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Analysis of the Rights, Duties, Functions and Liabilities of Promoters: Uncovering their Position Before and After Enactment of SRA, 1963

Aanchal Agarwal^a

^aNew Law College, Bharati Vidyapeeth University, Pune, India

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As we know, there is a distinctive procedure for a firm's inception and incorporation consisting of numerous steps. Promotion is the first and foremost stage of the entire process. At this phase, a person known as a promoter makes a case for the viability of a firm. The promoters bring the corporation into existence and depict the notion of a firm and its reason for being formed. The paper conducts an in-depth study of the position of a promoter in a corporation before and after the enactment of the Specific Relief Act 1963; it also includes the meaning of the promoter, its rights, duties, functions and liabilities. Even though the Companies Act of 2013 does not explicitly mention the privileges and responsibilities of the Promoters, they have gained recognition via interpretation through multiple case laws. The enactment states the promoters' liabilities. The research paper also investigates a promoter's legal standing before and following the firm's incorporation using court precedents and applicable laws.

Keywords: promoters, specific relief, companies act, incorporation.

INTRODUCTION

The entire procedure for establishing a corporation is complex and consists of numerous parts; promoters perform a significant role from the beginning of this procedure. The initial step in the establishment stage is the promotion stage. At this phase, a person or group of individuals, known as promoters, come together with an idea and intention of forming an entity from scratch. The promoters are not just in charge of promotion but are also of all aspects of the firm's operation; they might be a human, an entity, or a group of artificial legal persons. It is not required to be a firm's founder to be a promoter; someone who provides funds and aids in other vital tasks can also be considered a promoter. In another regard, the promoters are like the parents of the firm, who bring the entity into existence, i.e. conceive it.

It is a common fallacy that the promoter's duty ends once the firm has acquired the assets, raised its preliminary funding, and the Board of Directors has seized control of the company's operations. The analysis of the various clauses of the Companies Act of 2013 indicates, however, that this is not the case; the function of the promoters should not receive neglect even when the Board of Directors acquires authority over the firm's activities. The promoter's role continues when the enterprise operates as an ongoing business even while the business's affairs are ending and the company is winding up.

DEFINITION OF PROMOTERS

As to the Companies Act of 2013, under section 2(69), 'promoter' can be defined as follows:

- Any individual specified as such in a prospectus or recognised in the annual return mentioned in section 92; or
- A person with direct or indirect control over the company's affairs, whether as a shareholder, director or otherwise; or
- An individual on whose advice, directions, or instructions the company's Board of Directors is accustomed to act.

Proviso states that nothing in subclause (c) applies to an individual performing solely in a professional capacity.¹

The word- promoters has been used expressly in Sections 35, 39, 40, 300, and 317 of the Act.²

INTERPRETATION OF THE MEANING OF PROMOTERS IN VARIOUS CASES

In the case of *Bosher v Richmond Land Co.*³, the word promoter was defined as: 'A promoter is an individual who brings about the formation and organisation of a corporation. He brings together those who become interested in the venture, assists in obtaining subscriptions, and initiates the machinery that leads to the formation itself.'⁴ This definition of promoter lists down the basic crux of the role that the promoter plays in an organisation.

In the matter of *Whaley Bridge Printing Co.*⁵, a promoter of a company discussed and finalised with a seller the deal of the business. The seller, in return, splits his gains from the transaction with the promoter. Therefore, in this case, the Court held that the profits acquired by the promoter were not his to gain and belonged to the company. Additionally, L.J. Brown stated that the term promoter is 'a term not of law but of business, usefully summing up in a single word a number of business operations familiar to the commercial world by which an enterprise is generally brought into existence.'⁶

In *Twycross v Grant*⁷, a promoter was defined by Lord Cockburn as 'one who undertakes to establish a company with reference to a given project, to set it going, and who takes the necessary steps to accomplish that purpose.'⁸ This definition of the promoter is one of the oldest ones and

