large. The proposed building will house the following facilities:

- 1) Skill building center which will promote education in the field of technical trades such as welding, machining, tailoring etc and commercial education like Tally, computer proficiency etc. The training will be open to all the members of the general public.
- 2) Conference hall with seating capacity of 200 people. The town has very few conference facilities and HIA felt the need for putting up a facility which could be used by companies in hosur, association such as local chartered accountants body, HR association etc for their conferences, seminars etc.
- 3) Office of the Association – To carry out its functions effectively, HIA is in need of more spacious office. Part of the building will be used to house the offices of the Association.

Means of Finance:

To finance this projects, HIA plans to raise contribution from its member companies, and use it for the project which is meant for the welfare of the local community at large.

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Purpose of Raising Funds.

- 1) Construction of the building including furnishings and fixtures- Approx – 6.68 crores, which will house Skill Building Centre, Conference Hall and Office of the Association.
- 2) Setting up the Skill building centre – Approx – 1.38 crores (machinery, computers etc, other than building and fixtures), which will promote education in the field of technical trade and commercial education as specified herein above.

The association will maintain separate corpus by way of bank account for this project.

Facts in Issue:

With reference to purpose of raising funds, the facts in issue arise out of the question whether contribution by the Limited companies to the CSR corpus created exclusively for a purpose directly relatable to a subject covered in schedule VII by society registered under Societies Registration Act can be considered as CSR Expenditure under "Section 135 of the Companies Act, 2013" and The Companies (Corporate Social Responsibility Policy) Rules 2014, schedule VII and amendments thereof along with the relevant notifications and circulars issued there under.

Analysis:

The Companies Act, 2013 w.e.f 01st April 2014 has mandated the companies falling under the below threshold limit to comply with a compulsory spent of 2% of the preceding three years Average Net Profit calculated in accordance with the Sec 198.

Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more

Areas in which the Amount has to be Spent

As per the requirement laid down under The Companies (Corporate Social Responsibility Policy) Rules 2014 read with Schedule VII of the Companies Act, 2013 the Companies has to incur CSR expenditure on the any of the activities mentioned in the Schedule VII (mentioned below) either directly or through a Company established under Section 8 of the Companies Act, 2013 or a registered Trust or a Registered Society established by the Company either singly or along with any other Company provided the company/trust/society has a track record of three years existence.



The Companies will undertake the CSR activities as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business and The Company has to lay down the CSR policy which shall inter-alia include

- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
- (b) monitoring process of such projects or programs:

The CSR Expenditure

CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act and also the CSR expenditure shall not be an expenditure incurred in pursuance of normal course of business of a company.

SCHEDULE VII

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to:—

- (i) Eradicating hunger, poverty and malnutrition, ²["promoting health care including preventive health care"] and sanitation ⁴[including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water ⁴[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].

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(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents;

(vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports

(viii) contribution to the prime minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt.

(x) rural development projects

(xi) slum area development.

Explanation.- For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

As per the General Circular No. 21/2014 Dated: 18th June, 2014

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.....

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be **interpreted liberally** so as to capture the essence of the subjects enumerated in the said Schedule.

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- (VIII) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act. //

Opinion:

Based on the facts and the legal position analyzed above we herewith give our opinion as below:

QUERY No 1

Whether the following activities performed for a period of more than 3 years by HIA would qualify as CSR activities as enumerated under Schedule VII of the Act considering the fact that the activities mentioned in Schedule VII are given wide and liberal interpretation.

A. Promoting the interest of members of the association.

The above activity will not qualify as a CSR Activity due to the following reasons:

- a) Contribution to HIA for promoting the interest of the members of the association will not qualify as a CSR expenses as the contributing Company is one of the member of the HIA and this expenditure is to be seen as an expenditure incurred for promoting oneself and not for the public at large, which is the intention of the Schedule VII
- b) Even if we take a liberal view as per the General Circular 21/2014 contribution to HIA by the contributing Company has to be treated as an office which render their services for CSR as a part of Administrative overheads and should not exceed 5% of the total CSR expenditure as per rule 4(6) of CSR Policy, Rules 2014 and hence the 95% of the budgeted CSR spent will be disallowed.
- c) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act.

J. H.



d) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act. • Activities undertaken by the company in pursuance of its normal course of business.

B. Holding Seminars, Conferences, training sessions for the local populace.

The above activity will qualify as a CSR Activity as Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

C. Dissemination and sharing of Information and knowledge among the members.

The above activity will not qualify as a CSR Activity for the reasons mentioned in query 1A:

D. Promoting the welfare of the local community by activities such as lake rejuvenation, traffic management , infrastructure development etc.

The above activity will qualify as a CSR Activity as the same will fall within the scope of Schedule VII

- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water.

- Rural development projects

E. Assisting local police in traffic management by promoting the traffic warden scheme, providing police booths etc,

The above activity will qualify as a CSR Activity as the same will fall within the scope of Schedule VII by giving a liberal interpretation as per general circular 21/2014

- Rural development projects

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2. Whether the corpus created by HIA exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act should also be one which it is engaged in earlier.

The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (**either new or ongoing**), excluding activities undertaken in pursuance of its normal course of business. Under rule 4 of Companies (CSR policy) Rules 2014.

3. Based on the answers to the first two questions, whether the proposed projects of HIA qualifies for CSR Activities.

1. Construction of building including furnishings and fixtures- Approx-6.68 crores, which will house skill building centre, conference hall and **office of the association**.

The above said activity is covered under schedule VII sub section (ii) subject to the limit for the purpose of office of association, of who render their services for CSR will be part of Administrative overheads and should not exceed 5 % of the total CSR expenditure as per rule 4(6) of CSR Policy, Rules 2014 **and hence the proposed project and HIA qualifies for CSR activities as per the reply to the query no 2.**

2. Setting up the skill building centre- Approx- 1.38 crore (machinery, computers etc, other than building and fixtures), which will promote education in the field of technical trade and commercial education as specified.

The above said activity is covered under schedule VII sub section (ii) ie, promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects and **and hence the proposed project and HIA qualifies for CSR activities as per the reply to the query no 2.**

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4. Can the corporate members of the association who contribute towards the project of HIA claim the same towards CSR expenditure in their Books?

Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act. By applying the **General Circular No. 21/2014, Dated: 18th June, 2014** in the present case the Contribution by the corporate members of the Hosur Industries Association (HIA) to a Corpus created by HIA, exclusively meant for carrying out the activities specified under Schedule VII of the Act, will qualify as CSR Expenditure, provided HIA maintains separate accounts for the corpus collected and spent

Disclaimer:

The views expressed herein are based on the facts and assumption indicated by you. No assurance is given that the statutory authorities will concur with the views expressed herein.

The views are exclusively for the use of Hosur Industries Association and without the written consent should not be disclosed to any other person.

Yours Truly



N.H.Venkataraman

N. H. Venkataraman
Practising Company Secretary
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