One Person Company : A Boon to Entrepreneurship

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Abstract

The much awaited Companies Act, 2013 saw the light of the day when it obtained the assent of the President of India on 29 August 2013.The new Companies Act introduces significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. It also introduces revolutionary new concepts such as one-person company; small companies, dormant company, class action suits, registered valuers and corporate social responsibility.

This concept of OPC, first recommended by the expert committee of Dr. JJ Irani in 2005, provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. The introduction of OPC would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters. The One Person Company concept is the next big thing in India and it would act as a launch pad for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers. This will not only enable individual capabilities to contribute to economic growth, but also generate employment opportunity. This concept of One Person Company would also organize the unorganized sector of proprietorship firms and other entities which will be convenient to regulate and manage .With passage of time,

the OPC mode of business organisation is all set to become the most preferred form of business organization especially for small entrepreneurs.

Key words: Companies Act, One Person Company, Corporatisation, Entrepreneurship

Introduction

The term company law is that branch of law which relates to the various affairs of the companies right from the formation and registration to the winding up of the companies. All company legislations in India are more or less a close re-enactment of the English Acts. The history of Indian company law began with the Companies Act of 1850, modeled on British Companies Act of 1844. Between 1850 and 1882, the Companies Act was amended many times and the Act of 1882 repealed all the previous laws and remained in force till 1912. Subsequent amendments were made in 1914, 1915, 1920,1926, 1930, 1932 and 1936.

After the independence, it was found that the existing Companies Act should be amended to suit the changed conditions in the country. In line with Cohen Committee of England, the Central Government appointed a 12-member company law committee in October 1950 under the Chairmanship of Mr. C. H. Bhabha (known as Bhabha Committee) which submitted their report in April 1952. On the basis of the recommendations of the Committee, the Parliament passed the new Act in November, 1955 which received the Presidents assent on 18th January, 1956, and came into force with effect from April, 1956.

Objectives of the Study

This study has been concentrated with the following desired objectives:

1. To understand the legal aspects relating to setting up of One Person Company.
2. To ascertain the prospects of One Person Company towards promotion of entrepreneurship and company form of business in India.

Methodology

The study has been conducted on the basis of secondary sources of information like various reports, books, journals and periodicals.

Companies Act 2013

The 1956 Act has been in need of a substantial revamp for quite some time now, to make it more contemporary and relevant to corporates, regulators and other stakeholders in India.

To frame a law that enables companies to achieve global competitiveness in a fast changing economy, the Government had taken up a fresh exercise for a comprehensive revision of the Companies Act, 1956. As a the first step in this direction, a Concept Paper on Company Law drawn up in the legislative format was exposed for public viewing on the electronic media to elicit their opinions on the concepts involved. The Government then constituted an independent Expert Committee. A Committee was constituted under the Chairmanship of Dr. Jamshed J Irani, Director, Tata Sons on 2nd December, 2004, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable the adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. The Committee submitted its report to the Government on 31st May 2005.

Dr. J J Irani Committee Report

Dr. Dr. Jamshed J Irani Expert Committee on Company Law had submitted its report charting out the road map for a flexible, dynamic and user-friendly new company law. The Committee had taken a pragmatic approach keeping in view the ground realities, and had sought to address the concerns of all the stakeholders to enable adoption of internationally accepted best practices. As one wades through the report, one finds an arduous zeal to ensure that flexibility is coupled with accountability and transparency. To attune the Indian Company Law with the global reforms taking place in the arena, the Report of the Committee had sought to bring in multifarious visionary concepts, which if accepted and acted upon would really simplify the voluminous and cumbersome Companies Act in the country.

