IJARSCT

ISSN (Online) 2581-9429

International Journal of Advanced Research in Science, Communication and Technology (IJARSCT)

International Open-Access, Double-Blind, Peer-Reviewed, Refereed, Multidisciplinary Online Journal

Impact Factor: 7.53

Volume 4, Issue 5, March 2024

Research and Development on Partnership Firm

Mr. Mit Chauhan
Research Scholar
The Byramjee Jeejeebhoy College of Commerce, Mumbai, Maharashtra, India

Abstract: *According to section 4 of the Partnership Act of 1932,"Partnership is defined as the relation between two or more persons who have agreed to share the profits of a business carried on by all or any one of them acting for all". This definition superseded the previous definition given in section 239 of Indian Contract Act 1872 as – "Partnership is the relation which subsists between persons who have agreed to combine their property, labor, skill in some business, and to share the profits thereof between them". The 1932 definition added the concept of mutual agency. The Indian Partnerships have the following common characteristics:*

1) A partnership firm is not a legal entity apart from the partners constituting it. It has limited identity for the purpose of tax law as per section 4 of the Partnership Act of 1932.

2) Partnership is a concurrent subject. Contracts of partnerships are included in the Entry no.7 of List III of The Constitution of India (the list constitutes the subjects on which both the State government and Central (National) Government can legislate i.e. pass laws on).

3) Unlimited Liability. The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.

4) Partners are Mutual Agents.The business of firm can be carried on by all or any of them acting for all. Any partner has authority to bind the firm. Act of any one partner is binding on all the partners. Thus, each partner is 'agent' of all the remaining partners. Hence, partners are 'mutual agents'. Section 18 of the Partnership Act, 1932 says "Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm"

5) Oral or Written Agreements. The Partnership Act, 1932 nowhere mentions that the Partnership Agreement is to be in written or oral format. Thus the general rule of the Contract Act applies that the contract can be 'oral' or 'written' as long as it satisfies the basic conditions of being a contract i.e. the agreement between partners is legally enforceable. A written agreement is advisable to establish existence of partnership and to prove rights and liabilities of each partner, as it is difficult to prove an oral agreement.

6) Number of Partners is minimum 2 and maximum 50 in any kind of business activities. Since partnership is 'agreement' there must be minimum two partners. The Partnership Act does not put any restrictions on maximum number of partners. However, section 464 of Companies Act 2013, and Rule 10 of Companies (Miscellaneous) Rules, 2014 prohibits partnership consisting of more than 50 for any businesses, unless it is registered as a company under Companies Act, 2013 or formed in pursuance of some other law. Some other law means companies and corporations formed via some other law passed by Parliament of India.

7) Mutual agency is the real test. The real test of 'partnership firm' is 'mutual agency' set by the Courts of India, i.e. whether a partner can bind the firm by his act, i.e. whether he can act as agent of all other partners..

Keywords: Mutual Agents

I. INTRODUCTION

A partnership is an arrangement where parties, known as business partners, agree to cooperate to advance their mutual interests. The partners in a partnership may be individuals, businesses, interest-based organizations, schools,

governments or combinations. Organizations may partner to increase the likelihood of each achieving their mission and to amplify their reach. A partnership may result in issuing and holding equity or may be only governed by a contract. At common law, members of a business partnership are personally liable for the debts and obligations of the partnership. Forms of partnership have evolved that may limit a partner's liability.

The general partnership, in which all partners manage the business and are personally liable for its debts, developed under common law. General partners have an obligation of strict liability to third parties injured by the Partnership. General partners may have joint liability or joint and several liability depending upon circumstances.

The limited partnership (LP), is a partnership in which general partners manage the partnership's operations, and limited partners forego the right to manage the business in exchange for limited liability for the partnership debts. The liability of limited partners is limited to their investment in the partnership. This form of partnership was developed in the 19th century, the U.K. where it was imparted by charter, and in the U.S. where it was created by statute.

More recently, additional forms of partnership have been recognized:

limited liability partnership (LLP): a form of partnership in which all partners may have some degree of limited liability.

limited liability limited partnership (LLLP): a form of limited partnership in which general partners have limited liability for the debts and obligations of the limited partnership.

