

25/6/23

Chapter - 5 The Companies Act, 2013

Company - Meaning

- Company means a company incorporated under this act, or under any previous company law.
- Section 2(20) of the companies act, 2013 defines the term Company.

Introduction:-

- Companies act 2013 is preceded by companies act, 1956.
- This act contains 470 sections, 7 schedules and 29 chapters.
- Aim to improve corporate governance strengthen interest of minority shareholders and legislate role of whistle blowers.

Applicability of Companies Act:- (5 Marks)

- (1) Companies Incorporated in this act or any other previous law.
- (2) Insurance Company
- (3) Electricity Company
- (4) Banking Company
- (5) Companies registered under this special Act
- (6) Body corporates

Features of Company :- (SLAP)

(1) Separate Legal Entity:-

- This feature shows distinctive and most striking feature of company.
- When a company is registered, it is clothed with legal personality.
- It has almost same rights as of human being.
- Its existence is separate from its member.

Therefore, property of company is separate from its members and persons associated with it.

Case: *Macaura V/s Northern Assurance Co. Ltd* (1925)

Even a member does not have insurable interest in company.

2) Perpetual succession :-

- Members may come & go, die or change company shall continue.
- Company is created by legal person and can be end by legal person only.

3) Limited liability :- Liability of member depends upon kind of company in which he is member.

- Company limited by shares - Liability of member is only upto unpaid amount of shares.
- Company limited by guarantee - Liability of members arises at the time of liquidation of company only upto the amount guaranteed by shareholder.
- Unlimited liability company - A company in which each member shall be liable for entire debt of company at the time of winding up of company.

4) Artificial legal person :-

- A company is created by legal process and is clothed with all the rights of a individual ~~that~~ i.e we call it artificial legal person.
- Company is a separate entity which can own property, have bank A/c, can sue others and can be sued. Even members can enter into contractual relations with company.
However, company cannot take oath, go to Jail or marry or practice a learned profession.
- It can only work through its human agents i.e Directors, who are agent of company and not of members.

OPTIONAL (5) Common seal :-

- This is considered as official signature of company.
However instead of having separate seal, two directors and one secretary can sign on any document on behalf of company.

Corporate Veil Theory:-

- A legal concept where company is identified separately from its members.
- This theory ~~refers~~ refers to or put a shield between company and its members where members are safeguarded from the liability of company.

Case: *Salomon Vs Salomon and Co Ltd.*

Lifting up of Corporate Veil Theory:-

- (1) To determine character of company - If ~~com~~ public interest is at jeopardy than court may not be willing to shield company or its members and therefore, corporate veil may be lifted.

Case: *Daimler Co Ltd vs Continental Tyre & Rubber Co*

- (2) To protect Revenue or Tax - If company created just to evade taxes than corporate veil may be lifted to see ~~the~~ real intend for creation of company.

Case: *Dinshaw Maneckjee Petit Vs Income Tax ^{Commissioner} Air (CIT)*

- (3) To avoid legal obligations - If a company created a subsidiary and transfers its ^(investment) holding to such subsidiary to reduce its obligation to pay bonus to its workers, then it is against separate legal entity concept and against law.

Therefore, corporate veil is lifted to ~~the~~ check it is internal transfer.

Case: *Workmen of Associated Rubber Industry Ltd vs Associated Rubber Industry Ltd.*

- (4) Formation of Company to act as agent - company can be an agent or trustee of its members, however company cannot create a subsidiary just to be its agent as a subsidiary must also have its separate ~~then~~ identity.

Case: *Merchandise Transport Ltd vs British Transport Commission (1962)*

- (5) Company formed for fraud / improper conductor to defeat law - where device of incorporation is adopted for some illegal or improper purpose.

Case: *Tyford Motor Co. vs Home*

TYPES of Companies

1) On the basis of liability :-

(a) Company limited by shares - As per section 2(22) of companies act 2013, when the liability of members is upto unpaid amount of shares as per memorandum of association.

(b) Company limited by guarantee - As per section 2(21), liability of members of company is only upto guarantee amount which can be called at the time of liquidation [winding up of company if required].

