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Title: Discussion on the motion to consider the Limited Liability Partnership Bill, 2008, as passed by Rajya Sabha.

MR. DEPUTY-SPEAKER: We shall now take up Item No. 26 – Limited Liability Partnership Bill.

Shri Prem Chand Gupta.

THE MINISTER OF CORPORATE AFFAIRS (SHRI PREM CHAND GUPTA): Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration. "

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration. "

MR. DEPUTY-SPEAKER: I would like to make a request to all the hon. Members to speak very briefly so that this Bill can be passed today. This is my humble request.

Now, Shri Rupchand Pal.

SHRI RUPCHAND PAL (HOOGHLY): Sir, I shall be as brief as possible and I shall make some comments on this Bill.

In the beginning, the concept of this Limited Liability Partnership Bill was to promote the small enterprises and for investment by venture capital but ultimately it was turned out to be that others also would be there and it would be suitable for the small enterprises and also for investment by venture capital. Now, when the Standing Committee examined this Bill, it had expressed a serious reservation on certain areas. They are quite grey areas. It is particularly as to how this limited liability works out to be in view of the fact that it is related to so many other existing Acts. [\[H31\]](#)

For example, it is used as a tool for tax evasion. In UK, the LLP itself is answerable for the tax provisions. But in our country, all tax related things are guided by the Income Tax Act, 1961.

Then, about the Tribunals and the Appellate Authorities, till they come, what transitional provisions would be made? The Committee has categorically stated as to when and how it would be put in place. About the National Company Tribunal and the Appellate Tribunals, no one knows. It is because there are legal hurdles. So, in the interim period, it may create a lot of chaos. So, I would like to know what are the transitional provisions. It would have to be clearly spelt out.

Now, about the story of disclosures, the SEBI has been repeatedly underlying how the companies are deceiving the market as also the investors in various dubious ways of disclosures or rather non-transparent operations. We know about the scandalous stories of the vanishing companies.

Now, about the returns, the punishment provision is too inadequate. This is put in such a manner that it is difficult to know as to what would be the quantum of punishment. Suppose, on a repeated non-compliance of submission of the returns, what would be the quantum of punishment? Would it be the same as in the beginning?

Now, about the designated partners, how and when they would also be liable in a particular event? About the termination and dissolution, the minimum number of two partners is mentioned. In the event of death of a particular partner, if it comes to less than two, what would happen in such a situation? Such extraordinary situation has not been taken care of in the Bill.

The Standing Committee has categorically stated about so many things. For example, the definition of digital signature. It is a well-established and accepted thing in regard to the Information Technology provisions. But strangely, in the first draft of the Bill that was given to the Committee, it was not there. So, it should be clearly spelt about in regard to the definition of the digital signatures.

Similarly, there are very many other areas. Similarly, what would be the consequence in the amendments of the Company Secretaries Act, Institute of Chartered Accountants Act, Institute of Costs and Accountants Act, Advocates Act? So, this is

very experimental. While in principle, I support the Bill.

I had the occasion to witness and listen to the views of different stakeholders in the old scheme of things. Some of them had expressed certain things. But I do not find them incorporated in this Bill. So, I think, when there should be reconsideration, all these things would be considered. I can comment on all the points in detail but there is a time constraints.

But in spite of my reservations, I, in principle, support this Bill.

MR. DEPUTY-SPEAKER: Now, Shri Suresh Prabhu. Please be very brief.

SHRI SURESH PRABHAKAR PRABHU (RAJAPUR): Sir, this is a Bill for Limited Liability. I hope the time is not limited. So, please give us unlimited time to talk about limited liability. I would try to conclude my speech as quickly as possible. But give me some time.

