ONE PERSON COMPANY – REVOLUTION FOR INDIVIDUAL ENTREPRENEURSHIP!

Many businesses start as one person's idea. The creator is often an entrepreneur who spots a gap in the market or a commercial opportunity. He/ She turns the idea into a marketable product or service. One Person Company (OPC) is an innovative concept giving vent to the economic activity for aspiring business entrepreneurs. It provides a whole new bracket of opportunities for those who look forward to start their own ventures with an organized business structure. It is rather encouraging for budding entrepreneurs because though it has all benefits of a private limited company, it runs with extremely few human, financial and infrastructural resources while offering products or services to a large customer base.

In the words of the former Corporate Affairs Minister, Mr. Sachin Pilot, "One person company (concept) is quite revolutionary... This will give the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, access to market, limited liability, and legal protection available to the companies. The amount of compliance by one person company will also be much less in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen cornering profits, the one person company will have direct access to the market and the wholesale retailers."

The concept of OPC is not altogether a new concept. It has been prevailing and successful in many countries like the United Kingdom, United States, China, United Arab Emirates, etc.

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The idea is to give small businesses an organised structure in terms of access to credits, bank loans, limited liability, legal protection for business, access to market etc by ensuring accountability through certain minimal but critical compliances. The law pertaining to OPC is based on this philosophy.

OPC can be incorporated only by a naturally born Indian person resident in India. It can be a company limited by guarantee or limited by shares. As against a private limited company, OPC requires only one member to be a shareholder and subscriber to the Memorandum of Association. A minimum paid-up capital of INR One Lakh is required in case of OPC limited by shares. This member can himself be a director of the company or may appoint one or more directors upto maximum fifteen directors in the company.

Further, such member has to appoint a nominee who in case of death or disability of the member will be the default or ad-hoc member of the company. A minor cannot be appointed as a nominee. This provision ensures perpetuity and continuity to the life of the company. The golden rule of “members may come and go, but the Company must live on” holds good.

A person can be a member of only one OPC. Similarly he cannot be a nominee of more than one OPC. In case where a member becomes a member of another OPC by virtue of his being a nominee in that OPC he is required to meet the criteria within a period of 180 days.

The golden rule of perpetuity is one of the primary and most important differences between a proprietary concern and OPC where though the liability of the member is limited to the

amount invested, there is an assurance to the third parties such as the customers, creditors, etc about the succession planning and operation of the OPC.

Another important point of difference is that the law recognises the independent nature of this entity whereby the member is a different person from the entity. An OPC is required to have 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. In the landmark case of Solomon v/s Solomon & Co., 1897, The House of Lords held that Solomon & Co. was a separate legal entity from Mr. Solomon and debts of Mr. Solomon were not debts of the company.

This is a very important protection for financial institutes lending finance for the businesses since the personal liabilities of the sole member are not recoverable from the business. Because of a structured organisation, Banking and financial institutions are less apprehensive in lending money to OPC as compared to a proprietary firm. In most of the situations Banks insist the entrepreneurs to convert their firm into a Private Limited company before sanctioning funds. So having the status of OPC rather than a proprietary firm definitely gives an edge to the owner.

Since OPC is a one member company certain systems of operation applicable to private or public limited companies do not apply here. General meetings are held in private or public companies in order get the assent or dissent of the members on matters put forth in the meeting. In case of OPC there is only one member and thus the provision to convene general meetings stands ruled out. In case where any business is required to be transacted at an Annual General Meeting, or other General Meeting of the company by means of an ordinary or special resolution, it shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes book which is required to be maintained U/s 118 and signed and dated by the member and such date shall be deemed to be the date of meeting for the purposes of Companies Act, 2013 (the Act).

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Similarly, in case where the OPC has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a company at a board meeting are entered in a minute 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 the Act.

Till the birth of OPC all small entrepreneurs wanting to have a structured organisation were forming private limited companies. The drawback for them was that they mandatorily required at least one other person to be a member holding a meagre one share apart from themselves. The more the number of members the more varied opinions and operational difficulties to collectively arrive at a decision. This was rather a lengthy and a time consuming process. The single owner concept, gives complete control to the member and leads to speedy decision making and conclusion of issues for better operation.