¹ Companies Act 2013, s 2(69)

² Pramit Bhattacharya and Sujitha S, 'Promoters in Company Law' (*iPleaders*, 13 December 2023) <https://blog.iPLEaders.in/position-promoter-india/#_ftn5> accessed 08 January 2024

³ *Bosher et al v Richmond & H L Co et al* [1892] 89 Va 455

⁴ Mohit Daulatani, 'Position of a promoter in establishing a Company' (*Legal Service India*) <<https://www.legalservicesindia.com/article/1775/Position-of-a-promoter-in-establishing-a-Company.html>> accessed 10 January 2024

⁵ *Whaley Bridge Calico Printing Company v Green* [1879] 5 Qbd 109

⁶ Shubhang Gomasta, 'Promoters of a Company' (*Law Bhoomi*, 19 February 2020) <https://lawbhoomi.com/promoters-of-a-company-functions-duties-and-liabilities/#Position_of_Promoters_in_Companies_Act_2013> accessed 10 January 2024

⁷ *Twycross v Grant* [1877] 2 Cpd 469 (CA)

⁸ Gomasta (n 6)

according to me it simply provides a basic view for a layman to understand what exactly is meant by a promoter of a corporation.

In *Lagunas Nitrate Co. v Lagunas Syndicate*⁹, The court resolved several crucial issues of the Companies Act of 2013, which is why this case is known to be one of the well-decided cases of corporate law. Firstly, the court listed multiple requirements that an individual must fulfill when serving as a director of any business. Additionally, the court indicated that serving as a director of a business does not hold you accountable for unforeseeable errors or omissions while promoting the company's best interests. The Court even mandated that an individual, be it promoter or director of the company, cannot be held responsible for charges such as fraud, breach of trust, and other similar crimes if his actions led to damage to another person, as long as those decisions were taken in good faith. The Court also observed that if an individual acts as a promoter, he does not need to be involved in the initial works and establishment of the company; a person who subsequently aids in acquiring the capital could also be termed as a promoter.

Harry Guthmann and Herbert E Dougall, who were esteemed finance professors and have authored the book *Corporate Financial Policy*, defined a promoter as an individual who performs the work of bringing together the men, the funds, and the required assets and raw materials to establish a corporation.

In the words of Sir Francis Palmer, a promoter is an individual who formulates ideas and plans for the establishment and incorporation of the firm, aids in the preparation of the memorandum and the articles of association, brings together the directors, builds the terms and conditions of preliminary agreements and prospectus and conducts advertising and distributes the prospectus and acquires funds.

⁹ *Lagunas Nitrate Co v Lagunas Syndicate* [1889] 2 Ch 392

POSITION OF PROMOTERS IN THE 1956 ACT

The term 'promoter' was not defined in the Companies Act of 1956 but was used in sections 62, 69, 76, 478, and 519. Section 62 of the Companies Act of 1956 defined 'promoter' for that section exclusively (limited purpose). Section 62(6)(a) of the previous Act stated that a promoter is a person who was a party to the preparation of the prospectus or a portion thereof containing the untrue statement but does not include any person acting in a professional capacity to procure the company's formation.¹⁰

As per my understanding, there was no legal definition of a promoter mentioned in the previous statute due to the risk of evading liability for those who hold the title but do not meet the criteria of the definition. I strongly feel that the lack of a fixed definition widens the possibility of judicial interpretation, allowing judges to take charge and pave the way. An inclusive definition also minimised the possibility of a person not falling under it; this made every person fall under the ambit of the definition and prevented them from escaping the liability arising out of it.

So the Indian Companies Act of 1956 used the word 'promoters' only to place responsibilities and liabilities on them but failed to define it, but instead acknowledged their pre-existing status under the common law basis. Then came the Indian Companies Act 2013, which defined the word for the first time.

