

Why \Rightarrow To replace old obsolete act of 1956 companies Act.
When \Rightarrow 29th August, 2013
Where \Rightarrow Whole of India.

ACT $\begin{cases} \rightarrow \text{Chapters - based upon topics of relevance. (29)} \\ \rightarrow \text{Section - Rule \& + Regulations (470)} \\ \rightarrow \text{Schedule - format of making financial statements (7)} \end{cases}$

Section 1.

\downarrow
Applicability \rightarrow Area wise (Whole of India)

\downarrow
Entity (Person wise)

LECTURE - 2

Section 1. - Applicability of Companies Act, 2013 entity wise

1. Companies registered under this act or any previous law in force (Jio Pvt Ltd, Soringhate Pvt Ltd)
2. Banking Company (unless any inconsistency arise with banking regulation act 1949.) (HOFC).
3. Insurance Company (unless any inconsistency arise with Insurance Authority of India 1949. regulator & Development (ICICI Lombard).
4. Electricity Companies (unless any inconsistency arise with Electricity Act ~~2003~~ 2003. (CESC).
5. Companies formed by notification passed in official gazettee by Central Govt.

PM Cases

Section 2 - Define.

Sec. 2(e) - Company means a Co. registered under this act or any other previous company law.

★ Features of Company →

1) Separate legal Entity → The most striking feature of the company, it is separate existence in the eyes of law, the company stands as a distinct entity from that of its members. It is eligible to hold assets, incur liabilities in its own name. The members of the company shall have the same rights as that of a lender & not hold any insurable interest in the assets of company.

2) Perpetual Succession → Members may come & go but the existence of the company can be wound up by law alone, as a company is created by law. It can be put to an end by law alone. The natural process of death does not apply to artificially created legal entities.

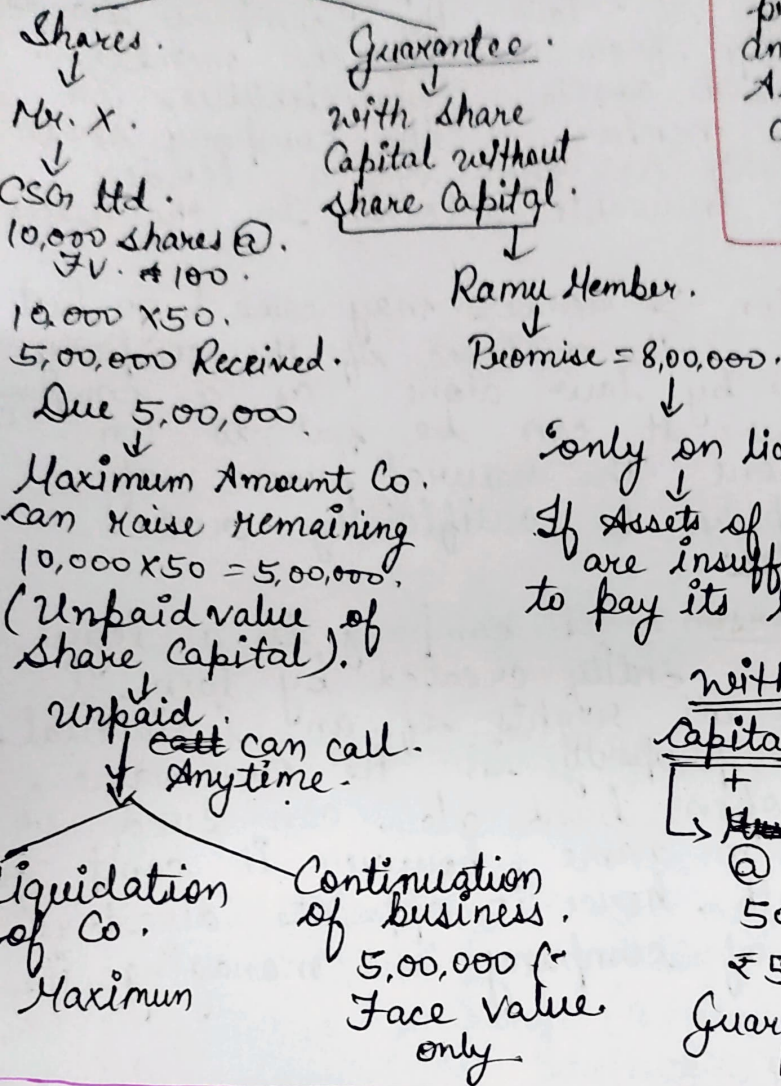
3) Artificial legal person - A company is a legal entity created by law, & it is clothed with all rights of an individual. A company can buy property in its own name, incur liabilities, open bank a/c, can sue or be sued in its own name, however it can't go to jail or take oath, hence it appoints directors to act as agents of company in managing its affairs.

LECTURE - 5

1) Common seal → Where a document has been authenticated by the seal or stamp of the company, the same is approved by the company, common seal is mandatory however the Amendment 015 makes company seal optional as two directors and company secretary or one director can authenticate the company documents, the same shall be equivalent to a company seal.

liability

Limited liability



Unlimited liability

The members of the Company promise to contribute to an unlimited extent if Assets of the company are insufficient on 'liquidation'.

During continuation of business liability is limited

eg. Amul.
Reebok Ranboxy.

with SC.
Capital (Shares).
+
→ ₹ 10,000 each.
@ 100 each.
50 paid up.
₹ 50 Anytime.
Guarantee Amt.
↳ Discontinue.

Without SC.
only Guarantee
↓
liquidation

liquidation of Co.
Maximum

Continuation of business.
5,00,000 (Face value only)

Company Ltd by shares.

Section 2(22).

