

How To Become A Partner In A Running Garment-Business

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What do the scholars of Islam say regarding the following matter: My friend has a running garment business. To expand the business and purchase more suits, he needs funds. I want to invest in his business. Currently, he has goods worth approximately 1 million rupees in his shop, and I also want to invest 1 million rupees. This way, our investments will be equal. However, since my friend will manage the entire business alone, his profit share will be 60%, and mine will be 40%. Please guide us on how to enter this partnership in a way that our unequal profit shares become permissible despite equal investments. Also, in case loss occurs, how will it be distributed between us? Please explain this as well.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

The method described in the question for entering into partnership is not permissible; however, a slight modification can make it permissible.

In the asked scenario, First, it is necessary to evaluate the goods in the shop to determine their value. Then the investor (yourself) will purchase half of the goods. For example, if the goods are worth 1 million, you buy a share for 500,000. Thus, each

suit becomes jointly owned, and you pay your partner 500,000. Then, both you and your partner contribute 500,000 each, totaling 1 million, to form a contractual partnership (Shirkat ul-Aqd) with this mindset that you and your partner will deal in garments thorough jointly owned garments and one million in cash. Profit will be shared as 60% for your partner and 40% for you. In this way, the disparity in profit ratio will be permissible.

It must be known that in this method, the partnership in ownership of goods (شركة الملك) is subsidiary (ضمني) and the primary partnership is in cash. Therefore, disparity in profit ratio in a contractual partnership formed through cash and formed after the non-primary (ضمني) partnership in the ownership of goods, is permissible. However, since you both own equal shares of goods and cash, any loss will also be shared equally in case it occurs.

The book “Mukhtasar-ul-Quduri” states:

“وإذا أراد الشركاء بالعروض باع كل واحد منهما نصف ماله بنصف مال الآخر ثم عقدوا الشركة”

Translation: If they want to form a partnership with goods, each should sell half of their goods in exchange for half of the other's goods, then form the partnership.

(Mukhtasar-ul-Quduri, p. 111,
Dar al-Kutub al-Ilmiyyah)

The book “Hidayah” states:

“هذه شركة ملك لما بينناان العروض لا تصح راس مال الشركة”

Translation: This is partnership in ownership of goods because we have clarified that goods cannot serve as the capital for a partnership.

(Hidayah, vol. 3, p. 9, Beirut)

In the book "An-Nahr-ul-Fa'iq," it is mentioned:

ان العروض لا يصلح مال الشركة نعم ذكر الاكمل عن شيخه عبدالعزيز البخارى وشيخه هو الامام قوام الدين الكاكي وصرح الكاكي هنا بانه اخذ عن صاحب (الهداية) ما حاصله ان ما ذكره المصنف تبعا للقدورى من جواز الشركة اختيار شيخ الاسلام وصاحب (الذخيرة) وشرح الطحاوى واختار شمس الائمة وصاحب (الهداية) انه لا يجوز عقد الشركة اتفاقا وهو اقرب الى الفقه لبقاء جهالة راس المال والربح عند القسمة بخلاف ما اذا باع نصف عرضه بنصف دراهم صاحبه ثم اشتركا لان الدراهم بهذا العقد صارت نصفين بينهما فيكون ذلك راس مالهما ثم بينا حكم الشركة فى العروض تبعا

Translation: Goods do not have ability to serve as capital for forming a partnership. However, Allamah Akmal narrated from his teacher, Abd-ul-Aziz al-Bukhari (in actuality his teacher is Imam Qiwan-ud-Din al-Kaki) and Allamah Kaki has explicitly stated that Allamah Abdul Aziz Bukhari deduced this opinion from the statements of the author of Hidayah. This whole opinion can be summarized as follows: the stance of permissibility of this method that the author has mentioned while following Imam Qudori is the stance of Shaikhul Islam and of the author of Zakhira and Sharh Tahavi. On the other hand, Shamusul Aemmah and the author of Al-Hidyah has taken the stance that here the contractual partnership is impermissible unanimously and it appears more aligned with the (spirit of) Fiqh. And that is because when the partnership is only in goods, uncertainty about the capital and profit persists at the time of division. But this will not be the case, if half the goods are bought for half of the currency (before entering the partnership) and then they enter in partnership

through cash (from both sides) because in this case Drahim (i.e. cash) will be from both sides and it will serve as capital and now we will consider the partnership in goods non-primary.

(An-Nahr-ul-Fa'iq, vol. 3, p. 299,
Dar-ul-Kutub al-Ilmiyyah, Beirut)

In "Inayah Sharh Hidayah" and "Miraj-ud-Dirayah Sharh Hidayah," it is stated:

"واللفظ للاول : واختار شمس الائمة السرخسى وصاحب الهداية انه لا يجوز عقد الشركة بالاتفاق وهو اقرب الى الفقه لبقاء جهالة راس المال والربح عند القسمة -- بخلاف ما اذا باع نصف عرضه بنصف دراهم صاحبه ثم اشترى كالان الدراهم بهذا العقد صارت نصفين بينهما فيكون ذلك راس مالهما ثم يثبت حكم الشركة في العروض تبعا وقد دخل في العقد تبعا ما لا يجوز ايراد العقد عليه"

Translation: Shams-ul-Aimmah As-Sarakhsi and the author of Hidayah ruled that a partnership agreement is impermissible here by consensus, and it is in accordance with the Fiqh because in this case confusion about capital and profit persists at the time of division. However, if half the goods are sold for half the currency first and then they form the partnership, then in this case their contribution in form of cash will be equal and this equally contributed cash will become the capital. Now their partnership in the goods will be subsidiary (ضمنى). It must be noted that sometimes a thing enters in a contract as a subsidiary (تبعا) and it is deemed permissible but the same becomes impermissible if it becomes the primary subject of an agreement.

(Inayah Sharh Hidayah, vol. 6, p. 175,
Dar-ul-Kutub al-Ilmiyyah, Beirut)

(رحمة الله عليه) Sadr al-Shari'ah Badr al-Tariqah Mufti Amjad Ali A'zami wrote:

”نفع میں کم و بیش کے ساتھ بھی شرکت ہو سکتی ہے مثلاً ایک کی ایک تہائی اور دوسرے کی دو تہائیاں اور نقصان جو کچھ ہوگا وہ اس المال کے حساب سے ہوگا، اس کے خلاف شرط کرنا باطل ہے۔“

Translation: Partnership is permissible even with disparity in profit ratios, such as one-third for one and two-thirds for the other. However, losses are distributed according to the capital ratio and any condition to the contrary is invalid.

(Bahar-e-Shariat, vol. 2, p. 491, Maktaba-tul-Madina, Karachi)

والله اعلم عز وجل ورسوله اعلم صلى الله تعالى عليه وآله وسلم

Answered by:

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The Answer is correct

Endorsed by

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