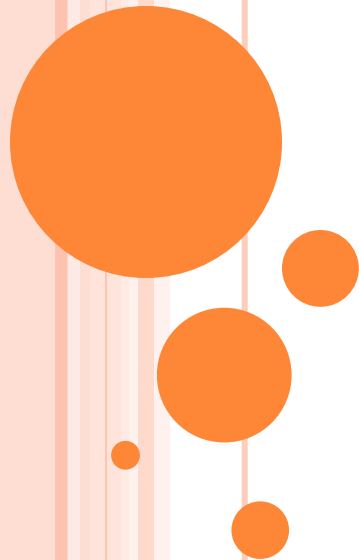


# BUSINESS RESTRUCTURING



Ashok Garg, Advocate  
*Ashok Garg & Associates*  
Tax & Business Law Advisors

# TYPES OF RESTRUCTURING

- **Legal / Ownership Restructuring**
- **Financial Restructuring**
- **Operational Restructuring**
- **Hierarchical Restructuring**



# MULTI-PURPOSE RESTRUCTURING

- **Necessary Restructuring**
  - Legal / Ownership Restructuring
  - Financial Restructuring
- **Opportunist Restructuring**
  - Hierarchical Restructuring
  - Operational Restructuring



# LEGAL & OWNERSHIP RESTRUCTURING (SHOULD BE )

- **Low cost**
- **Easy to implement**
- **Reduced risk**
- **Tax efficient**
- **Participation in management by owners is facilitated**
- **Socially impressive**
- **Exits are easier / least painful**



# LIMITED LIABILITY PARTNERSHIP VERSUS PRIVATE LIMITED COMPANY

LLP	PVT. LTD. COMPANY
Lower cost to implement	Higher cost of implementation
Easier to implement	Not so easy to implement
Low Risk- Limited Liability	Low Risk- Limited Liability
More tax efficient than company	Tax efficiency is low - dividend tax
Participative mgmt. easy	Participative Mgmt. not so easy
Greater financial freedom	Very restricted financial freedom
Risk to Designated Partners	Risk to Directors and KMPs
Socially less impressive	Socially impressive
Not a favourite of financiers	Favourite of financiers
Exits are not very easy	Exits are relatively straight
Closure is easier	Closure is not so easy



# TRANSFERRING BUSINESS TO NEW ENTITY

- Creation / incorporation of new entity
- Drawing up-to-date balance sheet of existing business
- Identifying assets and liabilities which are proposed to be not transferred to new Entity
- Existing liabilities which new owners do not want to take over
- Agreement to profit / loss sharing ratio & Exit Options
- Agreement as to participation in Management & Decision Making
- Ratios of financing the business & cost of funds
- Extent of acceptability of unknown liabilities of the past

-Contd.



**TRANSFERRING BUSINESS  
TO  
NEW ENTITY (CONTD.)**

# **DOCUMENTATION**

- **Creation of entity**
- **Agreement amongst Owners**
- **Transfer of business to new entity**



# TAKING STOCK OF PRESENT

- Prepare Balance Sheet- all assets and liabilities
- Prepare Fixed assets Register
- Prepare list of assets other than physical assets, like-
  - Leasehold rights- Very detailed List required
  - Intellectual Property Rights- Goodwill ,Brands, Trademarks, Patents, Processes, Databases,
  - Ongoing Contracts- cost whereof already written off
  - Deferred expenses of earlier years- benefits still coming
- List of Key Management Employees – their CTC details and their willingness to accept the change
- List of Contracts under negotiation
- List of bank accounts (with all details) and the list of all loans (secured or unsecured) outstanding

-Contd.





# TAKING STOCK OF PRESENT

(CONTD.)

- Governmental Registrations held as of now
  - PAN , TAN, Service Tax Regn. , EPF & ESIC Regn
  - Shop & Establishment Regn
  - Contract Labour Regulation Registration
- Pending Litigation List
- Pending Government Proceedings
  - Income tax assessments
  - Service tax proceedings
  - Proceedings under various labour laws, if any.
- Identifying Contracts which will be required to be rewritten and may be difficult to persuade the other party



# PROCESSES WHICH CAN'T BE AVOIDED

- Creation of new entity
- Agreement for transfer of business to new entity
- Agreement amongst new owners
- Taking stock of the Present assets and liabilities
- Novation of the contracts with-
  - Customers
  - Suppliers
  - Employees
  - Landlords
  - Consultants/ Professionals
- Obtaining Government Registrations /Licenses
- Opening new bank accounts / renewing Loan / Financing arrangements



# WHAT WE (ASHOK GARG & ASSOCIATES) CAN DO...

- Choice of new entity
- Negotiation with new partners
- Creation of new entity
- Documentation
  - Creation of new entity
  - Agreement with new partners, if any
  - Transfer of Business Agreement
  - New Employment Agreement formats
  - New Lease agreements- drafting
  - Vetting of new agreements with customers / vendors
- Advise/ consultation
  - Assets/ liability identification for transfer- especially legal effects
  - Preparation of Fixed Assets register- compliance with law
  - Financial restructuring and its legal effects
  - Vetting of all applications of various registrations and if needed preparation thereof
  - Drafting of various policies of the organization- like leave policy , Purchase Policy , Prevention of Sexual Harassment Policy and set up,



# THANK YOU!



*Ashok Garg & Associates*

**Tax & Business Law Advisors**

*GURGAON (India)-122002*

*[www.ashokgarg.in](http://www.ashokgarg.in)*

