

PARTNERSHIP LAWS IN INDIA – AN OVERVIEW

***Madhu Kaveri**

ABSTRACT

“Fight for the things that you care about, but do it in a way that will lead others to join you.”

- Ruth Bader Ginsburg

In India, people now are more interested in becoming entrepreneurs. They want to start their own business with their close ones or in partnership. Due to increasing business, people must be aware of the partnership rules. To protect their rights Indian Partnership Act, of 1932 was made. This article will talk about the rights of partners, dissolution of the firm, and registration.

Keywords: Partnership, Rights, Laws.

INTRODUCTION

Partnership principles were first brought under Chapter XI of the Indian Contract Act, 1872 from sections 239-266. With the growing business and cooperation, it was held that these laws were not enough for cooperation. Hence, sections 239-266 of the Indian Contract Act, 1872 were repealed. On 1st October 1932, the Indian Partnership Act was enacted except for Section-69 dealing with the registration of partnerships. Section 69 was enacted on 1st October 1933. The unrepealed provisions of the Indian Contract Act, 1872, save to date as they are inconsistent with the express provisions of this Act, shall still apply to firms.¹

WHAT IS PARTNERSHIP?

A partnership means when two or more persons agree with undertaking a business and sharing the profit and loss. “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. In partnership, "partners" means when people have entered into a partnership with one another, and "firm" means when they are combined and under which their business is carried on is called "firm name".²

*FIRST YEAR, BA LLB, INDORE INSTITUTE OF LAW.

¹ Section 3 of Indian Partnership Act, 1932.

² Section 3 of Indian Partnership Act, 1935.

According to section 5 of the Indian Partnership Act, 1932, Partnership is done by contract and not status. Here, it means that if a husband and wife are doing a business, they will not be considered partners.

ESSENTIAL ELEMENTS OF PARTNERSHIP

Parties - A partnership is done between two or more persons. In other words, to form a partnership, at least two persons or more must be there. The number of partners carrying partnerships in the banking business must not exceed ten and in other businesses, not more than twenty.

An agreement among the partners – A partnership is made when there is an agreement between two parties. An agreement can either be written or oral. The partnership could originate based on either the clear or implied agreement.

Business – For a partnership, there should be a business so that they can share profit or loss. Without business, the partnership is like a body without a soul. In absence of business, the partnership is meaningless and without purpose. Business includes each trade, occupation, or profession.

The objective is earning and sharing profit - An important feature of the partnership is to earn profits by running the business and sharing it amongst the partners. Any trade which doesn't aim at earning profits, can't be called a partnership. Further, the profit so earned is shared by the partners in an agreed proportion, or equally in absence of such agreement. A partner who is not sharing the profits, cannot be called the partner of the firm. Mostly the profits are earned, and the occurrence of loss is only accidental. But the losses too, like profits, are to be borne by the partners.

Business run by all or one on behalf of all - It is not essential that all the partners be active participants in business, but the business must be run for and on behalf of all the partners. If therefore, they have agreed that the work of the firm shall be carried on by some particular partner, the firm shall then not be dissolved since each partner is liable to every other partner of the firm just as the principal is liable towards his agent. Every partner is the proprietor himself as well as an agent to the other partners.

Liability of each partner, joint, and several - In a partnership firm, the liability of partners is unlimited. A partner cannot plead that his liability is limited to the amount of capital contributed by him. Further, the liability of a partner is joint and several both which means a partner can be held liable for the actions of the firm either individually or jointly with the other partners.

Existence of firms not separate from partners - A firm cannot exist independently or separately from its partners. If the partnership comes to an end, the firm also ends. Only by the partners does the firm exist in its status and structure.

TYPES OF PARTNERS

Active partner- Active partners are those who actively participate in daily business activities. They are also known as ostensible partners.

Sleeping partner- Sleeping partners are those who do not actively participate in the daily activities of the business. They have invested their money and share profit and loss. They are also known as dormant partners.

Nominal partner- Nominal partners are those who neither invest their money nor share profit and loss. They are there for using their name to promote the business.

Partner by estoppel- Partners who have represented themselves as the partner of the firm become liable to the third person who has invested their money in the firm by such representation.

Partners in profit only- Partners who only share the profit of the business and are not liable for the losses. He is not considered liable for dealing with third parties.

Minor Partner- If a partner has not attained the age of majority i.e., 18 years, he is considered a minor according to the Indian Contract Act, 1872. A minor can be a partner if all the partners agree. The liability of the minor partner will be limited.

RIGHTS OF PARTNERS

Right to conduct of business³- Every partner has a right to take part in the conduct of the business.

Right of access to accounts⁴- Every partner has a right to have access to and to inspect and copy any books of the firm.

Right to share in profits⁵- Partners have the right to share the profits equally in the profit earned and to contribute equally to the losses sustained by the firm.

Right to interest on capital⁶- No partner is entitled to interest on the capital subscribed by him unless there is an agreement to that effect. Again, wherever a partner is entitled to interest on the capital signed by him such interest shall be payable only out of profits.

Right to interest on advances or additional capital⁷- A partner making any payment or advance beyond his subscribed capital, is entitled to interest thereon at the rate of 6% per annum.

Right to indemnity⁸- A partner has the right to be indemnified in the respect of payment made or liability incurred by him on behalf of the firm.

Powers in an emergency⁹- In an emergency, a partner has the power, to do all such acts which an ordinary person will do to protect the firm from loss.

Right to express his opinion¹⁰- Each partner has a right to express their opinions about the business.

Right to retire – Every partner has a right to retire from the firm with the consent of all the partners.

³ Section 12(a) of Indian Partnership Act, 1932.

⁴ Section 12(d) of Indian Partnership Act, 1932.

⁵ Section 13(b) of Indian Partnership Act, 1932.