The Act also provides simplicity in terms of procedures for signing and filing of documents for OPC. Section 92 of the Act states that the annual returns shall be signed by the company secretary or where there is no company secretary, then by the director of the company. As regards financial statements, OPCs are required to maintain balance sheet, statement of profit & loss or income and expenditure in case of a non-profit organisation and a statement of

changes in equity, if applicable. Further they are required to maintain any explanatory notes annexed to, or forming part of, any document referred above. These financial statements can be signed by the director himself.

OPC thrives on the fundamental principle of ease in the operation of business for small entrepreneurs. The law has thus taken care of aspects where the entrepreneurs need not spend their precious time and resources in meeting the legalities, thereby putting the business at a secondary level. It has given them enough space in terms of exemptions from certain legal provisions.

Having said this, the Act takes special care whereby third parties are not put at any risk because of the nature of OPC as an entity. The Act requires that where OPC limited by shares or by guarantee 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 certainly does not apply to contracts entered into by the company in the ordinary course of its business. The company is required to inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors within a period of fifteen days of the date of approval by the Board of Directors. The Act provides for stringent punishment for failure to inform the Registrar within the prescribed time frame with a fine of INR 25,000 which may extend to INR 1,00,000/- or imprisonment upto six months or both to every officer in default of the OPC.

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These checks and balances are beneficial for both the OPC as well as the third parties since it helps in nurturing faith of the third parties in the OPC. The law ensures that while giving a freehand and concessions to OPC in operations, it does not function scot free at the cost of the third parties.

Taxation is another important aspect and a deciding factor for small entrepreneurs to choose whether to operate as a sole proprietary concern or OPC. From taxation point of view, however, OPC will be taxable as any other company. This is a major drawback of OPC as compared to sole proprietorship business where they enjoy the tax rates applicable to individuals.

An important form of business namely Non – Banking Financial Investment activities cannot be undertaken by OPC. This includes investment in securities of any body corporates.

Further, it cannot convert voluntarily into any other kind of company unless two years have expired from the date of its incorporation, except where the ceiling is crossed (paid up share capital) beyond INR Fifty lakhs or its average annual turnover during the preceding three years exceeds INR Two crores. During such situations OPC is mandatorily required to convert itself into a private or a public limited company by virtue of the paid-up capital or the turnover. Accordingly, the OPC is required to inform the Registrar within a period of 60 days from the date it crosses the ceiling about such conversion. Thereafter, the OPC shall take steps within a period of six months from the date on which it crossed the ceiling to convert itself into a private or a public limited company.

Vice versa a private limited company other than a Section 8 company (Not for Profit Company) may voluntarily convert itself into OPC if the paid up share capital is INR Fifty lakhs or less or average annual turnover during the preceding three years is INR Two crores or less. For conversion, the company has to pass a special resolution in the general meeting and obtain a no objection certificate from members and creditors before passing such a special resolution. A copy of such special resolution shall be filed with the Registrar. The next step would be to file an application for its conversion into One Person Company alongwith the following documents, namely:-

(i) declaration by directors by way of an affidavit duly sworn confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is INR Fifty lakhs or less or average annual turnover is less than INR Two crores, as the case may be;

(ii) the list of members and list of creditors;

(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and

(iv) the copy of No Objection letter of secured creditors.

The provisions for conversion from OPC to a private or a public limited company and otherwise ensure that the nature, purpose and identity of OPC is protected but at the same time do not restrict the growth of the company.

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The legalities involved in the formation and operation of OPC definitely require the skills of a company secretary because of his/ her in depth knowledge of Company Law and other Corporate Laws. Therefore, OPC is a new avenue that has opened up for company secretaries in practice.

All in all OPC has its own pros and cons. But even then it is an innovative and an economically viable business model for new entrepreneurs and also for family run businesses presently having the status of a proprietary concern. The concept of OPC will provide tremendous opportunities for millions of people, including those working in areas like handloom, handicrafts and pottery. It is a brilliant concept which can operate at the grass-root level and will in turn give them global recognition. No doubt the private limited company model has been very popular and successful world over. But advantages of OPC compared to proprietary concerns as also private limited companies are many. Currently, the OPC model is new and hence will take sometime to sink in. But the concept of OPC has a bright future because it can operate as a progressive model wherein a businessman can kick start with meagre resources and flourish. He then has the choice of continuing at that level or take a step further to convert into a private limited company and move ahead.