One Person Company In India: A Synoptic View In The Light Of The Companies Act, 2013

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Abstract
One Person Company (OPC) is a revolutionary concept that has been elaborately discussed in the Companies Act, 2013. It is one of the classifications of companies based on the number of persons. One Person Company (OPC) means a company which has only one individual as a member. Only natural-born citizens viz., small businessmen, entrepreneurs, artisans, weavers or traders among others can reap the benefits of One Person Company (OPC). Non-resident Indians cannot form an OPC. The shareholder shall nominate another person who shall become the shareholder in case of death/incapacity of the original shareholder. This epic-making concept benefits people who are engaged in self-employment and small business, encourages the sole proprietors to enter into the organized sector of business, boosts the confidence of small entrepreneurs, opens the avenues for more favourable banking facilities, particularly loans to sole proprietors. The persons who will form OPC will avail of the advantages of limited liability and the benefit of separate legal entity. On the flip side, it also suffers from criticism. In this paper, an attempt has been made to discuss about different facets of ‘One Person Company’ in the light of the Companies Act, 2013.

Keywords: Entrepreneurs, One Person Company, Natural-born citizens and Non-resident Indian.

Introduction
The concept “One Person Company” (OPC) is still very new in Indian context although this very concept was in existence in the countries like UK, USA, Singapore, China, Turkey, UAE and Pakistan. England was the 1st country which developed the concept through its decision in Saloman v Saloman & Co. Ltd. Finally in 1925, England gave statutory status to the concept and thus this country is deemed to be an innovator of OPC. The Companies Act, 2013 has brought about revolutionary changes in the Companies Act, 1956 and the introduction of the concept of ‘One Person Company’ is one of the changes that took place in the Companies Act, 2013. Such introduction has jerked the conventional form of a company. On 2nd December, 2004, an Expert Committee was constituted on Company Law under the Chairmanship of Dr. Jamshed J Irani, Director, Tata Sons. The said committee submitted its report on 31st May, 2005 and recommended for formation of “One Person Company”. At last, the concept of OPC was introduced in the Companies Act, 2013 on the recommendations of an expert committee appointed by the Ministry of Corporate Affairs which is deemed to be a landslide shift in the conventional form of a company.

Aim Of The Study
The aim of the study is to discuss the different facets of the One Person Company in the light of the Companies Act, 2013.

Methodology
The study is based on secondary sources of data/information. The data/information has been collected from different books, journals, newspapers, and relevant websites.

Review Of Earlier Studies
Das (2015) is of the view that OPC is like a One Man Army. The compliance burden is very less and the liability of the members is very limited. According to Kanungo and Dash (2016), the Act 2013 is more outward looking and attempts to align with international requirements. They also added that the new Act is a positive and welcoming step towards modernizing India’s company law and places India on par with corporate legislation elsewhere in the globe. It goes a long way in protecting the interests of shareholders and removes administrative burden in several areas. Dang & Sharma (2015) stated that the single entrepreneurs are in the need of a speedy mechanism to get incorporated in company form of a business and OPC seems to be the possible solution where the entrepreneurs are not required to fritter away their time, energy and resources on procedural matters. The main purpose for introduction of OPC was to encourage the sole proprietors, micro and small enterprises etc., to enter into corporate sector and to make their liability coextensive on the lines of international trends. [Lukey (2015)]
One Person Company: Meaning & The Concept
According to section 2(62) of the Companies Act, 2013, One Person Company (OPC) means a company which has only one person as a member where all the legal and financial liabilities are limited to the company only and not to its member. Here “Person” means a natural person. Natural person means an Indian citizen and Resident in India. Resident in India may be defined as a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year. OPC can run and undertake its business like sole-proprietorship with the status of company. It is one of the classifications of Companies based on the numbers of persons. OPC is basically a combination/hybrid of sole-proprietorship and company form of business.

Opc: Who Are Not Eligible To Become A Member Or Nominee
a) Minor
b) Non-Indian Nationals
c) Overseas Citizen of India
d) Non-Resident Indian
e) Company/LLP/A Body Corporate
f) A person incapacitated to contract
g) A person other than a natural person i.e. living human being

Procedure To Register A One Person Company
The following procedures are to be followed to register a One Person company:
a) Get Digital Signature Certificate (DSC) for the proposed Director(s).
b) Get Director Identification Number (DIN) for the proposed Director(s).
c) Choose Company Name and Apply to the Ministry of Corporate Affairs for availability of name.
d) Draft Memorandum of Association and Articles of Association (MOA & AOA).
e) Signing and filing of Documents including MOA & AOA with the Registrar of Companies electronically.
f) Payment of Requisite Fee and Stamp Duty to Ministry of Corporate Affairs.
g) Scrutiny of Documents at Registrar of Companies (ROC).
h) Receipt of Certificate of Registration/Incorporation from ROC.

