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EMERGING TRENDS OF ONE PERSON COMPANY IN INDIA

Belal Allail

Ph.D. Research Scholar in Faculty of Law , Aligarh Muslim University , Uttar Pradesh , 202002 , India

ABSTRACT In 2013, India introduced the Companies Act, 2013, the Act, has opened the new doors of opportunity in the field of entrepreneurship in India. This Act came into force in April 2014. It has introduced some new concept in the company law which were unknown before the Companies Act, 2013. This article comprehensively examines the idea of "one person company" in India as a distinct legal entity along with the progressive development of OPC in India and else. Furthermore, this article also focuses on the distinctive features of OPC and it is pros and cons.

KEYWORDS : One Person Company , Evolution , Law and Procedures

INTRODUCTION

The notion of One Person Company (OPC) in India come into existence bythe Companies Act, 2013.Prior to this Act, the concept of the One Person Company was unknown in India. This Act has heralded new phase of revolution in the organised commercial business in the era of globalisation and liberalisation in India. Hence, it is a radical concept which legally incorporates OPC with only one person. Although the concept of OPCs is resembledto the sole-proprietorship, as a separate legal entity with different from it is a proprietorship, promoter and with a slight difference of that, the liability is confined to only business assets. Although, in proprietorship, the liabilityis not restricted to some limit and creditors could control of particular assets,e.g. house, bank account etc. these assets may be used to resolve the dispute of business liabilities. Although the OPCs can administer and undertake its commercial or corporate affairs like the sole proprietorship along with the status of the company in India.Furthermore, the concept of OPC is new in India,but it has been reachedadvanced stages in some developed countries like UK, USA, Singapore, China, and some European countries.

In an OPC, only one person is enough to form a company ,where he/she will be a shareholder as well as director of the company. Moreover, the OPC is relaxing from complying with the sophisticated red-tapism. In the companies Act, 2013, there are sections 96, 98,100, 111, are not applicable to the OPC. Hence, it is a clearcut indication of industrial progress and development to flourish the OPC in India.

MEANING OF ONE PERSON COMPANY (OPC)

A general definition of the company is that it is an association of the peoples which has been created by law as a legal entity in order to carry out commercial or industrial activates. In English Law, a company is defined as a body corporate or corporation generally registered under the Company Act or other similar legislation. But the One Person Company (OPC) is slightly aberration to the traditional definition of the Company. Thus, OPC is a combination of a sole proprietorship. It incorporates to conduct the commercial activates by one person. Therefore, OPC is a single person limited liability company that requires single shareholder of a natural or legal person. Meaning thereby the ownership of the OPC held within the exclusively in one hand.

The ministry of corporate affairs has familiarised the notion of OPC in India with the threshold of paid-up share capital exceeds fifty lakh or its average yearly turnover of immediately preceding of three consecutive years exceeds to two crore rupees, then One Person Company has to convert itself into the private or public company. OPC has defined the Companies Act,2013, under section 62(2) that OPC "as a company having only one person."Although previous Company Act, 1956, required minimum two and maximum fifty persons to form a company. However, the person must be a natural person of Indian origin or residing at least for a duration of one hundred and eighty-two days throughout the immediately preceding one financial year.Furthermore, the subscription of the name of one person is necessary to mention in the memorandum along with the compliance the terms and conditions as mention the Companies Act, 2013. According to section 3 (1) (c), the sole person must nominate a nominee so in the case of death or incapacity the nominee looks after the affairs of the company. The consent of the nominee must be reduced into writing and must be filed with the register of the company (ROC) along with a memorandum of association and article of association.

Thus, the principle reason behind the consideration of the OPC is to promote and encourage the organised business by the single person along with the limited liability. Eventually, the idea of OPC has supported only one promoter and founder of the company. Thus, it is a significant development in company law in India which was introducedwith the object of to encourage the self-employment with a legal framework to regulate the corporates affairs of the company. Moreover, OPCrequiresonly one person whoestablishesabusiness in India with a little endeavour to set up acorporate entity. Thus, The OPC will act as a bridge between the proprietorship and private company to establish the company under the protection of the Indian Companies Act, 2013.

Moreover, OPC will promote the individual to commence their business of low-risk capability. It provides sole control of one person in a company which is only director and shareholder. Hence, it separates the legal entity which is protected and regulated by the rule of law. Thus, the single person who is unable to accomplice to commence the private limited company may likewise consider it.The concept of the OPC is a step towards empowering the micro business entrepreneurship within the legal framework.