Sir, if somebody wants to carry out a normal business, he has several possibilities viz., propriety concern, partnership, private limited company, public-private company, associations of persons. He could have a charitable trust. So, there are so many other possibilities including the cooperative organizations and many other ways. But one of the infirmities that we always encountered with was that the partnership did not have a continuity. Supposing there are two partners. If one of the partners dies, the partnership does not exist. There should be a perpetual entity, which can carry out the activity beyond a life of the partnership that should be there. Therefore, there was a need to have a Bill like this.

Sir, I welcome this Bill, which is coming in the form of Limited Liability Partnership Bill, 2008.

But Sir, I was just wondering that in the Indian Partnership Act, 1932, there is a provision, which says that there should be a minimum two partners and maximum 20 partners but if you have more than 20 partners, you could not be registered as a partnership under the Indian Partnership Act, 1932. I was wondering about as it was just trying to have a look at the Bill. Due to time constraint, I was not able to go through it fully. But I was not able to find any proper mention about this provision of maximum partners.[\[r32\]](#)

What happens in this case? Can we have more than 20 partners or can we not? So, that is something which I do not think so. It has been very explicitly mentioned here. So I was wondering about it.

Sir, one of the very important provisions that is really mentioned here is in present law on partnership. One of the problems with that was, a partner who is, of course, liable for his own action, is also jointly and severally liable for the actions of others. So, if the other partners undertake certain activities, which are detrimental to the interest of the partnership, the partner is still liable jointly and severally for the actions of all. But I think that is a very welcome provision that this limited partnership tries to limit that liability, and, therefore, this is an important issue.

Then, again, these are very important points. They are mentioned here. One is about winding up. In fact, this is something which I would request the Minister to look at this aspect. It is not an issue only related to the partnership. Generally, in India bankruptcy laws need a complete evaluation and overhaul. In fact, under the US law, there is a Chapter-11 which is mentioned under the bankruptcy law. If any partnership, any entity, any corporate body is facing a problem and if the assets are less than the liabilities, he can seek Chapter-11 protection and during that period he could carry out the business thereby they are ensuring the exit of business in a proper way, in a very structured way and the business can still be carried out while that bankruptcy operation takes place. I would request the Minister to look at this particular aspect which is not mentioned here. Therefore, this is something which is coming from me.

Regarding the issue related to conversion, in fact, there is a provision here in this Bill that conversion from limited liability partnership into partnership or even into the higher bodies like limited companies under the Companies Act, 1956, is possible. What I was wondering was this. What happens if we are converting such entities into the liabilities of it? What happens to the tax implication of it? I think really we need to make sure that migration of entity from one firm to another takes place very seriously, very smoothly without attracting any provisions of adverse laws that are really required. So, this one, again I think we should try to put into place.

There is another issue that really has to be properly taken into consideration is the partner's liability which has been

addressed. I think, probably, Mr. Minister, you must assure the House that you will also bring in comprehensive amendment to Partnership Act, 1932 itself because that itself again needs a proper re-visit and re-look. Thank you very much.

SHRI ALOK KUMAR MEHTA (SAMASTIPUR): Sir, I stand in support of the Limited Liability Partnership Bill, 2008.

I would like to congratulate the hon. Minister, Mr. Prem Chand Gupta for implementing the MCA 21 programme, that is, e-governance in registration of the companies. This has given a very good result and very good feedback. So, this is a great change in the system of registration and regulation of the companies in India after a long time. So, through this, our Government has made pace with the global development of this kind of activity.

I have very specific questions. How would you register the limited liability partnership firms? What will be the process of that? What will be the tax structure of the LLP, that is, Limited Liability Partnership firm? Would it be like private limited companies or limited companies or like a partnership firm? My third question is this. Can a private limited company be converted into limited liability partnership firm? I have these three questions

I have a great hope that more and more firms will be registered through this system and this Act will provide ease to the entrepreneurs of the country. This system is a mid-way system. In private limited firms, there are so many problems. In partnership firms, there is so much liability. So, I think in between these, this provides a greater solution to the entrepreneurs, and more and more Chartered Accountants, Company Secretaries, Cost Accountants and Lawyers will be employed in this system.