The Companies Bill, 2009 after introduction in Parliament was referred to the Parliamentary Standing Committee on Finance for examination which submitted its report to Parliament on 31st August, 2010.Certain amendments were introduced in the Bill in the light of the report of the Committee and a revised Companies Bill, 2011 was introduced. The amended Bill was passed by the Lok Sabha on 18th December, 2012 and by the Rajya Sabha on 8th August, 2013. The Bill was retitled as Companies Bill, 2012. The Companies Bill, 2012 was assented to by the President of India on 29th of August,2013 and notified in the Gazette of India on 30th of August 2013. It finally became the Companies Act, 2013. The changes in the 2013 Act have far-reaching implications that are set to significantly change the manner in which corporates operate in India. The new Companies Act introduces significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers and acquisitions. It also introduces revolutionary new concepts such as one-person company; small companies, dormant company, class action suits, registered valuers and corporate social responsibility.

Highlights of the Companies Act, 2013

a) Passed in Lok sabha December 18, 2012
b) Passed in Rajya Sabha August 08, 2013
c) President's assent August 29, 2013
d) Total number of sections 470
e) Total number of chapters 29
f) Total number of schedules 7

When a person thinks of starting a small scale business enterprise, more often than not he chooses proprietorship form of business due to its inherent advantages such as simple to form and operate, greater flexibility of management, fewer legal

[illegible] and fewer taxes. However, this form of business has [illegible] limitations such as unlimited liability of the business owner, [illegible] life, difficulty in raising capital etc. The limitations of sole [illegible]rietorship of organization led to the growth of corporate form [illegible]ganization. The limited resources in the hands of individual [illegible] and their unlimited liability in the business discouraged [illegible] from expanding business and avoid risky decisions.

The company form of business helps in overcoming these [illegible]tions and is also vital for economic growth of the country. A [illegible] as an entity separate from its owners. It has its own [illegible] rights, independent of its owners; can sue, be sued, own and [illegible]perty, and sell the rights of ownership in the form of stocks. [illegible], the procedural formalities in setting up and running a [illegible] and loss of control over business dissuade many [illegible]eneurs from undertaking company form of business inspite [illegible] advantages over proprietorship form of business. The [illegible] of incorporation of a company requires more time and [illegible] are closely monitored by government agencies, and have [illegible] with complex rules and regulations.

Concept of one Person Company

With the implementation of the Companies Act, 2013, a single [illegible] could constitute a Company, under the One Person [illegible] (OPC) concept. This concept of OPC was first [illegible]ended by the expert committee of Dr. JJ Irani in 2005.It [illegible] an opportunity to those entrepreneurs who refrained from [illegible] company form of business due to its limitations vis-à-[illegible]rietorship to create a single person economic entity in the [illegible] "One Person Company"; They can enjoy the status and [illegible] of a Company while operating and functioning like a [illegible] concern for all practical purposes.

One Person Company is defined in Sub- Section 62 of Section [illegible] the Companies Act, 2013, which reads as follows: '*One [illegible] Company means a company which has only one* [illegible]. It is essentially a legal entity which functions on the [illegible]ciple as a Company, but with only one member and one [illegible] with legal and financial liability being limited to the company only and not to the person owning the business. It was an alternative for Indians, who typically operate using the risky concept of a proprietorship.

Historical Development of one Person Company

Historically, United Kingdom is the first country, which paved the way to the One Person Company through a precedent set in its famous case Saloman v. Saloman & Co. (1897) AC 22. It is a very successful form of business in many developed countries with strong legal structures for corporate framework. Countries like the United States of America, United Kingdom and other European Countries have adopted this particular structure for companies for nearly a decade now. Few other countries such as Australia, Singapore, UAE, Qatar, Turkey, Pakistan, China, etc. have also recognized the existence and the validity of a One Person Company.

Special Features of one Person Company

Section 3 of the Companies Act classifies One Person Company as a private company for all the legal purposes with only one member. All the provisions related to the private company are applicable to a One Person Company, unless otherwise expressly excluded.

The Salient features of a One Person Company include the following:

(i) Only a natural person who is an Indian citizen and resident in India- (a) shall be eligible to incorporate a One Person Company; (b) shall be a nominee for the sole member of a One Person Company. 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.

