ISSN 2321-4171

ONE PERSON COMPANY IN INDIA: AN ANALYSIS

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ABSTRACT:

One Person Company (herein after mentioned as OPC) was introduced by The Companies Act, 2013. OPC is a revolutionary concept, a step forward to facilitate more business-friendly corporate regulation in India. It aims to provide the way for a more modern and dynamic legislation, to enable growth and greater regulation of the corporate sector in India.

Sec 2(62) defines OPC as meaning a company which has only one person as a member. OPC is similar to the existing concept of Sole-proprietorship with separate legal entity distinct from its proprietors and promoters.OPC is an innovative concept and permits entrepreneurs to start a small company of their own.

This paper contains the emergence and the development of the concept of OPC in India and further intends to explore what is an OPC, the features of OPC, steps to incorporate OPC and concept behind the OPC.

This paper also deals with the merits and demerits of OPC, procedure for the conversion of private company into an OPC and also winding up of OPC.

INTRODUCTION:

One Person Company (herein after mentioned as OPC is of sole proprietor and company form of business has been provided with concessional or relaxer required under Companies Act, 2015. With the implementation of Companies Act, 2015 a single national person can constitute a company under the OPC concept. OPC is incorporated as a private limited company it must have one member and one share holder at any point of time and may have only one director, where legal and financial liability is restricted to the company only and not to that person. A corporate form of legal entity in OPC ensures that the business has perpetual existence and easy ownership transferability.

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OPC is a radical idea which came into the picture with the introduction of the Companies Act, 2013. The introduction of OPC in the legal system will boost corporatization of micro businesses. In India, in the year 2005, the J.J. Irani Committee recommended the formation of OPC. It had recommended that such an entity may be provided with a simpler legal regime through exemptions so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliance.

Single Member Company emerged and developed rapidly in recent years, for the reason of their strong economic, political and legal theoretical basis. As a result, we can dig into their emergence and development from a social and historical point of view. It is helpful to encourage investment, develop economy and facilitate employment. Compared with ordinary types of companies

EVOLUTION 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.[3]

Origin of the concept in India, the concept of OPC was mooted, in the report of Dr. J.J. Irani Committee. The Irani Committee briefly referred to OPC in its report. The Committee expressed the view that the law should recognize the potential for diversity in the forms of companies and rather than seeking to regulate specific aspects of each form, seek to provide for principles that enable economic inter-action for wealth creation on the basis of clear and widely accepted principles.

ONE PERSON COMPANY:

One-person company is a new concept in India which has been introduced by The Companies 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,

[3] www.ijli.in/assets/docs/NamrataGupta. 20/01/2018 (8pm)

only one person is required who can be a shareholder as well as the director. 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.

OPC is defined under Sub-Section 62 of Section 2 of the Companies Act, 2013. It defines OPC has a company which has only one person as a member where all the legal and financial liabilities are limited to the company and not to its member. It is a kind of revolutionary concept in the new Companies Act, 2013[4].

<u>Sub-Section 62 of Section 2 of the Companies Act, 2013, reads as follows:</u>

One-person company means a company which has only one member. It shall also be important to note that Section 3 classifies OPC as a Private Company for all the legal purposes with only one member. All the provisions related to the private company are applicable to an OPC, unless otherwise expressly excluded. Only a natural person who is an Indian citizen and resident in India shall be eligible to act as a member and nominee of an OPC. For the above purpose, the term ‘resident in India’ means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one financial year.

<u>CLASSIFICATION OF OPC:</u>

In Chapter III titled "Classification and Registration of Companies" in the report of Dr. J.J Irani. The committee suggested multiple classifications of companies as given;

1. On the basis of size
   - **a)** Small Companies
   - **b)** Other Companies

2. On the basis of number of members:
   - **a)** One Person Company
   - **b)** Private Companies
   - **c)** Public Companies

3. On the basis of control
   - **a)** Holding Companies

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[4] Avatar Singh,Company Law, 16 edition

   - **b)** Subsidiary Companies
   - **c)** Associate Companies
4. On the basis of liability:
   - **a)** Limited
     - **i.** By shares; and
     - **ii.** By guarantee (with or without share capital)
   - **b)** Unlimited
5. On the basis of manner of access to capital:
   - **a)** Listed companies
   - **b)** Unlisted companies.[5]

<u>FEATUERS OF OPC:</u>

• Desire for personal freedom that allows the Professional skilled person to adopt the business of his choice.

• Personality driven passion and implementation of a business plan.

• The desire of the entrepreneurial person to take extra risk and willingness to take additional responsibility.

• Personal commitment to the business which is a sole idea of the person and close to his heart.