With this hope, I thank you, and I support the Bill.

**श्री शैलेन्द्र कुमार (चायल) :** माननीय उपाध्यक्ष जी, सीमित दायित्व भागीदारी विधेयक 2008 जो राज्य सभा से पारित होकर लोक सभा में चर्चा और पारित करने हेतु माननीय मंत्री प्रेमचंद गुप्ता जी ने रखा है, मैं इसका पुरजोर समर्थन करता हूँ।

जैसा अभी सम्मानित सदस्यों ने कहा कि जो प्राइवेट या सरकारी सैक्टर की कंपनियाँ सीमित दायित्व की हैं, अगर वे पार्टनरशिप में रहती हैं तो मेरे ख्याल से सबकी सामूहिक ज़िम्मेदारी रहती है। इसलिए इस विधेयक का महत्व बढ़ जाता है। दूसरी तरफ जो एकल दायित्व की कंपनियाँ हैं, उनमें एक तरह से उन कंपनियों की मोनोपत्ती होती है। यह बहुत अच्छा बिल है। इससे बहुत से लोगों को येज़गार मिलेगा, कार्य के क्षेत्रों में बँटवारा भी होगा और एक तरह से जो सामूहिक भागीदारी होगी, उससे कंपनियाँ ज़्यादा ज़िम्मेदार होकर आगे तखकी करेंगी।

मैं पुनः इस विधेयक का पुरजोर समर्थन करते हुए अपनी बात समाप्त करता हूँ।

SHRI BRAJA KISHORE TRIPATHY (PURI): Hon. Deputy-Speaker, Sir, the Limited Liability Partnership Bill, 2008 intends to make provision for the formation and regulation of limited liability partnership and for matters connected therewith or incidental thereto.

This Bill is replacing the Bill of 2006 with certain amendments. The Standing Committee have recommended many things for this Bill. But the Government has not accepted all of them and the hon. Minister is not accepting all the recommendations and they have incorporated some of the recommendations of the Standing Committee. In this Bill there are certain provisions just to make a provision for the company law, to propose new business vehicle etc. This corporate structure, in fact, facilitates creation of another corporate structure under this new law. It is said that this structure is aimed at giving boost to small and medium enterprises. But, what will happen? Of course, some professionals can take advantage of this law of limited liability partnership and they can have their company. Whatever lacuna in the company law will not apply under this thing and they can better choice to have their business. But if somebody takes relief of this and goes away from the company, what will happen? It is not specified whether the liability will go with the partner or not. That is not specifically told in the Bill itself. If some partner goes away from this new company or this corporate house, what will happen to the other partners? Whether the obligation of the liability will go to the remaining partner or not? That should be clarified by the hon. Minister.

Of course, this Bill is like a new cooperative and with this examination we hope that whatever the Standing Committee has recommended, the Government will come with a comprehensive Bill in future and they will also incorporate all the recommendations of the Standing Committee.

MR. DEPUTY-SPEAKER : Thank you. Before I request the next speaker, I would like to extend the time up to the passing of this Bill. I think that the House agrees.

SEVERAL HON. MEMBERS : Yes, Sir.

MR. DEPUTY-SPEAKER : Now I request Shrimati Tejaswini Gowda to speak. [\[k33\]](#)

SHRIMATI TEJASVINI GOWDA (KANAKAPURA): Mr. Deputy-Speaker, Sir, I seek your kind permission to speak from here. Today, let me compliment our visionary Prime Minister, who is pride of India. Under his able leadership, India achieved recognition as a growing economic power, which is drawing the world's attention. At this moment, I would like to compliment the manpower, the technical power and the entrepreneurs who are sharing this achievement.

