

EXIGENCY OF CSR DURING THE COVID-19 PANDEMIC

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ABSTRACT

Corporate Social Responsibility (CSR) globally is a self-regulative philanthropic activity by corporate entities as a gesture of goodwill and a means of building reputation and marketing tactics. It is basically a concept wherein corporates voluntarily donate their excess profit through charity to help people who are deprived of necessities and resources to fulfil their basic needs or it is also donated for other socio-economic welfare reforms. CSR is a vast concept and mandatorily applicable to certain class of companies in India. CSR is especially important for underdeveloped or developing nations and most organizations do not shy away from it. At the end of 2019 to the start of 2020 countries around the globe faced a threat by a coronavirus which was predicted to potentially lead pandemic-esque disasters. On 11th March 2020 this virus outbreak was officially declared as a pandemic by the World Health Organization. It came to be known as Covid-19 or SARS-Cov 2775. This outbreak had led to a global lockdown and also affected millions of lives. Government authorities and institutions around the world were in a dire need for funding to fight the virus and control the outbreak. No government in the world was financially capable in fighting the disease and had to rely on companies for financing to help lessen the impact of the virus. CSR played a prominent role in covering for damages and loss the pandemic brought and this article looks at the CSR contributions by companies in India and lays down the descriptive explanation as to the urgency of CSR in controlling disaster management situations. The article also explores a fund set up by the Central Government known as the Prime Ministers Citizen Assistance and Relief in Emergency Situations Fund, its role in the pandemic and also looks into the controversy surrounding it.

INTRODUCTION

Corporate Social Responsibility (CSR) is a liability on a company to contribute to the society along with conducting the business in an ethical manner. Corporate Social Responsibility is

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https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen



also known as corporate conscience, corporate citizenship, social performance or sustainable business/ responsible business. CSR involves both internal and external stakeholders. Internal stakeholders include the employees of the company whereas external stakeholders include community, customers, vendors shareholders, government etc. It is philanthropic contribution by the corporates for the welfare of the society in general. CSR proves to be beneficial to the companies as it can be used as a way of positive advertising for the general public and also used as a tool to gain stakeholders confidence. CSR is mandatory for companies satisfying a certain minimum criterion. The conditions to fulfil mandatory CSR applicability is -

- 1.) The company should be having a net worth of rupees 500 (five hundred) crores (approx. US \$ seventy-five million)
- 2.) The company having a turnover of rupees 1000 (one thousand) crores or more (approx. US \$ one hundred and fifty million)
- **3.)** The company should be having a net profit of rupees 5 (five) crore or more (approx. US \$ seven hundred and fifty thousand)⁷⁷⁶

The CSR provisions are applicable to the companies who attain the above criteria during the preceding financial year. The companies satisfying these conditions shall contribute at least 2 % of net profits (before taxation) towards CSR activities over the period of three financial years. India is the first country to mandate compulsory CSR for corporates which was included in The Companies Act (2013) amendment.

The CSR activities are to be undertaken only in India by the way of charity to various charitable societies, NGOs etc. who work for social economic welfare of society, by contract by hiring an NGO or other agency like that which can carry out the projects on behalf of the company, by itself; the company can take up a project on its own or create its own trust and use its own staff for its proper working/ monitoring or through other trusts/ societies. The activities which are considered as CSR activities include hunger eradication, poverty suppression of malnutrition, providing safe drinking water, sanitation, preventive health care, promoting education, employment skills, promoting gender equality, empowering women, environment sustainability, ecological balance, conservation of natural resources, protection of national heritage, art and culture, benefits of armed forces veterans, war widows and their dependents, contribution to Prime Minister's National fund relief and other funds set up by the Central Government. The activities that do not constitute to CSR activities include the

⁷⁷⁶ https://en.wikipedia.org/wiki/Corporate social responsibility



CSR projects undertaken outside India, the CSR projects or programs or activities that benefit only the employees of the company and their families. Contribution of any amount, directly or indirectly, to any political party, any activity undertaken in pursuance of normal course of business of a company⁷⁷⁷. To prevent big corporates from committing fraud in their CSR expenditure the Ministry of Corporate Affairs has made is mandatory for the companies to disclose the annual CSR report in their Board Report. This report is to have a detailed outline regarding the CSR activities conducted as well as their expenditure, information about the CSR committee, net profit of the company in the three preceding financial years, reasons if the company fails to spend the threshold limit (2 percent) from the net profit, and a declaration by CSR committee that the CSR work is in compliance within the Companies Act and its rules⁷⁷⁸.