Case: Narendra Kumar Agarwal v/s Saroj Malhotra

(c) Unlimited liability company - As per section 2(92), unlimited liability company is a company not having limit on liability of its members. Liability ceases when he ceases to be a member and member can be called to contribute only in the event of winding up.

Each member shall be liable upto total debts and liability of company.

2) On the basis of Members :-

(a) One person company ^[Sec 2(62)]: A company which has only one person as a member. It is a private company by nature introduced to encourage entrepreneurship & corporatization of business.

It is also a separate legal entity with limited liability.

Only a natural person, who is Indian citizen and has stayed in India for more than 120 days immediately during previous calendar year can incorporate OPC and become nominee.

(b) Private Company ^[Sec 2(68)]: means a company having following restriction as per its AOA:

- Restricts right to transfer its shares.
- Except OPC, max members cannot exceed 200 (of which Joint holders of shares are counted as 1 & employees & ex-employees shall be included in this number).
- Prohibits any invitation to public to subscribe for any securities.

(c) Small Company: ^[Sec 2(85)] means a company other than public company. ^{Amendments}
• having paid up capital which does not exceed ₹4 crores and
• turnover of which as per profit and loss account does not exceed ₹40 crores.

(d) Public Company: ^[Sec 2(71)] means a company which is not a private company and has a minimum paid up capital as prescribed.

- shares are freely transferable.
- minimum - 7 members, maximum - No limit
- Subsidiary of a public company is deemed to be a public company.

3) On the basis of Control :-

(a) Holding Company: ^[Sec 2(46)] means a company is a holding company in relation to one or more other companies, means of a company of which such companies are subsidiary.

Subsidiary Company: ^[Sec 2(87)] In relation to any other company means a company in which holding company -

- controls composition of board of direction.
- controls more than one half of total voting power either at its own or together with one or more of its subsidiaries.

(b) Associate Company: ^[Sec 2(6)] In relation to other company means a company in which that other company has significant influence, but which is not a subsidiary company of the company having such influence & includes Joint venture.

¹ Significant Influence - Holding 20% or more but less than 50%.

4) On the basis of access to capital :-

(a) Listed Company: ^[Sec 2(52)] means a company which is listed on recognised stock exchange. Companies in process of listing are not listed companies.

(b) Unlisted Company - means a company which is not a listed company.

5/6 Other Companies:-

(a) Government Company - means a company in which not less than 51% of paid up share capital is held by:

- 1) Central govt
- 2) State govt
- 3) Partly by central and partly by state govt.

Note: subsidiary company of govt. company is deemed govt. company.

(b) Foreign Company - means a company or body corporate incorporated outside India has a place of business in India by itself or through an agent, physically or through electronic mode and conducts any business activity in India in any manner. (A) (P) ^{Physically} (E) - electronic

(c) Formation of company with charitable objects - Section 8 of companies act 2013, deals with formation of company which are formed to promote - charities; objects of commerce, art & science; sports education research; social welfare; religion; protection of environment; etc. Such companies can apply its profits in promoting its objects & are prohibited to pay any dividend to its members.

Eg - BCCI, FICCI, etc

(d) Dormant Company - where a company is formed & registered under this act for future project or to hold an asset or intellectual property and has no significant accounting transaction, such ~~the~~ company can make application to ROC to obtain status of Dormant

Inactive Company - A company which has not been carrying any significant accounting transaction during last two financial years or has not filed financial statements and returns from last two financial year.