The amount of unpaid value can be called at any time during continuation of business or afterwards on liquidation.

ample - Reliance Textile.

Company by Guarantee

Section 2(21).

Only on liquidation guarantee amount is payable.

• Bharat Egg

* Limited liability → The liability of the company can be limited by shares or by Guarantee or can be Unlimited.

Q(21) → The amount of liability is limited upto the amt. Guaranteed by the members.
eg. → TATA Motor.

Q(22) → Limited by shares - the amount of liability is liability is limited upto the unpaid amount of capital. eg. Bharat Egg.

Q(23) → Unlimited Company - the liability of the members shall extend upto their personal assets. if the assets of Co. falls. shorts to pay off their liability. eg. → Amaraj. Ranboxy Reebok.

LECTURE-6...

Feature - SLE - the member / Director are separate from that of the company.

In the eyes of law both hold separate existence. Because of this legal system corporate veil existed.

* Corporate Veil → The Corporate Veil is the separate legal existence of the company, this concept separates the members, directors from the company i.e. in the legal existence company is separate from its members & it is shielded from any liability on debts arising in the name of the company. This is the corporate protection or insulation.

SLE CASE LAW :- Solman & Solman Co. Ltd.

Court Decision :- Solman & Solman Co. Ltd is separate legal entity in the eyes of law.

• On winding up the first payment shall be made to secured debenture as per the company is act which has been duly done

- Since the debenture are held by Solomon himself this is just a coincidence.
- As per law, Solomon is correct.

Exception → Lifting up Corporate Veil.

→ SLE (misuse)

It is an exception to the concept of corporate veil, which gives the court the power to disregard the corporate existence of a company & hold the directors personally liable for the misutilization of corporate existence.

① Alien Enemy - CASE LAWS - Dailmer Company Vs. Continental Tyre & Rubber Company.

German Co. - (Continental Tyre)

↓ sell Tyres.

Company in England.
(Dailmer Co.)

← Majority Shares held by German Co.

The real control was with German.

- All but except one was German.
- All directors were German too.

During 1st World War.

Continental Tyre & Rubber Co. $\xrightarrow[\text{against (Debt)}]{\text{Action}}$ Dailmer Co. (England)

Dailmer Claim - It is now a enemy Company as the control lies in hands of German.

②. Protection of Revenue.

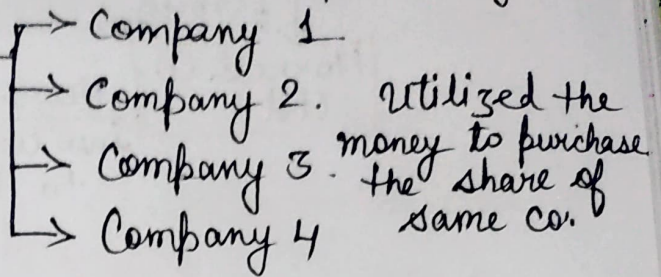
LECTURE / PART - 7.

Dinshaw Maneckjee Petit

↓
Earn huge Income
by way of Dividend &
Interest.

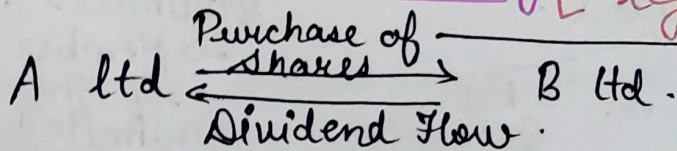
- Disregarded the SLE.
- Rendered all Co's as sham Company.
- Required to pay tax on all such investments.

- India's first Mill - in Mumbai.
- Tata, Ambani Category.
- Rich, & eminent personality.



↓
Withdrawn the money
in form of loan.

③ Associated Rubber Industry [to avoid legal legislation]



Expenditure	Income.
	Dividend xxx.

Transfer of Shares.

1968.

New subsidiary ← C Ltd.

- Now the dividend disappeared from PIL.
- Bonus Reduced.
- On Investigation it was determined that the company was Sham Existence.

④ Merchandise Transport Limited [Company as an agent].

The Parent was rejected from - [Grant of Transport license]

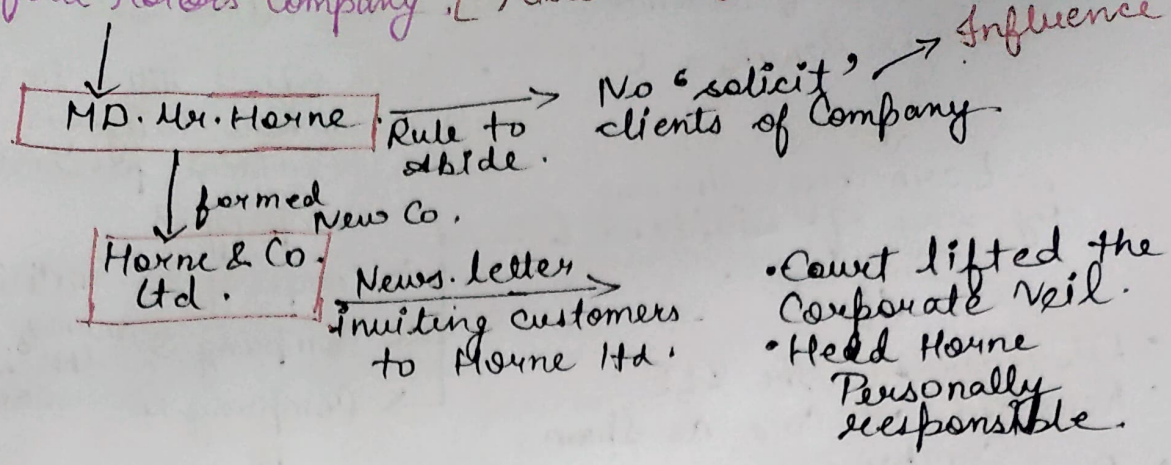
↓
Created a subsidiary Co.