A CSR Committee is to be created for transparent monitoring mechanism for implementation of CSR projects or programs or activities undertaken by the company. The CSR Committee consists of three or more directors, out of which one director shall be an independent director. The unlisted public companies or private companies where appointment of independent director is not required shall have its CSR Committee without the independent director. A private company having only two directors on its Board shall continue with two such directors. The function of the CSR Committee is to formulate and recommend the amount of expenditure to be incurred on the activities undertaken in pursuance of the CSR policy, to monitor the CSR policy and to inspect the mechanism for implementation of the CSR projects and activities ⁷⁷⁹.

Companies don't limit themselves to the prescribed limit of CSR given in The Companies Act (2013) and make generous contribution voluntarily which is also a general way companies fulfil their obligations towards the society. CSR in India has immense importance. A country with such a wide gap in the economic class can surely rely on corporates who can clearly afford to carry philanthropic work without exhausting their resources. CSR contribution prove to be most useful during calamities. Every year India faces some or the other calamity and during these though times corporates come to the rescue. With the help of Moderate Resolution Imaging Spectro-radiometer (MODIS) it was observed in 2018

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https://www.icsi.edu/media/webmodules/CompanyLaw.pdf

⁷⁷⁸ https://sqnbankingsystems.com/blog/corporate-social-responsibility-and-fraud/

⁷⁷⁹https://cleartax.in/s/corporate-social-responsibility#:~:



roughly 10-12 percent of the forests in India every year are prone to heavy fires⁷⁸⁰. The Southern and the North-Eastern regions of India possesses heavy risks of floods specially the coastlines in Gujarat, Maharashtra, Kerala and Assam. Other calamities such as earthquakes, damaging winds, drought, epidemics, storms are frequent catastrophes that occur. These events lead to mass loss of lives and also leads to huge monetary as well physical loses to the State. Though CSR contributions cannot totally overturn the damage but can surely help the State in sustaining it.

CORONAVIRUS: THE EMERGENCE OF A PANDEMIC

A disease is said to be a pandemic when it is considered to be prevalent over a country, continent or even the whole world. The recent case of Coronavirus (Covid-19/SARS-Cov 2) outbreak has been declared as a pandemic by the World Health Organization. It is said to have originated from the province of Wuhan, China. The virus has spread to most of the nations which has led to a global lockdown. This has caused an adverse effect to say the least on the global economy. No country in the world was prepared to combat the spread of this virus and it has caught many nations off guard. The first case of coronavirus in India was reported on 30th January 2020 in the state of Kerala⁷⁸¹. After the surge in cases Prime Minister Narendra Modi announced a nationwide lockdown for 21 days from 24th March 2020. As of 22nd August 2020, the number of cases has rose to 30,44,940 while the number of active cases is close to 7,00,000⁷⁸². The lockdown has seriously affected the daily bread and butter of the labourers, income of a common man and profits of big corporations. To combat this pandemic the Government of India has set up various medical institutions and camps to help cure people who have contracted this disease. The Government has spent huge amounts in ensuring that proper care of the patients have been taken. Facilities such as beds, ventilators in quarantine centres have been provided. The Government has also announced various schemes and policies to reduce the impact of the falling economy. However, the government is falling short in providing the necessary help to all the citizens who are affected due to this virus. So various corporations have come forward and lent their helping hand in some form or the other so that the country can get back on its feet.

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⁷⁸⁰ https://fsi.nic.in/forest-fire-activities?pgID=forest-fire-activities

⁷⁸¹ https://www.cnbc.com/2020/01/30/india-confirms-first-case-of-the-coronavirus.html

https://www.deccanherald.com/national/coronavirus-india-karnataka-maharashtra-delhi-tamil-nadu-west-bengal-update-state-wise-total-number-of-confirmed-cases-deaths-on-august-22-876343.html



Companies are providing the Government with funds, equipment's, man power and other possible assistance. CSR contribution in India is helping the government during the Covid-19 outbreak and the fight with the virus is still ongoing.

