

Legal Aspects of Entrepreneurial Development and Management

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Abstract:

Proper combination of right entrepreneurial environment, proper planning, efforts and innovation is responsible for success of any entrepreneurial venture. This article argues that adequate knowledge of legal aspects of business and its proper implementation would help the business to achieve its economic goal and sustain itself in the changing global competitive world of business with advantageous position.

Introduction:

Successful business venture is the result of the combination of right entrepreneurial environment, planning, efforts and innovation. Entrepreneur may not have absolute control over all the facets of business environment; however certain aspects can be definitely controlled rather managed by visionary entrepreneur. Regulatory or legal environment, if properly and favorably tackled by the entrepreneur, can play vital role in effective management of the business.

Scope of legal environment:

Every business activity has to be within the boundaries of rules and regulations of the government. Right from the inception of the business till its closure various legal conditions are required to be fulfilled. Formation of a business entity such as Factory, Company, Partnership, Proprietary Concern, its registration, obtaining various licenses, fulfilling various norms during the continuation of business and fulfilling the requirements of laws relating Taxation, Labour Laws etc. are the instances of such compliances. Besides this, service related regulations, Contracts, Intellectual Property Rights etc. are the issues, which can be mainly clubbed under the umbrella of the term 'Legal Environment'. Frequent changes in the legal provisions and diversified views reflecting in judicial interpretations make the

entrepreneurial environment even more complex. Hence due attention is required to be given to such legal aspects of business in any entrepreneurial endeavors so as to make an entire venture a success story.

Legal Framework for business:

Central and State Legislatures in India have enacted various legislations to regulate, protect and promote the growth of business in India. Some of these laws are summarized as under: -

Indian Contract Act, 1872; Sale of Goods Act, 1930; Negotiable Instrument Act, 1881; Companies Act, 1956; Partnership Act, 1932; Consumer Protection Act, 1986; Information Technology Act, 2000; Arbitration and Conciliation Act, 1996; The Patents Act, 2005, The Trade Marks Act, 2000, The Design Act, 2000; The Geographical Indications of Goods (Registration and Protection) Act, 1999; The Protection of Plant Varieties and Farmers Rights Act, 2001; The Copyright Act, 1957; The Biological Diversities Act, 2002; Foreign Exchange Management Act, 1999; Micro, Small and Medium Enterprises Development Act, 2006; Sick Industries Companies (Special Provisions) Act, 1987; Foreign Trade (Development and Regulations) Act, 1992; Competition Act, 2002; in addition to these laws there are other prominent braches of laws namely Taxation Laws; Labour Laws; Banking Laws; Environmental Laws; etc. Besides these, there are international conventions, agreements etc. having bearing on business.

Understanding the crux of theses legislations through legal terms and phrases is not a smooth task. Entrepreneur is expected to know the objectives of the legislations in its right spirit. Hence, being an entrepreneur, one has to be very cautious about his on her actions and probable legal consequences of such actions on his interest. Any step or action of entrepreneur which is legally incorrect, sometimes, is likely to cause irreparable loss to such an entrepreneur. Hence, it is suggested that entrepreneur should have moderate capacity to decide when to consult lawyer. Now a days many companies have their own in-house legal departments to give legal advice as and when required.

After the globalization, trans-border business transactions have been substantially increased and the entrepreneurs are compelled to take cognizance of global players to sustain in the business world. Business entities have no option but to explore and expose them to such newly emerging competitive global market.

In this context, it is humbly submitted that all those entrepreneurs, who are going to make themselves substantially equipped with knowledge of all such business laws, are going to have advantageous position in formulating their business strategies and implementing them conscientiously for betterment of their business. It has been observed historically that many corporates have failed miserably in their business due to lack of adequate knowledge of regulatory mechanism of business.

Formulating business strategies and taking wrong decisions in ignorance of certain legal provisions is not only disadvantageous but the same has been proved to be disastrous for many businesses.

Considering above mentioned legal challenges, entrepreneur can take certain positive steps to cope up with such issues. Though, entrepreneurs cannot hope to have the legal expertise or background of lawyers, of course, but they should be sufficiently knowledgeable about certain legal concepts that have implications for the business venture. We can broadly categorize laws which have implications on

- i. Inception of the business.

- ii. Conduct of business and
- iii. Growth and continuity of business.

Hence, if entrepreneur takes deliberate efforts to get himself acquainted with these legal aspects of business, he is likely to take right decisions at right time. He should see to it that he is not getting involved in any court cases as far as possible. Because justice delivery system in India is overburdened and hence it takes a lot of time to get one's business disputes resolved within a stipulated time. Moreover they are expensive and the procedure is also very technical and complicated.

Hence it is rightly said that 'The only way of winning legal battle is to try for avoidance of legal disputes'.

Few Suggestions to Entrepreneurs to cope up with legal challenges:

1. Prospective entrepreneur is expected to identify the legal structure which is suitable to the demands of the venture. The necessity for this derives from changing tax laws, liability situations, the availability of capital, and the complexity of business formation. Hence, such entrepreneur should give due consideration to the advantages and disadvantages of sole proprietorship, partnerships, companies, limited liability partnerships etc. while choosing legal structure of his business venture.
2. Entrepreneurs should see that he is not getting indulged in any legal battle. In spite of due care and caution, if he has to face any legal suit, he should endeavor to minimize his legal expenses. For this, it is suggested that lawyers may be hired on retainer basis, where fee structure is pre-determined. Efforts should be taken to resolve the business disputes by using alternative disputes resolution machinery. Court cases should be avoided. Arbitration agreements would be another better alternative than knocking the doors of the Courts. Engaging a lawyer who is familiar with entrepreneur's business is always advisable.
3. Company form of business organization would exonerate an individual from personal liability in certain cases.
4. It is better to seek legal opinion before drafting and signing business agreements, Efforts should be taken to understand technical terms used in such agreements. Well drafted, well maintained documents and records would help an entrepreneur in many ways to maintain overall business health.
5. Compliances of Various Laws: Regular Compliances of Tax Laws, Environmental Laws, Labour Laws can make entrepreneur more responsible socially and legally, which would benefit him in a long run.
6. Protection of Intellectual Property Rights: Intellectual properties like patents, trademarks, copyrights, designs, geographical indications can be well protected under existing laws. Properly protected patents etc. can create substantial revenue generation in globalized markets. Proper Management of Intellectual Property Rights (IPRs) can attract new capital to the companies. Companies can attract the investors by communicating effectively their IPR assets picture. It is now proven fact that the companies, whose patents were more frequently cited in assets of the companies, saw their stock prices rise for more rapidly than those of companies in the less frequently cited patents.

7. Formulation of the best HR practices would help to avoid strike, strife and industrial disputes and create industrial peace and harmony resulting in to a healthy business environment.
8. Proper precautions should be taken while entering in to electronic business transactions. Understanding glimpses of cyber law would also be advantageous in these days.
9. Laws relating to registration, licensing, pollutions, location, acquisition, Payment of Wages, Minimum Wages, Bonus, Industrial Disputes, Provident Fund, Gratuity, Pollution, Product, Patents etc. are required to be followed in its right spirit. According to a recent study, there are over 150 legal requirements of which entrepreneurs have to take care of. Hence proper mechanism should be created to tackle and regulate these legal aspects of business.

Conclusion:

For sound and healthy development and management of entrepreneurial ventures, besides social, political and economic environment, favorable legal environment is also necessary. Conscientious efforts by entrepreneurs to get acquainted with regulatory mechanism and implementing the same in right spirit with proper business strategies can definitely have advantageous position for the ventures in the changing global competitive world of business.

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