Requirement To Form One Person Company
A person who is an Indian citizen and Resident of India will be only eligible to establish an OPC. Other mandatory requirements are: (a) One Shareholder, (b) One Director, (c) One Nominee (who will become the shareholder/director in case of death, inability and accident of the original shareholder, (d) Director Identification Number (DIN) for the Director, (e) Digital Signature Certificate for the Director, and (f) Minimum share capital of Rs.1 lakh.

One Person Company: Why
One Person Company (OPC) is preferred because of the following reasons:
a) A whole new bracket of opportunities is availed of by those who look forward to start their own ventures with a structure of organized business.
b) People who are engaged in self-employment and small scale sectors get benefitted from this new concept.
c) This concept will instill a sense of confidence, enthusiasm and motivation in the minds of the sole proprietors to enter into the organized sector of business.
d) It restricts the liability of the proprietors to the extent of the liability of the company.
e) This new concept i.e. OPC will bring the small and medium enterprises within the domain of corporate entity.
f) It will open the door for more favourable banking facilities, particularly loans, to such proprietors.
g) The persons who are interested to form OPC can enjoy the benefits which are availed of by the private limited company. They will have access to credits, bank loans, limited liability, legal protection for business etc. all in the name of a separate legal entity.
h) Millions of people working in areas like handloom, handicrafts and pottery may have tremendous opportunities if they form OPC.
i) The amount of compliance by OPC is much less in terms of filing returns, balance sheets, audit etc.
j) As there does not exist any fear of unlimited liability that may lead to threatening their very existence, so the entrepreneur can commence business fearlessly and unhesitatingly.
k) Formation of OPCs will strengthen the economy of our country through their participation in the economic activities. Such company is expected to attract investors who were earlier afraid to take risk in doing investments in sole proprietorship business due to unlimited liability.
Distinguishing Features Of One Person Company

a) A One Person company is incorporated as a Private Limited Company only.
b) OPC will have only one person as a member/shareholder. A person is never allowed to be a member of more than one OPC. In the same way, one person cannot become nominee in more than 1 OPC.
c) The member and nominee should be natural persons, Indian citizens and Resident in India.
d) In case of death of member/shareholder or his incapacity to contract, then nominee/other person becomes the member of the company.
e) No minor shall become member or nominee of the OPC or hold share with beneficial interest.
f) The words “One Person Company” shall be mentioned in brackets below the name of the One Person Company.
g) Minimum authorized share capital of OPC is 1 lakh rupees.
h) Quorum for Board Meeting is not applicable where there is only 1 Director.
i) OPC will lose its status if paid up share capital exceeds Rs.50 lakhs or average annual turnover is more than 2 crores in 3 immediate preceding consecutive years.
j) OPC shall indicate the name of the nominee /other person in the Memorandum with his prior written consent.
k) OPC need not hold Annual General Meeting every year.
l) OPC shall have at least 1 Director and a maximum of 15 Directors.
m) Cash Flow Statement may not be included in the financial statement of an OPC.

Benefits Derived From One Person Company

The benefits derived from OPC are stated below:
a) Only one member can start the company.
b) OPC has perpetual existence i.e. the existence of the company is not hampered if the promoter/member dies. This happens as the OPC has a separate legal entity from that of its promoter. Here OPC and the shareholders are separate persons. If the company faces any legal controversy, the owner will not be sued, the company will have to face the consequences thereof.
c) Limited liability is another important feature of an OPC. It means that the liability of the owner is limited to the investment made in the business and cannot extend to personal asset of the promoter. Personal assets of the owner or shareholders are protected in case of credit defaults.
d) OPC can have 1 director up to a maximum of 15 directors.
e) The annual return of OPC is required to be signed by the Company Secretary or where there is no Company Secretary, it will be signed by the Director of the Company.
f) Mandatory rotation of auditor after expiry of maximum term is not applicable.
g) If the Board Meeting is not convened, then the sole member has to enter resolution details in a minute book. If minute book is signed and dated by members then it will be deemed to be the date of conducting Board Meeting for all purposes of the Companies Act, 2013.
h) The provision of Section 98 and Sections 100 to 111 (both inclusive) relating to holding of general meetings shall not apply to an OPC.
i) OPC is not required to prepare Cash Flow Statement whereas Public and Private Limited Companies are required to prepare the same at the end of financial year.
j) In case of OPC, the decision can be taken at ease as the business head is the decision maker. As he is not dependent on others for suggestions or implementation of suggestions etc., so he may take quick decision. As there is only one member in the OPC, so the question of consensus or majority opinion etc. does not arise.
k) OPC may be converted to other types of legal form by making amendment in the Memorandum of Association (MOA).
l) OPC will aid individuals who are in the less organized and unorganized sectors (small and medium sized traders, weavers, artisans, mechanics, carpenters, designers, and other skill dependent professions and vocations).
m) A lot of exemptions have been provided to the OPC which the public limited companies are not enjoying.