The subsidiary Co. applied for license → Granted

- Now all transaction of MIL was carried through the subsidiary.
- The court regarded the same as Sham Company.

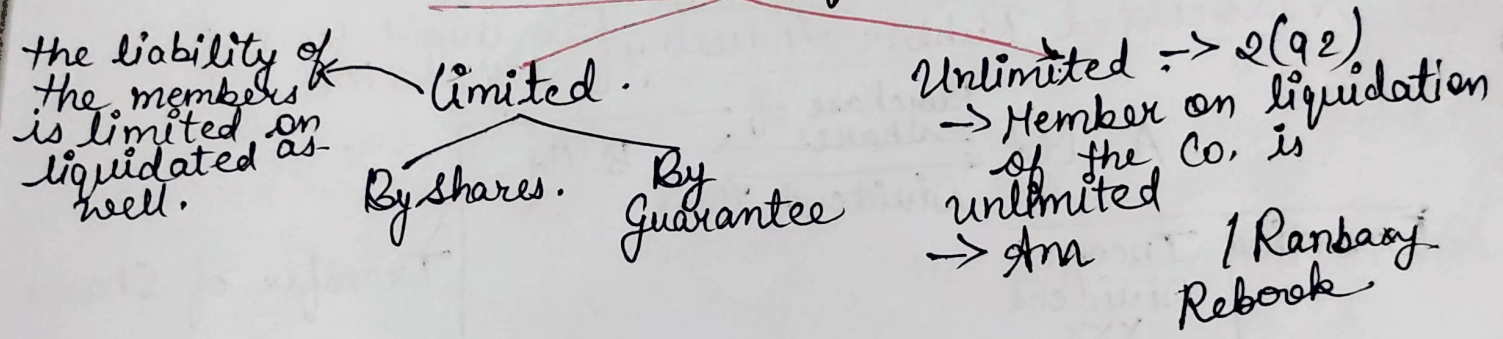
CRUX ⇒ Company used as an agent.

Telford Motors Company [Misconduct]

