One Person Company- a paradigm shift in the Indian corporate regime

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Abstract
Before the introduction of Company Act 2013, Sole proprietorship was the only option to do business single handed. But there was limitation of limited capital and unlimited liability. More ever there was problem of no separate legal entity .f you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of two shareholders. Due to this ,the person wanting to venture alone, have very less opportunities . Now, after the recent passing of the much-hyped Companies Bill, 2012, by the Rajya Sabha, there may be hope for the budding entrepreneur. The bill that aims to bring in sweeping changes in the corporate world has also opened the doors for the entrepreneur looking to set up a company all by himself. This has been made possible by bringing in the concept of One Person Company (OPC). Though this concept is new in India, it has been very popular abroad, including in Singapore, USA, even Europe. A one person company is a paradigm shift in the Indian corporate regime, bringing it at par with global standards. This paper is about prospects of one Man Company in India.

Key words: Sole proprietorship, Company Act 1956, Company Act 2013, One Person Company (OPC)

Introduction

The revolutionary new concept of 'One Person Company' (OPC) has been introduced by the Companies Act, 2013. This concept of OPC was first recommended by the expert committee of Dr. JJ Irani in 2005. 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. Though the concept of OPC is new in India but it is a very successful form of business in UK and several European countries since a very long time now. The concept opens up spectacular possibilities for sole proprietors and entrepreneur who can take the advantages of Limited liability and corporatization but were held back in doing so because of the requirements of finding a second director or second shareholder. One person company is a new concept in India which has been introduced by the company's act 2013. In the old Companies act 1956 a minimum of two directors and shareholders were required to form a private limited company. However in case of a One person company, only 1 person is required who can be a shareholder as well as the Director. Hence the name, One Person Company.

Concept One Person Company

The concept of [OPC] is a new vehicle/form of business, introduced by The Companies Act, 2013 [No.18 of 2013], thereby enabling Entrepreneur(s) carrying on the business in the Sole-Proprietor form of business to enter into a Corporate Framework. One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the Act. Section 2(62) of the Companies Act, 2013 ("Act") defines OPC as a company which has only one person as a member.

Minimum requirements:

1. Minimum 1 Shareholder
2. Minimum 1 Director
3. The director and shareholder can be same person
4. Minimum 1 Nominee
5. Minimum Share Capital shall be Rs. 1 Lac (INR One Lac)
6. DIN (Director Identification Number) for all the Directors
7. DSC (Digital Signature Certificate) for all the Director

Terms and Restrictions of OPC

1. A person shall not be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
2. Minor cannot shall become member or nominee of the One Person Company or can hold share with beneficial interest.
3. An OPC cannot be incorporated or converted into a company under Section 8 of the Act. [Company not for Profit].
4. An OPC cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
5. An OPC cannot 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 Rs.50 Lakhs or its average annual turnover during the relevant period exceeds Rs.2 Crores i.e., if the Paid-up capital of the Company crosses Rs.50 Lakhs or the average annual turnover during the relevant period exceeds Rs.2 Crores, then the OPC has to invariably file forms with the ROC for conversion in to a Private or Public Company, with in a period of Six Months on breaching the above threshold limits.

Sole proprietorship and OPC

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 soleproprietorship 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**.**

Features of One Person Company.

1. One share holder:
This is the fundamental concept of a One Person Company. In fact, One Person Company is defined in the Companies Act as a Company which has only one member. A single shareholder holds 100 percent shareholding. The thing to be kept in mind is that the Company Incorporation Rules provide that only a natural person who is a resident of India and also a citizen of India can form a one person company. It means that other legal entities like companies or societies or other corporate entities cannot form a one person company. Further it also means that Non resident Indians or Foreign citizens cannot form a One person company. Further the rules also specify that a person can be a shareholder in only one One person company at any given time. It simply means an individual cannot have two different one person companies in his name.

2. One Director
The other important point is that a One Person Company may have only one director. But at the same time there is no bar on more number of directors. However, as per the Act, the total number of directors shall not be more than 15. As per the Companies Act, if nothing is mentioned in the incorporation document, it would be assumed the sole shareholder shall also be the sole director in the one person company and which shall be practically the case in most One Person Companies incorporated.

3. Nominee
This is a very important concept where the person forming the One Person Company has to nominate a Nominee with his written consent who, in the event of death or inability to contract of the owner of the One Person Company, shall come forward and take over the reins of the one person company. Please note that the requirements of being a resident Indian and citizen of India also apply to the nominee. Further if the person so nominated becomes the member of such a One Person Company and is already a member of another One Person Company, at the same time, by virtue of rules has to decide within 6 months which one person company he has to continue. One more thing, the member can change the nominee at any point of time. On the death of the sole member, the nominee shall be the person recognized by the company as having title to all the shares of the member. Such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable. On becoming member, such nominee shall nominate any other person with the prior written consent of such person who, shall in the event of the death of the member, become the member of the company

4. 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.

5. Freedom from compliance
One Person Company also gets freedom from complying with many requirements as normally applicable to other private limited Companies. Certain sections like Section 96, 98 and sections 100 to 111 are not applicable for a One Person Company. Some of these are mentioned below:

- No requirement to hold annual or extra ordinary general meetings. Only the resolution shall be communicated by the member of the company and entered in the minute's book and signed and dated by the member and such date shall be deemed to be the date of meeting.
- For the purposes of holding board meetings, in case of a OPC which 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 have the date of the board meeting for all the purposes under Companies Act, 2013.
- No requirement of preparing cash Flow in the annual financial statements
- Annual returns can be signed by the Director himself instead of A Company Secretary

6. 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.

