Topic: Producer Company & it's Benefits to Company and members including taxation

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Back Ground

The Co-operative movement in India traces its origin to the agriculture and allied sector and was originally evolved as a mechanism for pooling the people's meager resources with a view to providing to them, the advantages of the economies of scales. However, the beginning of organized co-operative could be linked to Nidhis in Madras Province in the second half of the 19th Century, which were similar to credit co-operatives today.

Concept of Co-operative: A Co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly – owned and democratically controlled enterprise. Co-operatives are based on the values of self-help , self responsibility, democracy, equality, equity and solidarity.

Law Governing Multi State Co-operative Societies

In order to administer the operations of Co-operative societies, where membership was from more than one province, the government enacted the Multi Unit Co-operative Societies Act, 1942, which was subsequently replaced by the Multi-State Co-operative Societies Act, 1984 under entry 44 of the union List.

The Multi-State Co-operative Societies Act , 1984 has been re-codified passed by the Parliament in May, 2002 and notified on 3rd July, 2002.

Limitation of cooperative societies

Following are the limitations of Co-operative Societies:

1. Area of Operations is restricted geographically;
2. Government intervention is Excessive and Significant;
3. Professionals on Board: The members of co-operative societies are not professionals and offer honorary services on a voluntary basis. They are not equipped to carry out the management functions effectively;
4. Voting Rights: Person 1 Vote, Registrar to have Veto Power;
5. Shares are not freely tradeable;
6. Member Stakes: No linkage with number of Shares held;
7. Borrowing Power: There is Excessive Restrictions;
8. Dispute Settlement: Through Co-operative Court/Admin System;

How producer company different from co-operative societies?

Type of Features	Co-operative Societies	Producer Company
Governing Statute	Related Co-operative Societies enactments	As per Companies Act, 2013
Professionals on Board	No Specific Provision to that effect	Mandatory required
Area of Operations	Restricted geographically	No restriction
Shares Transfer	Not Freely Tradable	Transferable with the approval of Board
Voting Rights	1 Person 1 Vote, Registrar to have Veto Power	For Individual: 1 Person 1 Vote For institution: on the basis of their participation in the business of the Producer Company
Profit Sharing	Limited fixed Dividend	Limited Return, Patronage Bonus, Bonus shares

Concept of Producer Company

The economy of India is an agricultural-centric economy. With agriculture being the backbone of the Indian economy, the sector employs more than 50% of India's total workforce and contributes almost 17-18% to the country's GDP. But the primary producers and farmers have had a long struggle in India.

In order to address these problems, the Government of India set up an expert committee, led by **Y.K. Alagh** (an **economist**) to look into the matter. In the year **2002**, they **introduced** the Producer Companies' concept to the Indian economy, keeping in mind the pressing issues of farmers and agriculturalists – collectively termed producers. Since then, they have helped primary producers gain access to input, credit, production technology, market etc.

Purpose

Producer Companies provide a legal structure for farmers to collaborate and engage in collective production, marketing, and selling of their **primary produce**.

Beneficial to agriculturist in price negotiation and minimum wastage

Beneficial to corporate in FMCG – easy bulk purchase at low cost directly from agriculturist that will reduce the payment to intermediaries

It is a legally recognized body of farmers/ agriculturists with the aim to improve the standard of their living and ensure a good status of their available support, incomes and profitability.

agricultural activities is **backbone of Indian economy** and contribute substantially in the development of rural India

Meaning of Primary produce

Section 378A (j)

Primary produce means produce of farmers arising from agriculture **including** animal husbandry,

horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee keeping and farming plantation products.

include produce of persons engaged in **handloom, handicraft and other cottage industries,**

by-products of such products from above activities, and

products arising out of ancillary activities

any activity which is intended to increase the production on improve the quality thereof;

Objects of Producer Company (Section 378B)

Under the Companies Act 2013, a Producer Company is defined as a company that is formed and registered under the Companies Act, with the **objective of:**

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of **primary produce of the Members** or

(b) **import of goods or services for their benefit**:

Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) **processing** including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) **manufacture, sale or supply of machinery, equipment or consumables** mainly to its Members;

(d) providing **education** on the mutual assistance principles to its Members and others;

(e) **rendering technical services**, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

Objects of Producer Company (Section 378B)

Under the Companies Act 2013, a Producer Company is defined as a company that is formed and registered under the Companies Act, with the **objective of:**

(f) **generation, transmission and distribution of power, revitalization of land** and water resources, their use, conservation and communications relatable to primary produce;

(g) **insurance of producers** or their **primary produce**;

(h) **promoting techniques of mutuality and mutual assistance**;

(i) **welfare measures or facilities** for the benefit of Members as may be decided by the Board;

(j) any **other activity, ancillary or incidental** to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

(k) **financing** of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members."

Members of producer company

A Producer Company is formed by:-

Members (Section 378 C):

1. Minimum of 10 individuals (each of them being producers); **or**

2. Two or more producer institutions may be incorporated or not and retain necessary qualification; **or**

3. Combination of 10 or more individuals and producer institutions.

Members of the Producer Company have limited liability, and the liability of the company is limited to the extent of its assets. There is no maximum limit for number of members in a Producer Company.

Directors (Section 378-O):

Minimum directors shall be 5 and

Maximum no not more than 15.

Conversion of multi state co-operative society :

max no may be more than 15 but only upto 1 year.

Refer proviso : in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

Capital requirement

- **minimum authorized capital -** Rs. 5 lakhs.
- Maximum – no limit
- There is no minimum requirement for paid-up share capital;
- Subscriber shall take at least one share;
- The share capital shall consist of **equity shares** only no preference share **(Section 378ZB)**.
- A Producer Company shall be incorporated as a private limited company and it must include the words ‘Producer Company Limited’ in its name.

Members

“Member” means a person or Producer Institution (whether incorporated or not) admitted as a Member of a Producer Company and who **retains the qualifications necessary for continua**nce as such;

“Active Member” means a Member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles;

Benefits to Members (Section 378E)

- **Sale consideration:** Every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares;

- **limited return** :Every Member shall, on the share capital contributed, receive limited return **(dividend)**; Member may be allotted bonus shares also.

- **patronage bonus:** The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 378ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

Voting- 378Z and 378D

- *every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.*
- *membership consists solely of **individual Members**, the voting rights shall be based on a **single vote for every Member**, irrespective of his shareholding or patronage of the Producer Company. Equal voting irrespective of shareholding 378D(1)(a)*
- *where the membership consists of **Producer Institutions only,** the voting rights of such Producer Institutions shall be determined **on the basis of their participation in the business of the Producer Company** in the previous year, as may be specified by articles*
- *In first year of registration, the voting rights shall be determined on the basis of the shareholding by such Producer Institutions.*
- *membership consists of individuals and Producer Institutions, the voting rights shall be computed on the basis of a single vote for every Member.*

Articles, restrict the voting rights to active Members,

- *378D(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.*

- ***"active Member"** means a Member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles; [section 378A(a)]*

General Meeting

- Every Producer Company shall hold its first annual general meeting within a period of **ninety** days from the date of its incorporation **(Section 378ZA)**.
- Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its **Annual General Meeting** and not more than 15 months shall elapse between the date of one annual general meeting of a Producer Company and that of the next.
- **Quorum (Section 378Y)**: Unless the articles require a larger number, **one-fourth of the total membership** shall constitute the quorum at a general meeting.

Chief Executive and his functions (Section 378W)

- Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.
- The Chief Executive shall be ex-officio director of the Board and such director shall not retire by rotation.
- The qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.
- The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.

Transferability of shares (Section 378ZD)

- A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares alongwith any special rights, to an active Member at par value.

- Where the Board of a Producer Company is satisfied that-

(a) any Member has ceased to be a primary producer; or

(b) any Member has failed to retain his qualifications to be a Member as specified in articles,

the Board shall direct the **surrender of shares** together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

Internal Audit (Section 378ZF)

Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949.