KINDS OF PROMOTERS

Professional promoters are those who specialise in promoting innovative company ideas. Professional promoters begin all phases of forming a new firm; they possess years of expertise promoting multiple enterprises and use their knowledge to promote a company effectively. Professional promoters are those who work to promote businesses. Professional promoters are typically not linked to any single firm because they work as promoters for numerous firms. They are solely associated with a particular firm during its promotional period. Once the professional promoters have completed the firm's promotion, they hand over control to their executives or

¹⁰ Daulatani (n 4)

shareholders and proceed to another endeavour or firm to promote. Knowledge and expertise are critical for effective promotion, and professional promoters possess both. That is the reason they are compensated for their services.

Managing Promoter: An entrepreneur's responsibility is to begin and promote. The entrepreneur is also a promoter since he performs all the initial duties, such as recruiting the appropriate members for the firm, signing contracts in his name for the firm's benefit, and bringing the business or corporation to life. Entrepreneurial promoters come up with business concepts and implement all of the necessary procedures to market their firm. These sorts of promoters take the required measures to establish an operational unit and give it structure, and they maintain complete control and management of the organisation. The founder is often the one who promotes the business. These promoters operate on the grassroots level to promote the brand. Because they are generally founders, they bear responsibility for any potential risks that arise throughout the firm's promotion. The Tata, Birla, and Reliance groups are excellent instances of entrepreneurial promoters in India, as the founders conducted each phase of the organization's promotion.

Occasional promoters do not regularly participate in an enterprise's promotion activity, and it's not their primary work. Unlike professional promoters, occasional promoters do not regularly promote a series of firms; instead, they promote only a few enterprises. Occasional promoters have their separate career or fields besides promoting a firm and as soon as the promotion activity is complete, they leave over the administration of the firm to its owners or shareholders and return to their profession. Usually, the occasional promoter is interested in promoting a firm or assisting its operations in reaching the next level. They like putting their plans into action and starting a business. Attorneys, accountants, surgeons, and other professionals who want to promote a firm may serve as occasional promoters.

Financial Promoter: Various financial institutions may assist emerging company endeavours by launching them, and they act as promoters for the firm, just as any other promoter would. Most financial institutions offer financial aid and coaching to new firms, assisting them in launching their initiatives into the commercial world. A corporation needs funds for survival, and the

promoter tries to make that happen. The financial promoter supports the firm by providing funds. Financial promoters frequently work with young entrepreneurs eager to make investments and urge them to put money into new enterprises, thereby promoting emerging companies through financial help. Financial promoters give the managerial and technical competence required to bring a firm into being.

RIGHTS OF PROMOTERS IN A COMPANY

According to the rules, promoters have the following rights:

Right of indemnification: If more than one promoter engages in a corporation's initial establishment, one of them may seek reimbursement or compensation from the other promoters in the event of a contract violation. The promoters are jointly and severally accountable for the firm's issues, including misleading statements mentioned in the prospectus and any secret profits.

Must receive remuneration: If the promoter holds a management position in the firm, he additionally becomes eligible for compensation from the corporation because he works hard to operate the company's affairs. This payment can be done in several forms, including money and debentures. However, this must be included in the employment agreement.

Right to be reimbursed for legitimate preliminary expenditures: A promoter has the genuine right to recoup any expenditures paid from his pocket throughout the firm's establishment and development. These expenditures include registration, paperwork, promotion, attorney fees, and many more. The reimbursement of these expenditures is dependent on the number of directors.

DUTIES OF PROMOTER IN A COMPANY

The promoters possess multiple duties towards the firm, which can be categorised as follows:

Reveal secret profits: The primary obligation of the promoters is to be faithful to the firm and avoid engaging in wrongdoing or unprofessional behaviour. They ought to refrain from covert

or concealed gains while engaging in promotional initiatives such as purchasing real estate and then reselling it by quoting a higher price, thereby gaining profit and not revealing it. They are not prohibited per se from generating such profits; their sole duty is that they must declare them. They have to disclose every detail about their profit margins and revenues to all the vital shareholders of the firm. As per section 26 of the Companies Act 2013, the prospectus must include the promoter's profit.

