A COMPARISON OF THE COMPANIES ACT, 2013 WITH THE COMPANY LAW IN UNITED KINGDOM WITH SPECIAL REFERENCE TO ONE PERSON COMPANY

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ABSTRACT

Under the Companies Act of 1956 the meaning of body corporate avoided from its scope 'a partnership sole' yet the Act of 2013 has evacuated this special case and think of a new progressive idea for example one individual organization (OPC). In any case, there is a contrast between the two. The idea of OPC enables a solitary individual to run an organization restricted by offers, and Sole ownership implies a substance where it is run and claimed by one individual and where there is no qualification between the proprietor and the business, while it isn't so in the event of OPC. In OPC, the organization will get corporate character and appreciate every one of the benefits of a private company viz., restricted risk, ceaseless progression, separate property, ability to sue and be sued, legally binding rights, and so forth. Part I of the paper illuminates the idea, its importance, attributes, and the compliance trouble alongside the requirement for the presentation of the idea of OPC in India on the lines of UK, China, Singapore and a few European nations after the proposals of the J.J. Irani Committee in 2005. Part II tests its utility with regards to the present situation in India. So as to fundamentally analyze the idea and its advantages over the sole ownership purposes of qualification have been drawn between the two ideas. After an intricate exchange on its points of interest the inadequacies and provisos in the idea have been investigated. The article concludes with the perceptions and proposals to beat the ambiguities to encourage the objectives of the new idea remembering its suggestions for the investigation of corporate administration.

INTRODUCTION

The Companies Act, 2013 is milestone enactment with extensive outcomes on all Companies incorporated in India. The Companies Act, 2013 is all the more outward looking and endeavors to line up with global prerequisites. It is relied upon to establish the pace for an increasingly modern enactment which empowers development and more noteworthy guideline of the corporate division in India. The 2013 Act has been created with a view to upgrade self–regulation, improve corporate governance norms, enhance accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors.

This paper is centered around the administrative structure of organizations in pre and post-independence time, method of reasoning behind new Companies Act , its significant targets and a relative investigation of Companies Act, 2013 with Companies Act 1956 with respect to One Person Company and further comparison with the Company Law provisions in UK.

India enacted its new Companies Act 2013 (the “Companies Act”) at the end of August 2013. The Companies Bill was passed by the Lok Sabha (the Lower House of the Parliament of India) on 18 December 2012 and in the Rajya Sabha (the Upper House of the Parliament of India) on 8 August 2013. It received Presidential Assent on 29th August 2013 thereby creating the Companies Act 2013.

The Companies Act, 2013 defines one-person company as “a company which has only one person as a member.”[i] All the liabilities in case of an OPC are limited to the company and not to its members. Section 3 of the Act classifies OPC as a private company and it shall be treated as a private company for all legal purposes.

LITERATURE REVIEW

Dr. Rabindra Kumar Sahu (Jan 2016) had conducted a study on, “the Companies Act,2013 vis-à-vis the companies act 1956-a brief review of some provisions” and analysed the difference between some provisions of the Companies Act ,1956 and Companies Act ,2013 and found out that the new act focuses on e-governance, good corporate governance, corporate social responsibility, protection of minority shareholders etc.

Debendra Kumar Ojha and Dr. Kishore Kumar Das (Jan 2016) had studied the provisions relating to one person company or single member company under Companies Act ,2013 and stated that advent of one person company will brought revolutionary change in the Indian business sector.

Nishant Sharma and Ruchita Dang (May 2014) has made a study on historical background of companies act and made a comparison between the Companies Act 2013 and Companies Act 1956 on various topics under different chapters of the Act.

Adv. Vinay Haswani and Prof. Krati Rajoria (Jan 2016) have written a paper on the analytical study of One Person Company , which has been introduced in the company Act, 2013.

HISTORICAL PERSPECTIVE OF COMPANIES ACT

Company law in India is that part of Indian law which controls and regulates companies in India.

Joint stock companies Act 1850: **-** Companies enactment in India owes its starting point to the English Company law. The companies act passed from time to time in India have been following the English Companies Acts with specific adjustments to suit Indian conditions. The principal administrative institution for "Registration of Joint stock organizations" was spent in the year 1850. This Act depended on the English Companies Act, 1844 (known as the Joint stock Companies Act 1844) which perceived Company as a distinct lawful entity, however didn't allow to it the benefit of limited liability.

