

## Mediation as a Tool in Resolving Corporate Disputes with Special Reference to One Person Companies in India

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**ABSTRACT:** *The corporate structure in India underwent a change with the introduction of One Person Companies in India by The Companies Act, 2013. Formation of One Person Companies in India is a radical transformation as for the first time Companies law have explicitly taken into consideration the growth and self-sufficiency of young entrepreneurs, small businessmen, weavers, artisans. Since numerous new companies are being formed, consequently new corporate conflicts will rise in near future and certainly the burden on justice delivery system will increase besides the fact that litigation will also adversely affect the small businessman. This article discusses Mediation concept as a strategy to resolve conflicts of One Person Companies and suggest certain modifications sought to be made in the present law of mediation as applicable to the companies.*

**Keywords** – Corporate, Dispute, India, mediation, One Person Company

### 1. Introduction

The Corporate structure of India has undergone a big change primarily due to the coming of the new Companies Act, 2013. The initiation of the concept of One Person Company is one such innovative step which will have expansive impact on encouraging entrepreneurship among small business man in India. It is seen as facilitator which will uplift democracy in corporate sector. To provide maximum support to such novel concept many procedural rigidity for formation and working of such companies have already been relaxed. This entry of new entities in corporate world is seen as beginning of new era. An era of the strengthening of common man. However, this strengthening must be absolute in all respects. In a way, a newly formed One Person Company must be saved from endless litigations and delays of justice delivery system because even trivial cases can damage relationships, tarnish reputation, eat up enormous sums of money, time, and talent which can frustrate a sole shareholder and lower down his morale. The laws need to be reviewed as conflicts are inevitable part of any organization, the coming of this new kind of company will add to more corporate disputes which has to be resolved as early as possible. Here, it is pertinent to note that the Companies, 2013 has largely reformed the old structure of adjudication. Now there is no need to approach multiple forums as the government at central level has constituted the National Company Law Tribunal (NCLT) [2] to directly hear the cases of company law which will probably help in speedy disposal of cases. But a thorough analysis of NCLT and National Company Law Appellate Tribunal (NCLAT) provision read with section 442 of the Companies Act, 2013 and the Companies (Mediation and Conciliation) Rules, 2016 which talk about judicial mediation makes it clear, that this elaborate procedure is not much

suitable for One Person Companies as One Individual Companies though technically fall under the category of private companies in actual terms are special companies created to uplift the grassroots level entrepreneurs and special law must be made accordingly to suit their needs. Accessibility of justice must be ensured to them. To be successful, a good justice delivery system must be open to multiple modes of solving disputes. Provisions must be made for direct jurisdiction of Mediation and Conciliation Committee for One Person Company without a formal adjudication case been already filed in the court of law.

## **2. Concept of Mediation**

### **2.1 Meaning**

The word 'mediation' originated from the Latin root 'mediare' which signify 'halve'. According to Chinese people, it is a process of solving disputes by directly stepping into the problems of conflicting parties, and for Arabs it is a technique of manipulation. Even, Westerners affirm that 'mediation' is a process for conflict resolution [6] As per Black's Law Dictionary 'mediation' is a strategy of non-binding altercation determination by an unbiased third force which aid the debating parties to reach a mutually pleasant solution. [7] In general terms, mediation is the procedure in which an impartial third party, the mediator, encourage discussion between the contenders and helps them to explore each other's perception, empowering in this manner a settlement of disputes. The mediator simply acts as a facilitator or a catalyst and neither the one who partakes in the negotiation process, nor the one who tosses out the recommendations for settlement of the dispute. [8]

### **2.2 Nature**

Mediation is the procedure in which the parties to a debate have in camera discussions on a disagreeable issue in the nearness of impartial mediator(s). It is a deliberate process and is undertaken only if all the parties are freely consenting for it. The mediator helps the parties alter their earlier positions, towards surveying where their interests are. At that time, she/he helps the parties to determine how the matter can be settled, exploring various available possibilities. Contrary to the formal adjudicatory processes, the mediation need not be confined only to the matters already raised in the case but can go to any issue the parties want to resettle. Mediation is a time-bound, non-public and confidential process. The information shared must be kept private by all parties, including the mediator. This encourages a free and straight to the point dialog on things in dispute. [9]