Duty to reveal all concealed information: Numerous confidential transactions occur during the formation and establishment of a corporation. Since a promoter has a loyal and trustworthy association with the firm, often known as a fiduciary relationship, under this fiduciary relationship, the promoter must reveal all significant information about the firm's operations and establishment to the appropriate shareholders. The enterprise's MOA and AOA should contain all these relevant information.

Operate in the best interests of the firm: Promoters must always put the interests of the corporation ahead of their own. They have to take into account the firm's best interests while forming it and during all commercial activities.

Duty to reimburse the funds or assets misappropriated and to provide compensation: According to section 340 of the Companies Act 2013, the Tribunal can order the liable promoter to reimburse or return the firm's funds or assets or make a contribution to the business's resources as compensation if it comes to light during the winding-up process that a promoter involved in the company's promotion or establishment misappropriated or improperly used the company's funds or property.

PROMOTER'S LIABILITIES

A promoter's obligations are as follows:

Liability if the prospectus has errors: Section 26¹¹ specifies what must be disclosed in the prospectus and which reports ought to be provided. The prospectus has to include all relevant

¹¹ Companies Act 2013, s 26

data on secretaries, accountants, legal consultants, financiers, board members, and directors' remarks. If vital data gets omitted from the prospectus, the promoter may face liability from shareholders and penalty under Section 447 of the Companies Act, 2013.

Criminal liability: Section 34¹² addresses the criminal consequences of creating a prospectus with misleading representations. If the prospectus published by the promoters includes false representations, they may face criminal charges. The penalty is either two years of jail time, a compensation of up to 5000 rupees, or both. Except he can demonstrate that the erroneous claim was insignificant or that he had reason to believe, on reasonable grounds, that the claim was not false at the moment of the issuance of the prospectus, the promoter can be charged criminally accountable for errors in reporting.

Civil liability: Section 35¹³ describes the civil liability for any kind of prospectus errors. As per this section, an individual who bought the company's shares and debentures believing what was mentioned in the prospectus may hold the promoter liable for the misleading assertions contained in the prospectus. The promoter may be held accountable for any financial harm or loss incurred by the person who subscribed for securities because of the incorrect assertions in the prospectus.

Case law: William Derry v Henry Peek:¹⁴ The Henry Peek firm's prospectus indicated they had the authorisation to utilise steam-powered trams instead of horses, but, in reality, the corporation did not actually have such a right since steam-powered Trams needed to be sanctioned by the Board of Trade. However, in these conditions, it was well known to all that obtaining the permission of the Board was a formality, and the company presented the claim in the prospectus with this consideration. However, the Board denied the claims of the company. Based on the statement, people who had bought securities in the firm filed a fraud claim against the firm after its liquidation. In this instance, the House of Lords attempted to determine whether the defendant company's claim in its prospectus was dishonest or just erroneous. The

¹² Companies Act 2013, s 34

¹³ Companies Act 2013, s 35

¹⁴ *William Derry v Henry Peek* [1889] 14 App Cas 337

Court denied the petition of security holders and ruled that the shareholders were unable to showcase that the directors/leaders were deceitful in their conduct. The Court described fraudulent misrepresentation as a declaration known to be untrue or made intentionally or negligently about the statement's veracity. So, the plaintiff could not sue the defendant corporation for fraud.