Joint Stock Companies Act 1857: The Joint stock companies act of 1850 was replaced by the Joint Stock Companies Act of 1857. This Act of 1857 gave, without precedent for India the advantage of limited liability on the individuals from organizations. In any case, this demonstration didn't expand the advantage of limited liability to the individuals from banking organizations and insurance agencies.

Companies Act of 1913: The Indian Companies Act, 1913 didn't consider the particular highlights of the Indian exchange and business and some exceptional organization, for example, "Managing Agency." The Act was, in this manner, saw as profoundly unsuitable over the span of its activity. As such, this Act was exposed to countless amendments every once in a while.

Companies Act 1956: After the END of World War II, the requirement for a further modification of the organization law was felt. Numerous progressions had occurred in the association and the board of Joint stock Companies. The legislature of India, along these lines, designated on 25th October, 1950, A board of 12 individuals speaking to different fields under the chairmanship of Shri. H. C. Bhabha for a far-reaching audit of the Indian organizations Act 1913. The advisory group presented its report on all parts of organization law in April 1952. In light of the proposal of the Bhabha Committee Companies Act of 1956 was passed. The Companies Act of 1956 was based on the English Companies Act of 1948, with certain changes to suit the Indian conditions. The organizations Act of 1956 came into power from first April, 1956. This Act contains 658 sections and 15 schedules.

COMPANIES ACT, 2013 – A BRIEF OVERVIEW

The Companies Act, 2013 made changes with provisions regarding the governance of all listed and unlisted companies in the country. The Act was partially made effective w.e.f 12th September 2013. It consists of 29 chapters divided into 470 sections, 7 schedules and 95 definitions. There are quite a few areas where the Companies Act, 2013 has given a lot of attention and also are highlighted in the Act quite well.

Some issues like, At least one woman should be on the Board of Directors that has been prescribed in the Act. This Act also made it compulsory for Companies earning more than a stipulated profit to spend a certain amount of profit on activities to uplift the under privileged. This means that they gave importance to Corporate Social Responsibility.

It was in this Act that a new form of Private Company was introduced i.e. One Person Company. Before this Act’s introduction, it was compulsory for a company to have at least 2 Shareholders and 2 Directors in a Private Company. This Act introduced One Person Company which may have only one Shareholder and One Director.

DIFFERENCE BETWEEN COMPANIES ACT, 1956 AND COMPANIES ACT, 2013

A} Preliminary Provisions

The Companies Act , 1956 was enacted in 1956 by the Indian Parliament on 1st April 1956. The Companies Act, 2013 on the other hand was enacted in 2013 by the Indian Parliament and enacted on 1st April 2014.

Companies Act 1956 was separated into 13 parts having 658 sections, along with 15 schedules where as Companies Act 2013 has been divided into 29 chapters along with 470 sections and 7 schedules. Companies Act 2013 consider some definitions which Companies act 1956 did not consider like CEO and CFO, Independent Director, Promoter etc.

B} Definitions

The term "Listed company" means All companies listed in the Stock exchange in the Companies Act, 2013. The definition of Employee stock option now covers Directors, officers & employee of holding and subsidiary also. The scope of "officer in default" has been widened to include registrar and merchant bankers related to the issues. Only "April-March" to be considered as financial year.

ONE PERSON COMPANY

The Companies Act, 2013 defines one-person company as "a company which has only one person as a member."[ii] All the liabilities in case of an OPC are limited to the company and not to its members. Section 3 of the Act classifies OPC as a private company and it shall be treated as a private company for all legal purposes.