Types of Partners in a Partnership Firm:

1. Active or managing partner

An active partner participates in a company's management. Referred to as material participants, active partners invest in the partnership and participate in its day-to-day activities to maximise their returns. They typically hold some of the most important positions and can serve in various roles, including those of a manager, advisor, organiser and controller of the company's operations. The active partner may withdraw compensation from the business, subject to the partnership deed's terms and conditions. Additionally, they are completely liable for any debts. They serve as agents and manage everyday tasks on behalf of all the other partners. Any decision made by an active partner in the regular course of business is binding on the company and other partners. When leaving the partnership firm, an active partner publicly announces their intention to resign from the company to release themselves from responsibility for the actions of the remaining partners. Without issuing public notification, they would still be responsible for the actions of the other partners post-retirement.

2. Inactive or sleeping partner

An inactive partner is not involved in the day-to-day operations of the partnership firm. But other partners might consult with them when making important decisions for the company. Similar to other partners, a sleeping partner contributes a fair portion of capital to the business and shares its gains and losses. Outsiders may not be aware of this partner's relationship, but they invest in the company and are responsible for paying off any debts on the company's behalf. They have limited financial obligations and liability to the business. A person who is financially capable and interested in the company but cannot work full-time in the business can take on the role of an inactive partner. The actions of all the other partners are binding on them. Unlike an active partner, it is not necessary for a sleeping partner to give public notice if they choose to leave the partnership. The firm cannot allow them to withdraw compensation because they are not involved in the day-to-day management of the company. If the partnership agreement does pay inactive partners, it is not deductible under the Income Tax Act of 1961.

3. Nominal partner

A nominal partner has no substantial stake in a partnership firm. They do not participate in the operation of the company and merely lend their name to it. They make no capital investments in the company and hence do not share in its profits. But the nominal partner is still responsible for the actions of any other partners when dealing with third parties and outsiders. They are also responsible for paying the firm's debts back to its creditors. The company might increase its sales or gain greater market credibility by leveraging the nominal partner's name. For instance, a business can establish a partnership with a celebrity or business tycoon. This can provide value to the company and improve its brand image by leveraging the individual's notoriety and goodwill. The nominal partner may agree to this arrangement in exchange for money or any other form of compensation.

IJARSCT
ISSN (Online) 2581-9429
International Journal of Advanced Research in Science, Communication and Technology (IJARSCT)
International Open-Access, Double-Blind, Peer-Reviewed, Refereed, Multidisciplinary Online Journal
Impact Factor: 7.53
Volume 4, Issue 5, March 2024

4. Partner by estoppel or holding out

A partner who indicates through their words, deeds or conduct that they are a partner in the firm is a partner by estoppel. Even if they are not actually a partner in the company, they may have presented themselves in a way that legally binds them to become a partner by estoppel. Also, if a company names a person as a partner and the person knows this but does not object to or reject the partnership, people can assume their consent, and thus they legally become a partner by estoppel for that firm. Later, they cannot deny being a partner. Although this partner does not participate in the firm's management or capital contributions, they are nevertheless responsible for the credits and loans the company obtains. There are two basic requirements for establishing a partner by estoppel—the individual represents they are a partner of a firm either orally, in writing or via their conduct, and a third party acts with knowledge of that representation. The individual who introduces themselves as a partner is responsible for any financial losses caused to the third party because of the representation, provided the third party can establish it in court.

5. Partner in profits only

A partner who enters the partnership firm as a 'partner in profits only' partakes in profits but is not responsible for any losses. Even when engaging with third parties, they are only accountable for their profit-making activities and do not share any other liabilities. They do not participate in firm management and are not accountable for the company's business decisions. These types of partners often join a company for its money and goodwill. They are accountable to third persons for their acts of gain, though. This means a third party could hold this partner responsible if the business suffers a loss and the other partners go bankrupt. The third party may not concern themselves with the internal arrangement of only sharing profits because it is a private arrangement among the partners. When other partners cannot pay up, the 'partner in profits only' becomes accountable for the firm's liabilities. They can then reimburse the third party for their losses or contributions to the firm.

