ONE PERSON COMPANY: CONCEPT, OPPORTUNITIES & CHALLENGES IN INDIA

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ABSTRACT

With ever changing scenario of business the new concept of One Person Company has been emerged as per Companies Act 2013. It is a hybrid of sole proprietor business and company form of business. Although this concept of Entrepreneurship is new in India and it will require time to be accepted amongst the people. There is a need to provide one person or young entrepreneurs a full freedom to contribute in the economic activities. Under the Companies Act of 1956 the definition of body corporate excluded from its scope 'a corporation sole' but the Act of 2013 has removed this exception and come up with a new revolutionary concept i.e. one person company (OPC). But there is a difference between the two. 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, whereas it is not so in case of OPC. In OPC, the company will acquire corporate personality and enjoy all the advantages of a private company viz., limited liability, perpetual succession, separate property, capacity to sue and be sued, contractual rights, etc. This paper is therefore an attempt to understand the concept opportunities and threats related with one Person Company in India.

Keywords: Companies Acct 1956, Companies Act 2013, One person Company, Sole proprietorship

INTRODUCTION

As per the Companies Act 1956 there is no such concept of One Person Company. This concept was first recommended by the J.J Irani Committee in 2005.And now as per new companies act 2013 One Person Company can be formed. One person company can be formed only with one person that means in contrast with other form of companies one person company can enjoy certain privileges and exemptions. The paper attempts to explain the role, pros and cons of one person company in Indian Business. In order to make the understanding of the topic clear paper is divided into various sections**. First** section that is the present section is the introduction section which explains the meaning and features of this new concept. **Second section** contained Objectives and methodology. **Third** section discusses the process of incorporation of an OPC and the concept of Nominee. **Fourth** section is the section where the core area of the paper is discussed that is privileges, opportunities and threats. Conclusions and suggestions are discussed in **fifth** section and references are contained in the **last** section of the paper.

As per section **2(62)** of the companies act 2013 "One person Company'' means a company which has only one person as a member.

One Person Company will provide new opportunities for the small entrepreneurs. It is company which is registered by one person with limited liability and it's a private ltd company. One person can take decision on its own.

One person Company can be formed in two ways;

1. Company limited by Guarantee. 2. Company limited by shares.

Company limited by shares shall have minimum paid up share capital of Rs 1 lakh. It cannot transfer its shares and cannot invite public to subscribe the securities of the company.

A One Person Company should mention OPC below the name of the company. The member of the one person company has to nominate a nominee with written consent and the same should be file with the registrar of the company. A member of the OPC can change the nominee after giving the intimation to ROC. No person shall be Eligible to become a nominee in more than one OPC.

OBJECTIVES

The objective of our study is to analyze the impact of this new concept on small Entrepreneurs in India and to find out the possible opportunities and threats. Although this concept is new in India but in contrast U.K is practicing it since very long where it is known as SMPC.

METHODOLOGY

The research paper is based on the information collected from various secondary sources, Articles, websites, Journals, Data available online, various books, Company Bare Act 2013.

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. 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.

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. 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.

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 OF ONE PERSON COMPANY

- Obtain Digital Signature Certificate [DSC] for the proposed Director(s).
- Obtain Director Identification Number [DIN]
- Select suitable Company Name, and make an application to the Ministry of Corporate Affairs for availability of name.
- Draft Memorandum of Association and Articles of Association.
- Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.
- Payment of fee and stamp duty to the Ministry of Corporate Affairs. Scrutiny of documents at Registrar of Companies [ROC]
- Receipt of Certificate of Registration/Incorporation from ROC.

CONCEPT OF NOMINEE

As per the provision of section **3(1**) of the Companies Act 2013 at the time of incorporation of OPC the member is required to appoint his nominee.

The Nominee so appointed shall become member in the following cases:

(i) In the event of the death of the member

(ii) At the time when member becoming incapacitated to contract.

Who cannot become a member of an OPC or act as nominee in OPC

(i) Minor.

(ii) Foreign citizen.

(iii) Non Resident.

(iv) A person incapacitated to contract.

(v) A person other than a natural person.

PROCESS TO NOMINATE A NOMINEE

- The member of an OPC needs to obtain a written consent from the person intend to nominate as a nominee.
- The name of nominee needs to be mentioned in Memorandum of Association.
- The nomination needs to be filled in form INC 2 along with the written consent in form INC 2 with requisite fee with Registrar of the company.
- Permanent account number is mandatory.
- The form is required to fill electronically and then submit to Roc along with form no INC 2 and INC 3.

CIRCUMSTANCES FOR CHANGE OF NOMINEE

(A) ***Nominee can himself withdraw***

(a) Nominee can withdraw his consent by giving written notice to the OPC.

(b) The member has to nominate a new nominee within 15 days of the notice of the withdrawal.

(c) OPC shall within 30 days of the receipt of withdrawal file a form INC 4 & INC 3 along with requisite fee to Registrar of company.

(B) *Change of nominee by the member*

(a) The member of an OPC can change the nominee at any time by informing the OPC in writing.

(b) The member will obtain a written consent of new nominee in form INC 3.

(c) Within 30 days of receipt of such intimation the OPC has to file form no INC4 along with requisite fee and written consent of new nominee with the registrar of the company.

(C) *Death or incapacity of member*

(a) In case of death or incapacity of the member the nominee will become a member of the OPC.

(b) The new member needs to nominate a new nominee within 15 days of becoming a member.

(c) The OPC shall file with Registrar an intimation of nomination in form INC 4 with requisite fee within 30 days.

OPPORTUNITIES AND THREATS

One person Company is totally a new concept in India it will take some time to grow its wings in India. There are many opportunities as well as threats associated with one person company which we are going to discuss one by one in our present section. Following are the privileges and exemptions available to OPC.

- OPC will provide greater opportunities to small Entrepreneurs as it requires lesser capital and other legal compliances.
- Any Foreign company through merger, joint venture can easily approach one person company to start the venture without any delay in its legal proceedings.

- It is a low risk-taking venture.
- It provides young entrepreneurs a new idea to start a business.
- It combines the feature of both sole proprietorship and the company.
- Legal formalities are less as compared to other business practices.
- Mandatory rotation of auditor after expiry of maximum term is not applicable.
- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.
- As per section 92 of the companies Act, 2013 annual Return shall be signed by Company Secretary or where there is no Company Secretary then by the director of the company.
- OPC is not required to prepared cash flow statement. Paper work is less.

DISADVANTAGES OF AN OPC

- A person shall not be allowed to incorporate more than one OPC
- OPC cannot be incorporated or converted into a company not for profit. It cannot carry any non-financial activities.
- An OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation of OPC, except threshold limit (paid up share capital) is increased beyond Rs 50 lakhs or its average annual turnover during the relevant period exceeds Rs 2 crores. The compliance cost is high as compared to sole proprietorship.
- Existing Private ltd Company cannot be converted into an OPC.

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.

CONCLUSION

The success of OPC is purely dependent upon its implementation but the concept is a necessity in the changing business arena of the country where entrepreneurs are require taking risk & at the same time needs protection to cover up that risk. The single entrepreneurs are in the need of a speedy mechanism to get incorporated in company form of a business & OPC seems to be the possible solution where the entrepreneurs are not required to fritter away their time, energy & resources on procedural matters. 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. Though OPC appears a promising form of business but there is a long way to go since in India the outlook of sole traders is more traditional & they usually don't want to deviate from the way they have doing their business.

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