(ii) An One Person Company can be formed under any of following categories : a company limited by guarantee or a company limited by shares, or an unlimited company. Sec 3(2)

(iii) An One Person Company limited by shares shall comply with following requirements :

a) Shall have minimum [paid up capital of INR 1 Lac

b) Restricts the right to transfer its shares

c) Prohibits any invitations to public to subscribe for the securities of the company.

(iv) The words 'One Person Company' should be mentioned below the name of the company, wherever the name is affixed, used or engraved.

(v) The member of a One Person Company has to nominate a nominee with the nominee's written consent, and file it with the Registrar of Companies (RoC). This nominee in the event of death or in event of any other incapacity, shall become a member of an One Person Company. [See 4(1) (f)] The member of an One Person Company at any time can change the name of the nominee providing a notice to the RoC in such manner as prescribed. The nominee can also withdraw his consent at any time

(vi) The member of the One Person Company acts as first director, until the Company appoints director(s). One Person Company must have minimum of one director at any point of time and can appoint maximum 15 directors.

(vii) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.

(viii) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.

(ix) No minor shall become member or nominee of the One Person Company or can hold share withbeneficial interest.

(x) Such a Company cannot be incorporated or converted into a company under Section 8 of the Act.

(xi) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(xii) No such company can 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.

Incorporation one Person Company

The process for incorporating a One Person Company is very similar to that of a Company. The Steps to Incorporate One Person Company are stated below:

1. Obtain Digital Signature Certificate [DSC] for the proposed Director(s).
2. Obtain Director Identification Number [DIN] for the proposed director(s).
3. Select suitable Company Name, and make an application to the Ministry of Corporate Office for availability of name.
4. Draft Memorandum of Association and Articles of Association [MOA & AOA].
5. Sign and file various documents including MOA & AOA with the Registrar of Companies electronically.
6. Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.
7. Scrutiny of documents at Registrar of Companies [ROC]
8. Receipt of Certificate of Registration/Incorporation from ROC.

Exemptions Available to one Person Company

One Person Company has been bestowed upon with the following privileges or exemptions or exception from rules which apply to a Private Limited Company, which are as under:

i) Cash Flow Statement does not form part of the definition of "Financial Statements" of One Person Company, i.e.

Cash Flows will not be a part of the Annual Financial Statements in the case of a One Person Company. **[Sec 2 (40)]**

ii) The Annual Returns of a One Person Company shall be signed by a Company Secretary. However, in a case where there is no Company Secretary appointed or the Company Secretary is not present, then, in that case the said Annual returns can be signed by the Director of the company. **[Sec 92]**

iii) It is not mandatory for a One Person Company to call and hold an Annual General Meeting.**[Sec 96]**. Furthermore, provisions of **Sec 98** (Power of Tribunal to Call meetings of members, etc.) and Provisions from **Sec 100 to 111** (provisions relating to holding and the procedure for General Meetings, like notice, etc.) are not applicable to such a company. It shall be sufficient compliance if the resolution is communicated by the member to the Company and entered into the minutes books as required to be maintained under section 118 and signed and dated by the member and such date is deemed to be the date of the meeting for all purposes. **[Sec 122]**

iv) Similarly, in case of Board of Directors has only one Director on the Board of Directors of a One Person Company, then it shall be sufficient if the resolution by such director is entered in the minutes book required to be maintained as required by Section 118 and signed and dated by the Directors and such date shall be deemed to be the date of meeting for all purposes. **[Sec 122]**

v) Financial Statements of a One Person Company shall be approved by One Director and must be submitted to the Auditor for his report thereon. **[Sec 134]**

vi) In case of the report of the Board of Directors, it must be signed by the One Director and be attached to the Financial Statements and should speak in detail and explain and comment on every reservation, qualification and adverse remark of the Auditor. The Auditor Report shall also be attached to the Financial Statement in the same manner as in the case of Private Limited Companies.**[Sec 134]**