CSR AND OTHER CONTRIBUTIONS BY THE COMPANIES AMIDST THE ONGOING PANDEMIC

The rise of the pandemic saw many celebrities and public figures participating in charity and humanitarian work and also providing their help to the government in tackling the virus. Similarly, corporations have also assisted the respective authorities and lent their aid in an attempt to fending off the disease. On 23rd March 2020 the Ministry of Corporate affairs had announced that the expenditure spent by the companies will be considered under the ambit of CSR expenditure. Funds used for combatting Covid-19 from the profits of the companies is one of the main sources of contributions towards the government⁷⁸³. Many domestic as well as multinational companies have pledged to provide preventive healthcare, spreading awareness, tools for sanitation and providing disaster management relief. Reliance Industries Ltd which is the biggest corporation in India and one of the largest corporations in Asia and the world have contributed a sum of 500 crores to the PM cares fund. They have also provided hundreds of beds to Covid hospitals and camps, more than seventy lakh free meals to the under-privileged and also provided thousands of PPE kits to doctors and health care professionals as of 1st July. Reliance have also contributed an additional 5 crore to Maharashtra CM relief fund and their CEO Anil Ambani has donated 1,00,000 masks. The Godrej group has pledged to donate 50 crore rupees to PM cares fund. The amount will be provided over time and they are also promoting awareness regarding the disease. Xiaomi (India) has donated N95 masks for government hospitals and state police in Karnataka, Punjab and Delhi, and PPE kits for doctors at AIIMS⁷⁸⁴. ByteDance Ltd (India) have donated 100 crores worth of medical and sanitation equipment's to various healthcare agencies and government authorities. Another 100 crores have been contributed by Bajaj group towards necessary items for doctors also helped in improving the medical infrastructure in rural areas. Ola cabs have donated a sum of 20 crore and also provided vehicles to be used as ambulances. Hyundai (India) has ordered 25,000 diagnostic kit for health care professionals.

⁷⁸³ http://www.mca.gov.in/Ministry/pdf/Notification 10042020.pdf

⁷⁸⁴ https://csrbox.org/how-Indian-companies-responding-COVID19



Kotak bank have committed to a total of 60 crores out of which 25 crores is paid by Uday Kotak their founder. A sum of 10 crore has been further donated to Maharashtra CM relief fund⁷⁸⁵. One of the biggest commitments is made by Wipro, Wipro Enterprises and Azim Premji Foundation, who have together committed 1,125 crore rupees towards the battle with coronavirus and the socio-economic crisis that followed. Wipro's commitment is 100 crores Wipro Enterprises 25 crore and Azim Premji foundations is 1000 crore⁷⁸⁶. In May talks of converting Wipro's Pune office into a covid centre were conducted. Jindal South West (JSW) Group have pledged 100 crores to PM cares relief fund and also contributed in other State relief funds as well. A sum of 50 crore rupees has been covered by Bosch India from which 5 crores has been directly contributed to PM cares national relief fund and the remaining 45 crores have been pledged for prevention of Covid-19 and attenuating the damage it causes and through the Art of Living Foundation they have provided meals to four thousand migrant workers and the deprived class⁷⁸⁷. E-commerce giants Flipkart and Amazon have also come forward in these crucial times. Flipkart (Walmart) are to donate 46 crore rupees worth of equipment's and material needed to ensure the safety of health professionals. Amazon has extended its help to its delivery partners by setting up a relief fund for them and promising a sum of 185 crores as donation ⁷⁸⁸. Tata Sons and Tata Trusts have together promised to donate a sum of 1500 crore rupees. Tata Sons expenditure is said to be 1000 crore in relation to various needs and facilitation in an attempt to resist Covid-19 and Tata Trust have further committed to donate 500 crores. State Bank of India (SBI) are said to donate an amount of 100 crore to PM cares fund and towards other relief funds. SBI isn't the only bank to contribute CSR expense. Banks such as HDFC & ICICI bank have also come forward in these harsh times. HDFC has donated 55 crores to PM cares fund meanwhile ICICI group have donated a total of 100 crores out of which 80 crores is donated to PM cares fund and 20 crores is donated to different authorities. State owned corporations such as Oil and Natural Gas Corporation (ONGC), Indian Oil Corporation, Hindustan Petroleum Corporation Ltd, Bharat Petroleum, Gas Authority of India (GAIL), Oil India and Petronet LNG have together

https://www.deccanherald.com/national/coronavirus-india-karnataka-maharashtra-delhi-tamil-nadu-west-bengal-update-state-wise-total-number-of-confirmed-cases-deaths-on-august-22-876343.html

https://government.economictimes.indiatimes.com/news/economy/corporate-social-responsibility-in-times-of-covid-19-pandemic/75771467