EVOLUTION OF OPC

The concept of the OPC is not new in some developed countries of the world.UK, USA, Singapore, China, Australia, Qatar and some European countries have incorporated the concept of OPC long back.However, it was introduced in India recently by the ministry of corporate affairs in India. Thus, the UK is the birthplace of OPC,and later China entered it in 2005.A couple of different nations have additionally given the legal status of OPCs. Nowadays the notion of the One Person Company (OPC) existed in many countries on the globe but the credit for the establishment of One Person Company (OPC) in history goes to England. UK is the first country in the world which open the door of One Person Company (OPC) through a very important precedent established in a landmark case of Saloman v. Saloman& Co which afforded statutory status to OPC in England. In this case, House of Lords found the doctrine of the separate legal entity of the company. Hence, a company is distinct from it is shareholders, and it's not an agent of shareholders.

This case also recognised the notion of 'One Person Company', therefore in deciding the case Lord Macnaghten pointed out that "it does not matter whether the power to control the company is within only the hands of one person as long as the shares are fully paid up". His Lordship also observed that the conclusion was not "contrary to the true intention of the Companies Act, or against public policy, or detrimental to the interests of creditors." moreover the notion of single person administer an OPC has it existed in Britain for a long time.

Hence, under the UK, company Act, 2016, the public and a private company can be incorporated with a single member. Section 7 of the said Act stipulated that public and a privatecompany are eligible for establishing the OPC by giving it aname in the MoA as well as fulfilling the requirement of the UK Act. Moreover, the USA also allow in various States to form the single member limited liability company (LLC). The European Commission on 14th September 2014, had proposed the directive of the European Parliament, and for Council on the promotion of single member, private limited liability company. The object of this directive is to facilitate investments across the member States.

EVOLUTION OF ONE PERSON COMPANY IN INDIA

The Companies Act 1956, was enacted on the recommendations of the Bhaba Committee set up in 1950 with the question unite the current corporate laws and to give another premise to corporate activity In India. Thus. With the enactment of the Company Act, 1956 repealed the company Act, 193.The Companies Act, 1956, has since given the legal structure to corporate entities in India. The requirement for streamlining this Act was felt now and again as the corporate sector developed in pace with the Indian economy, with upwards of 24 amendments occurring since 1956.It provided that a minimum of two or maximum of fifty members are required to incorporate a company in India. Hence, it is neither express nor implied support for the idea of One Person Company India. Therefore, the notion of One Person Company (OPC) come into existence by the Companies Act, 2013; it expressly mentions under section 2(62) that One Person Company (OPC) means a company has exclusively one person as a member.

It a revolutionary concept for the progress and development of the affairs of entrepreneurship in India through the one person. Although it was first recommended by Dr JJ Irani in 2005, in it is reportedthe committee has observed and recommended that the concept of the One Person Company may be introduced with the following characteristics.

"With increasing use of information technology and computers, the emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the marketplace 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 Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Thus, such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters".

(a) The One Person Company (OPC) may be registered as a private Company with the one member and one director
(b) Suitable safeguards in the situation of the death or disability of the one person should be afforded through the appointment of the individual as a nominee Director. On the death of the original director, the nominee should manage the affairs of the company till the transmission of the share to the legal heirs of original shareholder
(c) Letters 'OPC' to be suffixed with the name of One Person Companies to distinguish it from other companies.

INCORPORATION OF OPC IN INDIA

Acquire the digital signature certificate (DSC) for the proposed Director

Acquire the Director Identification Number(DIN) for the proposed Director

Choice the appropriate name of the company and apply to the ministry of corporate office

Prepare the Memorandum of Association (MoA) and Articles of Association (AoA)

Endorse and files many legal documents including MoA, AoA, with the Register of the company.

Payment of requisite fee along with stamp duty to the ministry of corporate affairs Scrutiny of the document at Registrar of Company(ROC)Obtain the certificate of incorporation/ registration form (ROC)

TYPES OF OPC IN INDIA

The Companies Act, 2013, permits five kindsone person companies which can be incorporated in India:

- OPC limited Shares
- OPC limited by guarantee with a share capital
- OPC limited by guarantee without share capital
- Unlimited OPC with Share Capital
- United OPC with Share Capital

https://indiancaselaws.wordpress.com/2015/09/16/one-person-company-under-companies-act-2013/

DISTINCTIVE FEATURES OF OPC IN INDIA

Every general meeting of the Board of Directors needs to be held in the half of the calendar year and not more than 90 days gap between two meetings. However, such condition is not applicable to the OPC.[15] The requirement of section 174 of the above mention Act is not required in the OPC. Thus, only one director hasengaged in the OPC. Moreover, section 118 of the Act above, mention that all the business of the company have been at the transacted meeting of the board must be reduced into the Minutes book. Thus, the provisions of the sections 98,100 to 111 are expressly providedwith that condition of the general meeting not required in the case of OPC.