One Person Company: Its Bleak Sides

The bleak sides of the OPC are:
a) One Person Company is not allowed to be a member or nominee of more than 1 OPC.
b) No minor can become member or nominee or can hold share with beneficial interest of the OPC.
c) OPC is not allowed to carry out Non-banking Financial activities including investing in shares of another body corporate.

d) OPC cannot be converted to a Private or Public Limited Company until and unless 2 years expire from the date of incorporation. However, if the paid up share capital of an OPC increases the threshold limit of 50 lakh rupees or average annual turnover increases 2 crore rupees then OPC becomes converted automatically to a Private/Public Limited Company within a period of 6 months from the date of breach of the threshold limit.

e) The compliance cost is higher as compared to sole proprietorship.

f) It is assumed that the banks will provide funds easily to OPC but the picture states otherwise. At present banks demand collateral and other securities for extending credit facilities to small individual entrepreneurs.

g) Unscrupulous individual entrepreneurs may use OPC for siphoning off funds and evading tax liability. From the view point of taxation, smaller proprietors are not attracted as the base rate of tax of a company is quite high (30% approx) and may result in a higher incidence of taxation for them.

h) The Act prohibits any foreign participation.

i) The existing proprietors of the sole proprietorship businesses can easily raise funds without hindrance from their relatives, friends and others when the situation demands. On the other hand, an OPC, being a private company, is not permitted to borrow from others.

j) One Person Company cannot be incorporated or converted into a company under section 8 of the Act. (Not for Profit Company)

k) OPC cannot invest in securities of body corporate i.e. the OPC cannot become a member in any other company or LLP.

**ONE PERSON COMPANY Vs SOLE PROPRIETORSHIP BUSINESS**

The differences between OPC and Sole Proprietorship Business are stated below

<table>
<thead>
<tr>
<th>Basis</th>
<th>One Person Company</th>
<th>Sole Proprietorship Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Entity</td>
<td>Separate legal entity</td>
<td>Not a separate legal entity</td>
</tr>
<tr>
<td>Liability</td>
<td>Limited liability</td>
<td>Unlimited liability</td>
</tr>
<tr>
<td>Perpetual succession</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Debt responsibility</td>
<td>Not the sole responsibility of the owner</td>
<td>Sole responsibility of the owner</td>
</tr>
<tr>
<td>Finance</td>
<td>Credit record of the OPC</td>
<td>Credit record of the owner</td>
</tr>
<tr>
<td>Tax</td>
<td>Separate tax</td>
<td>Tax paid by the owner</td>
</tr>
<tr>
<td>Registration</td>
<td>Registration required</td>
<td>Registration not required</td>
</tr>
</tbody>
</table>

**Impact Of Opc In Indian Entrepreneurship**

The concept of OPC is new in India and it will take time to instill a sense of confidence among the general public. With the passage of time, it will be matured and the business world will no doubt accept it. Needless to mention that the OPC mode of business organization will be preferred to by the small entrepreneurs. The benefits emanating from this concept are many that attract the small entrepreneurs. Minimum paper work and compliances, ability to form a separate legal entity with just one member, and provision for conversion to other types of legal entities by induction of more members and amendment in the Memorandum of Association are some remarkable advantages that encourage them to form OPC. The small traders, entrepreneurs with low risk taking capacity, artisans and other service providers will be attracted and enthused to form OPC expecting a bright future. The OPC would act as a launch pad for some entrepreneurs to showcase their capabilities in the global arena. The introduction of OPCs in Europe, United States and Australia has resulted in strengthening of their economies. It is hoped that the introduction of the concept ‘OPC’ in our country will play a crucial role in further strengthening of the Indian economy.

**Conclusion**

The introduction of the concept ‘OPC’ is said to be the harbinger of progress and industrial growth. It is ex-
pected that the concept will give a big impetus to corporatization in the country. Many traders or sole proprietors will be motivated to form OPC because of limited liability of such company. There will be the little possibility of occurring frauds and misrepresentation as there will have only one member. Many weavers, traders will come up with company as they will get the opportunity to work as entrepreneur. OPC will give them the security of limited liability and the opportunity to secure lending from venture capitalists, foreign investors and banks etc. Thus it is a unique concept which will help in providing legal protection to the unorganized Indian businesses. More and more participation in economic activities in our country will contribute to economic growth and generate employment opportunities. The critics are of the view that it may make room for evasion of public funds and tax liability by an individual. Mass awareness programme need to be taken so that general public may be aware of the benefits and advantages derived from OPC.

References