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LIMITED LIABILITY PARTNERSHIP: LIMITING THE UNLIMITED LIABILITY OF PARTNERS

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Abstract: *Partnership is one of the oldest models of business relationship. Though limited liability companies have replaced partnership firms to a great extent in modern complex business world, however partnership form of business is still preferred by professionals and small trading and business enterprises in India, but because of its unlimited liability concept, it has got less momentum in India. Here business concerns are mainly operated as sole proprietorship, partnership and company forms. Each of these forms is subject to different regulatory and tax regimes reflecting their organization and ownership.*

Keywords: *Sole Proprietorship, Limited Liability Partnership, Legal entity, unlimited liability, contribution, designated partners.*

INTRODUCTION

The subject of incorporation, regulation and winding up of a trading corporation including banking, insurance and financial corporation is within the legislative competence of the parliament by virtue of Entry 43 of Union List in the VII Schedule to the constitution of India. At the same time, the subject of partnership real with contracts including partnership contract is provided in Entry VII of the concurrent List. This entry has no reference to the extent of liability of the partnership whether limited or unlimited but by virtue of the power in the concurrent List, the parliament has power to make a Limited Liability partnership law and the same has been enacted as the Limited Liability Partnership Act, 2008 (herein after referred as LLP Act and the Central Government hereby has made the rules as LLP Rules 2009.

The partnership firm establishment under the Indian partnership Act, 1932 has not been suitable because of its unlimited liability concept and it has become an increasing cause of concern due to following reasons:-

- (i) A general increase in the incidence of litigation for professional negligence and in the size of claims,
- (ii) The growth in the size of partnership firm,
- (iii) The increase in specialization among partners and the

coming together of various professionals under a partnership firm,

- (iv) The risk to a partner's personal assets when a claim exceeds the sum of the assets and insurance cover of the firm.

In view of above reasons, a need was felt for a type of partnership entity where each partner will be liable for his or her own part of liability. It would make partners more accountable to their clients or, customers and ensure that all partners can engage in their business without the concern of having their personal assets at risk, unless there is specific cases of negligence or wrongdoing.

The LLP :

The limited liability partnership is a special legal entity with unlimited capacity but limited liability of partners. It has ability to enter into a contract and hold property and will continue to exist in spite of any change in membership. It is akin to a company with a limited liability than to a partnership. Section 2(n) of the LLP Act defines LLP as a partnership formed and registered under this Act. If the definition of LLP under the Act is analyzed, then it is quite clear that the concept of mutual agency is not applicable and partners are only agent of LLP and not the agent of other partners like partnership firm.

Essential Elements of LLP

(a) LLP Agreement : It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of partners, their rights and duties in relation to that LLP. The management structure of an LLP would need to be addressed by the members in a separate agreement. Such LLP agreement need not be registered and can remain a private document. A comprehensive LLP agreement governs the duties and responsibilities of the members and provides for the following:-

- (i) The management of the LLP;
- (ii) The decision making process;
- (iii) The capital contribution of members ;
- (iv) The division of profits;
- (v) Change to the membership;
- (vi) Dispute resolution;
- (vii) Termination of the LLP; and
- (viii) Amendment provision of the LLP agreement.

(b) Business :

Section 2(e) of the Act provides an inclusive definition of the term business by including very trade, professions service and occupation. Thus the service includes service rendered by some professionals like advocates, accountant, company secretary and cost accountant.

(c) Partners :

It means any person who becomes a partner in the LLP in accordance with the LLP agreement. However, any individual or body corporate may be a partner in LLP provided :

- He has not been found to be unsound mind person by a court of competent jurisdiction and the it is inforce.
- He is not an undischarged insolvent or he has applied to be adjudicated as an insolvent and the application is pending.

According to section 6 of the Act, every LLP shall have at least two partners.

(d) Registration :

Registration of LLP is required before the “Registrar of the companies” After registration the acronym ‘LLP may be used at the last of its name.

(e) Other requirements of LLP:

- File an annual return
- Notify any changes to the LLP membership
- Notify any changes to their members names and residential addresses.

- Notify any change in the Registered office Address.

Salient Features of LLP:

(i) LLP can be formed by any two or more persons for the purpose of carrying on any lawful business, profession, vocation or occupation.

(ii) The persons forming a LLP can be natural or corporate bodies Viz any other LLP, foreign Limited Liability Partnership, Private or Public Limited Companies or foreign companies.

(iii) Every LLP has at least two partners, who should be individuals, at least one of them be a resident individual to be named as “Designated Partner” who takes responsibility for compliance of all legal requirement of the LLP Act, Rules and other laws applicable to the LLP.

(iv) Unlike companies, LLP does not have share capital partners are free to decide their contribution to be made either in monetary form or in terms of property or services.

(v) Unlike partnership firm which may or may not be registered under the Indian partnership Act, 1932, LLP are required to be registered after complying with the formalities.

(vi) LLP on registration becomes a body corporate having separate legal entity and is separate from its members.

(vii) The LLP Act provides for partners of LLP to regulate their relationship among themselves vis-à-vis the LLP by an LLP Agreement in writing to be filed with the Registrar. In absence of such agreement, the relationship is determined by the provisions of first schedule to the LLP Act.

(viii) Unlike traditional partnership firm, there is no limit on number of partners in LLP.

(ix) LLP has total flexibility on internal structure and management. There is no rigid requirement of Board, meeting, resolution etc. for taking business decisions as in companies.

(x) The most important feature of LLP is the protection against personal liability to members who are only liable to the extent of their contribution in the LLP. Personal liability arises only in case of fraudulent or wrongful acts or omissions of partner’s own, not of other partners.

(xi) There is no statutory ceiling on managerial remuneration and other compensation as under the companies Act, 2013.

(xii) Unlike a traditional partnership firm, the LLP has benefit of perpetual succession as the death, insolvency or exit of any partner for any purpose does not bring an end to the LLP as on entity till the same is dissolved after following the procedure laid down under LLP Act.

(xiii) A part from coming into existence by registration, a LLP can also be formed by conversion from traditional partnership

firms, private limited companies and unlisted public companies into LLP with complete benefit of continuity.

(xiv)The names of LLP is protected as there can not be two LLPs in the same name.

CONCLUSION:

Thus the introduction of the LLPs in India is a good beginning towards a long journey. The hybrid structure of LLP is for facilitating professionals to organize and operate in an innovative and efficient manner competing in global market. LLP is infact growth towards individual participation to social participation. So the limited liability concept is a mechanism useful to encourage contributions in business organizations. The relation between limited liability and liquid marketis fundamental to an understanding of law of LLP in India.

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