⁷⁸⁷ https://indiacsr.in/jsw-group-pledges-100-cr-to-fight-coronavirus/

https://www.skillreporter.com/2020/04/announcements/mou-collaborations/nsdc-and-amazon-india-collaborate-to-launch-combat-covid-19-digital-campaign/



spent 1000 crores as CSR expense in PM cares fund. Indian Oil has also medically insured their three lakh twenty-four thousand employees for a sum of approximate 23 lakhs. ONGC alone contributed 300 crore rupees. Infosys Ltd have provided tools, PPE kits, meals, ventilators and other equipment's worth rupees 500 crore and also donated a sum of 50 crores to PM cares fund. Food delivery agent Zomato have provided 1,00,000 ration kits in more than twenty cities and also donated an undisclosed amount in PM cares fund. Motor vehicle venture Thirukkurungudi Vengaram Sundram (TVS) have pledged a sum of 30 crores and Hero MotoCorp has manufactured 5000 litres of sanitizers, provided 6000 ration kits in more than 5 states and also donated hundreds of vehicles to police forces and other authorities to help ease their transport problems. Imperial Tobacco Company Ltd (ITC) has set up a Contingency fund and collected 150 crores which is being used to fight the epidemic. Tech giants Larson and Turbo (L&T) are to contribute 150 crore rupees gradually to PM cares fund in order to provide relief during the covid crisis⁷⁸⁹. Aditya Birla group have contributed 400 crores in PM cares and are also committed in providing additional help, worth 100 crores to other local authorities⁷⁹⁰. Mahindra group have donated 50 crore rupees in PM cares fund and also extended their helping hands in taking care of migrant labourers and health care professionals. United Phosphorous Ltd (UPL) have also donated to PM cares a total of 75 crores. These aren't the only companies to have made their fair share of contributions, many other companies too were involved.

Many companies have come up with innovative ways of collecting and contributing to CSR expense. Some companies have adopted unique methods which have proved to be advantageous not only in increasing the CSR accumulation but also spreading awareness regarding the novel coronavirus and also promoting positivity during these gloom dark days. One of the examples of this is FMCG firm Marico and ATE Chandra Foundation. They have launched a nationwide hunt for innovative solutions to healthcare challenges during Covid-19 crisis. Marico Innovation Foundation has invited med-tech entrepreneurs, corporates and innovator to solve the med-tech challenges faced in the on-going COVID-19 crisis with a prize of Rs 2.5 crore ⁷⁹¹. Besides these CSR activities certain companies and institutions also

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https://www.itcportal.com/media-centre/press-releases-content.aspx?id=2236&type=C&news=ITC-COVID-Fund

https://www.indiatoday.in/business/story/covid-19-aditya-birla-group-donates-rs-500-crores-in-pm-cares-fund-1663117-2020-04-04

https://www.outlookindia.com/newsscroll/covid19-marico-announces-rs-25-cr-prize-for-innovative-healthcare-solution/1785212



started social media campaigns and used different platforms to get the attention of the common folk. Challenges with hashtags were started to create awareness among the people. The #safehandschallenge by the World Health Organization was started to encourage people to clean their hands so the virus may be neutralized if physical contact was made with an infected person. Curefit came with another challenge #movementformovement whereby it tasked the users for a twelve-day challenge and for every person completing the challenge it would donate rupees 100 to PM cares fund. #Namastekaro challenge was started to promote social distancing and explain its importance⁷⁹². Celebrities are also using their reach to educate people on this matter.