It shall also be important to note that only a natural person who is a resident in India[iii] and also a citizen of India can form a one-person company. It means that other legal entities like companies or societies or other corporate entities cannot form a one-person company.[iv]

A person shall not be eligible to incorporate more than a single OPC or become nominee in more than one such OPC. A natural person who is a member of an OPC shall meet the eligibility criteria within a period of one hundred and eighty days in case he becomes a member of another OPC by virtue of being a nominee in that OPC. A minor shall not become member or nominee of the One Person Company or cannot hold share with beneficial interest. Such Company cannot be incorporated or converted into a company under section 8 of the Act and also cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporates. Such company cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.[v]

CHARACTERISTICS OF ONE PERSON COMPANY IN INDIA

1. OPC is a type of company based on the number of members.
2. OPC is a company which has only one person as a member and where legal and financial liability is limited to the company only and that person is not personally liable.
3. It can be incorporated only as a private company and it is a private company for all legal purposes, all the benefits that are available to Private Limited Companies are applicable to One Person Companies such as access to credits, bank loans, limited liability, legal protection for business and access to market, etc. all with a separate legal identity.
4. One-person company can have only one director, although it can have up to fifteen directors.
5. It is mandatory to appoint a nominee.
6. The words "one-person company" should be mentioned in brackets below the name of such company, where its name is printed, affixed or engraved.
7. An OPC is exempted from holding general meetings and Board meetings if the company has only one director.
8. The Registrar of Companies should be informed about every contract entered into.

COMPLIANCE BURDEN

The minimum number of directors in the case of an OPC has been limited to one.[vi] An OPC must conduct at least 1 meeting of the board of directors in each half of a calendar year with a gap of at least 90 days between the 2 meetings. For an OPC having only 1 director, the provisions of section 173 (Meetings of board) and section 174 (Quorum for meetings of board) will not apply.[vii]

Contracts by One Person Company

When an OPC enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the board of directors of the company held next after entering into contract.[viii] This requirement, however, will not apply to contracts entered into by the company in the ordinary course of its business. Also, an OPC is required to inform the registrar of companies about every such contract within a period of 15 days of the date of approval by the board of directors.[ix]

OPC as Private Company

Since OPC has been given the status of a private company, OPC will have to comply with the provisions that are applicable to a private company with certain exemptions which relatively reduce the compliance burden on them such as:

- OPC is not required to prepare a cash flow statement as a part of a financial statement;[x]
- OPC need not appoint a Company Secretary, as the annual return can be signed by the director of the company;[xi]
- OPC is also not required to hold a mandatory Annual General Meetings;[xii]
- Several provisions of the Companies Act, 2013 are not applicable to OPC viz.:Power of Tribunal to call meetings of members, etc.;[xiii] Calling of extraordinary general meeting;[xiv] Notice of meeting;[xv] Statement to be annexed to notice;[xvi] Quorum for meetings;[xvii] Chairman of meetings;[xviii] Proxies;[xix] Restriction on voting rights;[xx] Voting by show of hands;[xxi] Voting through electronic means;[xxii] Demand for poll;[xxiii] Postal ballot;[xxiv] Circulation of members' resolution.[xxv]

Taxation

Since nothing has been specified as such by the finance ministry, it is assumed that the rates of taxation applicable for a private limited company shall apply to a One Person Company. Net profits, which are calculated by deducting all allowable expenses from the turnover of sales, shall be taxable at the rate of 30 percentage + education cess.

Related Party Transactions

Where One Person Company enters into a contract with the sole owner of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

Further, the company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board.

This clause shall be very much in vogue since the business of the One Person Company may use many assets of the owner and may pay compensation for that. Examples may be rent paid for using property or machinery or Furniture owned by the Owner. It may pay interest on loans taken from the owner. It may pay salaries to the Owner. All these contracts are covered under the section.

Process of Incorporation

The process of incorporation of a one person company involves the following steps:

- The shareholder/member shall get a Director Identification Number (DIN) as well as a digital signature certificate.
- Member should apply for the name of the company
- Then get the consent of the nominee in the prescribed forms.
- Member shall file the consent along with the incorporation forms with the MOA and AOA and other relevant documents.
- After receiving the Certificate of Incorporation from the ROC, the OPC can commence its business with the registered name.
- The words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Conversion from one person company to private limited and vice versa

The Act provides that when a one person company reaches a paid up capital of 50 lakh rupees or more or when the average turnover of the company is Rs. 2 Crores or more for a period of 3 years, then once required amendments in the memorandum of association and articles of association have been made the company shall convert into a private limited company and now such company shall comply with all the requirements of a private limited company.

Conversion of a private limited company into a one person company

A private limited company which does not have a paid up capital of more than Rs. 50 lakhs or where the average annual turnover for the past 3 years is less than Rs. 2 Crores can convert itself into a One Person Company and enjoy the benefits as such.