Lord Herschell stated, 'I believe they were mistaken in assuming that the Board of Trade's consent would follow as a matter of course because they had obtained their Act. The Board had complete discretion on whether to provide consent. The prospectus was erroneous. But it isn't the question. If they believed that the Board of Trade's consent had been practically concluded by the passing of the Act, has the plaintiff established, as he was required to do, that they were guilty of fraudulent misrepresentation? I think not. I cannot conclude that any of them knowingly made a false statement, one that he did not believe to be true, or was unconcerned about whether what he claimed was true or false. Overall, I believe they honestly believed what they claimed was true and I feel the accusation of fraud levelled against them has not been established.'¹⁵

If an issue arises while winding up: Section 300¹⁶ authorises the Tribunal to conduct a public investigation into all promoters deemed liable for fraud in the promotion or formation of a firm. If the liquidator's investigation reveals fraud in the promotion or formation of the firm at the time of the liquidation process, the promoter, like any other executive or board member of the firm, may be held accountable for public examination by the Tribunal.

Personal liability; pre-incorporation contracts: Prior to the formation of a business, if the promoters engage in a contract, such contracts are known as pre-incorporation contracts, and the firm is neither accountable for them nor ratifies them; thus, the promoters are personally responsible for them.

¹⁵ Ananya U S and Sriya K, 'Analysis on the Position, Duties, Rights and Liabilities of Promoters' (2023) 5(6) IJFMR <<https://www.ijfmr.com/papers/2023/6/10125.pdf>> accessed 11 January 2024

¹⁶ Companies Act 2013, s 300

According to me, it is extremely essential to clearly outline all the liabilities of a promoter simply and vividly because a promoter maintains an upper hand in company management and has access to all critical and sensitive data that is not public information and he is in an influential position can misuse this information for his benefit. So, the new Companies Act places him in a vulnerable position as an officer in default whenever he violates the provisions of the Companies Act 2013. We can clearly depict that a promoter is generally liable if he provides false data and credentials for shareholders in an organisation and bears responsibility for errors in overview and even for disclosure of interests.

POSITION BEFORE THE ENACTMENT OF SPECIFIC RELIEF ACT 1963

Prior to the Specific Relief Act's enactment in 1963, promoters considered it challenging to conduct promotional activities since the pre-incorporation deals of the firm were unenforceable. Further, it was impossible to ratify such contracts. As a result, individuals were unwilling to provide funding or assistance for the business's formation due to the absence of a legally binding agreement. The promoters were likewise concerned about assuming personal accountability; however, the stance on accountability has changed since the enactment of the Specific Relief Act in 1963.

POSITION AFTER ENACTMENT OF SPECIFIC RELIEF ACT 1963

The Specific Relief Act of 1963 simplified the incorporation process by allowing promoters to engage in pre-incorporation agreements with additional parties; sections 15(h) and 19(e) of the Specific Relief Act 1963 allow promoters to transfer their rights and duties to the business provided the legal documents of formation allow for it.

Section 15 of the Specific Relief Act 1963 states who may obtain specific performance of a contract, and its subsection (h) of the act specifically states that before the incorporation of the company, when the promoters of a company have entered into a contract for the company and such contract is warranted by the terms of the incorporation the company may obtain the

specific performance of a contract, provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.¹⁷

Section 19 of the Specific Relief Act talks about enforcement of the specific performance of a contract, and subsection (e) states that when the promoters of a company have, before its incorporation, entered into a contract for the company and such contract is warranted by the terms of the incorporation, then the contract may be enforced against the company, provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.¹⁸

Therefore, in simpler terms, we can assume that it means that a contract initiated between third parties and the promoter on behalf of the firm has the status of a binding agreement involving the two parties. The firm can only get the authority to ratify a contract via its memorandum. As a result, if a corporation fails to ratify the contract, it is immune from lawsuits by a third party, even if the deal was profitable to the firm. Hence, if the firm lacks the power to ratify the contract or fails to ratify the contract, the promoter will be held personally accountable. If, after the firm's formation, it ratifies the contract formed by the promoter, the contract becomes valid and enforceable on the firm rather than the promoter. Sections 15(h) and 19(e) further specify that the promoter may transfer privileges and duties to the entity provided a clause mentioning such is in the incorporation contract. However, the promoter lacks the right to any income or payment. Yet, the common practice is to reward the promoter with an agreed-upon amount after the firm's establishment. A promoter is unable to ask for remuneration as an inherent right; still, if the promoter gets reimbursed, it will be on the basis of equality and justice, and if he receives any securities, then the promoter instantly becomes a shareholder of the company.