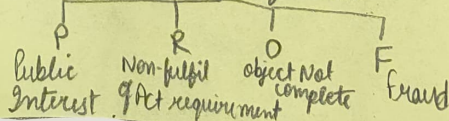
Significant accounting transaction: any transaction other than -

- Payment of fees to registrars
- Payment made to fulfil requirement of act
- Payment for office maintenance
- allotment of shares related expenses

Sec 8 Companies - Privileges -

1. No need to put Ltd or Pvt. Ltd
2. No License
3. No Min Capital Required
4. Short meeting - 14 days
5. Directors | Independent Director X
6. No NRC
7. No SRC
8. Partnership firm can be a partner

Revocation of license



a co. which the central govt.
may be notified in the
official gazette

- (e) Nidhi Company - [Sec 246] Company incorporated with an object to cultivate habit of thrift i.e. cost cutting or savings amongst members from which company will receive savings and give loan for mutual benefit of members.
- (f) Public Financial Institution (PFI) - Under section 2(72) of companies act, 2013, following institutions are considered as PFI's -
- Life insurance ~~cor~~ corporation of India (LIC)
 - Infrastructure development finance company limited. - sponsor KBC.
 - Unit trust of India (oldest mutual fund)
 - Any other corporation notified by central govt.
 - Any other corporation notified by central govt. with consultation of RBI.
- Such organisations shall constitute by central or state govt. also, 51% or more shares are held by central or state or partly both.

Promoters: Sec 2(69)

- Persons who has been named as such in prospectus
- who directly or indirectly control affairs of company.
- Acc to whose directions, directors of company perform

Incorporation of Company - 7 section 7 steps 7 documents

Section 3 - To Incorporate

- Public Company - 7 or more members are needed
- Private Company - 2 or more members are needed
- One person company - Only 1 member.

Process -

- ① Filing of Documents along with prescribed fees to registrar:
 - MOA & AOA duly signed by subscribers
 - Declaration by directors of professional incorporating company that requirements of this are complied with
 - Declaration by subscribers that
→ he is not convicted in offence connected to incorporation of company.

→ he has not found guilty for any fraud or misrepresentation in last 5 years.

→ all documents filed with ROC must be true as per their knowledge

- Address of correspondence.
- Particulars of subscribers
- Particulars of Directors
- Particulars of any other related party

② Issue of Certificate of Incorporation - Registrar on the basis information filled shall issue certificate of Incorporation in prescribed form.

③ Allotment of CIN - After issue of CDI registrar may issue CIN.

④ Maintenance of Copies of Documents - All document issued by ROC shall be kept at registered office.

⑤ Furnishing false information or incorrect information at the time of Incorporation. ROC shall hold company liable v/s 447 of Companies act & shall not Incorporate such company.

⑥ Company already Incorporated with false or incorrect information or by suppression of material facts.

In such case, ROC shall take action as per section 447 and case can be filled under tribunal.

⑦ Order of Tribunal - when company get incorporated by furnishing false or incorrect information or by suppression of material facts then tribunal may on satisfaction on situation, ~~order~~ order to:

- change management
- ~~directly~~ directly liability of members to unlimited.
- direct for removal of name of company from register of company.
- order of winding up
- order of anything with it deems fit.

SPICE - (Simplified procedure for incorporating companies electronically)
MCA (Ministry of Corporate Affairs) has introduced an easy way to incorporate and manage company electronically.

Section 9 - Effect of Registration:

Post registration, companies shall become body corporate having their own identity and shall become separate legal entity.

Classification of Capital

Capital word has different meaning for ~~busi~~ businessman, accountant, lawyer or any other person. However, for companies capitals can be classified as:-

① Nominal or Authorised Capital:

It is that capital which is mentioned in MOA of company under capital clause, this is maximum amount of capital which a company can issue.

② Issued Capital:

It is that capital which company issues from time to time for subscription.

③ Subscribed Capital:

It is that capital which is for the time being subscribed by members of company.

④ Called up Capital:

It is that part of capital which is called up for payment.

⑤ Laid-up Capital:

It is the total amount paid for shares issue.

Shares:

- A share is a share in share capital of a company and includes stock.
- share is not sum of money. It is interest in company.
- shares are moveable assets.

Types of shares:-

- ① Equity shares - all share capital which is not preference share capital.
- ② Preference shares - These shareholders get preference in receiving dividend or at the time of repayment.

Memorandum of Association -

- It is the charter of company which defines powers and scope of company.
- It is considered as foundation of company on which company is build.

Objects of MOA:

- (i) It contains object for which company is formed.
- (ii) It enables shareholders and creditors to know scope of company.
- (iii) Shareholders must know the purpose for which company took their money, MOA explains that.