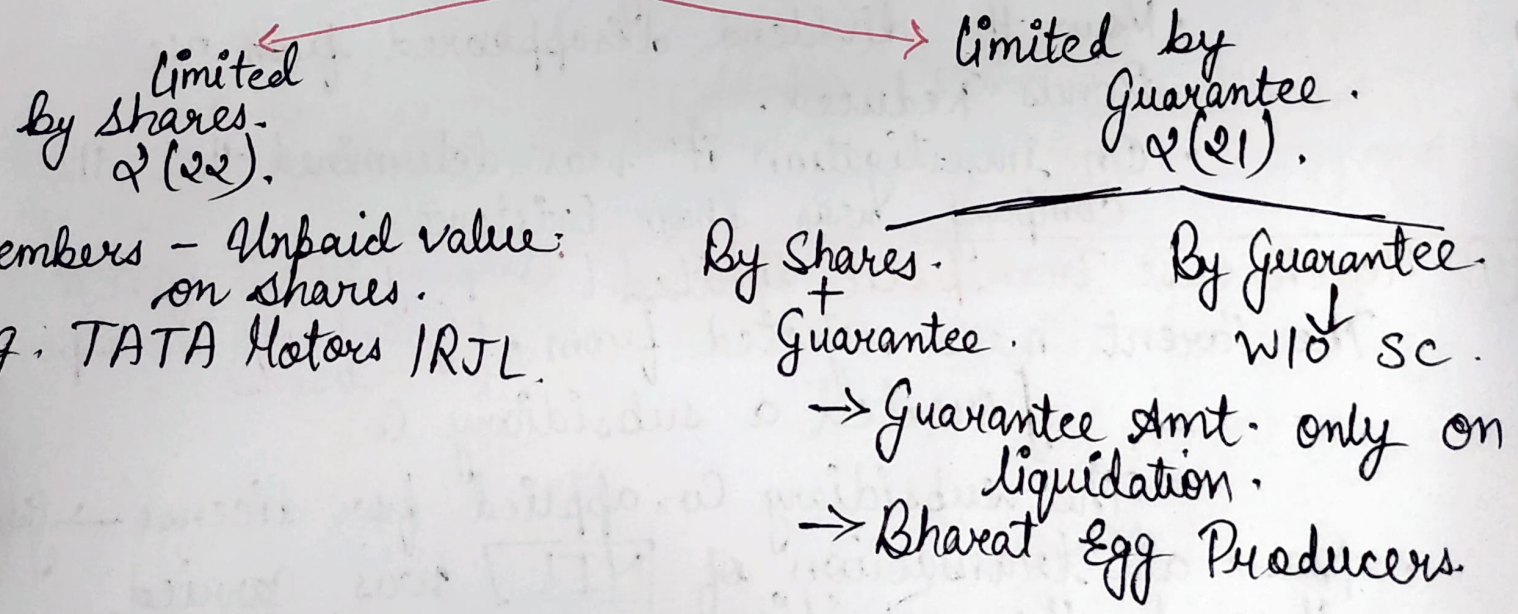


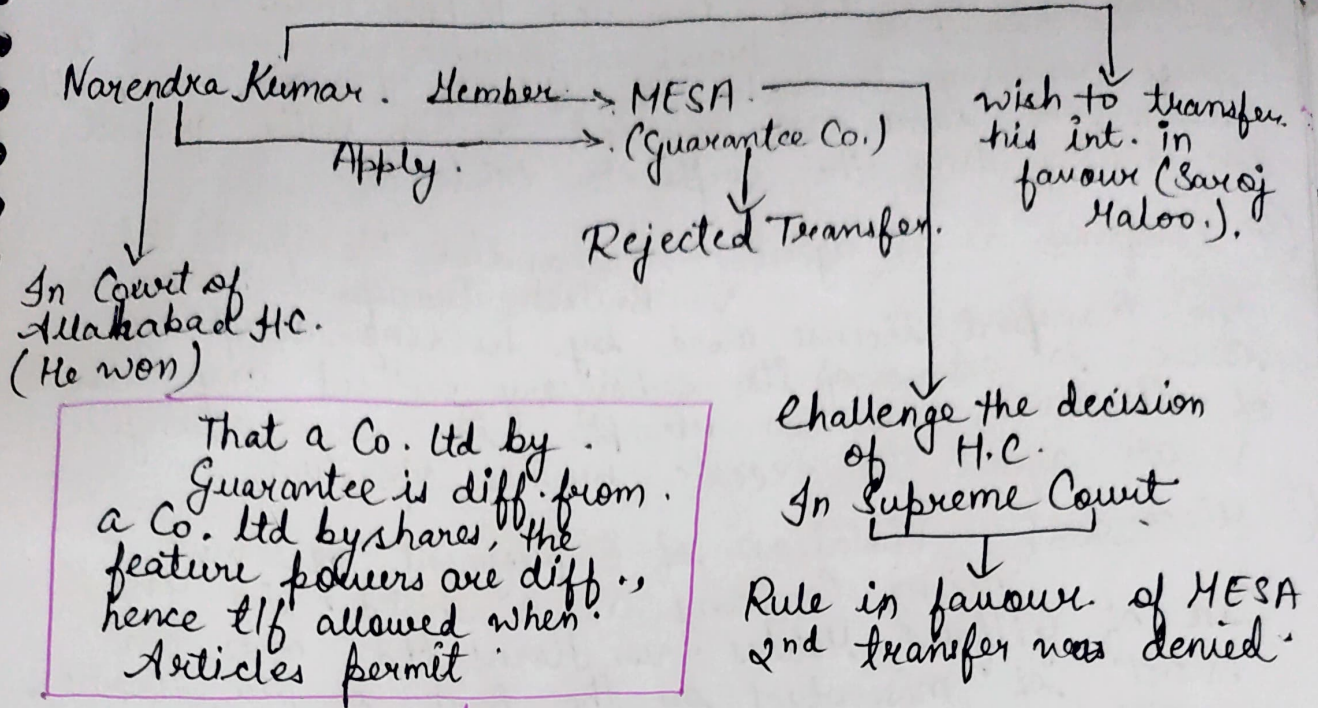
Part / LECTURE - 8.

* Basis on Classification of Companies.
On the basis of liabilities.



LIMITED.





Question & Answers.

Nov. 2018. Question Paper -

Q.5(b). Corporate Veil is the separate legal existence of the Company where the members are shielded from any liability towards the company, it acts as a corporate insulation.

The provision of lifting up the Corporate veil grants the court power to disregard the legal existence in the event of misutilization of corporate personality.

①. Alien Enemy ⇒ Held, in the case of *Dialamer vs. Continental Tyres* where the control of a company was in hands of an alien enemy, the corporate veil was disregarded & the court suspended the operations.

②. Protection of Revenue ⇒ In case of *Dinshaw vs. Commissioner of Income Tax*, where the legal personality was used to circumvent tax liability near regard. as shell companies & the existence was a mere sham.

- ③ Legal legit legalisation - Associated Rubber industries transformed securities in name of a shell company to evade the liability towards workers' bonus, the same was regarded as a valid ground for dis-regarding the corporate existence.
- ④ Company as an agent - Merchandise Transport Ltd. vs. British Transport Commission, the transport license issued by holding company assets issued in name of its subsidiary without any assets of its own, was an attempt to use Company as an agent to execute business operations.
- ⑤ Misconduct - Violation of employment agreement using Company as a shield in the Case of Gilford Motors vs. Horne Ltd. was an event of misconduct on the part of Mr. Horne, misutilising the corporate existence.

LECTURE - 9

★ On the basis of Members →

⇒ One person

1. One Person Company (OPC) § 2(62).

OPC is a new type of Private Company with a single member.

The OPC shall constitute a single member who is an Indian Citizen & a Natural Person whether or not resident in India.

The OPC shall appoint a nominee who is required to be an Indian Citizen & a natural person other than a minor.

The Nominee shall give a written consent of his will to become a nominee & same can be changed.

The member of the OPC can incorporate only one OPC & be a nominee in another.

- A person can only be a nominee in one OPC or a members in one OPC.
-

- An OPC can't engage in any NPO or be converted into an NGO.
- OPC can't perform Non-Banking business in nature of Non-Banking finance corporation
- An OPC can convert itself freely to a Public or Private Company.

Ex:- Tuffle House (OPC) Private limited.

LECTURE-10

xyz → Yeh xyz apne jeevan mein Ek OPC hi khol sakti hai aur (ye bhi) Sath mein wo ek aur OPC ka nominee ho sakti hai.

lekin → 2 OPC ka member } Nahi ho
 } sakti.

Private Company - 2(68)

Refers to a company with a minimum paid up share capital as may be prescribed & the articles have the following restrictions.

(a) restricts transfer of shares.

(b) except one person company, maximum members can't exceed 2 hundred.

* Provided that, the following shall not be counted to determine limit of 2 hundred,

- employees in current employment.
 - employees who have ceased to be in employment & had received shares during the course of employment.
 - Joint holders of security shall be counted as one.
- (c). Prohibits invitation to Public to subscribe to its shares.