According to a study as of May 15th Indian companies have already contributed more than 80 % of the mandatory CSR obligations for the financial year 20-21 and the country might soon get exhausted of its CSR resource from the corporates⁷⁹³. The earnings and profits of the companies have been greatly hindered due to Covid-19 pandemic. In these times many companies are having mass lay off of its employees and staff. This in return is causing unemployment and the economy is gravely declining day by day. The micro, small and one person companies have been affected the most. Multinational companies are likely to survive the pandemic affected market but the cost of survival itself is definitely going to be very high. The pandemic has also affected the GST collection and the government has confirmed the shortage of the revenue it brings.

ROLE OF CSR WITH REFERENCE TO THE PM CARES FUND IN THE COURSE OF THE PANDEMIC

The Government of India had acknowledged the fact that the novel coronavirus could become a disaster if proper precautionary measures weren't taken. To control this disease, they required funding from various institutions and philanthropists. As a result, the Ministry of Corporate Affairs (MCA) on 23rd March 2020 issued a notification which specified that the activities relating to funding in attempt to fight the virus is to be considered as a CSR activity. The expenditure on this activity is to be treated under Schedule VII (1 & 12) of the Companies Act relating to promotion of healthcare, sanitation and disaster management. This

https://www.grazia.co.in/lifestyle/world-social-media-day-2020-top-10-viral-challenges-during-lockdown-5208.html

https://www.businesstoday.in/current/economy-politics/india-inc-set-to-spend-entire-csr-budget-on-coronavirus-no-space-for-other-causes/story/406429.html



notification however brought doubts and questions among the corporate bodies and to clear these confusion MCA issued two additional notice's on 28th March 2020 and 10th April 2020. The notification on 28th March clearly stated the establishment of Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM cares Fund) with the objective of dealing with emergency or distress situations in light of the COVID-19 pandemic. However, the private sector sought further clearance from MCA as the notification issued only mentioned PM cares fund as a means for contribution of CSR expenditure⁷⁹⁴. Consequently, MCA on 10th of April issued another notification which declared what activities are to be considered permissible and non-permissible as CSR expense. The notification clarified that the contributions made to PM cares fund and State Disaster Management Authority are to be included as CSR expense while contribution towards CM Relief funds and State Relief funds are to be excluded. Funding on activities relating to Schedule VII (1 & 12) of the Companies Act are to be classified under CSR expense. Payment of salary or wages to employees and workers are not to be considered in the ambit of CSR expenditure. Only ex-gratia payments to daily wage labourers and workers are to be regarded as CSR expense but obligatory payments to casual workers during lockdown period are to be excluded 795. There have been various discussions by experts whether there are further activities that need to be included as CSR expenditure. The above criteria do not necessarily encourage companies in spending their CSR expense and also reduces the scope for it. Companies are not happy with certain exclusions in consideration for CSR activities. A writ petition was filed in Supreme Court by a member of All India Trinamool Congress and Indian Parliament, Mahua Moitra regarding this concern. The plea challenged the notifications of MCA which excluded CM's Relief Fund as a means for consideration of CSR expenditure. The petition highlighted that excluding funds with regards to CSR was a contravention of Constitutional tenets of federalism and Article 14 (right to equality) as well as being ultra-vires of the Companies Act. The plea was however dismissed due to the fact that the Mahua Moitra's lawyer had filed a similar petition on May 5th which he withdrew immediately and on 27th May he submitted another petition. Accordingly, the bench rejected the idea of the same person(s) filing another petition regarding the same issue after withdrawing in the first place⁷⁹⁶.

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⁷⁹⁴ http://ebook.mca.gov.in/Default.aspx?page=notification

https://indiacorplaw.in/2020/05/is-the-indian-csr-legal-framework-covid-ready.html

⁷⁹⁶ https://www.newindianexpress.com/nation/2020/aug/10/sc-dismisses-mahua-moitras-plea-against-excluding-cms-relief-fund-from-purview-of-csr-2181520.html



According to the PM cares website a total amount of 3076.62 crore was collected between 27th March 2020 to 31st March 2020. One of the most talked points about the PM cares is its controversial transparency policy. The figures shown by the website are old and there have been many additional contributions. Journalists have also filed an application under the Right to Information Act (RTI) for obtaining knowledge about the figures of PM cares. Under RTI public authority are bound to disclose information to the public. However, the response from the RTI office was that PM cares does not come under the ambit of public authority and hence develops no obligation towards disclosing the figures to the public. This action has been heavily criticised due to the fact that the set-up fund gives the impression of lack of accountability towards the public.

