

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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Company vs LLP

Many Entrepreneurs starting a new business are curious about the comparison between a Private Limited Company vs LLP. Both entities offer many similar features required to run a small to large sized business, while also differing starkly on certain aspects. In this article we decode compare Private Limited Company vs LLP from the viewpoint of an entrepreneur starting a new business.

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CORPORATE AFFAIRS



Imposition of costs: A tussle between SAT and SEBI

Before the Supreme Court, SEBI recently argued that SAT does not have the jurisdiction and is not empowered to impose costs on SEBI. It was held by SAT that, “it is high time for SEBI to take a fresh look at their officers who are worthy of discharging the duties as RO.” SAT has even imposed costs on the National Stock Exchange and the Bombay Stock Exchange in multiple orders. In none of these cases has the Supreme Court gone into the question of law to determine the power of SAT to impose costs on SEBI and the limitation, if any, on the same.

Clarification on passing ordinary resolution by the companies under Companies Act 2013

It has been decided to allow companies to conduct their EGM through video conference (VC) or other audio visual modes (OAVM) or transact items through postal ballot in accordance with framework provided in the ministry’s general circular upto 31st December 2022.



TAXATION



The functionality of AATO for the FY 2021-22

The taxpayers can view the Aggregate Turnover of the current FY based on the returns filed till date.

The taxpayers have also been provided with the facility of turnover updation in case taxpayers feel that the system calculated turnover displayed on their dashboard varies from the turnover as per their records. The taxpayer can amend the turnover twice within the month of May, 2022. Thereafter, the figures will be sent for review of the Jurisdictional Tax Officer who can amend the values furnished by the taxpayer wherever required.

Reporting 6% rate in GSTR-1

A new tax rate of 6% IGST or 3% CGST+ 3% SGST has been introduced on certain goods vide Notification No. 02/2022 dated 31st March 2022. Changes are being made on the GST portal to include this rate in GSTR-1. As a temporary measure, taxpayers who have to report goods at this rate may do so by reporting the entries in the 5% heading and then manually increasing the system computed tax amount to 6%.



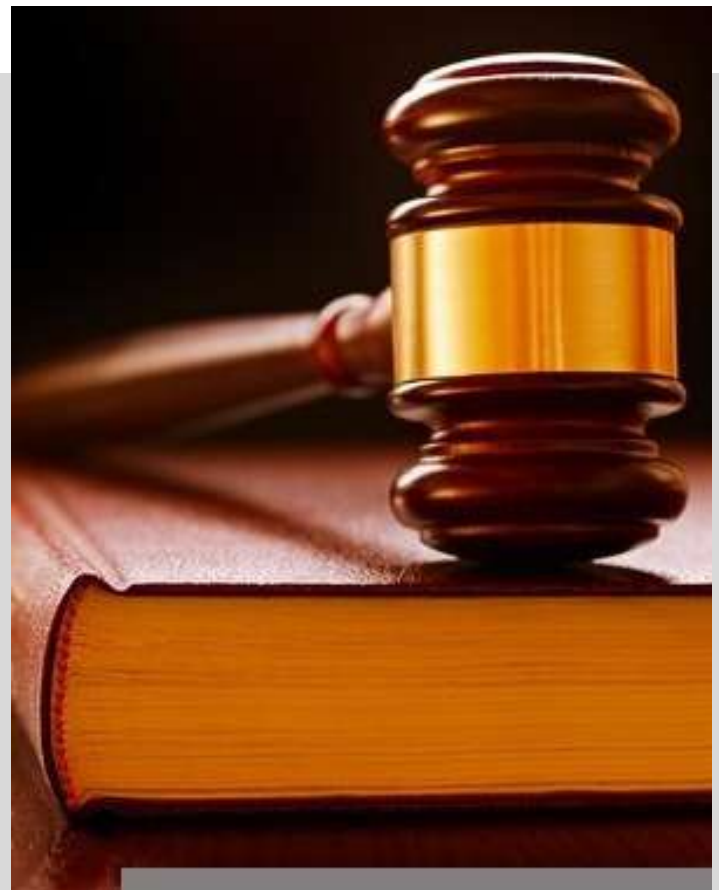


Parent's Income & Better Education Prospects Not Sole Criteria for Deciding Custody

Granting guardianship of a 9 years old to her mother, the Chhattisgarh High Court has observed that such cases could not be solely decided by interpreting legal provisions. Justice Goutam Bhaduri held that, 'it is a human problem and has to be solved with a human touch. Noting that 'welfare of the child' is the paramount consideration in deciding their custody and not the rights of the parents under a statute..