LECTURE - 11

Small Company :- (85)

A company shall be considered as a small Co. if both the conditions are complied with :-

(i) The paid up shares capital does not exceed four crore rupees or such higher amount as may be prescribed not exceeding 10 crore rupees or hundred crores.

(ii) Turnover does not exceed forty crore rupees or such amount as may be prescribed not exceeding hundred crores.

→ Provided that, the following shall not be regarded as a small company,

(1) holding or subsidiary Company

(2) Section 8 Company

(3) Company incorporated under special Act

Public Company :- (71)

A Company shall be regarded as a public Company if

(a) it is not a private company &

(b) has a minimum capital as may be prescribed.

Significant points :-

No minimum Capital prescribed

Minimum 7 members are required to form a public company.

No restriction on transferability of shares.

The maximum number of members are not ltd.

invite people to subscribe to its capital, subsidiary of a public Co. is a deemed public company.

A Co. may be incorporated for lawful purpose.
eg. ⇒ TATA Motors Ltd,

LECTURE - 12

On the basis of Control

(i) Holding Company - Section 2(46) means a company which has one or more subsidiary company.

(ii) Subsidiary Company - means a company where, the other company holds :-

- (a). controls the composition of board of directors.
- (b). more than one half of voting power on its own or with one or more of its subsidiaries [Section 2(87).]

(iii) Associate Company → Section 2(6) a company shall be regarded as an associate of the other company, if it holds significant influence in the affairs of such other company, it includes a joint venture but does not include a subsidiary company.

Provided that, significant influence shall arise from total voting power.

Provided further that, total voting power shall include :-

- (1). Equity share Capital &
- (2). Convertible Preference share Capital

Listing is a luxury, Registration is Compulsory

Listed Company :- Defined under section 2(52) of the companies act means any company which is listed on any of the stock exchanges.

Note :- It includes those securities listed under section 2(81) (i.e. equity shares)

Unlisted Company :- It is a company which is not listed on any of the stock exchanges.
[eg. Boxing hats Pvt Ltd.]
[like all private companies].

LECTURE - 18

★ Non-profit organisation - Section 8.

- Works for special purpose promotion of.
- (a). Art. (b). Science. (c). Culture.
 - (d). Religion (e). Charity (f). Education
 - (g). Research etc.

Non-payment of Dividend.

eg:- Ram Krishna Mission.

Privileges:- [Section 8 - 8 Benefits]

- No requirements to add 'LTD' or 'PVT Ltd' against the name.
- No. requirement for minimum Capital.
- Operates under special license from Government.
- Can call general meeting in 14 days clear notice instead of 21 days.
- Requirement of minimum directors or Independent director not needed.
- Nomination & Remuneration Committee is not needed.
- Shareholders Relationship Committee is not needed.
- A partnership firm can be a member of Section 8 Company.

★ Revocation of license ⇒

⇒ Revocation under following conditions by Central Government:-

After Opportunity of Being Heard.

Requirements or condition of section

Affairs conducted with fraud.

Violation of objects of Company.

Prejudicial to Public Interest.

Registrar shall put the words 'LTD' or 'Pvt Ltd' against the Company name on the Register.

② → Wound Up Company
or
→ Amalgamate

That is to combine the Company with another Co (NPO) with the same object.
[Synergy]

* Penalty / Punishment

Company - 10 lakhs to 1 Crore.
officer + Director - ₹5000 to ₹5,00,000.

↓
If found in default of fraud - then. 447.

LECTURE - 14

Sec. 447 Fraud → understand in relevance to NPO
Jail → Min. 3 years Max 10 years.
and.

Penalty → three times the amount involved in fraud

Important Note -

①. Small company will not cover.

(A). H & S. Company.

(B). Section 8.

(C). Special Act, incorporated.

②. A subsidiary whether public or private of a public company is a deemed public company.

③. The subsidiary of a govt. Company is deemed a govt. company.

* Govt. Company → A Company is a govt. Company where, at least 51% of paid up share Capital is held by:

(a). Central Govt. or.

(b). State Govt.

(c). a Combination of Central & State Government.

Provided that, A subsidiary of a govt. company is a deemed govt. Company
Ex: Indian or Corporation Ltd

Sec. 42) Foreign Company

- means a company registered outside India & conducts its business operations in India by:-
- an agent, physical establishment or any electronic mode or-
- by use of any other mode

LECTURE - 15

Section 47) - Public Financial Institution

A body established by an act of parliament or by a special act - in which atleast 51% of paid up share capital is held by Central Government, State Government or combination of both. It includes:-

1. Life Insurance Corporation of India.
2. Industrial Development finance Corporation.
3. Unit Trust of India.
4. Producer Companies.
5. Any other body notified by Reserve Bank of India

Section 406 Nidhi Company

Company established for the mutual benefit under the act of parliament to promote the habit of thrift & savings.

Dormant Company (Section 455)

→ Co. can directly go for a dormant

A company can be registered as dormant company or an inactive company provided to hold an asset in a future project on any intellectual property.

Inactive Company ⇒ A company is an inactive company if it does not engage in any significant accounting transaction or does not file its annual returns & financial statements in last 2 immediately

preceding previous year.

→ The following are not significant accounting transactions :-

- Register & Records of office for maintenance
- To fulfill requirements of any act.
- Allotment of securities
- Payment of fees to register, registrar.

★ Incorporation of Companies →

Promoters & (69)

issue to public
to invite to buy
shares.

→ (N) - whose name is mentioned in the prospectus or annual return of company.

→ (C) - Controls the affairs of the company or.

→ (D) - Directs the board of directors.

However promoters shall not refer to any person in acting in professional capacity
eg. MD, CEO, CFO.