The PM cares fund consists entirely of voluntary contributions from individuals or organizations and does not get any budgetary support. The fund will be utilised in meeting the objectives as stated above. Donations to PM CARES Fund would qualify for 80G benefits for 100% exemption under the Income Tax Act, 1961⁷⁹⁷. Donations to PM CARES Fund will also qualify to be counted as Corporate Social Responsibility (CSR) expenditure under the Companies Act, 2013. PM CARES Fund has also got exemption under the FCRA and a separate account for receiving foreign donations has been opened. This enables PM CARES Fund to accept donations and contributions from individuals and organizations based in foreign countries. There have a been quite a few researches regarding the money donated as CSR by the companies. The barriers due to lack of clarity by RTI's office regarding the PM cares fund has made the studies difficult. The PM cares has contributions from individuals as well as NGO's and other institution's too. Therefore, all the contributions in PM cares is not related to CSR and many of the donations will be considered as charity and researches have tried to distinguish the philanthropic and CSR contribution. Credit Rating Information Services of India Ltd (CRISIL) is one of the leading companies which has invested its research in relation to CSR amount in PM cares fund. CRISIL found out that from 130, about 113 companies directly spent their CSR expenditure to pandemic related activities by the data available as of 15th May 2020. 84 companies out of the 113 have contributed an amount of 7537 crore rupees which is available as classification under CSR expenditure by the corporates and may avail its benefits. The 29 remaining companies have contributed an amount of 373 crore rupees to other funds (State, CM relief fund etc.) which do not fall in the

⁷⁹⁷ https://www.pmcares.gov.in/en/web/page/about us



criteria for the amount to be considered as CSR expense. A further amount of 84 crore rupees were contributed as donations which were facilitated by their employees voluntarily (also not amounting to CSR expense)⁷⁹⁸. Out of the 84 companies 56 belonged to the private sector occupying 67 % of the figure and accounted for two-thirds of the CSR amount spent on Covid-19 relief, 24 companies (29 %) were affiliated with the government (public sector) and their contribution was approximately 30 %. The rest of the amount was brought in by the foreign companies⁷⁹⁹. Region-wise, 36 companies in Maharashtra, which accounts for a third of all covid-19 cases in the country, stand out as they accounted for 63% of the total spending. From 7537 crores of CSR contribution which was collected from 15th March to 15th May a sum of 4316 crore rupees were donated towards PM cares fund in monetary terms and the remaining 3221 crore rupees were spent on relief funds, PPE kits, sanitation work and such activities. During the 2019 fiscal a total amount of 11,392 crores were spent as CSR expenditure by over 1267 corporates. In comparison to last fiscal India has already received 7537 crores worth of CSR contribution which means India has already exhausted around 80% of CSR expense as of May itself. The growth of CSR expenditure by corporates this fiscal is around 14%800. The companies have fulfilled their obligations to the nation and are still searching for ways to assist the respective authorities and thereby helping the citizens. Contributions by the companies are most definitely proving to be beneficial, but a very high percentage of CSR funds had to be forgone to achieve short term goals. Not to mention that the markets have been heavily disturbed and many companies are experiencing very huge losses due to the global lockdown. Companies that seem untouchable are now seen folding hands in front of this pandemic crisis. MSME sectors has been the worst affected category of companies, many might not survive the economic crisis the pandemic brings and may have to file for bankruptcy. CSR is one of the most important tools for philanthropy globally that symbolises the importance of charity. It is considered as a way for companies to give back to the society their profits as a gesture of thankfulness and realizing their privilege in doing so. The relief CSR has offered to all the respective institutions is more than appreciable and has and will save countless other lives.

https://www.livemint.com/companies/news/india-inc-allocated-over-80-of-annual-csr-budget-for-covid-19-crisil-11591715454335.html

⁷⁹⁹ https://www.mondag.com/india/coronavirus-covid-19/944738/csr-amidst-covid-19

https://government.economictimes.indiatimes.com/news/economy/corporate-social-responsibility-in-times-of-covid-19-pandemic/75771467