### **2.3 Historical Perspective**

In India, the origin of mediation is darkened by the need of a clear chronicled record. There is dispersed data that was accumulated by tracing mediation in an exceptionally rudimentary framework in the post-*Vedic* period in India. Mulla in his book of Hindu Law mentioned that the early Aryans essentially conjured the unwritten laws of divine wisdom, reason and prudence and administered accordingly. So, the first originating philosophies of mediation were *Wisdom, Reason and Prudence*. Then came the *Dharma Shashtras* (code of conduct) amid which scholastic jurists created the philosophy of basic laws. During the days of *Yagnavalkya*, outstanding ontogeny and progress of trade, commerce and industry was witnessed and the Indian merchants are said to have cruised the seven oceans, sowing the seeds

of worldwide commerce and all the disputes were fathomed on principles of justice, equity and good conscience. Indeed, Buddhism also recommended mediation as the wisest strategy of settling dispute. In the Mughal era also, there was a reference of celebrated case of mediation wherein two ladies claimed motherhood of a child, the Mediator suggested cutting the child into two and separating its body and giving one-half to each woman. The real mother gave up her claim to spare the child's life while the fake mother concurred to the division. The child was at that point given to the real mother. [10] In 21st century, the concept of mediation advanced with enhanced frequency in the Western countries. Its origin can be traced in USA, notably at the Pound Conference in 1976 [11] and the Commission of United Nations on International Trade Law's Conciliation Rule and the recommendation made by the General Assembly. [12]

#### 2.4 Legislative Recognition

The legislative recognition of mediation was formally done in the Industrial Disputes Act, 1947 by vesting the duty of mediation in the conciliators for the settlement of Industrial disputes. [13] Thereafter, came the Arbitration and Conciliation Act of 1996 which made detailed provisions for conciliation of discord. It is pertinent to note that the concept of mediation was not there in Arbitration and Conciliation Act, 1940. [14] A major turning point came in 1999 when the Government enacted the Code of Civil Procedure (Amendment) Act, 1999 (CPC Amendment Act) by which a new Section 89 [15] was added into the Code of Civil Procedure (CPC). This section talks about the concept of 'judicial mediation' as opposed to 'voluntary mediation'. A court by virtue of this section can now select cases where an amiable arrangement is viable, formulate the terms of such a settlement and invite the parties to discord to discuss on it. The basic feature of Section 89, CPC, is that in the absence of an arbitration agreement, the judicial mediation is possible only after obtaining the consent of the parties.

It is to be noted that this amendment of the CPC was opposed by large number of lawyers resulting in the formation of a Committee chaired by Justice M. Jagannadha Rao. The Committee gave its report which was welcomed, and it paved way for mediation in India. In addition, the landmark case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, [16] became the high watermark for development of mediation in India, wherein the reference to mediation, conciliation and arbitration was made mandatory for court matters. [17] In 2003, The Civil Procedure Mediation Rules, 2003 [18] were enacted. Apart from them the Mediation Rules of High Courts contain provision for obligatory mediation under certain situations. So far as application of mediation technique in corporate dispute is concerned, it is a new provision added by the Companies Act, 2013. It talks about the composition of a Mediation and Conciliation Panel at the Central level, to whom the cases will be referred by the government, the NCLT and the NCLAT.

### 3. Concept of One Person Company

#### 3.1 Meaning

As the title proposes, it implies a company which has, as it were only one individual as a part and where lawful and money related risk is constrained to the company only as it were and not to that individual. (*i.e.* obligation is restricted). [19]

As per the statutory law, a One Person Company is a company which has only one person as a member. This company by its nature is a private limited company [20] having no restrictions on minimum paid up share capital. [21] So, it is a company where a single shareholder holds 100 percent shareholding. It is also specified that One Person Company can be a company limited by shares or guarantee or unlimited company. [22]

### 3.2 Historical Perspective

Liechtenstein in Central Europe was the pioneer in the world to statutory recognize the Single Member Liability Company. [25] In U.K., the case of Salomon paved way for it. [26] In India the decision of *In Re Kandoli Tea Company Case* [27] seems to be first on the subject which approved the One Person Companies. However, the contemporary basis of One Person Company in India can be traced back to the report submitted by the J.J Irani Committee. [28] This committee highlighted that with the emergence of service sector and increasing use of information technology and computers the business capabilities of persons should be provided a platform for indulging in economic activities. This recommendation of Irani Committee was given statutory recognition by Act of 2013.