CASE: Kelner v Baxter:¹⁹ This case depicts the fact that a promoter planning to perform duties for an unregistered business is personally accountable for contracts entered into on behalf of the pre-incorporated firm. The facts of this case are such- a team of promoters for a new hotel firm,

¹⁷ Specific Relief Act 1963, s 15(h)

¹⁸ Specific Relief Act 1963, s 19(e)

¹⁹ *Kelner v Baxter* [1866] Lr 2 Cp 174

the Gravesend, signed a deal for procurement of wine. The contract in question was supposedly signed on behalf of Gravesend; however, at that moment, the incorporation of Gravesend had not happened, so it was a pre-incorporation contract. Registration of Gravesend as a company ultimately took place, but the wine had already been drunk, and the payment did not happen. Thereafter, Gravesend went into liquidation and the promoters, acting as Gravesend's representatives, got prosecuted for the contract. The promoters asserted that because Gravesend was recently incorporated, ratification of the deal took place, and obligation had shifted to the company in question. The Court of Common Pleas ruled that since the firm was not in existence, it would render the contract unenforceable, except if it was binding on the promoters. The Court further stated that no one is allowed to represent someone who has no existence; hence, a business cannot be liable before incorporation for a contract entered into by the promoters. A firm's later ratification cannot absolve the promoters of accountability. A promoter may avoid the blame only if an alternative agreement replaces the initial pre-incorporation arrangement.

FUNCTIONS OF A PROMOTER

A promoter serves multiple functions in establishing a firm, from developing the business proposal to implementing all the necessary measures to make the plan a reality. Here are some of the functions of a promoter:

Discovery of Strategic Opportunities: At first, the promoter must find an opportunity in a specific kind of business area that has the potential to be profitable in the future. The possibility might involve exploring new ideas or introducing innovative aspects to an already established structure. The promoter can identify this potential by consulting with someone with the required expertise in that field. When a promoter sees an opportunity for development in a commercial initiative, they pursue the concept further.

Complete Analysis or Extensive Research: At this stage, numerous aspects are extensively researched and evaluated from multiple perspectives to determine the firm's financial performance and long-term viability. For instance- Consumer demand, raw material supply, financing arrangements, logistics, method of distribution, and other factors are looked into.

Confirmation of Company's name: After agreeing on its organisational framework, it is vital to register the firm under a name. The 'registrar of companies' must authorise the company's name.

Memorandum Signatories: The memorandum of association (MOA) acts as the firm's foundation. The promoters choose the individuals who are to sign this legal instrument. Typically, the first signatory to the Memorandum of Agreement becomes the firm's director. The director must offer written authorization in the manner provided by the statute.

Resources or Funds Organization: A firm cannot exist without appropriate finance, just as a human body cannot survive without food and water. As a result, making the required financial preparations is critical. The promoter determines the requirement extent of capital and from where to procure it. Commercial financing, private equity, and initial public offerings are some of the most common choices. Several banking and legal specialists get hired, and their opinion is taken into consideration to ensure proper arrangement of capital.

Drafting essential documents such as MOA and AOA: Aside from the Memorandum of Association (MOA), which serves as the firm's founding document, promoters must file additional essential paperwork with the registrar of companies, such as the Articles of Association (which govern all of the firm's internal operations), an incorporation certificate, a prospectus and other documents.

LEGAL POSITION OF A PROMOTER IN INDIA

Because of the promoters' vital role in the firm's formation and incorporation procedure, the question regarding their legal standing within the firm arises. Promoters are not regarded as representatives, as there cannot be a principal because the company did not exist before incorporation. Also, the firm is not a beneficiary; therefore, promoters are not trustees.