MEMORANDUM OF THE COMPANY

The memorandum of the Association (MoU) must provide the name of the company as a private limited, the object of the company, liability of the members and the amount of the company on which it incorporated. Moreover, in OPC,name of the person must be mentioned in (MoU) who succeeds in case of the death or incapacity of the director to hold his/her place.

PERPETUAL SUCCESSION

The OPC is a legal entity distinct from the shareholders and having the characteristic of perpetual succession. It helps the entrepreneurs to flourish their business without any fear of loss of the position in the company. The creditors of the company are free from fear and hindrances. However, the company have only one shareholder and director and all the affairs of the company under its control. The OPC has the character of perpetual succession after it being incorporated. Thus, the OPC is also an artificial legal entity separate from its owner. Hence, the creditors should be warned that their claims against the company cannot be pressed against the owner.[16]

BOARD OF DIRECTOR OF OPC

The company have Board of Director, which is consisting of minimum two and maximum of fifteen Directors. The three directors in public company, two in the private company and only one director are required in the OPC. In case of more than the fifteen directors, special resolution must be filed to appoint the directors beyond the prescribed limit.When the articles of the company are silent about the appointment of the directors than subscribers to the MoU who are the person must consider the director of the company to the directors are adequately appointed.Moreover, the OPC can be registered as a private company with a single director. Therefore one Director is required to incorporate the company as one person company and one director shall be the sole shareholder in the company.

RULES MANDATORYFOR OPC

In the OPC, the only natural person who is an Indian citizen and has been residing in India can incorporate OPC. The person who stayed in India forthe past 182 days preceding to the registration of OPC. Moreover by this means the other legal entities like the society, corporation and non-Indian citizen are not eligible to incorporate the OPC in India. Thus only the natural person who is an Indian citizen can incorporate the OPC in India. Furthermore, sucha person cannot be entitled to incorporate or be a nominee of more than one OPC in India.

NOMINATION OF PERSON

In OPC, the shareholder must nominate the name of another person who will be shareholders in the situation of death or incapacity of the real shareholder. The name of a nominee must be mentioned in the MoA of the company. The consent of the nominee must be obtained before the mentioning his/her name as the nominee of the company. However, the nominee with free will can withdraw as the nominee of the company only by the giving the notice to the sole member of the company. Hence, it is mandatory for the director of the company to appoint another member as a nominee within 15 days.

LIMITED LIABILITY

In the OPC the liability of its shareholders is limited to the value of shares they have invested. Thus the liability of the director is limited to the business asset. Therefore, the OPC is different from the sole-proprietorship where the liability is unlimited,and the creditors may keep the personal belongings to settle the business claims.

WINDING UP OF THE OPC

The winding or Strike off OPC in India is carried out under recently notified rules Companies (Removal of Names of Companies rules 2016), which is regulated by section 248 of Companies Act,2013.The winding up of the company filed under the new norms announced by the ministry of corporate affairs. The name of the company can be removed from the register of the companies by the registrar by filing the STK-2 form. The section 248 to 252 granted the vast power in the hand of the register to close the business of the company if:

- If the company does not initiate its business within one year from date of incorporation
- The company failed to carry any business or operation or operation for a period of two immediately preceding financial years, and it has not applied any application for acquiring the status of a dormant company.

Whereas in such circumstances the Register has the power to take away the name of the company from the register of the company by giving notice to the company as well as Director of the company.

VOLUNTARY WINDING UP OF OPC

The company can be incorporated by voluntary removing its name from the register of companies through the STK-2. By using such form, the company be free from all the liabilities and passed special resolution from the removal of the company name form the register of the company. After the filing of an STK-2form, the register of the company makes the sure discharge of liabilities and obligation within the reasonable time. Thus, the register of the company (ROC) would issue a public notice regarding the winding up of the company.