Sale of Property has no effect on her Right to Maintenance under Sec.125 CrPC

The Allahabad HC has observed maintenance under Section 125 CrPC cannot be denied to wife on the ground that she can sustain herself from the money she got from selling the property of the husband. The HC thus disapproved of the Family Court's view and partly allowed prayers of the wife noting that if there was some property and money out of sold property was used for maintenance of the children as well as revisionist; it could not be inferred that the revisionist has lost her opportunity for grant of maintenance under Section 125 Cr.P.C.



Limited Liability Partnership

Private Limited Company



REGISTRATION PROCESS:

Private Limited Company

The Private Limited Company Registration process and the LLP Registration process are very similar with some differences in the documents and forms being filed for incorporation. The steps for incorporation of a Private Limited Company are

- Obtaining Digital Signature Certificate (DSC) for the proposed Directors
- Obtaining Director Identification Number (DIN) for the proposed Directors
- Obtaining name approval from MCA and Filing for incorporation.

LLP

- LLP registration also has a similar process:
- Obtaining Digital Signature Certificate (DSC) for the proposed Partners,
- Obtaining Director Identification Number (DIN) / Designated Partner Identification Number (DPIN) for the proposed Partners
- Obtaining name approval from MCA and Filing for incorporation.

Both Private Limited Company and LLP are registered with the Ministry of Corporate Affairs and are issued a Certificate of Incorporation. The processing time for incorporation of a private limited company and LLP are also comparable with both entities taking on average about 20 days to incorporate.



REGISTRATION COST:

The Government fee for incorporation of an LLP is significantly cheaper when compared to the Government fee for incorporation of a Private Limited Company. LLPs have been introduced to meet the needs of small businesses and hence LLP enjoy lower government fee for incorporation. Also, the number of documents that have to be printed on Non-Judicial Stamp Paper and Notarized is lesser for LLP registration when compared to that of a Private Limited Company registration.

OWNERSHIP:

Private Limited Company offers more flexibility for the promoters when it comes to ownership and ownership sharing. The ownership of a Private Limited Company is determined by its shareholding and a private limited company can have up to 200 shareholders. Further, since the shareholders do not directly participate in the management of the company, there is a clear distinction in a private limited company between the owners of share and the management. Hence, private limited company is advantageous when it comes to ownership and management features.

In an LLP, there is not a clear distinction between the owners and management. In an LLP, the LLP Partners hold ownership of the LLP and also hold powers to manage the LLP. Therefore, a Partner in an LLP will be both an owner and a manager, whereas in a Private Limited Company, the shareholders (owners) do not necessarily have to have management powers.

A private limited company is recommended for any business that is considering FDI or Employee Stock Options or Equity funding or Venture Capital funding.



COMPLIANCE:

Tax compliances are similar for both private limited company and LLP. However, when it comes to compliance relating to the Ministry of Corporate Affairs, LLP enjoys significant advantages. An LLP does not have to have its accounts audited if the annual turnover of the LLP is less than Rs.40 lakhs and the capital contribution is less than Rs.25 lakhs. A LLP would however have to file LLP Form 8 and LLP Form 11.

A private limited company on the other hand would have to file annual return audited financial statements with the Ministry of Corporate Affairs each year.

FINES AND PENALTIES:

The penalty for non-compliance or late filing of documents with the Ministry of Corporate Affairs are most of the times higher for an LLP as a flat fee of Rs.100 per day is levied when the non-compliance continues with no cap on the liability. Therefore, LLPs could incur larger penalty or fines from MCA due to non-compliance. Therefore, it is important for the promoters of an LLP to be aware of the due dates and file the required documents with the registrar on time.