NEED FOR INTRODUCTION OF OPC

The concept of a one person company has existed for a number of years in countries around the world known as Single Member Company. Liechtenstein is the first country in the world where the concept of Single Member Liability Company was legally recognized in 1925.

It was the J.J. Irani Committee that expressed the view that the law should recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles.[xxvi]

“It would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the law should recognize the formation of a single person economic entity in the form of One Person Company.”

OPC allows the professionals to have personal freedom in establishing the business of their choice. It gives a lot of scope and provides ample number of business opportunities to small scale entrepreneurs who have an advantage of limiting their liabilities while entering into the corporate world. It provides an incentive to people entering entrepreneurship as the legal complicacies are minimal compared to other legal entities and minimizes the risk of wasting time, money and effort as the liability is not unlimited.

With the advent of OPC as a business model the liability on government to fulfill the employment needs of people is reduced to a certain extent and it also points out the dynamic nature of the new companies Act.[xxvii]

OPC v SOLE PROPRIETORSHIP

The concept of OPC allows a single person to run a company limited by shares, and Sole proprietorship means an entity where it is run and owned by one individual and where there is no distinction between the owner and the business. The distinction between both the structures is as follows:

- Limited Liability - Fundamentally the basic difference between a sole proprietorship and an OPC is the way and manner in which the liability is treated in an OPC. OPC is different from sole proprietorship because it is a completely separate entity and that is the distinction between the promoter and the company. The liability of the share holder will be limited to the unpaid subscription money in his name. On the other hand the liability in a sole proprietorship, the person/owner is alone liable for the claims which will be made against the business.
- Tax Bracket - Though the concept of an OPC has been incorporated in the Companies Act, 2013 but the concept of same does not exist in tax laws as yet, as a result an OPC can be put in the same bracket of taxation as other private companies. According to Income TA,1961 a private limited company is under the bracket of 30% on total income with an additional surcharge of 5% if the income exceeds 10 million with an addition to 3% of education cess.
- Succession - In an OPC there is a nominee designated by the member. The nominee which will be a Natural Born citizen of India and who resides in India. The nominee shall in the event of death of the member become a member of the company and will be responsible for the running of the company. But in the case of sole proprietorship this can only happen through an execution of WILL which may or may not be challenged in the court of law.
- Compliances - A One Person Company has to file annual returns etc just like a normal company and would also need to get its accounts audited in the same manner. On the other hand a sole proprietorship would only need to get audited under the provisions of Section 44 AB of the Income Tax Act, 1961 once its turnover crosses the certain threshold.

THE IMPACT OF OPC IN INDIAN ENTREPRENEURSHIP

The concept of an OPC is in its initial stage and very new in Indian entrepreneurship, it will take time for such a new concept to mature and implemented with complete efficiency. With the passage of time an OPC will be adopted as one of the most successful business concepts. The benefits arising out of it are many viz., its incorporation involves less paper work; it has the ability to form a company with just one member without any additional shareholder, and if the member is willing to add shareholders, all he needs to do is to modify the Memorandum of

Association and file it before ROC. OPC is a feasible option for small entrepreneurs viz., traders, artisans, weavers, small to mid level entrepreneurs. Any foreign company or investor who wishes to establish in India through either an investment, a merger or a joint venture will have to just deal with the member of an OPC, and the venture will be expected to start sooner with more effective results. The foreign investors in order to establish a corporate relationship need not have to deal with a score of shareholders/ directors as that might involve disparity in ideas, concepts, etc for the business to grow. In upcoming years the impact of an OPC will be remarkable and it is a promising future for Indian Entrepreneurship. Expectedly, there will be good Foreign Investments, Joint Ventures, and Mergers etc. An OPC is doing well in European countries, In United States and Australia the same is resulting in strengthening the economy of the countries. In India when the expert committee of Dr. J.J. Irani proposed the concept of an OPC, it was solely aimed for the structured organized business, with a different legal entity altogether and to organize the private sector of the entrepreneurship, which indeed is expected to be done, along with a significant growth in Indian Economy benefiting the country on the Global Level.