↳ Related with D - Directors

★ Section 3 - Formation of Company

In order to form

a public company - 7 members are required -

a private company - 2 members are required.

→ However a single person can form one person company

LECTURE - 16

→ Section 4 Define & (56)

Memorandum is the charter of the company. It is a public document which defines the scope of powers & operations.

→ Section 399 ⇒ Every Person dealing with the C shall read its MOA.

To understand the use of amount invested by them in such company.

1. Clauses of the Memorandum

1. Name Clause → The name of the Company shall contain the words private limited. or limited against its name as the case may be.
2. Registered office Clause → Contains the state where the registered office is located.
3. Object Clause → It contains the main & the incidental objects for which the company has been established.

Note:- if the name of the Company resembles the object, alteration of name is required on change of object ~~will~~ within 6 months.

4. Liability Clause → It contains the details with respect to the liability of the members in the company whether.

I. Limited by Shares.

II. Limited by Guarantee.

III. Unlimited Company

5. Capital Clause → It contains the authorized capital with which the company is registered.

6. Association Clause → Contains the name of the 'first members' of the company along with the shares held by them with their address.

In case of an OPC the memorandum shall contain the name of the nominee.

However the company can adopt Schedule I for preparing Memorandum of Association.

TABLE A ⇒ Ltd. by Shares.

TABLE B ⇒ Ltd. by Guarantee having Share Capital.

TABLE C ⇒ Ltd. by Guarantee Not having Share Capital.

TABLE D ⇒ Unlimited Company having Share Capital.

TABLE E → Unlimited Company Not having Share Capital.

LECTURE - 17

Doctrine of Ultra Vires → beyond your Power.

'Ashbury Railway Carriage'.
The doctrine states that any activity which is beyond the scope of memorandum which defines its powers the same shall be void & not enforceable by or against the company.

★ Effect of Ultra Vires transaction

1. Company or the outsider can't sue each other.
2. The agreement is void as it is beyond power of the Company.
3. Money received under an ultra vires transaction if explained expended can't be recovered.
4. The property acquired under the ultra vires transaction is not the property of the company.
5. Where money is not expended or property is in existence, the outsider can file an injunction order (restrain order) preventing the company from use of such property.

Section - 5 - Articles of Association.

These are the internal rules related to the mgmt. of the internal affairs of the company. It is subsidiary to the memorandum, and the rights and duties are prepared in line with the memorandum of association. It is a business document hence the same shall be prepared in a strict manner & be duly followed.

These are bye laws of the company to be complied with, by the directors & officers etc. the auditor is required to read the same in his course of audit.

BYE → to abide → to follow.

Laws → Rules.

Sch I Articles Table.

- F → ltd. by shares.
- G → ltd by G having SC.
- H → ltd by G not having SC.
- I → Unlimited Co. having SC.
- J → Unlimited Co. not having SC.

- The articles can contain an ^{entrenchment} ~~entrenchment~~ clause on which is introduced to protect something.
- Entrenchment can be introduced at the time of incorporation or after incorporation.
- Where the same is added after incorporation requires consent of all in case of a private company and
- a special resolution in case of a public company.

LECTURE - 18

Section 6 - Over-riding effect of Act.

- Companies Act.
- Memorandum of Association.
- Article of Association.
- Other deeds & documents.

Section 7 → Incorporation of a Company.

- Particulars ⇒
1. Name.
 2. Surname
 3. Address.
 4. Nationality.

7 Documents ⇒

1. MOA & AOA of the company

Declaration by any acts CA / CS / CMA / advocate & person named in articles that all requirements are completed.

Declaration from members who signed the MOA that Address for Correspondence.

~~Disclosure~~ MOA subscribers.

Article subscribers ⇒ Contain Particular.

- 1) Name.
- 2) Surname.
- 3) Address.
- 4) Nationality.

7) Disclosure of Directors interest if any.

- C - Complete information.
- F - No Fraud in last 5 years.
- O - Offence not convicted.

(in relation to Promotion, formation, Mgmt. of -

NOTE :- The maximum directors in a company can be ~~is~~ 15

- A person can be directors in as many companies as he wants to :-

All these documents are submitted by promoters to

Registrar - ROC

Registrar verify the information in these docu.

All Info. Complete

Grant registration certificate with CIN

Corporate Identification Number.
21 digits Alpha numeric.

What if some information is false.

- Omission to provide.
- Suppression of facts.

1) ROC identified it during the registration process.

~~ROC identified it during registration process.~~
officers involved punished.
u/s. '447'.