### 3.3 Features of One Person Company

The various features of One Person Company are as under :

1. **Shareholder:** It is a company requiring only one shareholder and that can only be a natural person in contrary to artificial or juristic person. This requirement is further rigged by the fact that he must also be an Indian citizen who is a corporeally residing in India. Further, this company will always be a solitary and unparalleled privilege for such person as he is barred from opening another One Person Company. [29]
2. **Director:** This company structure is a very flexible one, keeping in view of the fact that it commands just one director at the commencement though a maximum of fifteen directors can be appointed relatively. [30]
3. **Nominee:** It is clarified that there shall be a person to be known by the name of the 'nominee' who is to handle the company in case the sole Director/member is disabled or diseased. That is, he is the one who chimes into the status quo and accepts the company at that strenuous stage with all the extant assets and liabilities. As the nominee is to step into the position of sole shareholder sooner or later, he must also have the essential qualification which are mandatory in the former case such as he must also be a natural person who is an Indian citizen and corporeally residing in India. At the time of formation of the company the name of the nominee must be explicitly specified in the memorandum after obtaining the prior consent of such nominee in writing. Here the role of Registrar also assumes predominance as the responsibility to make firm that the nominee had willingly given his consent vests in the Registrar. [31]
4. **Limited Liability:** The immunity of limited liability is very beneficial for investors as the investors in the corporation are only liable for the money they plunge, nothing more than that will be taken from his pocket. The

owners are not at all vicariously liable for the risk of obligation. It implies a course of action of risk sharing. [32]

5. Perpetual succession: Perpetual entity is a vital incident of formation of a company. The major detriment of sole proprietorship is rectified here as now the demise or incapacity of sole member cannot dissolve the One Person Company. [33]
6. Compliances: Many compliance requirements such as Annual general meetings, preparation of Cash Flow Statements etc. which apply to Private Limited companies are not applicable to One Person Company. [34]
7. Board Meeting: There is no need of board meeting in case of a company having only one Director. But if there are more Directors than one, meeting must be there in 6 months. For fixing the date of meeting only a resolution entered in minute book is sufficient. The provision as to annual general meeting, extra ordinary general meeting is not applicatory to One Person Company. [35]
8. Financial Statement and Annual Return - There is quite a pragmatic relaxations as far as financial statement is concerned. As a matter of fact, this statement shall be signed by a single director only. Stringent formalities existing in other form of companies for annual return is also minimized as now it shall be signed by the company secretary or in his absence, by the director of the One Person Company. [36]
9. Related Party Transactions - One of the prominent feature of One Person Company is that, it being a separate entity from owner can also enter into the contract with the sole member of the company who is also its director. The necessary formalities for it are also simple such the contract can be in writing or recorded in a memorandum or in the minutes of the Board meeting. However, to ensure transparency, the company must inform the registrar about it. [37]

#### 3.4 Present Scenario

The annual report published by the Ministry of Corporate Affairs, during the financial year 2015-16 makes it clear that a total of 3,912 One Person Companies were registered till March 31, 2016 with authorized capital of ₹ 94.31 crore. Economy activity wise classification declare that the maximum number of One Person Companies were registered in Business services (2,272) followed by community, personal and social services (571) and manufacturing (329). [38] The above reports highlight that many people of our country have started forming One Person Company.

#### 3.5 Benefit of forming One Person Company

The chief advantages which the One Person Company offer are incomparable and more bounteous than the sole proprietorship form of business. As right from the beginning, the status of the company created by it gives superior credit value to the such company, in a way presenting added opportunities to boost finance. Thereby, the financial base for business gets broadened. Similarly, as opposed to general methods of lending in case of One Person Company loans are given on the basis of execution of the One Person Company and not on the owner's foundation. Loans under the

present banking system in India are granted to various sectors like agriculture, micro-and small-scale industries on priority basis. [39]

#### **4. Mediation As Best Tool To Resolve Disputes of One Person Company**

Time and again focus is on one point that One Person Company is an ideal business format for small scale merchants, businessman with less risk-taking magnitude, craftsman and other service providers and it will act as a dispatch cushion for such business visionaries to display their potency worldwide. [41] It is a new business structure in the already existing pedigree of sole proprietorships, partnerships, limited liability partnership. Meaning thereby, the government aims to uplift the entrepreneurs of India working at grassroot level, instill more confidence in them, let them taste the corporate culture and also indirectly organize the unorganized strata of the society.