COMPANY LAW IN UNITED KINGDOM

Company law in the UK is mainly set out in the Companies Act 2006 (the 2006 Act). Part 15 (sections 380 to 474) sets out requirements for the preparation, distribution and filing of accounts and reports including the choice of accounting framework. These requirements are supplemented by regulations which contain, for example, the detailed requirements for the form and content of financial statements. Part 16 sets out the general requirements for accounts to be audited including exemptions for certain companies, rules around the appointment, removal and resignation of auditors and auditors' liability. The 2006 Act is wide ranging and covers almost all of the law applicable to companies. Its requirements are not static and are amended from time to time. The prime aims of the Act are: to modernise and simplify company law, to codify directors duties, to grant improved rights to shareholders, and to simplify the administrative burden carried by UK companies. As if often the case with legislation, the Companies Act has been criticised by some commentators for delivering a number of reforms, without necessarily making the life of limited company directors any simpler.

OPC in United Kingdom

Although OPC is a recent concept in India, it has been prevalent in the United Kingdom for years through a precedent set by Lord Herschel in the renowned case of Saloman v. Saloman & Co. Ltd where he acknowledged the idea of a one-man company as lawful. Further, under Section 7 of the UK Companies Act, 2006, a one-person public and a private company can be formed by complying with the registration and Memorandum of Association requirements, as laid down in the UK Act. Similarly, in the United States, almost all states permit single member limited liability companies with varied state-specific laws for the same. Amongst Asian countries, Pakistan, Singapore and China adopted OPC in their legal systems in 2003, 2004 and 2005 respectively. In UK, the famous case of Salomon vs. A Salomon & Co. Ltd paved the way to the idea of one man company by setting up a precedent. As per section 7 of UK Companies Act, 2006, both the private and public companies can be incorporated with a single member. The UK Act does not provide for maximum number of directors which a company can have. Under UK laws, the meeting of Board of Directors is largely guided by the Articles of Association of the Company. From a general comparison of both, it is evident that except for a few differences, the position is mostly similar in both the countries. However, the concept of OPC is new in India, it needs to be seen whether it will emerge as a success in corporate arena as it is in UK.

CONCLUSION

The concept of one person company is expected to give big impetus to Corporatization in the country. The only care to be taken is that there should be no regulatory mess ups like the ones which hampered the growth of Limited Liability Partnerships in this country. Otherwise the rules framed so far with respect to One Person Company have been very sensible.

The idea of One Person Company conveys the possibility to fill in as braces for the time of Start-up India by bringing the little and medium-sized organizations that prior worked in the disorderly area inside the domain of sorted out segment and by offering a straightforward legitimate structure that advances the interests of business people. This effect will be in arrangement with the aim of the J. J. Irani Committee to perceive and inspire elements that are made by single business people, as opposed to a relationship of people, through the presentation of OPC in the Indian Legal System. Besides, an OPC appreciates a few benefits and exclusions under the Companies Laws as exception from directing general and executive gatherings, arrangement of tax collection from the substance separate from its proprietor's salary and separate lawful element of the organization guaranteeing restricted risk of the sole investor. Be that as it may, these advantages are not without their very own confinements as the setting up and upkeep of an OPC is awkward, tedious and substantial on the pocket.

It is advantageous to take note of that it has been a long time since the idea of OPC was enlivened in India. Maybe the Government ought to embrace a solid five-year evaluation of its change as a money saving advantage examination to survey whether the idea of OPC has lived to its desires and added to the monetary advancement of the nation or whether it has demonstrated to be one more paper change.

REFERENCES

[i] Section 2(62) of the 2013 Act
[ii] Section 2(62) of the 2013 Act
[iii] The explanation to Rule 3 provides that "For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year."
[iv] As per Rule 3 of Company Incorporation Rules, 2014
[v] Ibid.
[vi] Section 149(1)(a) of the Companies Act, 2013
[vii] Section 173(5) of the Companies Act, 2013
[viii] Section 193 of the Companies Act, 2013
[ix] ibid
[x] Section2(40) of the Companies Act, 2013
[xi] Proviso to Section 92(1)
[xii] Section 96(1) of the Companies Act, 2013
[xiii] Section 98 of the Companies Act, 2013
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[xxvi] CS R. Sridhan Et Al., One Person Company, The Institute of Company Secretaries of India (June 2014), p.3
[xxvii] http://lexquest.in/expository-analysis-one-person-company-concept-arrow-shot-dark-serving-purpose/