श्री गणेश

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Law :

Chp - 5 :- The Companies ACT, 2013

Contain's

470 section's & 7 schedules

→ Divided in 29 Chapters

Purpose of the Act

(1) Improve corporate governance
(2) Simplify Regulation
(3) Strength the interest of Minority holders
(4) Role of wishtle Blower
(5) Class Action Suit

Applicability of Act

(1) Companies incorporated under this act or any previous company law.

(2) Insurance Company.

(3) Banking Company.

(4) Company Engaged in generation or sup

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of electricity.

⑤ Companies governed by Special Act.
eg:- [SBI - SBI ACT]

⑥ Body corporate incorporated under act and Specified by central government.

Meaning OF Company
(Clause)
⇒ Sec 2 (20) :- A company incorporated under this act or any previous law.

Features of Company.

① Separate legal entity:
→ When company is registered it is cloth with legal personality.

→ It's Existence is separate and distinct from that of member's.

→ A company can own property, have bank account, Raise loan, incurse liability and enter into contract.

→ Although the capital and asset are contributed by Shareholder's, Company becomes owner of it's capital and asset. Shareholder are not

joint or co-owner of company property.

Case law :- Saloman & Saloman Co. Ltd

A member do not have even Insurable Interest in assets of company.

Case law :- Macaura V/s Northern Assurance Company Ltd.

(2) Perpetual Sucussion :
→ Members may die or change but company goes on till it is wound up on ground's specified by act.

→ Company is created by law and law only can bring end to it.

(3) Limited Liability :
→ Member's liability depends upon type of company of which he is a member.

i) In case of limited liability Company
→ Liability is limited upto nominal value of shares held by him. Shareholder's can't be asked to pay more than unpaid value on shares.

ii) In Case of Guarantee Company
→ Member's are liable only to Extend

amount guaranteed by them and that too only when company goes into liquidation.

iii) In case of unlimited liability.
→ Liability is unlimited.

④ Artifical legal Person:
→ Company is created by law and therefore it is colth with legal personality.

→ It has seperate legal identity from it's members.

→ It can run through human agency - The directors who control affairs of company but they are not agent of members of company.

~~→ Common Seal.~~

⑤ Common Seal:
→ It is official signature of company affixed by officers and Employee of company.

→ As per companies Ammendment Act, 2015 Common Seal has been made optional.

→ For document which need to be authenticated by common seal now can be authenticated by:

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(i) Two director's of company
or
(ii) A director and company secretary, where company has appointed C.S.

Corporat Veil

- Refer's to legal concept where company is identified seperately from its member.
- Member's of company are sheilded from liability connected to company's Action.
- There is corporate insulation

Case Law : Salomon Vs Saloman Company Ltd

Lifting up of Corporate Veil

→ It mean's Disregarding the corporate Entity and Paying Regard instead to realities behind legal Facade.

OR

→ When law ignores concept of seperate legal entity and treats member's and company one and same by looking into actuality.

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• Some Cases of Corporate Veil

(1) To determine character of the company
→ - whether company is Enemy or Friend

→ case law : Daimler Co. ltd Vs Continental Tyres and Rubber Co.

→ • Test of control is adopted so that public interest is not likely to be in jeopardy.

• If affairs of the company are under control of people of enemy country then it is treated as enemy & contract turns out to be void

(2) To Protect Revenue / Tax

→ • If corporate Identity is used to Evade or circumvent tax court disregards the separate legal Entity.

→ Case Law :- Dinshaw Maneckjee Petit Vs CIT [Comissioner of Income Tax]

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③ To Avoid legal Obligation.

→ When sole purpose of forming a company is used to reduce amount which is duty of company to pay then corporate veil may be lifted.

→ Case Law : Workmen of Associated Rubber industry ltd Vs Associated Rubber Industry Ltd.

④ Formation of Subsidiaries to act as an agent :

→ a) A company may sometimes be Regarded as an agent or trustee of member's or of another company and may be Deemed to lost Indivivality in favour of ~~principle~~ principal.

→ b) Here principal shall be liable for action of company.