⁶ Section 13(c) of Indian Partnership Act, 1932.

⁷ Section 13(d) of Indian Partnership Act, 1932.

⁸ Section 13(e)(i) of Indian Partnership Act, 1932.

⁹ Section 13(e)(ii) of Indian Partnership Act, 1932.

¹⁰ Section 12(c) of Indian Partnership Act, 1932.

REGISTRATION

When some partnership firm applies an application to the registrar of firms for registration, and on the fulfillment of all legal formalities of the registration and the registrar enters the name of that firm in the register called 'register of the firms', this is known as 'registration'. In India, registration is not compulsory as per Indian Partnership Act, 1932. It is on the partners whether they want to register their firm or not. If they don't register then they will not be able to take legal action against their partner in case of any wrong done by their partner. There is no penalty for non-registration.

Procedure for registration¹¹

Any partner of the firm can send an application for the registration to the registrar stating where the firm is situated or proposed to be situated, a statement in the prescribed form accompanied by the prescribed fee, and a true copy of the deed of partnership. Such application shall be signed by all partners. The partnership deed should contain:

1. Name of the firm
2. The place or principal place of business of the firm
3. The names of other places where the firm carries on the business
4. The date when each partner joined the firm
5. The names in full and permanent addresses of the partners
6. The duration of the firm

When the registrar is satisfied with the application, he registers the firm and enters the firm named in the register of the firm. After the registration of the firm name, he then issues a certificate of registration.

Demerits of non-registration¹²

Suits between partners and firms- Partners of an unregistered firm cannot sue the firm or any of their partners.

¹¹ Section 58 of Indian Partnership Act, 1932.

¹² Section 69 of Indian Partnership Act, 1932.

Suits between the firm and third parties- An unregistered firm cannot use a third party for enforcement of any right arising from the contract. A fresh suit may be filed after the registration.

Third parties can sue the firm- Any third party can sue the unregistered firm.

Right of set-off- An unregistered firm or partners cannot claim a right of set-off in proceedings instituted against the third party. The right of set-off is available on the claims not exceeding the value of Rs.100.

Rights unaffected due to non-registration

Any partner might apply for the dissolution of the firm.

After dissolution, a party might demand his account from the firm.

The firm could file a suit against the third party up to a value of Rs100.

The official receiver shall be authorized to realize from the property of the insolvent partner.

The rights of the firms or partners shall not be affected if their head offices are overseas.

Dissolution of the firm -

According to section 39 of the Indian Partnership Act, 1932, the dissolution of a partnership between all the partners of a firm is termed “dissolution of the firm”. When the firm’s business end, all the assets realized and liabilities are cleared off, it is known as the Dissolution of the firm.

TYPES OF DISSOLUTION

Dissolution of a firm without court’s intervention-

Dissolution by mutual agreement¹³- With the consent of all the partners or according to the contract between the partners, a firm may be dissolved.

¹³ Section 40 of Indian Partnership Act, 1932.

Compulsory Dissolution¹⁴- (i) by the adjudication of all the partners or all the partners but one, as insolvent; (ii) by the happening of any event which makes it unlawful for the business of the firm to be carried on or of the partners to carry on the partnership. But where more than one separate adventure or undertakings are carried on by the firm, the illegality of one or more shall not itself cause the dissolution of the firm in respect of its lawful adventures.

Dissolution on the happening of a certain contingency¹⁵- Subject to a contract between the partners a firm is dissolved

- (a) if set up for a fixed term, by the expiry of that term;
- (b) if set up to carry out one or more adventures or undertakings, by the completion thereof;
- (c) when there is a death of a partner; and
- (d) adjudication of a partner as an insolvent.

Dissolution by notice at will¹⁶-

- (a) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- (b) The firm is dissolved from the date mentioned within the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution of a firm with court's intervention¹⁷

Unsound mind- The court may dissolve the firm when the partner is of unsound mind. In such case, the suit may be brought as well by the next friend of the partner who has become of unsound mind or by any other partner of the firm.

Permanent incapability- When a person becomes permanently incapable of performing his duties, any partner may bring in a suit for the dissolution of the firm.

¹⁴ Section 41 of Indian Partnership Act, 1932.

¹⁵ Section 42 of Indian Partnership Act, 1932.

¹⁶ Section 43 of Indian Partnership Act, 1932.

¹⁷ Section 44 of Indian Partnership Act, 1932.

Misconduct- When a partner, other than the partner suing, is guilty of misconduct and it is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business, the court may dissolve the firm.

Breach of agreement- When a partner, other than the partner suing, wilfully or persistently commits a breach of agreements relating to the management of the affairs of the firm of the conduct of its business; or otherwise, therefore, conducts himself in matters concerning the business that it is not reasonably practicable for the opposite partners to carry on the business in partnership with him, the court may order the dissolution of the firm.

Transfer of Interest- When a partner, other than the partner suing has in any way, transferred the whole of his interest in a firm to a third person, or his share has been attached under a decree or has allowed it to be sold in the recovery of arrears of land revenue, the court may dissolve the firm.

Continued Loss- When there is a continuous loss and the firm cannot be run on a profitable basis, the court may dissolve the firm.

Equitable case- On any other ground that renders it just and equitable, the firm should be dissolved.

Other ground here might be feeling of mutual co-operation disappears or there develops any obstruction in management, closure of the mutual talks between the partners, etc., so it is better to dissolve the firm.

CONCLUSION

Partnership Act plays an important role in the conduct of successful business. It helps partners to fulfill their rights in case of breach of contract. It not only talks about the rights of partners but also about the dissolution of the firm, registration, etc. Partnership rights were repealed from the contract act and enacted as the Partnership Act, of 1935 because the previous rights were not enough for a successful partnership. So, new rights were made under this act.