6. Minor as a partner

A minor, or someone under the age of 18, cannot be a formal partner in any partnership firm as per the Contract Act. But, if other business partners agree, they may still be eligible for a partnership. A minor may partake in a company's profits, but they are only liable for their capital contribution if the company suffers a loss. After reaching maturity or turning 18, a minor partner has six months to determine whether they want to stay on as a partner or leave the firm. They declare this by a public notice in both situations. They become subject to the firm's unlimited liability as of the day they gained the benefits of a partnership if they fail to offer any notice within six months or decide to stay. Additionally, they gain the right to actively participate in running the company's operations. If a minor chooses not to become a partner, their liabilities and rights remain those of a minor until the day of public notification. Any actions the company takes after the notice date are not subject to liability for their share.

7. Secret partner

A secret partner is a partner whose affiliation with the company is unknown to the broader public. The secret partner occupies the space between the active and sleeping partners. They invest capital, enjoy profits, share losses, take part in business management and are subject to unlimited liability. But they keep their membership a secret from outsiders and other parties. A silent partner is similar to a secret partner but does not have the right to take part in business management.

8. Sub-partner

A third party who shares a stake in a company with an existing partner is a sub-partner. This occurs when a partner consents to divide the company's profits with another party. The relationship is between them and the partner and not between the sub-partner and the partnership firm. A sub-partner is not an entity of the firm and has no obligations to the firm as a result. Typically, a sub-partner accepts a profit-sharing arrangement as a third party. Such a partner is not permitted to identify themselves as a partner in the company. Additionally, they are not accountable for the actions of the original firm's partners and have no rights reserved in the original firm. They can only make a profit claim against the partner who engaged them as a sub-partner based on the agreed-upon terms.

II. REVIEW OF LITERATURE

There are a range of types of partnerships and different ways of classifying them. For example, Powell and Glendinning (2002) classify partnerships based on the sectors that are involved. Partnerships are driven by a diversity of factors and

ISSN 2581-9429 IJARSCT

have varying governance structures, operational challenges, and tasks (United way Toronto,2009). As a result, there are no exhaustive typologies for partnerships.

III. RESEARCH METHODOLOGY

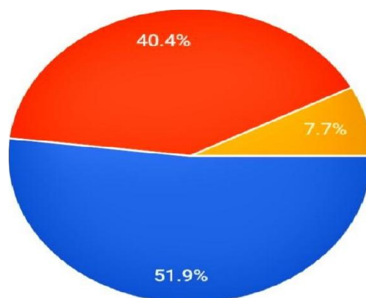
A research method is a systematic plan for conducting research. Sociologists draw on a variety of both qualitative and quantitative research methods, including experiments, survey research, participant observation, and secondary data. Quantitative methods aim to classify features, count them, and create statistical models to test hypotheses and explain observations. Qualitative methods aim for a complete, detailed description of observations, including the context of events and circumstances.

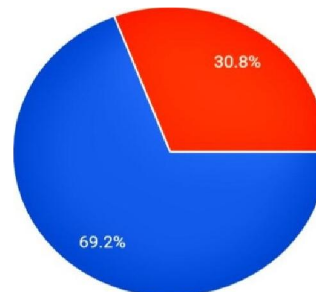
3.1 Objective Of Partnership:

- To maximize profits and share risks, provide access to greater financial resources, benefit from the advice and skills of all partners, increase efficiency, encourage innovation and build strong relationships.
- Partnerships also help to create economies of scale and provide a platform for growth. Also, partnerships provide greater freedom to explore new business opportunities and gain more connections and networks.
- It also provides the partner access to more resources, as compared to running the business alone.
- Similarly, partners can benefit from shared knowledge, experience and contacts of the other partners. Ultimately, making the partnership firm more successful and profitable.
- A partnership firm enables its partners to share the cost, time and skills required to manage the business

IV. DATA ANALYSIS

What is the primary source Copy of income for partnership firm 52 responses
Business profits Business investment
Business lending
Whether partnership office
Copy is owned or lease
52 responses





REFERENCES

[1]. https://www.scribd.com
[2]. https://www.lawyered.in
[3]. https://study.com
[4]. bbamantra.com
[5]. https://www.yourarticlelibrary.com