→ Case Law : Merchandise Transport Limited Vs British Transport Commission (1982)

⑤ Company Formed For fraud / Improper conduct or to defeat any law

→ a) Where device of Incorporation is

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adopted for some illegal / improper purpose – Defeat / circumvent tax, Defraud to creditors or avoid legal obligation.

→ Case Law : Gilford Motor Co. Vs Horne

Classes of Companies Under the Act

① On the Basis of Liability.

a) Company limited by Shares

→ •) According to Sec 2 (22) : when liability of members of a company is limited by it's memorandum to the amount [unpaid] on share, It is known as company limited by share.

•) It means Shareholders may be called up to contribute only to extent of the amount which remains unpaid on his Shareholding. His personal property cannot be used to meet company's Debt.

•) Shareholder is co-owner of company & not of company's Assets.

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b) Company Limited by guarantee

→ •) According to sec 2(21): Company having liability of it's member's limited by memorandum to such amount which member's undertake to contribute to assets of company in Event of winding up.

•) Members may not called upon to contribute beyond stipulated sum.

*→ Guarantee Co. & Co. Limited by shares

Common Features
① Separate legal entity
② Limited Liability

Distinction
G.C. :⇒ Company can call amount only at time of winding up

LLC :- Company can call amount at any time as it may demeed fit.

Here, G.C. → Guarantee Company
&
LLC → Limited liability Company

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c) Unlimited Company

→ ◦) No limit on liability of it's member's

◦) Liability cease's when person cease's to be member.

(2) On the basis of members

(a) One Person Company

→ ◦) It's a company which can be incorporated by one person.

◦) Minimum paid up capital is not prescribed.

◦) MOA Shall ~~supply~~ specify name of person who shall in event of Death may become member of company.

◦) Other person (Nominee) shall give prior consent in prescribe form and it shall be Filed with ROC.

◦) Only a natural person who is Indian citizen and who has stayed in India for more than 120 day's During immediately Preceding Financial year.

i) Shall be eligible to incorporate a OPC

(ii) Shall be a nominee for the sole member of a OPC.

-) No person shall be eligible to incorporate more than one OPC.

-) Such Company can't be converted into Section 8 Company.

-) Such company can't carry out Non Banking financial Activities.

-) Default

(i) ~~If~~ company :- upto 10,000 + 1000 / day

(ii) Officer in Default - Not specified.

b) Private Company

→) A company having minimum paid up Share capital as may prescribed and ~~by~~ which by it's articles.

(i) Restrict the right to transfer it's share's.

(ii) Limit's no. of member's to 200.

) Provided that where two or more person holds one or more shares jointly they

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Shall be treated as single member's

b) Provided ~~that~~ Further that :-

(i) Person who are in Employement of company

&

(ii) Person who, have been Formly in the employment of the company were members and have continued to be member's.

c) Small Company

→ a) As per Sec 2(85) - which means company other than public company.

(i) Paid up capital does not exceed 50 lac or higher amt as may be prescribed which shall not be more than 10 cr.

and

(ii) Turnover as per P&L in immediately preceeding financial year does not ~~exceed~~ exceed 2 cr or such higher amt as may be prescribed not more than 100 cr.

As per amendment

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Provided that, as per rules

•) Paid up Share capital prescribed is 4 cr
&
•) Turnover prescribed is 40 cr.

Exception
a) Holding and Subsidiary Company.
b) Section 8 company
c) Company or Body Corporate governed by any special act.

d) Public Company

→ •) It means a company which is not a private company.
•) Has minimum paid up Share capital

Provided that,
A company which is subsidiary of public company shall be deemed as public company for purpose of this law.

3) On the basis of control

a) Holding and Subsidiary company
→ •) These are relative terms

•) Subsidiary Co. in relation to any other

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company means a co. in which holding co.

(i) controls composition of Board of Directors

(ii) Excersises or controls more than one-half of Total voting power either on it's own or through subsidiary.

a) Composition of BOD means when one co. can appoint or Remove all or majority of Director's.

b) Associate company

→ a) In relation to any other company it means, a company in which other co. has significant Influence, but which is not subsidiary company having such Influence and Includes joint venture.