Government Initiatives

CCEA (Cabinet Committee on Economic affairs) approves scheme (Press release dated 19th February, 2020) for formation & Promotion of Farmer Producer Organizations (FPOs) to form and promote 10,000 new FPO.

Agencies Set up by Government for promotion of FPO’s: -

1. SFAC (Small Farmers’ Agri-Business Consortium)
2. NABARD (National Bank for Agriculture and Rural Development)
3. NCDC (National Cooperative Development Corporation)
4. CBBO (Cluster Based Business Organization)
5. NPMA (National Project Management Agency)

Implementing Bodies

SFAC: SFAC is an exclusive Society focused on increasing incomes of small and marginal farmers through aggregation and development of agribusiness. A Producer Company get benefited from Small Farmers' Agri-Business Consortium (SFAC).

NABARD: A Producer Company can register with the National Bank for Agriculture and Rural Development (NABARD) to avail of various financial and technical assistance programs for the promotion of agricultural activities.

NCDC: The National Cooperative Development Corporation (NCDC) was established by an Act of Parliament in 1963 as a statutory Corporation under the Ministry of Cooperation. It core objective is to Planning, promoting and financing programmes for production, processing, marketing, storage, export and import of agricultural produce, food stuffs, certain other notified commodities.

CBBOs: In order to form and promote FPOs in uniform and effective manner so as to achieve the target of formation of 10,000 new FPOs in 5 years and to make the FPOs economically sustainable, **three Implementing Agencies, namely, SFAC, NCDC and NABARD**, shall be responsible to form and promote FPOs through Cluster Based Business Organization (CBBO)

Example of CBBOs: - ITC Limited, Patanjali Foods Limited, Patanjali Price Waterhouse Coopers LLP, Grant Thornton Bharat LLP etc.

NPMA: National Project Management Agency (NPMA) will be **set up by SFAC** through transparent manner for providing overall project guidance, data maintenance through integrated portal and information management and monitoring.

The NPMA will be equipped with the technical team with five categories of specialisation in Agriculture / Horticulture, Marketing and Processing, Incubation Service Provider, IT/MIS and Law & Accounting to provide overall guidance at all India level.

Support provided under scheme

The Ministry of Agriculture & Farmers Welfare has launched a dedicated Centre Sector Scheme for Formation and Promotion of Farmer Producer Organizations (FPOs)vide its notification dated 29th February 2020. It aims on formation of 10000 new FPOs in order to provide adequate handholding and professional support to develop economically sustainable FPOs with a total budgeted expenditure of Rs. 6,866 crores for this purpose.

Brief of the support schemes are as follows:

1. FPO Management Cost

Under the scheme, financial support to Farmer Producer Organization (FPO) **@ up to maximum of Rs. 18 lakh / FPO or actual**, whichever is lesser is to be provided **during three years from the year of formation**.

The indicative financial support broadly covers (i) the support for salary of its CEO/Manager (maximum up to Rs. 25000/month) and Accountant (maximum up to Rs. 10000/month); (ii) one time registration cost (one time up to maximum Rs. 40000 or actual whichever is lower); (iii) office rent (maximum up to Rs. 48,000/year); (iv) utility charges (electricity and telephone charges of office of FPO maximum up to Rs. 12000/year); (v) one-time cost for minor equipment, including furniture and fixture, maximum up to Rs. 1,00,000 subject to the condition that the FPO is saving from other heads like office Rent, travel, cleaning, etc. by the FPO (vi) travel and meeting cost (maximum up to Rs.18,000/year); and (vii) misc. (cleaning, stationery etc. maximum up to Rs. 12,000/year) subject to overall ceiling of assistance of Rs. 18 lakhs per FPOs in 3 years;

2. Provision for Equity Grant

Equity Grant shall be in the form of matching grant upto Rs. 2,000 per farmer member of FPO subject to maximum limit of Rs. 15.00 lakh fixed per FPO. This Equity Grant is **not in the form of government participation** in equity, but only as a matching grant to the FPOs as farmer members' equity. Therefore, Rs.1,500 crore with Department of Agriculture & Farmers Welfare (DAC&FW) is proposed in the scheme to cover all the 10,000 FPOs, if maximum permissible equity is contributed to all 10,000 FPOs.

