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Has the Limited Liability Partnership Model provided an Effective Alternative to the Complexity of Incorporation and the Personal Risks associated with Partnership Law

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ABSTRACT

In this article I have attempted to discuss a perpetually existing issue of company law. This title of the research paper encapsulates its essence. The commencement of the Limited Liability Partnership Act in 2008 led to a new phase in the Indian corporate sector. As the Limited Liability Partnership (hereinafter 'LLP') model gained popularity, many compared it to the existing partnership mechanism. While there are some similarities in both, several differences on grounds such as risk and complexity have been examined. Apart from an elaborate explanation of the LLP model, the application of the model on various kinds of businesses has been highlighted. The pandemic situation's effect on partnerships, and how LLPs will fare after these times has also been evaluated. Towards the end, the author have touched upon the current limitations of the model and the potential it can reach with certain modifications.

I. INTRODUCTION

Section 4 in The Indian Partnership Act, 1932

4. Definition of “partnership”, “partner”, “firm” and “firm name”. —”Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively a “firm”, and the name under which their business is carried on is called the “firm name”².

Limited Liability Partnership (LLP) is an elective type of business association. It gives the advantages of restricted risk “as well as permits its individuals the adaptability of getting sorted out their inside issues as an organization dependent on a commonly shown up arrangement. Responsibility of the accomplices isn't really that restricted of investor in an organization.

¹ Author is a student at Law College Dehradun, India.

² “The Indian Partnership Act, 1932 section 4.”

Further there could be limitless responsibility on accomplices, on the off chance that that of certain different laws. In an inexorably hostile market climate, a requirement for another corporate structure giving an option in contrast to the conventional association, with limitless individual responsibility from one viewpoint, and, the resolution based administration design of the restricted obligation organization on the other, was felt, to empower proficient skill and pioneering drive to join, put together and work in adaptable, inventive and effective way.”

In this paper we are going to understand what exactly the term Limited Liability Partnership in depth and also how it is an effective alternative.

II. GENERAL TYPES OF PARTNER

Generally speaking, “there are about ten different types of partner to whom we come across on daily basis, these partners are not exhaustive in nature since the Partnership Act, 1932 do not restrict any type of partnership, in whichever way the partner would like to define.”

Following are general types of partners:

1. Active/Managing Partner:

An active partner “is the person who take part in the day to day business and also takes active participation in the conduct and management of the firm. He/she can carry the business on behalf of the other partner as well.”

2. Sleeping Partner:

Also known as “dormant partner” a “partner who is bound with other by all the acts of done by him/her. This partner is not actively working on day to day basis, but continues to share profit and losses of the firm.”

3. Nominal Partner:

This partner does not have any significant “interest in the firm, as in he does not have any command in management, his name is leading to the firm. On his name the firm can promote or get credit from the market.”

4. Partner by Estoppel:

A person “who by conduct, or his words, or his action displays himself as a partner, even though he is not a partner but he represents himself as one and is aware of that representation is a Partner by Estoppel.”

5. Partners in Profit only:

As “the name suggest the following partner will only share the profits earned by the firm and

not be liable for any losses of the firm.”

6. Minor Partner:

According to Section 3 of the Indian Majority Act, 1875³ a person is deemed to have attained the age of majority when he attains 18 years of age. “However, a minor can also be appointed to claim the benefits of the Partnership.” The Partnership Act, 1932 allows a minor to enjoy benefits of partnership when a set of rules and procedures are compiled in accordance with the law. “A minor will share the profits of the firm, however, his liability for losses is only limited to his share of the firm.”

7. Secret Partner:

This “partner is kept in secret from third party and outsiders, it is position between sleeping and active partner, shares all liabilities of firm.”

8. Limited partner:

As the name suggest a person whose liability is only up to the extent of his contribution.

9. Sub-partner:

A partner “who associates someone else in his share of the firm.”

10. Outgoing Partner:

A “partner who voluntarily retires without dissolving the firm, since he retiring from the firm he is called outgoing partner or retiring partner.”

III. TYPES OF PARTNERSHIP UNDER PARTNERSHIP ACT:

The types under Partnership Act they are understood under certain heads such as:

1. According to objectives:

I. Partnership at will

Partnership “created at the discretion of the partners to decide that till when they want the partnership to exist, without determination of time limit it is known as partnership at will.”

II. Particular partnership

Making “particular partnership to carry out specific work, these partnership is made on basis of project, temporary contract based work or specific business only.”

2. According to tenure:

³ “Indian Majority Act, 1875 Section 3.”

I. Fixed terms:

Partnership is “for fixed period of time, the partnership automatically comes to end at the end of tenure.”