So, upliftment of small entrepreneur is the main objective of the concept of One Person Company. However, this upliftment must be complete in all respects. A newly formed One Person Company must be safeguarded from never ending litigations and delays of justice delivery. So, if possibly all the corporate disputes must be resolved by the process of mediation. The various benefits of solving dispute of One Person Company through mediation process are given below-

1. One Person Company can opt for mediation voluntarily and the determine the suitable outcome amicably - The upper hand in deciding the disputes rest always with the parties which seems much comfortable for One Person Companies. This in fact in simple terms, means that the parties retain with them the final decision as to settlement of dispute and also determine the terms and conditions of settlement. This is even so in case of 'court referred mediation' or 'mediation required under a contract or a statute' *i.e.* the final conclusive decision for dispute resolution is always with the parties. This right of self-determination is the basic component of the mediation process and an outlining ethos of one individual company since its outcome is the settlement of discord by the parties themselves and is therefore, unobjectionable. The parties have extreme authority over the result of mediation. Further, any party may withdraw from the mediation procedure any time without relegating any reason.
2. One Person Company is saved from rigid procedure of court - Courts as the greatest and the foremost institution for the endowment of justice have always laid stress on the well-defined procedures which with the passage of time has grown to be rigid. Mediation law however, perceives that a mediator is not a judge so the methodology to be adopted by him must be adaptable enough to listen to parties independently and then jointly. [42]
3. Mediation helps One Person Company to maintain confidentiality - The process of mediation at both level whether it is inter-parties, inter-mediator or inter-court is a private and secret. This connotes that any statements made, or document produced during mediation is inadmissible in court without the written consent of all parties. As far mediators are concerned he is also duty bound not to disclose any statement made by one party to another party, unless assented by the first party.

4. Mediation helps One Person Company to reach to a mutually acceptable solution - During this process of mediation not only facts but legal issues are also discussed to find out the main cause of discord. The objective of mediation process is to discover a commonly worthy arrangement that can appropriately and lawfully fulfills the demands, wants and interface of the parties. If the mediator fails to settle the dispute, he must file a report of non-settlement. Here it is relevant to specify that this report will not mention the reason for the failure. The report will just mention "not settled". [43]
5. One Person Company is saved from the long delays of litigation - The greatest confrontation before India is the gigantic figure of undecided cases in the courts and the fact that pendency of cases clogs the wheels of justice [44] and the verdict loses its impact. The Indian judiciary is a bouquet of the apex Supreme Court and 24 High Courts besides lower judiciary but India has the the world's biggest backlog of cases that is a total of 25,771,359 cases [45] which are pending in the courts across the country which hatch astonishment worldwide and tremendous concern at national level. One Person Company can be saved from this wastage of time.

#### **5. Conclusion And Suggestions**

Mediation is a facet of good governance and is the best additional modus for resolving disputes. For India it was a much-needed reform as there are multifarious issues like problem of excess population, slow justice delivery system. Further, when it comes to business matters, they must be resolved without delay as time is money for any business concern. Mediation technique can act as an apogee for resolving One Person company disputes as it has the potential to rebuild the future business relationship and maintain privacy too. The suggestion regarding the applicability of mediation law on One Person Companies is as under -

1. Section 442 needs to be revised - S.442 of the Companies Act, 2013 talks about voluntary or judicial mediation. The provision states that any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the NCLT or the NCLAT, apply to the Central Government or the Tribunal or the Appellate Tribunal, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. [46] Similarly, these authorities can also refer the case suo motu to the panel. That basically means first the company have to file a proceeding before NCLT which at present has only 11 benches [47] or Central Government and then it will be referred to mediation panel. It is argued that such a long procedure can be suitable for big companies which have a good pool of resources but for small companies like One Person Companies it will create more hurdles then assistance. So, it is submitted that a new section must be added to facilitate the special needs of One Person Companies and Mediation Panel must be vested with the jurisdiction to directly entertain cases of One Person Companies as ideally in case of One Person Company, mediation should be opted for before litigation, when circumstances are more workable and before considerable money have been expended.

Thus, by this paper an attempt has been made to propose mediation as a best method for resolving conflicts of One Person Companies and it is urged that a new section must be added in the Companies Act, 2013 and in the Companies (Mediation and Conciliation Rules), 2016 to address the special needs of One Person Companies as the provisions in the of Mediation in the Companies Act, 2013 seems not suitable for these companies.

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