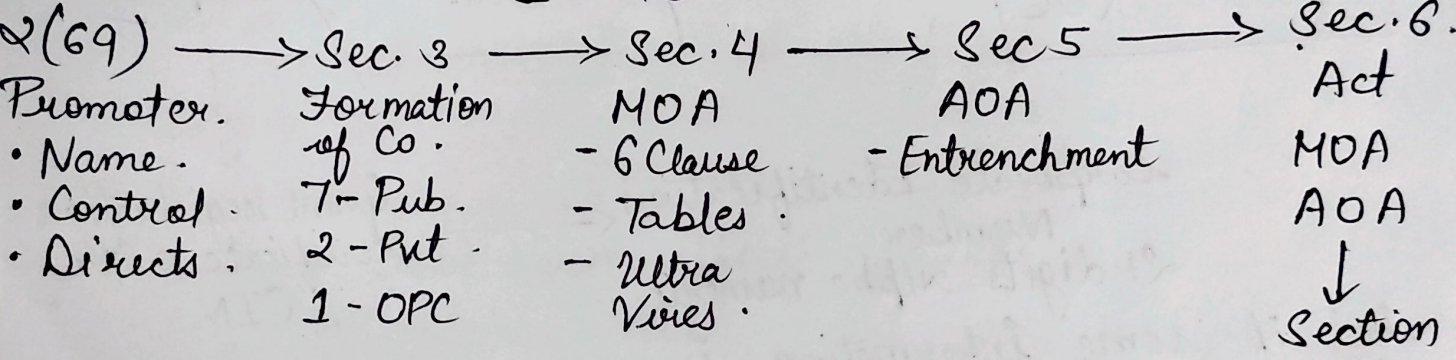
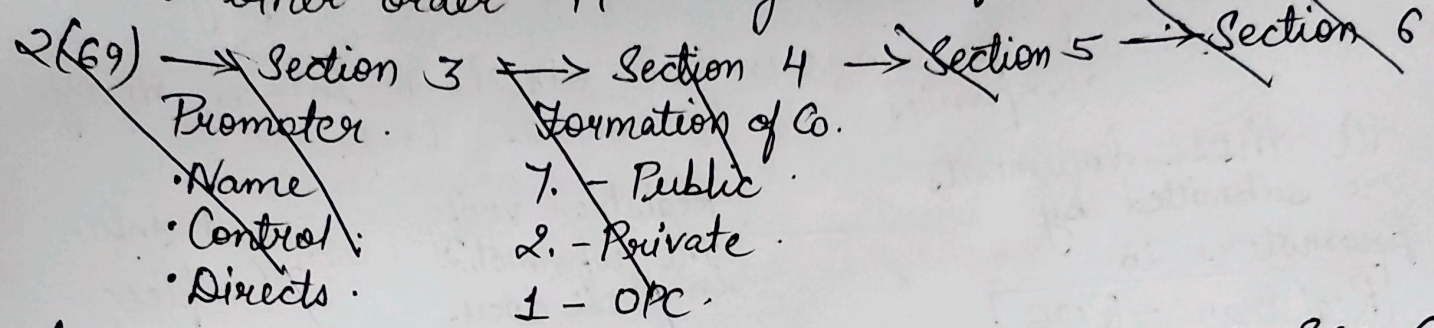
2) (Suppression of facts) → ROC was informed after registration that info. in document was suppression of facts.

officer 447.

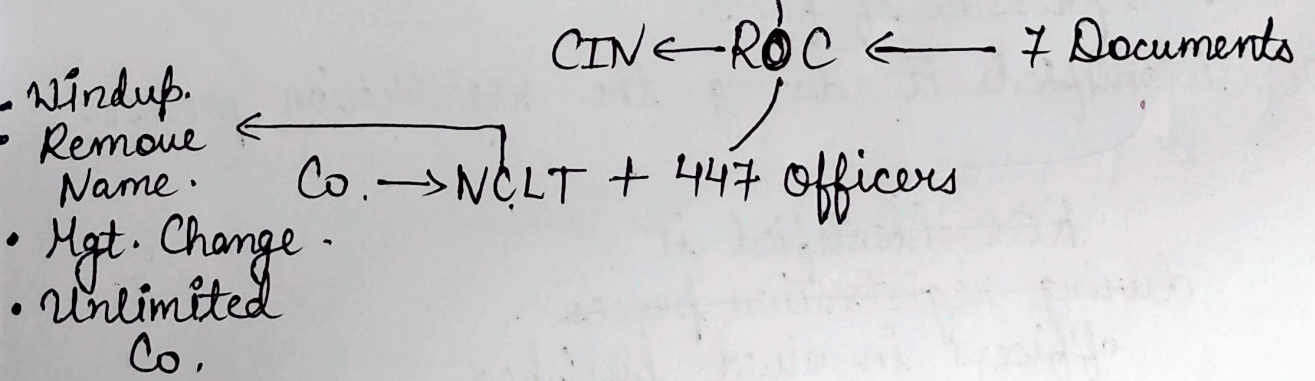
NCLT fo. ?

- National Company Law Tribunal (NCLT).
 - Will provide an opportunity of being heard to Company.

- Order by NCLT may contain:
- Change of mgmt. for orderly conduct or.
 - Order for winding up of Company or.
 - Cancel name of company
 - extend the liability of its members to unlimited or.
 - such other order it may deem fit.



Office 447 → False I/O/s.



LECTURE - 19.

Sec. 2(84)

- Share is the smallest unit in the capital of Company & it includes stock.
- Shares are movable and are distinctively numbered.
- Shares are of 2 types: - Equity Share Capital
- Preference Share Capital.

LECTURE - 19.20.

Section 43 → Kinds of Share Capital

- Eq. Sh. Capital
- Preference Share Capital.

Sec. 44 → Shares are movable property easily transferable (except in case of private company).

Section 45 → Shares have distinct number for identification.

Kinds of Share Capital:

①. Equity Share Capital →

Plain V ? Equity - Where the ratio of share (Equity share with Uniform voting right) to votes is equal.

Differential Voting rights - The shares contain less than one vote on one share and extra dividend points, beneficial for the company as it does not result in dilution of control.

②. Preference Share Capital.

→ This is capital containing preference over equity in terms of preferential dividend payment - where dividend is declared preference is paid at a fixed rate.

(B) Preferential repayment of Capital - At the time of liquidation the capital is repaid prior to payment made to equity shareholders.

NOTE → Any other security having preference with respect to repayment of capital or and prior payment of dividend at fixed rate is preference share capital.

DOCTRINE OF CONSTRUCTIVE NOTICE

↓
Co. is saved. MOA/AOA (Resolution).
So that it is read by all (Public document)

↓
★ Popular case judgement on which a law is based.
→ Soloman vs Soloman Ltd. Doctrine of Corporate Veil.
→ Ashbury Railway Carriage. Doctrine of Ultra vires.

