FACULTY OF JURIDICAL SCIENCES

Lecture-21

5. <u>One Person Company (OPC)</u>

According to The Companies Act, 2013 of India "One Person Company is a company registered under the proposed Companies Act with just one member and shall have '(OPC)' added in brackets to its name." The Memorandum of such a company shall indicate the name of the person.

One person company (OPC) is a new concept in India which was introduced by the Companies Act 2013. Unlike the old Companies act 1956, where minimum two directors and shareholders were required to form a private limited company. In OPC, only a person is required to form a company. Such a person can be both a shareholder as well as the director, while enjoying the benefits of limited liability. Therefore, the name One Person Company.

This initiative opens up plethora of spectacular possibilities for sole proprietors and entrepreneur, who while taking the benefit of Limited liability and corporatization, can run their small businesses without having the need to find a second director or second shareholder.

<u>The concept of 'one person company' has the following characteristics:</u>

(i) OPC may be registered as a private company with one member.
(ii) Adequate safeguards in case of death/disability of the sole owner are provided.
(iii) OPC will have a corporate entity of its own.
(iv)The owner of an OPC shall be liable only to the extent of its capital. If the activities are carried out in a mala fide manner the liability of the owner extends to his personal property.
(v) An OPC may be managed by the owner or his representative.
(vi)An OPC will get its annual accounts audited and file a copy of the same with the Registrar of Companies.
(vii) A minimum share capital may be prescribed for an OPC.
(viii) Every OPC shall have at least one director.
(ix) The one person shall have to indicate the name of the person who in the event of the subscriber's death, disability, etc. becomes the members of the company.

Merits:

(i) OPC will enable small entrepreneurs and professionals, e.g., chartered accountants, lawyers, doctors, etc. to avail the benefits of companies,

(ii) The procedure for forming the OPC is very simple.

(iii) Running an OPC is easy as it does not require compliance with many legal formalities.

(iv)As the risk is limited to the value of shares held by one person, small entrepreneurs have not to fear litigation and attachment of personal assets.

(v) There is no need to share business information with any other person, therefore, business secrecy is ensured.

(vi)The motivation and commitment of the owner are high due to absence of profit sharing.

(vii) Quick decisions can be taken due to complete control by the owner. There is freedom of action.

(viii) OPC would provide the start-up entrepreneurs and professionals the much needed flexibility in setting up business without losing control.

Demerits:

(i) The life of OPC is uncertain and instable.

(ii) The concept of OPC makes mockery of the corporate concept because company means more than one person.

(iii) A company should operate as a democratic institution with discussion and decision by voting. But in an OPC there is no democracy.

(iv)An OPC has to be incorporated. It has also to comply with some legal formalities.

The concept of OPC has been introduced in a half-hearted and incomplete manner. How would OPC work and what would be the regulatory provisions concerning their formation and functioning has not been made clear. Hence, the provisions concerning OPC require a re-look and redrafting.

JOINT HINDU FAMILY FIRM

Joint Hindu Family (HUF) is a form of business organization wherein the members of a family can only own and manage the business. It is governed by Hindu Law. Karta of the HUF is the Head of the family who is authorized to do business on behalf of the HUF. A HUF is also allowed to purchase assets in its name. a separate Permanent Account Number (PAN) is allotted to the partnership. HUF has unlimited business liability and like a proprietorship concern, it is also not required to register itself.

The Joint Hindu Family Business or the Hindu Undivided Family (HUF) is a unique type of business entity. It is governed and dictated by the Hindu Law, which is one of the several religious laws prevalent in India.

Features of a HUF

- **Formation:** To begin a Hindu Undivided Family there must be a minimum of two related family members. There must be some assets, business or ancestral property that they have inherited or will eventually inherit. The formation of a HUF does not require any documentation and admission of new members is by birth.
- **Liability:** The liability of all the various co-parceners is only up to their share of the property or business. So they have limited liability. But the Karta being the head of the HUF has unlimited liability.
- **Control**: The entire control of the entity lies with the Karta. He may choose to confer with the co-parceners about various decisions, but his decision can be independent will be final and also legally binding.
- **Continuity:** The HUF can be continued perpetually. At the death of the Karta, the next eldest member will become the Karta. However, keep in mind a Hindu Undivided Family can be dissolved if all members mutually agree.
- **Minority:** As we saw earlier the members are eligible to be co-parceners by the virtue of their birth into the family. So in this case, even minor members will be a part of the HUF. But they will enjoy only the benefits of the organization.

Advantages of the HUF

- A Hindu Undivided family is comprised of family members running a business. Like any other organization, there is scope for disagreements and conflicts. But since the Karta has absolute power and takes all decisions by himself, it will lead to effective management.
- Just like a company, the existence of a HUF is perpetual. The death or retirement of one member of even the Karta will not affect it, and it will continue on.
- Since the co-parceners do not have any effective control over the management of the HUF, and all power lies with the Karta, the liability of the members has also been limited to only their share of the property. This keeps the balance between power and responsibility.
- Also since all members of the HUF are relatives and members of the same family, there is a sense of loyalty and cooperation. The trust among members is also there and leads to overall cooperation.

Disadvantages of the HUF

- No outside members other than family members can be introduced to the HUF. This makes it very difficult to get additional capital from the market. With limited capital, the chances of expansion are very low. It limits the scope of the business.
- While the Karta has all the power he also has the burden of unlimited liability. This may make him overly cautious and timid in his business dealings. In turn, the business could suffer. Another factor is that he may even be held responsible for the actions of other members.
- Also, the absolute dominance of the Karta overall business and financial decisions make cause conflict among the HUF. His decisions and business acumen may be questioned by other members, and cause issues within the HUF.
- Another issue may be that the Karta may not be the most qualified person to lead the business. The position is given to the senior most family member, whether he is the most qualified or not is not taken into consideration.