FROM THE ARCHIVES

M/s. U.K.B. Electronics Pvt. Ltd.
versus
Commissioner of Trade & Taxes, Delhi

Present for the respondent: Mr. S.B. Jain

Date of order: 17.09.2011

VALUE ADDED TAX- EXPORT OR IMPORT-SALES IN THE COURSE OF EXPORT – DEFAULT ASSESSMENT FRAMED U/S 9(2) OF CENTRAL SALES TAX ACT – THE APPELLANT MANUFACTURING ELECTRONIC GOODS KNOWN AS CONNECTORS FOR M/S L.G. ELECTRONICS PVT LTD – THE COMPANY WAS MANUFACTURING COLOUR TELEVISIONS FOR THE PURPOSE OF EXPORT – APPELLANT WAS ENTITLED TO EXEMPTION AS PENULTIMATE SELLER – “SAME GOOD” THEORY HAS NO APPLICATION IF SALE INEXTRICABLY CONNECTED WITH EXPORT OUTSIDE INDIA – THE VATO DID NOT ACCEPT 3 “H” FORMS FOR NOT HAVING SUPPORTED DOCUMENTS – THE APPELLANT CHALLENGED THE DEFAULT ASSESSMENT ORDER IN OBJECTION BEFORE OBJECTION HEARING AUTHORITY – APPELLANT SUBMITTED THAT SUFFICIENT OPPORTUNITY WAS NOT GIVEN TO SUBMIT THE REQUISITE DETAILS OF HIS CLAIM – APPELLANT FILED SALE INVOICES, “H” FORM – SALE INVOICES OF L.G.ELECTRONICS (p) LTD & EXPORT DOCUMENTS AND CUSTOM DOCUMENTS AND BANK STATEMENT – FURTHER SUBMITTED THAT CONNECTOR ITEM WAS INSTALLED IN COLOUR TELEVISION EXPORTED AND HAD NOT CHANGED ITS CHARACTER – REVENUE ARGUED THAT EXPORTS HAVE TO BE MADE OF THE SAME ITEM AND SALES WERE NOT COVERED U/S 5(3) OF CENTRAL ACT – OHA REJECTED THE OBJECTION – THE APPELLANT FILED THE APPEAL BEFORE VAT TRIBUNAL – APPELLANT SUBMITTED THAT OHA ERRED IN NOT CONSIDERING THAT THE VATO COULD NOT HAVE INVOKED “SAME GOODS THEORY” IN THE CASE OF DEEMED EXPORT – THE APPEAL WAS ALLOWED AND THE CASE WAS REMANDED BACK TO VATO WITH A DIRECTION TO GIVE AN OPPORTUNITY OF HEARING AS PER THE FINDING OF COURT.

BRIEF FACTS OF THE CASE:

THAT APPELLANT M/S U.K.B. ELECTRONICS PVT. LTD. WAS A REGISTERED DEALER REGISTERED UNDER DELHI VALUE ADDED TAX ACT, 2004 AS WELL AS UNDER CENTRAL SALES TAX ACT. DURING THE TAX PERIOD OF MARCH 2006 -07, THE APPELLANT HAD IN FULFILMENT OF THE ORDER PLACED BY M/S L.G. ELECTRONICS SUPPLIED ELECTRONIC GOODS KNOWN AS 'CONNECTORS' TO M/S LG ELECTRONICS, WHICH M/S LG ELECTRONICS NEEDED FOR THE MANUFACTURE OF COLOR TELEVISIONS FOR THE PURPOSE OF EXPORT OF COLOUR TELEVISIONS IN COMPLIANCE OF AN EXPORT ORDER ALREADY RECEIVED FROM THE IMPORTER. M/S LG ELECTRONICS GAVE 3 H FORMS OF THE VALE OF RS. 22,71,207/-. ACCORDINGLY, FOR THE TAX PERIOD OF MARCH 2006-07, THE APPELLANT FILED THESE 3 H FORMS FOR RS.22,71,207/- FOR CLAIMING EXEMPTION U/S 5(3) OF THE CENTRAL ACT. LD. WARD VATO REJECTED THESE H FORMS AND CREATED A DEMAND OF TAX @ 12.5% ON THE VALUE OF 3 H FORMS AMOUNTING TO RS.22,71,207/- BY WAY OF DEFAULT ASSESSMENT OF TAX AND INTEREST U/S 9(2) R/W SEC. 32 OF THE ACT ON THE GROUND THAT THESE FORMS WERE NOT SUPPORTED BY NECESSARY DOCUMENTS FOR EXPORT SALES. THE APPELLANT FILED THIS APPEAL, ACCOMPANIED BY AN APPLICATION FOR A STAY OF THE AMOUNT IN DISPUTE.

HELD:

THE SUBJECT MATTER OF THIS APPEAL DESERVED TO BE REMANDED BACK FOR AFFORDING AN OPPORTUNITY TO THE APPELLANT TO ESTABLISH ITS CLAIM OF EXEMPTION U/S 5(3) OF THE CENTRAL ACT IN TERMS OF THE PRINCIPLE OF LAW LAID DOWN IN AZAD COACH BUILDERS' CASE BY THE HON'BLE CONSTITUTIONAL BENCH OF THE APEX COURT AND ALSO WITH A VIEW TO AFFORD AN OPPORTUNITY TO THE APPELLANT TO ESTABLISH THE RELEVANCY OF THE DOCUMENTS PLACED ON RECORD BEFORE THE COURT. ACCORDINGLY, THE MATTER STANDS REMANDED BACK TO THE LD. VATO WITH A DIRECTION TO GIVE AN OPPORTUNITY OF HEARING TO THE APPELLANT AS PER HEREINABOVE OBSERVATIONS BUT BEFORE THAT THE VATO SHALL ENSURE THAT THE APPELLANT HAS COMPLIED WITH THE STAY CONDITION PRESCRIBED BY THIS TRIBUNAL. APPELLANT WAS ALSO DIRECTED TO FILE A COPY OF THE CHALLAN SHOWING COMPLIANCE OF THE STAY CONDITION. VATO SHALL MAKE AN ENDEAVOUR TO DISPOSE OF THE MATTER AS EXPEDITIOUSLY AS POSSIBLE.

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