Explanation,

(i) control of 20% of total voting power or control on Decision under an agreement

Total Share capital
= Paid-up Share capital + Convertible Preference Share capital)

a) Shares held by co. in fiduciary capicity shall not be treated / counted for Associate purpose.

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4) On the basis of access to capital

a) Listed Company
→ ◦) It is a company which has its securities listed on Recognised stock exchange.

b) Unlisted company
→ ◦) Company other than listed

5) Other Companies

a) Government company
→ ◦) A company in which not less than 51% of paid up share capital is held by
→ Central govt.
→ State govt or Governments.
→ Partly by central govt or partly by state governments.

◦) It also Includes co. which is subsidiary of ~~such~~ Such govt company.

b) Foreign Company

→ ◦) It means company or Body corporate incorporated outside india which,

a) Has place of Business in India whether by itself or through agent, physically or through electronic mode.

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b) Conducts any business activity in India in any other manner

*c) Section 8 Company

→ Formed with objects
- Promote - commerce, Art, science, sports, education, Research education, Social, Charity.

- Such co should apply its profit in promoting object.

- Prohibits the payment of Dividend.

Power of CG to issue license.

(i) CG may allow to Register Person or Association of person without words limited or Pvt limited.

(ii) Registrar of companies shall on application register it as company.

(iii) Company shall enjoy same privileges as limited co.

Revocation of license

→ If CG finds out that co. has contravened

conditions subject to which license is issued

- Affairs of co. are ~~fraud~~ fraudulently managed or violates object of company or prejudicial to public Interest.
- On Revocation Registrar shall put word limited or Private ~~#~~ limited.
- Before this Reasonable opportunity shall be given.

Penalty - Company
10L - 1Cr

Officer in Default

Director / OID - 25,000 to 2,50,000
+
If Fraud - Sec 447

d) Dormant Company

→ (i) Company Registered under the act for future project or to hold asset or Intellectual property and has no significant Accounting transaction.

(ii) Such co. Shall Apply to ROC for Dormant Status

(iii) Inactive company : Co. which has not been

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carrying any Business or operation or Not made any significant Accounting transaction during last 2 year or has not filed financial statement and annual return during last 2 year.

d) Significant Accounting Transaction
→ It means transaction other than

(1) Payment of Fees to Registrar.
(2) Payment for ~~fulfiling~~ Requirement of Act.
(3) Allotment of Share's to fullfill requirement of Act.
(4) Payment for ~~maintan~~ maintonance of its office and records.

e) Nidhi Company

→ a) Company which CG notifies in official gazette - as nidhi or mutual Benefit society.

f) Public financial ~~I~~nstitution

→ a) Following are condition - for Institution to be Notified as PFI.

a) It is established under central and State Act ~~other~~ other than company law

b) Not less than 51% of paid-up share capital is held or controlled by CG / SG or SG's

Example - LIC, UTI, Etc.

Mode of Registration / Incorporation of Company

•) Promoter

→ •) person who form the company are known as promoter
•) They Receive idea of forming company.
•) They take necesary action of formation of company.

•) However, Person acting in professional capacity are not Regarded as promoters.

•) Basic Requirement of forming a company

In case of Public co. → 7 or more
Pvt. co. → 2 or more
OPC → 1 member

•) Incorporation of company

1) filing of Document and Information with Registrar

→ •) For Registration of co. following Document need to be submitted with Registrar with in

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whose jurisdiction Registered office is situated.
a) MOA and AOA duly signed by ~~Registrar~~ Subscribers.

b) Declaration by a person engaged in formation of company - CA / CS / CMA / Advocate & and by a person named in Articles (Director, Manager or Secretary) that ~~are~~ All requirements of Act have been complied.

c) Declaration from each of subscribers to Memorandum and from person named as Director, if any in the articles stating

i) He is ~~is~~ not convicted of any offence in connection with promotion formation or management of company.

(ii) He has not been found guilty of any fraud or misfeasance for breach of Duty in company act or previous law during the last 5 year

(iii) Document submitted with ROC are true to best of Knowledge and belief.

d) ~~The~~ The address of correspondence till Regis-tered office is established.

e) Particulars (Name, Surname, family name, nationality) of every Subscriber in MOA along with proof of Identity.