The fiduciary role of the promoter concerning a corporation was originally expressed in the case of *Erlanger v New Sombrero Phosphate Co.* Cairns LJ contended that the promoters 'clearly stand in a fiduciary role' in this instance. Promoters are responsible for establishing, commencing, building and growing the company. They possess the authority to decide under

what supervision and when the business establishment takes place and begins operating as a trading entity. Therefore, promoters are essential to the promotion sector. The Court consequently designated them to act as fiduciary representatives. Hence, a promoter has no legal status. They are not corporations or a corporate trustee.²⁰

The same decision was reaffirmed in *Weavers Mills v Balkis Ammal*.²¹ In this case, the promoters promised to purchase numerous real estate on behalf of the corporation. Later, when the company's incorporation took place, it seized control of the site and started constructing structures upon it. The Court determined that promoters cannot challenge the firm's claim to the asset, even if they hadn't handed over the property to the firm following its registration.

A foundation of belief and confidence is vital to build a fiduciary relationship. It does not imply that the promoter has no legal relationship with the firm. The promoter's fiduciary competency requires not to earn any secret gains and to declare to the enterprise any acts or omissions that may have a bearing on the firm. If it comes out that they acquired a hidden gain during any of the company's dealings, then the promoters will be obliged to return it to the firm. Until the revelation of every significant detail, the promoter may not acquire gains from selling his property to the business. If the company finds out that the promoter gained during business dealings, the firm can either accept the proceeds from the sale or ratify the agreements and reclaim the promoter's profits. Also, any agreement signed by the promoter and not ratified by the firm after its inception will only hold the promoter personally accountable.

In the matter of *Prabir Kumar Misra v Ramani Ramaswamy*²², the Hon'ble Madaras High Court ruled that it is possible to determine a promoter's fault and accountability by his actions and the agreements he signed within the firm's pre-incorporation period. The main issue of whether the promoters' signatures in the MOA and AOA were necessary to hold them accountable emerged. The Bench ruled that the promoter is not required to be a signatory to the MOA or AOA, a shareholder, or a board member of the company before its formation. The promoter is

²⁰ *Erlanger v New Sombrero Phosphate Co* [1878] 3 App Cas 1218

²¹ *The Weavers Mills Ltd v Balkis Ammal & Ors* [1969] 2 Mlj 509

²² *Prabir Kumar Misra v Ramani Ramaswamy & Ors* Ca Nos 11-15/2009

responsible for each significant step of carrying the business entity into making, such as suggesting the company's goals, developing the initial scheme, implementing arrangements for the incorporation, putting together a prospectus, MOA and AOA, etc.

In the end, I feel that the legislature must mandatorily include the rights, liabilities, duties and functions of a Promoter in the Companies Act 2013. There must be concise notions regarding the roles and duties of the promoter as there still exists scope for making it clear because as we have seen, there are numerous cases present that have attempted to interpret the functions and duties of a promoter but all of them are slightly different from each other so no one of them in itself provides a clear idea altogether.

CONCLUSION

Finally, we may define a promoter as someone who assists in the firm's establishment. A promoter is an individual engaged with a firm since its inception. A promoter performs various critical roles, from the conception of an entrepreneurial idea to the development of a prosperous firm, all of which are necessary for the company's survival. According to me, a promoter's legal status is likewise obvious concerning a business that does not yet exist after it has been registered. This paper went through the several rights, liabilities, duties and functions, such as indemnification and receiving preliminary expenditures of the promoters. The article also closely analysed the position before the enactment and afterward the shift in liability following the enactment of the Specific Relief Act of 1963. Under Sections 15(h) and 19(e) of the Specific Relief Act of 1963, a promoter may transfer his rights and responsibilities to a business provided the agreement be supported by the terms of incorporation, subject to the other party's permission. Overall, this research paper attempted to scrutinize the legal position of a promoter in a company and even discussed the various judicial precedents pertinent to it.