II. Flexible:

Partnership which are neither fixe of time nor of any particular tenure.

3. According to Nature:

I. General:

Each “partner will reserve a right to make decisions about the working and management of the firm.”

II. Limited liability Partnership(LLP):

It is corporate “form of business organization, in such case liabilities are limited of the partners which depends on their work load or contribution in the firm.”

IV. UNDERSTANDING THE BASICS OF A LIMITED LIABILITY PARTNERSHIP (LLP):

Limited Liability Partnership or LLP for short is an alternative form of business organization⁴. It is governed under the act of Limited Liability Partnership Act, 2008. An LLP acts as a limited partnership, in LLP each member’s personal liability is protected expect to the extent of their capital contribution.

Features of LLP

1. **Liability “of Partners**– “The liability of Partners is limited to their contribution of share in the business. A partner is liable for his own wrongful acts. One Partner is not responsible for the acts of others due to negligence or misconduct.”

2. **Legal entity**- “LLP is a body incorporated and a legal entity separate from its partners having perpetual succession as per **Section 3** of the Limited Liability Partnership Act, 2008.”

3. **Limit of Partners** – A “minimum of two partners are required to form an LLP as per **Section 6(1)** of the Limited Liability Partnership Act, 2008. There is no maximum limit on the number of partners.”

4. **Audit of Accounts** – “LLP shall maintain annual accounts where audit of the accounts is required only if the contribution exceeds Rs. 25 lakh or annual turnover exceeds Rs. 40 lakhs.

⁴ Limited Liability Partnership, available at https://www.bcasonline.org/Referencer2015-16/Other%20Laws/li_mited_liability_partnership.htm (last accessed on 12th June 2021)

A statement of accounts and solvency shall be filed by every LLP with the Registrar of Companies (ROC) every year.”

5. **Admission or Retirement of Partner-** “LLP can continue its existence irrespective of changes in partners.”

6. **Designated Partners**– LLP shall have two individuals as designated partners and one of them shall be resident of India⁵.

V. NEED FOR LLP OVER ANY OTHER PLAN OF ACTION

In “the world of Indian Corporate, it is awarded with idea of limited liability partnership, which opens new window of new and innovative business ideas and will have alternative integrate features of LLP along with flexibility of traditional partnership firm, this system is a mixed of best of both worlds, where it opens the idea and innovation to Indian Corporate world along with tradition internal design of partnership firm.

LLP is a blend of association and corporate which gives adaptability and expense status as that of Partnership while having status of body corporate. All the firms or companies whether listed or unlisted public or private are allowed to convert themselves into LLP under the act of LLP act, 2008, under the same no previous or prior approval is required from the central government for increasing the no. of partners and can wind up easy voluntarily or with help of tribunal.”

In India, “the very idea LLP was a little late, but it is said, always late but worth the wait. It is the outstanding form for small business and medium business enterprises, as it is a hybrid of company and partnership firm to form a new innovate organization. LLP is a thought for constitution of group of Professionals so as to address multidisciplinary issues. Through LLPs, there comes, high expected freedoms, which Indian experts should seize. A Limited Liability Partnership (LLP) “is an organization where a few or then again all accomplices (contingent upon the ward) have restricted obligation. It in this way shows components of organizations and partnerships. In an LLP, one accomplice isn't capable or responsible for another accomplice's offense or carelessness. This is a significant distinction from that of a limitless organization.”

In a LLP, a few accomplices have a type of restricted risk like that of the investors of a partnership. In a few nations, a LLP should likewise have in any event one "General Partner" with limitless obligation⁶.”

⁵ Understanding LLP, available at https://blog.ipleaders.in/need-know-limited-liability-partnership-llp-india/#Governance_of_Law (last accessed on June 12, 2021)

⁶ Ravi Meena, LLP in India: As Advantageous Business Model (2013).

The LLP configuration is a “choice corporate business vehicle that gives the upsides of compelled commitment of an association anyway allows its people the flexibility of masterminding their inside organization dependent on a generally shown up assertion, actually like the case in an organization firm. This association would be truly important for nearly nothing and medium endeavours when everything is said in done and for the undertakings in organizations fragment explicitly⁷. LLP benefits the upsides of the Organizations with higher inclination. Nature of Effortlessness of trade is faultless in the LLP and its perceived situation in Corporate World places a LLP in significantly more advantageous position than an Association.

The LLP Act, 2008 is affirmation of the changing necessities of the business conditions in the current time frame. The joining of the LLPs will give a steady new option in contrast to new organizations like capable affiliations which are nervous about their show to chance. In context of the improvement of Indian Administration industry of late, start-ups LLPs would also add to the improvement of the organization business and a far reaching number of existing associations, open and furthermore private, are depended upon to change over into LLPs so as to move toward the benefits of the LLP.”