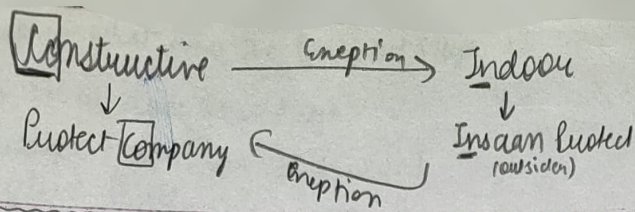
Content of MOA:

- | | |
|------------------------|---------------------------------|
| (i) Name clause | (iv) Liability clause |
| (ii) Registered clause | (v) Capital clause |
| (iii) Object clause | (vi) Association clause |
| | (vii) OPC only - Nominee clause |

Doctrines of Ultra Virus:-

- "Ultra virus" means "beyond power".
- This doctrine simply explains that anything which is beyond power of company shall be void abinitio.
- Being a public document, MOA is expected to be checked by any person dealing with company and any contract, entered beyond scope of company shall be void.

Case: Ashbury Railway carriage and Iron company Ltd. Vs Riche



Articles of Association-

- This is magna carta of company. It has bylaws of company which explains powers of management.
- Any act beyond ~~the~~ MOA shall be void & be Ratified. However, any act beyond AOA can be ratified by shareholders.

Contents of AOA -

- (i) Regulations
- (ii) Inclusion of matters
- (iii) Entrenchment provisions
- (iv) manner of Inclusion of entrenchment
- (v) Notice to registrar

Doctrine of Constructive Notice:

- Any person dealing with company can inspect by electronic mode any document kept with registrar or take a copy or extract of such documents or payments of prescribed fees.
- Any person dealing with company is assumed to have knowledge of public documents of company whether or not such person read it.
- This doctrine protect company from outsiders dealing with company.
- Here, public documents means and includes MOA, AOA, special Resolution, etc.

Doctrine of Indoor Management:

- This doctrine is an exception to doctrine of constructive notice. As per this doctrine, an outsider cannot be assumed to have knowledge of internal issues / working of company.
 - Outsiders dealing with company can be assumed to know about public documents of company but cannot be presumed to aware about its internal working.
- This doctrine protects outsiders from company.

Case: Royal British Bank v/s Turquand

(This doctrine is also known as Turquand rule).

Exceptions to Doctrines of Indoor Management

- ① Actual or constructive knowledge of irregularity.
Case: *Howard v/s Patent Ivory manufacturing company.*
- ② Suspicion of irregularity.
Case: *Anand Bihari Lal v/s Dinshaw & Co.*
- ③ Forgery (Fake signs)
Case: *Ruben v/s Great ~~affair~~ Fingall Consolidated.*

Sections Companies Act, 2013

Sections	Provisions	Sections	Provisions
1	Short title, extent, commencement & applicability	2 (68)	★ Private company
2	Definitions	(71)	★ Public company
2(5)	Articles	(72)	★ Public Financial Institution
(6)	★ Associate Company	(84)	★ Shares
(8)	Authorised Capital	(85)	★ Small Company
(9)	Banking Company	(86)	★ Subscribed Capital
(11)	Body corporate	(87)	★ Subsidiary Company
(15)	Laid up Capital	(92)	★ Unlimited Company
(17)	Chartered accountant	3	★ Formation of a Company
(20)	★ Company	4	MOA
(21)	★ Company Ltd by guarantee	5	AOA
(22)	★ Company Ltd by shares	7	★ Incorporation of Company
(41)	Financial Year	8	★ Formation of Company for charitable objects, etc.
(42)	★ Foreign Company	9	Consequences of Registration
(45)	★ Government Company	10	Effect of MOA & AOA
(46)	★ Holding Company	43	Kind of shares
(50)	Issued Capital	447	★ Revivification of fraud
(52)	Listed Company	455	★ Dormant Company
(56)	Memorandum		
(62)	★ One person Company (OPC)		
(64)	Raid up Capital		