• It is run by individuals yet OPCs are a separate legal entity similar to that of any registered corporate.

• A One Person Company is incorporated as a private limited company.

• It must have only one member at any point of time and may have only one director.

• 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.

• One person cannot incorporate more than one OPC or become nominee in more than one OPC.

[5] www.icsi.edu/Docs/Webmodules 19/01/2018 (3pm)

• 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.

• OPC to lose its status if paid up capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in three immediately preceding consecutive years.

• No minor shall become member or nominee of the One Person Company or hold share with beneficial interest.

• Such Company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.

• Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate. No such company can convert voluntarily into any kind of company unless 2 years have expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.

• An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into One Person Company by passing a special resolution in the general meeting.

STEPS TO INCORPORATE ONE PERSON COMPANY (OPC)[6]:

1. Obtain Digital Signature Certificate for the proposed director(s).

2. Obtain Director Identification Number for the proposed director(s).

3. Select suitable Company Name and make an application to the Ministry of Corporate Office for availability of name.

4. Draft Memorandum of Association and Articles of Association.

5. Sign and file various documents including Memorandum of Association and Articles of Association with the Registrar of Companies electronically.

6. Payment of Requisite fee to Ministry of Corporate Affairs and also Stamp Duty.

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[6] Intelligent Legal Risk Management Solution, iPleaders (2014).

7. Scrutiny of documents at Registrar of Companies

8. Receipt of Certificate of Registration/Incorporation from Registrar of Companies

CONCEPT BEHIND OPC:

1. One shareholder:

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.

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.

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 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.However, written consent of such Nominee to act as Nominee must be obtained and filed with the ROC at the time of incorporation along with MOA and AOA.

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. Tax @30% along with another cess is to be paid.

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 Section96, 98 and Sections 100 to 111 are not applicable for a One Person Company.

ADVANTAGES OF ONE PERSON COMPANY:

A One Person Company (OPC) Private Limited has numerous advantages when compared with Companies and Proprietorship firm.

- **Compliance Burden:**

The One-person Company (OPC) incorporates into the meaning of "Private Limited Company" given under section 2(68) of the Companies Act, 2013. Subsequently, an OPC will be required to conform to procurements relevant to private limited companies. On the other hand, One Person Company has been given various exclusions and, in this way, have lesser compliance related burden.

- **Perpetual Succession:**

An One-person Company being an incorporated entity will likewise have the component of perpetual succession and will make it simpler for entrepreneurs to raise capital for business. The OPC is an artificial entity from its proprietor. Creditors should therefore be warned that their claims against the business can't be squeezed against the proprietor.

- **Simple to Get Loan from Banks:**

Banking and financial institutions prefer to lend money to the company instead of proprietary firms. In a large portion of the circumstances, the entrepreneurs to convert their firm into a Private Limited company before authorizing funds. So, it is ideal to register your start-up as an One Person company rather than proprietary firm.

- **Annual Return Filing**:

One Person Company’s yearly return is required to be signed by a director. The mandatory requirement of Company Secretary Signature is not applicable to OPC.

- **No Prerequisite to Hold Annual or Extra Ordinary General Meetings:**

Just the resolution might be conveyed by the member from the organization and entered in the minutes book and signed and dated by the member and such date should be considered to be the date of meeting.

- **Board Meeting:**

A One Person Company might lead at least one meeting of the Board of Directors in every 50% of a calendar year and the gap between the two meetings shall not be less than ninety days.

DISADVANTAGE OF ONE PERSON COMPANY:

There are few disadvantages in forming one-person company such as:

- **High Tax Rate:**

As a corporate form, you cannot avail tax slab advantage. In proprietary, you are required to pay according to your salary at 10%, 20% or 30% tax rate. But in the case of One Person Company, you are directly charge 30% income tax. High tax rate is big disadvantage of One Person Company.

- **Consistence Cost:**

Compliance cost of partnership firm or proprietary is very low compare to One Person Company.

- **OPC is Included in Name:**

You are required to specify One-person company in your company name in bracket. There is slight lower impression that the organization is kept running by one and only person. Other side, in the event that you start your company with couple of shareholders, the administration can’t be dedicated and you can offer impressions to customer moreover.

- **One Person Management:**

Shareholder is one and all the decisions are done by a person. On the off chance that he is insightful, it is great however in some cases cross check is required for business development. Company's success and growth is all dependent on one person's decision taking ability.

- **OPC Incorporation is Allowed:**

You can incorporate one and only OPC (One Person Company). In the event that you need to start other company as OPC, it is not permitted. In today's quick economy, more than one business can differentiate income and spare you from enormous misfortunes. One and only stream of pay or business is unsafe these days. Having this condition is snag for serial business people.