Objectives of Equity Grant: The objectives of Equity Grant are to **(i)** enhance viability and sustainability of FPOs; **(ii)** increase credit worthiness of FPOs; and **(iii)** enhance shareholding of members to increase their ownership and participation in their FPO.

3. Credit Guarantee Facility

In order to ensure access of FPOs to credit from mainstream Banks and Financial Institutions, there is a need to create a dedicated fund. The dedicated Credit Guarantee Fund (CGF) will provide suitable credit guarantee cover to accelerate flow of institutional credit to FPOs by minimizing the risk of financial institutions for granting loan to FPOs so as to improve their financial ability to execute better business plans leading increased profits.

Objective of CGF: The primary objective of CGF is providing a Credit Guarantee Cover to Eligible Lending Institution (ELI) (i.e. bank/financial institutions) to enable them to provide **collateral free credit** to FPOs by minimising their lending risks in respect of loans.

Corpus of CGF: A dedicated Fund of up to Rs. 1,500.00 crore will be created as CGF. Out of up to Rs. 1,500.00 crore CGF, up to **Rs. 1,000.00 crore** will be created, maintained and managed by **NABARD** and the rest of up to **Rs. 500.00 crore** by **NCDC**.

Taxation

A Producer Company is taxed as a regular company under the Income Tax Act, and it is eligible for various tax benefits that are available to companies engaged in agricultural activities.

Taxation in the hand of Company

- Eligible Business Income 100% tax free u/s 80PA up 31ST March 2025.
- Other Income such as interest etc. shall be taxable.

Deduction in respect of certain income of Producer Companies

80PA. (1) Where the gross total income of an assessee, being a Producer Company having a total turnover of less than one hundred crore rupees in any previous year, includes any profits and gains derived from eligible business, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains attributable to such business for the previous year relevant to an assessment year commencing on or after the 1st day of April, 2019, but before the 1st day of April, 2025.

(2) In a case where the assessee is entitled also to deduction under any other provision of this Chapter, the deduction under this section shall be allowed with reference to the income, if any, as referred to in this section included in the gross total income as reduced by the deductions under such other provision of this Chapter.

Deduction in respect of certain income of Producer Companies

80PA. (1).

Explanation.—For the purposes of this section,—

(i) "eligible business" means—

(a) the marketing of agricultural produce grown by the members; or

(b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or

(c) the processing of the agricultural produce of the members;

(ii) "member“ shall have the meaning assigned to it in clause (d) of section 581A of the Companies Act, 1956 (1 of 1956);

(iii) "Producer Company" shall have the meaning assigned to it in clause (l) of section 581A of the Companies Act, 1956 (1 of 1956).

Taxation in the hand of Member of Producer Company

Amount received against sale of agriculture Produce – Agriculture income in general hence tax free u/s 10(1).

Dividend Income/Limited Return

Taxable but agriculturist have to pay tax only when taxable income exceed threshold limit. Generally agriculture income are exempted.

Bonus Share

At the time of issue of bonus share by the company no tax in the hand of shareholder but such share/bonus share are capital assets therefore taxable at the time of transfer.

Patronage Bonus

The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 378ZI, may be disbursed as patronage bonus, amongst the Members, **in proportion to their participation in the business of the Producer Company**, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting. Ref. 378E (3) of Companies Act.

Such Income should be treated at par with agriculture income as such amount received for participation in the business of producer company by way of supply of agriculture produce therefore such amount should be consider as additional revenue for sale of agriculture produce therefore it should be exempted as agriculture income.

Conclusion

In conclusion, Producer Companies provide a legal structure for farmers to collaborate and engage in collective production, marketing, and selling of their primary produce. The Companies Act 2013 provides for the registration, governance, and regulation of Producer Companies, and they are subject to similar compliance requirements as regular companies. These provisions aim to promote agricultural activities and rural development in India.

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