REQUIREMENTS FOR FILING FORM STK-2

The rules for winding up of the company under the procedure of the STK, whether the company is private limited company, one person company (OPC), limited company, can apply for the closure of business by filling the following requirements

- Indemnity bond properly indorse by every director inform STK-3
- A declaration that accounts consist of assets and liabilities made up to a day, not exceed 30 days from the date of application and endorse by a charted accountant
- Affidavit in the form stk-4 by each director
- Copy of the special resolution which must be certified by all Directors except OPC of 75 % of the members of the company.
- Declaration about pending litigation if in case of involving the company

The company under the STK-2 form accepted by the Register of the company than it will dissolve under section 248 of the Companies Act, 2013. It ceases to operate as a company under the Company Act, and its certificate of incorporation deemed to be cancelled.

ADVANTAGE OF OPC

- The Companies, Act, 3013, define the private limited company under section 2(68). Therefore the OPC could entail the provisions pertinent to the private companies. Be that as it may, OPC has been furnished with various exclusions and hence have the lesserconsistency related burden.
- The OPC help to get unorganised sector into the organisedsector of the private limited company. The small business may enter into corporate entities through the incorporation of OPC in India.
- OPC being the private limited and it is one of the most acceptable business in the world. It provides the sense of confidence to carry out the corporate legal affairs in the company.Itacquires the legal status and safeguards form the judicial authorities.
- The OPC model help to take the quick decision in the situation of the exigency in the affairs of the company. Thus, sole decision-making body in the company makes it unique in the matter of taking all decision with minimum compliance of the requirement of law.
- The OPC is immune from holding the annual or extraordinary meeting of the company. Hence, the only resolution must be communicated to its members. The entry of the resolution must be mentioned in the minute's book, signed and dated.

DISADVANTAGE OF OPC

The maximum and minimum limit of a member of OPC is only one it prohibit the other person to be a member of the OPC as well as it prevents to the minor to become the member or hold the share of the company. It also imposed the restriction to the other persons to become the member of the company except for the natural person who is an Indian citizen and resides must be eligible to incorporate OPC in India.

- The OPC is proper only for the small enterprises if the maximum paid limit exceed more than two crores than it would convert into the private limited company.
- The section 2.1(1) of company Act, 2013 restricted the number of member of OPC only natural person having citizenship and residing in India is entitled to incorporate an OPC in India. Thus, the juristic person, artificial persons are strictly prohibited.
- The Non-Banking Financial Investment activities along with Investment of securities of anybody are prohibited in OPC ,and it cannot be converted a company under section 8 of the Company Act, 2013.
- The person only eligible to incorporate or be the nominee of the only Company and one person can incorporate nominate only

one member in OPC not more it.

- The OPC is immune from the IT. Thus such company must be kept in the same tax slab as other private company keep for the purpose of taxation. Therefore, the OPC concept is less profitable because it imposing a more financial burden.
- The notion of the perpetual succession of the membership of the OPC is very controversial that member is carrying the membership even after the death or retirement.
- In OPC there are no sweat equity shares or employee stock ownership plan to promote the interest of employees.

CONCLUSION

The emergence of the concept of OPC in India would pave the way for the regulators and market players and market approachability to the numerous credit and loans. It also promotes entrepreneurship of small business in India. The notion of OPC would provide the innumerable probability to the sole proprietors and entrepreneur. They can take the benefits of limited liability and corporatisation. Moreover, the OPC will provide the great accelerator to individual entrepreneurship and affords an opportunity those wanted to commence own business with a proper legal framework in India. It also opens up new vistas of corporate. Hence, in 2014, the ministry of corporate affairs notified the companies' incorporation rules, 2014 under the Companies Act, 2013, it provides the basic framework for OPC. Further, it saves the time and energy and resources relaxation from various legal formalise. It helps to economic growth and causes the employment opportunity in India. Furthermore,the One Person Company (OPC) has been proved an impetus to promote entrepreneurship in India. It provides the expeditious mechanism where individual without compliance the plethora of legal requirement can incorporate its company. The OPC is advantageous for both regulators and market. It organised the unorganised sector of proprietorship and regulated it more conveniently and effectively. Moreover, it is useful for small entrepreneurs who want to establish their business as a distinct identity with lesser legal compliance and beneficial in comparison to a private company while holding the limited liability. However, despite the outstanding feature of the Companies Act, 2013, it has a particular shortcoming. The Companies Act, 2013, imposed the condition that only Indian can incorporate an OPC in India should be relaxed, and a foreigner should be allowed to open OPC in India. Remove the differences between natural and artificial person. Moreover, the Income Tax Act, 1961, should recognise the OPC.

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