- **Not Suitable for High Turnover:**

There is procurement of automatic conversion of One Person Company in Private Limited Company in the event that you appraise high turnover of your business or you have effectively high turnover, better choice is build up private limited company than One Person Company. Setting up OPC and after in some cases conversion of one-person company in Private Limited Company is not a good idea.

PROCEDURE FOR CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY (OPC)[7]:

Secretarial procedure for **Conversionof Private Company into One Person Company(OPC)** is given below:

1. **Calling of Board Meeting:** Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:

   a) To Get in-principal approval of Directors for **Conversionof Private Company into OPC.**

   b) Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for **Conversion of Private**

[7] www.icsi.edu/Docs/Webmodules 20/01/2018 (5pm)

Company into OPC. This **Conversion** shall be in accordance with **Rule 7 of Companies (Incorporation) Rules, 2014;**

c) To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;

d) To authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board.

2. Issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;

3. **Holding of General Meeting:** Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Special Resolution, for **Conversion of Private Company into One Person Company (OPC).**

4. **ROC Form filing:** As per Rule 7(3), Company is required to file Special Resolution passed by shareholders for **Conversion of Private Company into One Person Company (OPC)** with concerned Registrar of Companies. Hence, file form **MGT.14** within 30 days of passing of Special Resolution with the concerned Registrar of Companies, with prescribed fees and along with following **attachments:**

a) Notice of EGM;

b) Certified True copy of Special Resolution;

5. The company shall file an application in **Form No.INC.6** for its conversion into **OPC** along with fees as provided in the **Companies (Registration offices and fees) Rules, 2014**, by attaching the following documents, namely: -

i. The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid-up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, 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.

6. **Duty of ROC:** Concerned Registrar of Companies (ROC) will check the E-forms and attached documents filed by the Company for **Conversion of Private Company into One Person Company (OPC).** On being satisfied that Company has complied with prescribed requirements the Registrar shall issue the Certificate to the effect of **Conversion of Private Company into One Person Company (OPC).**

ONE PERSON COMPANY CLOSURE OR WINDING UP:

The process of closing an OPC is known as Strike off or company closure. Company closure is done under newly notified rules Companies (removal of Names of Companies) Rules, 2016 which governed by Sec 248 0f Companies Act, 2013.

HOW TO CLOSE OPC IN INDIA:

A Company closure is filed under Form STK 2 (Earlier form was FTE) along with the government fees of Rs.5000/- and some necessary docs. However, it is important to note the cases where closure can be filed. A Company closure can be filed after the following steps:

- **Pay all Liabilities:**

The first step is to repay all the liabilities of the company and ask for written No Objection Certificate from them. However, in case, if they have not started the business, then this clause does not apply to them.

- **75% Consent:**

This condition does not apply to OPC in India because under OPC, all the 100% shares are owned by the individual and hence he needs no approval from any other person.

- **Prepare Application:**

The next step is to prepare application and file the same with ROC.

SUCCESSFULL OPC'S IN INDIA:

1. Broom bikes OPC Private Ltd, Aashish Sharma
2. Snehsanskriti OPC Private Ltd, Parveen Choudhary
3. Wow wash OPC Private Ltd, Madhvi Narulla
4. Wimoku OPC Private Ltd, Jothish Kumar Narayanan
5. Fashtoons Apparel OPC Private Ltd, Pritam Maratha

IMPACT IN INDIA:

The youth of the country seems to be extremely motivated to start something of their own which can also be said of the new emerging Start-up generation. In order to do so starting up with an OPC seems to be the most likely and easier option as ideas are in plenty and yet implementation of them weren't able to be done on an individual level, before the emergence of OPC in India.[8]

1. Annual General Meeting (AGM) and Extra-Ordinary General Meetings do not apply to an OPC.

2. No requirement of appointing a first director for the company. The sole member is deemed to be the first director.

3. OPC should have a minimum of one (1) director and a maximum of fifteen (15) directors. In case the Board consists of only one director, then the OPC is exempted from the requirement of conducting a Board Meeting as well.

4. It will be deemed to have complied with the provisions relating to Board meetings if at least one meeting is conducted in each half of the calendar year. However, the gap between the two meetings should not be less than ninety (90) days.

CONCLUSION:

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 the passage of time, the OPC mode of business organisation is all set to become most preferred form of business organisation especially for small entrepreneurs.

[8] https://blog.ipleaders.in 22/01/2018 (9pm)

There is a need to create mass awareness to penetrate key benefits and advantages among general public.There are ample opportunities for OPC concept to be renowned as a flagship business model of modern India as there is an entrepreneur in almost every youth of young India.