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f) Particulars (Name, surname, address, Director identification number along with proof of Identity.

2) Issue of certificate of Incorporation on registration.
→ After all the Document is filed Registrar shall issue certificate of Incorporation to effect that Company is incorporated under the Act.

3) Allotment of Corporate Indentity Number (CIN)
→ Registrar shall issue CIN which shall be unique / Distinct Identity for the company.

4) Maintenance of copies of all documents and information
→ Co. shall maintain all Document originally filed, with ROC in such manner as may be Prescribed.

5) Furnishing of flase or incorrect information or Suppression of material fact at the time of incorporation
→ Person shall be liable for fraud under Section 447.

6) Company already incorporated by furnishing any false or incorrect information or representation or by Suppressing any material fact.

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→ •) Promoters are liable for fraud under Section 447.
•) Person making Declaration - under section 447.

7) Order of Tribunal
→ where co. has already Incorporated by furnishing Incorrect Information or by Suppressing material fact or Incorporated by any fraudulent action - Tribunal may on application and if situation so demands.

a) Pass such order as it may think fit for Regulating management of co. including changes in MOA / AOA.

b) Direct liability to be unlimited.

c) Direct Removal of Name of co. ~~of~~ from ROC.

d) Direct winding up of co.

e) Pass ~~other~~ such order as it may deemed fit.

Provided that co. shall be given reasonable opportunity of being heard and tribunal shall look into transaction of co.

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Effect of Resgistration
→ •) Once co. is incorporated all features of co. gets activated - ~~For~~ Perpetual sucession, Disposal of property, Rights to enter into contract.

Share
→ •) Types of Share
1) preference Share capital
→ •) with reference to any co. limited by Shares. It means that Part of Share capital that ~~wo~~ would carry preferential right with Respect to -

a) Payment of Dividend
→ Either fixed Amount or amount calculated at a fixed Rate, either free or subject to Income tax.

b) Repayment
→ In case of winding or repayment of capital, amount of share capital or paid-up capital - there is preferential right with Respect to premium or capital.

2) Equity Share Capital
→ •) It means capital which is not preference Share capital

•) Two Types -

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a) with voting Right
b) with differential voting right.

Features of Share
① Share are movable property.
→ According to section 44 - Shares or Debenture of any member shall be movable or transferable as per Articles.

② Shares shall be Numbered.
→ Share's shall be Distinguished from Distinctive number.

Memorandum of Association
→ •) It is charter document which defines scope of power which has established under the Act.

•) Object of Registering MOA.
→ •) It contains object for which Co. is formed and Defines its scope beyond which actions can't go.

•) It enables shareholders, creditors and all those associated with co. - power of company.

•) Shareholder should know purpose for which money will be used.

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•) Memorandam of Association shall be Drawn in such form.

form A - MOA of Co. ltd by shares
B - MOA of Guarantee Co. and not having share capital
C - MOA of guarantee co. and having share capital
D - MOA of Unlimited co.
E - MOA of Unlimited co. and having share capital.

•) Content of MOA:

(i) Name Clause:
→ •) In case of Public limited - "limited"
•) In case of Pvt limited - "Pvt. ltd".
•) In case of Section 8 - No such condition

→ "Electoral Trust" is allowed for registration of company under section 8 - in according with Electoral Trust scheme and as notified by centeral govt.

→ In case of OPC - One Person Co. shall be Included below its Name.

(ii) Registered office clause:
→ •) State in which registe office of company is situated.

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(iii) Object clause :
→ It contains objects ~~for~~ which company is ~~to~~ proposed to be incorporated and any incidental matter there to.

(iv) Liability Clause :
→ •) In case of co. ltd by ~~sat~~ shares - amount unpaid on face value shall be liable to be paid by share holder.

•) Incase of guarntee co. - Amount ~~in~~ upto which each member undertakes to contribute.
(a) To the Assets of co. in events of winding up while he is member or within one year after he ceases to be member for payment of Debts and liabilities which may have been contracted while he was member.

(b) Expenses of winding up.

(v) Capital Clause :
→ It contains amount of share capital company is authorised to issue and also contains of Name of subscriber who ~~has~~ wishes to become member.