VI. HOW “RISK FACTORS” IS TAKEN OUT OF LLP ACT, 2008:

“Advantages of LLP form”

LLP form is a form of business model which:

1. “Is organized and operates on the basis of an agreement.”
2. “Provides flexibility without imposing detailed legal and procedural requirements.”
3. “Enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.”

The “fundamental disadvantage from a monetary point of view in other adventures of business is that there is an absence of administrative abilities and capital, so such an association is inadmissible for little as well as for a wide range of business. To economies of scale it is better for people to pool in their assets for their organization. Hazard is subsequently essentially divided among the accomplices, in spite of the fact that leasers and representatives will be uncovered, particularly in the improbable occasion of occasion that the accomplices will have deficient private resources for take care of the obligations of the business⁸.

⁷ Ravi Xavier Rozario, Limited Liability Partnership: An Effective Alternative to Complexity of Incorporation and the Personal Risks Associated with Partnership Law (2018).

⁸ Supra 5

Ideas of good corporate administration rehearses or the corporate social obligation make sound business just when the speculations on these are in the edified business interests. Eventually, the matter of business remains business and comprises the core value for any business structure. Be it sole ownership or LLP in India associations or LLP or a business entity, the exertion consistently stays at limiting the dangers” for self and abundance creation. The command over unwanted practices at last stays the subject of an effectual administrative framework and maybe, to some extent, are an issue of self-applied business morals principles⁹.

The “major difference between an LLP and a joint stock company is that the internal governance structure is entirely different, where the company’s works on statute of Companies act 1956 the LLP works on contractual agreements between the partners, LLP functioning is more flexible as compare to companies working system. LLP got lesser compliance requirements as compared to a company.”

VII. CONCLUSION

A “limited Liability Partnership (LLP) a partnership in which some or all partners are limitly liable. An LLP is a body corporate and legal entity separate from its partners, it has perpetual succession. For quite a while, a need has been felt to accommodate a business design that would consolidate the adaptability of an association and the benefits of restricted responsibility of an organization at a low consistence cost. The Limited Liability partnership design is an option corporate business vehicle that gives the advantages of restricted responsibility of an organization however permits its individuals the adaptability of getting sorted out their interior administration based on a commonly shown up arrangement, similar to the case in an association firm.”

To “adopt Limited Liability Partnership in India few recommendations and suggestions were made by J.J. Irani Committee, The Bhatt Committee in 1972, Naik Committee in 1992, Expert Committee on Development of Small Sector Enterprises headed by Sh. Abid Hussain in 1997, Study Group on Development of Small Sector Enterprises (SSEs) headed by Dr S.P. Gupta in 2001 and the Naresh Chandra Committee-II. The Cabinet approved the Bill on December 7, 2006, which was then presented before Rajya Sabha on December 15, 2006. The Limited Liability Partnership (LLP) Bill, 2008 received the approval of the Cabinet on 1st May 2008. Both Houses of Parliament passed the bill without any changes. The Bill received the assent of the President on 7th January 2009.”

⁹ Supra 4

There are “different benefits in LLP like limitless limit separate legitimate substance, the expense for fusing it is extremely low, it is altogether different from its accomplices, and obligation is restricted to a certain breaking point which has been guaranteed to them. The organization moreover being versatile that it will in general be addressed just by an assertion between accessories. Essentially it conjoins unmistakable highlights of an organization with that of organization.”

The “idea of LLP is a blend of Organization which is advantageous for both little and medium size firms. Each accomplice is answerable for his own deeds or carelessness. As likewise it is named as an "elective corporate business vehicle" as the working is same as some other general association yet it accompanies an exceptional arrangement of the restricted obligation rule.”

LLP is a corporate business vehicle that gives the advantages of restricted obligation of an organization to its individuals and “furthermore permits to deal with their inside administration based on commonly showed up understanding as if there should be an occurrence of an association firm. Accomplices have lower liabilities to any obligation which may emerge in future in maintaining the business. It contains components of both 'a corporate design' just as 'an association firm construction' and is known as a mixture between an organization and an organization. The Accomplices are needed to contribute towards the LLP as indicated in the LLP Understanding. Their offer can be in any structure for example unmistakable or immaterial, mobile or resolute property, monies and cash. As far as responsibility under Restricted Risk Association the Organization is obligated for misfortunes or obligations if emerge in maintaining the business where the individual individuals from the LLP will not be obligated for such misfortunes or obligations.”

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