Of course, the LLP Bill was first introduced in Rajya Sabha on 15<sup>th</sup> December, 2006. This Bill was referred to the Departmentally-Related Standing Committee on Finance. This hon. Committee made a lot of recommendations, which the Government examined and accepted. To make them included in the Bill, the Government thought it appropriate to introduce a new, fresh Bill during this Session. So, in this august House, our UPA Government, under the leadership of Shrimati Sonia Gandhi, has introduced this Bill.

I compliment our Minister, Shri Prem Chand Gupta for his new initiatives. I have few doubts. LLP is viewed as an alternative corporate business vehicle that provides the benefits of the limited liability but allow its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement. At the same time, it allows people engaged in scientific and technical disciplines to form a commercially efficient vehicle suited to their requirements. I have few doubts in my mind. I would like to pose these queries to the hon. Minister to answer.

First, who are the beneficiaries or users of this proposed new legislation? Second, how will the Government ensure that the framework for taxation of LLPs in India does not adversely affect the competitiveness of LLPs incorporated under the LLP Bill, 2008 *vis-à-vis* LLPs incorporated in other countries or foreign LLPs establishing their business in India? Third, how will the Government ensure that the registration of LLPs is done smoothly by extending electronic system, that is, MCA 21 programme being run under the provisions of the Companies Act, 1956? Fourth, how would the Government ensure that necessary rules are prepared and issued timely so that the provisions of the LLP Bill, 2008 on its enactment are implemented early? Fifth, how would the Government ensure that the potential beneficiaries are saved of unnecessary and avoidable procedural and compliance requirements including the requirements relating to the obtaining and filing of certificates from various professionals? And, by when can we see the first LLP registered?

With these words, I would like to thank the Chair.

SHRI PREM CHAND GUPTA: Sir, first of all, I would like to thank all the hon. Members who have participated in this debate on this important legislation which we are about to pass today.

Sir, all the hon. Members have raised certain issues which are more or less common. Shri Rupchand Pal raised certain important issues. As mentioned by him, it is true that the Standing Committee earlier had recommended that the scope of partners in LLP firm should be restricted, but in view of today's business requirement, where global economy is changing so fast, we feel that this restriction would have been a retrograde step and not as per the requirement of the day. Today, the service sector contributes 50 per cent of our GDP. You know that we are leading in IT sector and we are leading in hospitality sector. So, we thought that this number should not be restricted and we should keep it open. Earlier, in the partnership firms, a minimum of two partners and a maximum of 20 partners were allowed. [\[SS34\]](#)

But we have decided that there would be no restriction in LLP firms. Other than this, we have more or less accepted all the recommendations of the hon. Standing Committee.

The issue of taxation was raised. You would appreciate that the issue of taxation is being looked after by the Ministry of Finance, Department of Revenue. However, our efforts would be that our LLP firms do not have any disadvantage of any taxation ruling. We want this because our LLPs would be working not only in the local market, but they would be working in the foreign countries also. Therefore, we would be definitely involved as far as taxation matter is concerned, and our Ministry would take up the issue with the Ministry of Finance so that our LLPs are not at a disadvantage.

The next issue raised was about the transition arrangement, which was raised by Shri Rupchand Pal. We have been trying to put NCLT in place, but unfortunately, the issue is pending with the hon. Supreme Court of India. Now, the case is likely to come up very soon as it has been listed at number 10 or 12. I think that the Constitution Bench would hear it. Once it is done, then we will ensure that the entire process is in place and there should be no gap. But, in the meantime, the courts are there and the issues can be taken up in the courts.

The issue of liability of a designated partner was raised by Shri Rupchand Pal, and also my friend Shri Suresh Prabhu. All the partners would have liability to the extent of their commitment in the LLP. The LLP would have the commitment to the extent of their assets, but the partner's liability would be limited to the commitment that they have made in the LLP. They can fix the percentage as to what would be the responsibility; what would be the accountability; and what would be the liability of a particular partner, as per the share, in cash or kind through the personal arrangement and agreement. These were the issues raised by Shri Rupchand Pal.