vii) In the case of a One Person Company, the limitation period for the filing of Financial Statements before the Registrar of Companies is 180 days from the closure of the financial year. **[Sec 137]**

viii) A One Person Company needs to have a minimum of one Director but to a maximum of 15 Directors. But the said limit can be increased by passing a special resolution as in the case of any other company.**[Sec 149]**.An individual who is a member shall be deemed to be the first Director of a One Person Company until director(s) are duly appointed by the member according to the provision of the Act. **[Sec 152]**

ix) For the purposes of holding Board Meetings, in case of a One Person Company which has only one director, it shall be sufficientcompliance if all resolutions required to be passed by such a Company at a Board meeting are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. For other One Person Companies, atleast one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days. **[Sec 173]**

Prospectus of one Person Company as new Business Ownership Concepts in India

The Companies Act 1956 mandated a minimum of two shareholders in order to constitute a company. It was a hurdle for aspiring entrepreneurs to incorporate a company and also an obstacle for the growth of the Indian economy. Such entrepreneurs were left only with the option of starting a sole proprietorship. This concept of One Person Company aims at bringing in the unorganized business sector into the form of organized business

[illegible] by conferring them the status of a private limited company and also promotes entrepreneurship by providing various incentives and exemptions to persons aspiring to establish a One Person Company. The introduction of One Person Company is a move that would encourage corporatisation of micro businesses and entrepreneurship. A One Person Company is expected to have a [illegible] future and it will be embraced as a most successful business concept. The reasons behind it are:

1. Limited Liability Protection to Directors and Shareholder
2. Legal Status and Social Recognition for the Business
3. Complete Control ofthe Company withthe Single Owner
4. Exemptions and therefore have lesser compliance related burden.
5. Easy to Get Loan from Banks
6. Easy To Manage
7. Separate Legal Identity and Perpetual succession,etc.

One Person Company provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. One Person Company will give the young businessman all benefits of a private limited company and hence they will have access to credits, bank loans, limited liability, legal protection for business, access to market to sell in the name of a separate legal entity and hence would encourage entrepreneurship. One Person Companies would also be the most apt for Indian entrepreneurs who wish to enter the foreign markets, joint ventures with foreign corporations and tap foreign markets.

The concept of One Person Company has done well in European countries, South East Asian Countries, America, etc. the same is helping in strengthening the economy of the countries. Dr. J. J. Irani recommended One Person Company to organise the unorganised Sole Proprietorship sector in India. This will be India's entry to the Global Economy. Small entrepreneurs will grow in their entrepreneurship, be it weaver, traders, artisans, small to [illegible] level entrepreneurs, One Person Company is a bright future for them to grow and to get a recognition globallyalongwith a significant growth in Indian economy benefiting the country on the global level.

The first OPC in India was incorporated on 28th April, 2014 at Delhi under the banner 'VIJAY CORPORATE SOLUTIONS OPC Pvt. Ltd.' Mr. Vijay Kumar Sarma is the only director and shareholder of the company. At present there are about 3,740 one person company incorporated in India. (https:// connect2india.com/in/index.html)

Conclusion

The concept of One Person Company is advantageous both for the regulators and the market players. From regulators perspective, One Person Companies by organizing the unorganized sector of proprietorship will make the regulation of these entities convenient and effective.

Further, the conferment of the status of private limited company on a One Person company will not only limit the liability of sole entrepreneurs but also provide access to market players to various credit and loan facilities and hence would encourage entrepreneurship. This concept, if implemented properly, will act as a big incentive for small entrepreneurs and thereby will boost the economic growth of the country.

However, this concept has been criticized on some grounds. Though OPC offers many of the benefits of a Company, it still has significant compliance requirements and tax disadvantages in some instances, when compared to a proprietorship.

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