★ Every person dealing with Company shall read its Memorandum of Association and Article of Association & any other documents prior to entering in any transaction with the company (Section 299).

Doctrine of UV.

↓
Company → Explains.
↓
What is & What is not with its Power.
(Company POV)

Doctrine of CN.

↓
Outsider.
Warn.
So that he reads the MOA/AOA/other Resolutions before entering in any contract with company (Outside POV).

LECTURE - 21

Doctrine of Indoor Management

Meaning.

Outsider.

↓
No Role.

↓
Inside +
the Company.

↓
set of all activities which
are performed to ensure
work is done appropriately.

↓ Responsibility.

Directors

* The matters related to Company's management are internal to the company the outsider is not expected to know about its due performance & shall be protected against internal mismanagement.

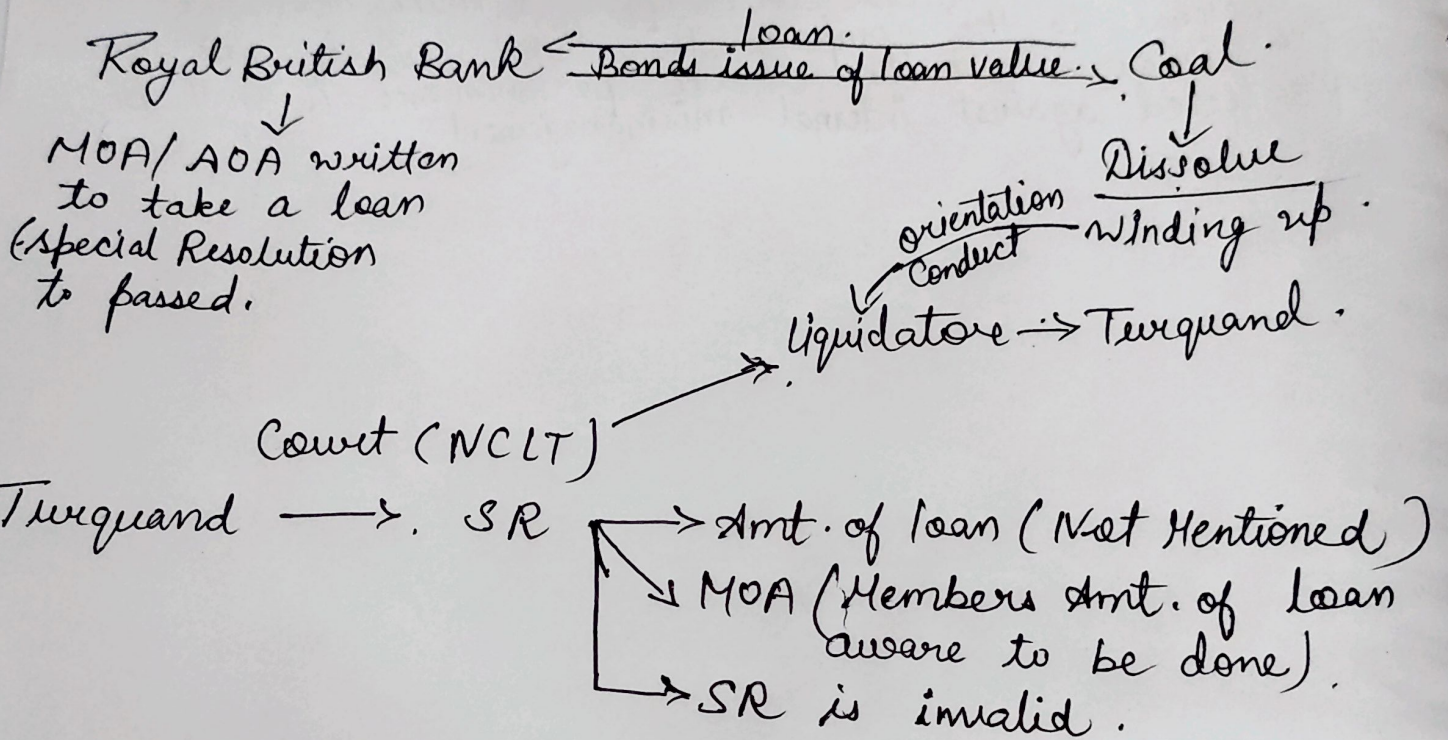
Ex :- ?

Doctrine of Constructive Notice is the exception of
 Doctrine of Indoor Management.

* Constructive - Company protected.
 Insaan liable.

* Indoor - Insaan Protected
 Company liable.

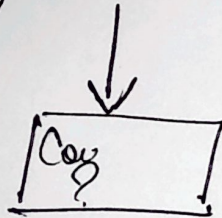
→ Turquand's Rule



List
 ① x
 ? Unsecured creditor

← Bonds
 Debt - Secured.

Royal British Bank



- Royal British Bank
- is correct
- MOA
- SR

- SR is passed on incomplete information its the Co's response

General Rule → Doctrine of Indoor mgmt.
Protects Outside.

Exceptional Rule → The outsiders will not be protected.
against Company

LECTURE - 22

In other words, the doctrine of Indoor Mgmt. deals with protection to all outsiders dealing with company suffering a loss due to irregularities/irregularities in internal management.

Turquand's Rule?

Exception of Doctrine of Indoor Mgmt.

Normal Rule Protect - Outsiders.

Exception - Protect the Company

① Active or Constructive Notice → Knowledge →

This rule states that where a person has active or constructive knowledge about the irregularities & still associates in a transaction the doctrine does not protect him.

② Suspicion of Irregularities → Where the outsider is negligent and fails to inquire a unsuspicious transaction on account of company the act should provide no protect. no legal effect / void

③ Frogey → Frogey is a nullity, the company never accountable on frogey