(vi) Association Clause :
→ It contains name of person who agrees to be associated with company during Incorporation

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L.D.R.

Doctrine of ultra vires

→ •) It simply means beyond powers.

•) It means when acts of company are beyond power contemplated by MOA / AOA, such act becomes void and neither company nor outsider can sue regarding it.

•) Company can be Restrained from Deploying its fund for purpose other than sanctioned by MOA / AOA.

•) It also assumes that one who is Dealing with company shall be Deemed to know about its power.

Case law :- Ashbery Railway Carriage and Iron Company limited Vs Riche

•) Act which is ultra vires can never be binding on company. It cannot become Intra vires by Reason of estoppel, lapse of time, Delay.

•) Following are positions :-

(i) When act is performed which is legal in itself, not authorised by object clause of MOA - is ultra vires and is void in Nature.

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(ii) Act when is ultra vires can't be ratified by unanimous consent of all share holder

(iii) Act which is ultra vires director but intra vires to company can be Ratified by members by passing Resolution in general meeting.

(iv) If Act is ultravires the article, it can be ratified by ammending AOA by passing Special resolution.

Articles of Association

→) They are Rules and Regulation which are framed to manage its internal affair.
) They are also known as magna carta.
) It Regulates Domestic management of company and certain Rights and obligation between management and Co.

) Contents of AOA

(i) Contains regulation : It contains rules for regulating management of Co.

(ii) Inclusion of matter
→ Contains matter which are prescribed in Rules

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(iii) Contain provisions for entrenchment
→ a) It may contain provision of entrenchment [to protect something] only if procedure are more restrective than those applicable in Statue.

(iv) Manner of inclusion of the entrenchment provision
→ a) In case of Pvt co. - unanimous approval.
a) In case of Publi co. - Special Resolution.

(v) Notice to the registrar of the entrenchment provision.
→ a) Co. shall give notice to RoC in such manner as may be prescribed.

(vi) Forms of Articles
→ Tables F, G, H, I, ~~J~~ and J - schedule I

(vii) Model Articles
→ Co. may adopt some or all of model article.

(viii) Company registered after the commencement of this Act.
→ Company has to comply with all model article provision which are applicable for Regulating the company.

Diff. Blw MOA & AOA

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Basis	MOA	AOA
Objectives	states objective for which co. is Incoporated.	It states rule and regulation for achiving objective.
Relationship	Defines relationship with outsider world.	Defines relationship with co. and members
Alteration	Can be altered under certain ~~term~~ circumstances.	Can be altered by passing SR
ultra vires	Act Done Beyond scope is void.	Act Done beyond is void but can be ratified by passing SR.

Doctrine of Constructive Notice.

→ i) Section 399 - MOA and AOA ~~are~~ public Document and any person can inspect by Electronic means kept with registrar or make copy of records by paying amount of fees.

ii) Every person dealing with co. is presumed to have knowledge of Documents.

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(iii) Such presumption is called constructive Notice.

(iv) whether person Reads or Not he is presumed to have knowledge of contents of Document. Also he is assumed to understand it in true sense.

•) Thus, a person dealing with co. enters into contract which is beyond the scope / Power of co. then he has not ~~acquired~~ acquired any rights against the co.

Doctrine of Indoor management.

→ •) It is an Exception to Doctrine of Constructive notice.

•) It means outsider dealing with co. cannot be presume to have knowledge of Internal affairs of Co.

Case law : The Royal British Bank vs Turquand

Exception to Doctrine of Indoor management

a) Actual / constructive knowledge of irregularity

→ When person dealing with co. has notice of actual or constructive irregularity.

Case law : Howard vs Patent Ivory Manufacturing Co.

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b) ~~Suspens~~ Suspicion of Irregularity.

→ •) Benifit cannot be given to a person who ~~be~~ behaves negligently.

•) Where person dealing with company is put upon inquiry in usual course and know the fact but do not do so can't claim company for this.

•) Person shall be Responsible for such act.

Case law :- Anand Bihari lal vs Dinshaw & Co.

(c) Forgery

→ In case Forgery transaction are always void and have nullity effect.