One issue was raised by Shri Suresh Prabhu. He himself is a very renowned Chartered Accountant. I have been consulting him on various issues, and he has been guiding me. I have always given due weightage to what he has been suggesting. I am glad that today he is here, and he has raised some very valid issues.

The concept rules are being prepared. I must tell you that we have adopted a consultative process as far as the rule-making is concerned. We have even consulted all the professional institutes like the Institute of Company Secretaries and the Institute of Chartered Accountants in framing the law. We have taken their view points, and we have consulted the professionals also. More or less, we have consulted all the stakeholders in framing this new legislation. Now, what we have done is that these rules have been framed, and they have been put on the website of the Ministry of Corporate Affairs. I would appreciate if you all could kindly look at them. If you have any suggestion, then we would be very happy to provide you with all the required information and we will definitely like to have your suggestions on this.

Shri Suresh Prabhu's next question was about the number of partners, that is, about having two minimum and 20 maximum. I had explained that this number is now unlimited because there is no sense in keeping this limitation on our professional bodies. You would appreciate that a firm in the United States or in UK can have 10,000 partners.[\[r35\]](#)

But our professional firms had a limitation. They could not have more partners, so their scope of work was limited. But with this increased number, they can have their branches anywhere in the world. They can have business anywhere in the world. I think relaxation in number is a good move. I hope you would appreciate it.

Shri Alok Mehta raised an issue as to how long it will take to register an LLP and in what manner it would be done. I must tell you that earlier the Registrar of Companies was accepting the duly filled in documents, and now everything can be done through MCA21 programme. You can file your returns electronically and there is minimum paper work. Similar provisions would be kept, as far as LLP is concerned.

Coming to the taxation issue, I have explained that we would definitely be taking it up with the Ministry of Finance.

Tejaswini is a *tejaswini* lady; she has raised a lot of important issues. One of the questions raised by her was who are going to be the likely beneficiaries of the proposed legislation. Persons providing services of any kind, like professionals, chartered accountants, lawyers, company secretaries, etc., are all covered under this. Any type of professional can have multiple partners in the firm. But the regulations of the regulating Act of that firm would be applicable to them. The solicitor firms cannot have chartered accountants as their partners because that particular Act restricts this. But as far as the Chartered Accountants' Act is concerned, I think that is being amended. It has already been amended and the chartered accountants can have partners from different professions.

Sir, small and medium enterprises, small firms, small professionals and firms, where professionals from different fields can come together, can provide service under one roof. This would be a very revolutionary mode of doing business. I hope all our small producers and SMEs would take advantage of this provision.

As far as taxation is concerned, I have already explained that it would be our endeavour to ensure that our LLPs are not in a disadvantageous position. The next question raised by Madam Tejaswini was what would be the procedure of registration of LLPs and how Government would ensure that it would be smooth. As I explained earlier that MCA21 programme is an E-governance programme and that programme would cover registration of LLPs. The registration of LLP firms would be a completely paperless transaction.

As far as framing of rules is concerned, as I explained to Shri Suresh Prabhu, we have already put most of the rules on the website of the Ministry. I would be very happy to receive suggestions from my colleagues. The Government would be very happy for the reason that when a legislation is passed, it should be good for the next 20 years.[\[r36\]](#)

So, taking into account, we have incorporated best possible legislation. I cannot say firmly but our effort should be that from 1<sup>st</sup> of April next year, we would have the first LLP company registered.

Sir, with these words, I would like to thank my colleagues once again and I would like to submit that the Bill may be taken up for passing.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

MR. DEPUTY-SPEAKER: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 81 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 81 were added to the Bill.*

*The First Schedule to the Fourth Schedule were added to the Bill.*

*Clause 1, the Enacting Formula and the Long Title were added to the Bill.*

MR. DEPUTY-SPEAKER: Now, the hon. Minister may move that the Bill be passed.

SHRI PREM CHAND GUPTA: I beg to move:

"That the Bill be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed."

*The motion was adopted.*