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One Person Company: A Critical Analysis

KEYWORDS

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ABSTRACT *The Companies Act, 2013 opens a new segment for organizing a business in India by providing the concept of OPC which is a legitimate way to incorporate a company with only one member. OPC is similar to the existing concept of Sole-proprietorship with separate legal entity distinct from its proprietors and promoters. OPC can run and undertake its business like Sole-proprietorship with the status of Company. It will not only provide them an opportunity to vent into something new but will also help them to access certain facilities like bank loans, legal shield for their business and a thorough access to the market as a separate entity.*

INTRODUCTION

One Person Company' (OPC) is a revolutionary concept is a step forward to facilitate more business friendly corporate regulations in India. The Companies Act, 2013 aims pave the way for a more modern and dynamic legislation, to enable growth and greater regulation of the corporate sector in India. Till recently, if you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of two shareholders. So, for the person wanting to venture alone, the only option was proprietorship, an onerous task since it is not legally recognized as a separate entity. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc. all in the name of a separate legal entity. OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc all in the name of a separate legal entity. Single entrepreneur can manage his business on his own. It can have only one member at any point of time. It may have only one director but as per the provisions of section 149 can however appoint more than 15 directors after passing a special resolution. So, the key difference between OPC and sole proprietorship is the way the liabilities are treated. For instance, in an OPC the promoter's liability is limited in the event of a default or legal issues. Also one person can take a decision without waiting for other director's consent and wasting of time and energy in convincing other directors can be avoided. OPC Company is like an One Man Army. The compliance burden is very less and the liability of the members is very limited is an added advantage. OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act,2013. "OPC should boost the confidence of small entrepreneurs".

Historical Development of One Person Company:

One person companies are in existence in certain countries. In India this concept has been mooted by the Ministry of Corporate Affairs by allowing One Person Companies in India in line with UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries. It is a right thinking in right direction by the Ministry of Corporate Affairs. One Person Companies have been in existence in UK for several years now. China allowed formation of OPCs as recent as in 2005. A few other countries have also given the legal status for OPCs.Historically, United Kingdom is the first one, which paved the way to the one man company through a precedent set in its famous case Saloman v. Saloman & Co. (1897) AC 22. Section 7 of the UK Companies Act, 2006 deals with method of forming company. It provides that -

(1) A company is formed under this Act by one or more persons—

(a) Subscribing their names to a memorandum of association (see
Section 8), and

(b) Complying with the requirements of this Act as to registration

(2) A company may not be so formed for an unlawful purpose.

The Concept One person Company :

One Person Company (OPC) is defined in sub section 62 of section 2 of the Companies Act, 2013 which reads as follows : "One person company means a company which has only one member" The important features of the One Person Company (OPC) – OPC has only one person as a member/shareholder. OPC can be registered only as a Private Company. OPC may be either a company limited by share or a company limited by guarantee or an unlimited company. An OPC limited by shares shall comply with following requirements: Shall have minimum paid up capital of INR 1 lac o Restricts the right to transfer its shares o Prohibits any invitations to public to subscribe for the securities of the company. An OPC is required to give a legal identity by specifying a name under which the activities of the business could be carried on. The words "One Person Company" should be mentioned below the name of the company, wherever the name is affixed, used or engraved. The concept of OPC is still in its nascent stages in India and would require some more time to mature and to be fully accepted by the business world. With passage of time, the OPC mode of business organization is all set to become the most preferred form of business organization especially for small entrepreneurs. The benefits emanat-

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ing from this concept are many; The One Person Company concept holds a bright future for small traders, entrepreneurs with low risk taking capacity, artisans and other service providers.

The salient features of OPC are:

1.Only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company. *Explanation:* The term "Resident in India" means a person who has stayed in India for a period of not less than 182 days during the Immediately preceding one calendar year.

2. The Shareholder shall nominate another person who shall become the shareholders in case of death/incapacity of the original shareholder. Such nominee shall give his/her consent and such consent for being appointed as the Nominee for the sole Shareholder. Only a natural person, who is an Indian citizen and resident in India shall be a nominee for the sole member of a One Person Company.

3. Must have a minimum of One Director, the Sole Shareholder can himself be the Sole Director. The Company may have a maximum number of 15 directors.

Advantages of OPC

1. Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.
2. Personality driven passion and implementation of a business plan.
3. The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.
4. Personal commitment to the business which is a sole idea of the person and close to his heart.
5. It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.
6. A One Person Company is incorporated as a private limited company.
7. It must have only one member at any point of time and may have only one director.
8. The member and nominee should be natural persons, Indian Citizens and resident in India. The term "resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
9. One person cannot incorporate more than one OPC or become nominee in more than one OPC.
10. If a member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being Member in one OPC.

Conclusion:

OPC Company is like an One Man Army. The compliance burden is very less and the liability of the members is very limited is an added advantage. OPC is expected to benefit people who are into self employment and many small scale sectors. It is a remarkable feature of the Companies Act, 2013 but still lots of limitations are showing in one person companies under companies Act 2013 these are First A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company second An OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate. Also there has been criticism in certain quarters against the formation of such a company as it may give room for evasion of public funds and tax liability by an individual