7. Process of Incorporation:

The process of incorporation of a one person company is a very simple one.

First the sole shareholder shall get a Director Identification Number (DIN) as well as a digital signature certificate. Then he should apply for the name of the company. After that he should get the consent of the nominee in the prescribed forms. Then he shall file the consent along with the final incorporation forms with the Memorandum and Articles and other required documents. After that he shall receive the final incorporation certificate from the register of companies. Now he can commence business under the name. Please note that that the words ''One Person Company'' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

8. Conversion from one person company to private limited and vice versa

It is provided in the Act that when a One Person Company reaches a paid up Capital of 50 lakh rupees or more or when the average turnover of the company which is Rs. 2 Crores or more for a period of 3 years, then the company shall be converted into a private limited company after making the necessary changes in the memorandum of association and articles of association and shall comply with all the requirements of a private limited company. Conversion of a private limited company into a one person company- A private limited company which does not have a paid up capital of more than Rs. 50 lakhs or where the average annual turnover for the past 3 years is less than Rs. 2 Crores can convert itself into a One Person Company and enjoy the benefits as such.

The advantages of One Person Company

A One Person Company (OPC) Private Limited has many advantages as compared to Proprietorship firm.

1. Limited Liability Protection To Directors and Shareholder

All unfortunate events in business are not always under an entrepreneur's control; hence it is important to secure the personal assets of the owner, if the business lands up in crises. While doing business as a proprietorship firm, the personal assets of the proprietor can be at risk in the event of failure, but this is not the case for a One Person Private Limited Company, as the shareholder liability is limited to his shareholding. This means any loss or debts which is purely of business nature will not impact, personal savings or wealth of an entrepreneur.

2. Legal Status And Social Recognition For Your Business

One Person Company is a Private Limited Structure, this is the most popular business structure in the world. Gives suppliers and customers a sense of confidence in business. Large organizations prefer to deal with private limited companies instead of proprietorship firms. Pvt. Ltd. business structure enjoys corporate status in society which helps the entrepreneur to attract quality workforce and helps to retain them by giving corporate designations, like directorship. These designations cannot be used by proprietorship firms.

3. Complete Control Of The Company With The Single Owner

This leads to fast decision making and execution. Yet he/she can appoint as many as 15 directors in the OPC for administrative functions, without giving any share to them.

4. Helps for Testing of business model and enables Funding

The OPC business helps Startup Entrepreneurs to easily test the business model, a prototype and upon building a marketable product approach Angel investors, Venture capitalists for funding and easily convert into multi shareholder Private Limited company.

5. Easy to Get Loan from Banks

Banking and financial institutions prefer to lend money to the company rather than proprietary firms. In most of the situations Banks insist the entrepreneurs to convert their firm into a Private Limited company before sanctioning funds. So it is better to register your startup as a One Person private limited rather than proprietary firm.

6. Tax Flexibility and Savings

In an OPC, it is possible for a company to make a valid contract with its shareholder or directors. This means as a director you can receive remuneration, as a lessor you can receive rent, as a creditor you can lend money to your own company and earn interest. Directors' remuneration, rent and interest are deductible expenses which reduces the profitability of the Company and ultimately brings down taxable income of your business.

7. Easy To Manage and Freedom Compliances

OPC is one of the easiest forms of corporate entities to manage. Very few ROC filing is to be filed with the Registrar of Companies (ROC). No need to conduct Annual General Meeting (AGM)

The impact of OPC in Indian entrepreneurship

Though the concept of an OPC is still very new in Indian entrepreneurship and thus very revolutionary, it will take time for such a new concept to be incorporated with complete efficiency, but as and when the time will pass, an OPC will have a sparkling future and it will be embraced as a most successful business concept. The reason behind it is the incorporation of same is less paper work, one person can form a company without any additional shareholder, and if the member is willing to add shareholders, all he needs to do is to modify the Memorandum of Association and file it before Roc. Small entrepreneurs will grow in Indian entrepreneurship, be it weaver, traders, artisans, small to mid level entrepreneurs, OPC is a bright future for them to grow and to get a recognition globally. Foreign Investors will be dealing with one member to establish a corporate relationship and not with a score of shareholders/directors where there are more chances for disparity in Ideas, concepts etc for a business to grow. Any foreign company who wishes to establish in India through an Investment, through a merger or through a Joint venture will have to just lock the deal with the member of an OPC, and the venture will be expected to start sooner with more effective results. In upcoming years the impact of an OPC will be remarkable and it is a promising future for Indian Entrepreneurship. Expectedly, there will be good Foreign Investments, Joint Ventures, and Mergers etc. An OPC is doing well in European Countries, In United States, Australia the same is resulting in strengthening the economy of the countries. In India when the expert committee of Dr. JJ Irani proposed the concept of an OPC, it was solely aimed for the structured organized business, with a different legal entity altogether and to organize the private sector of the entrepreneurship, which indeed is expected to be done, alongwith a significant growth in Indian Economy benefiting the country on the Global Level.

Conclusion:

This is a concept that 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. Small entrepreneurs can now carry on their business in form of One Person Company (OPC) with status of separate legal entity. The concept is good for Entrepreneurs with new ideas and new ventures trying to explore the corporate world with minimum compliances and maximum benefits as exemptions. Various small and medium enterprises, doing business as sole proprietors, might enter into the corporate domain through OPC. The unorganized sector of the economy will find an outlet to show their entrepreneurial expertise. OPC will provide an escape route for the proprietor of the business unit to avoid unlimited liability. Instead registration of the proprietorship could have been made compulsory.

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