

## [ Companies Act ]

22/10/24

Q. Ultra vires 'doctrine & its Effects.

→ Doctrine of ultra vires means simply beyond their powers'. The doctrine states that any activity which is performed beyond the scope of the Memorandum & Articles of the Co. shall be void, i.e. such transaction shall not be binding upon the Co.

\* Transaction which are ultra vires the Co. cannot be Ratified by passing special Resolution in the general Meeting.

# Effect of ultra vires transactions:-

1. Any transaction which is ultra vires the Co. is void in nature, i.e. without any legal effect.
2. The Co. can neither sue nor be sued under an ultra vires transaction.
3. However the Co. shall have no right on any property, or money acquired under an ultra vires arrangements.
4. The 3<sup>rd</sup> party can file an injunction order (Restrain order) to prevent the Co. from use of such property.

Q. Define OPC & state rules regarding formation of OPC?

→ Sec-2(62)

- It is a special type of Pvt. Co having a single member to manage its affair.
- An Indian citizen, whether resident or not can form an OPC in India. (i.e. Resident Requirement to be India for 120 days)

- The OPC is required to have a nominee who shall also be an Indian citizen.
- An OPC cannot function like Sec-8 Co., nor can it engage in banking business as NBFC (Non Banking financial Corporation).
- OPC can freely convert into public or private Co.
- Any offense committed by an officer on the OPC shall be punishable to 1000/day of continuation of default.
- The OPC shall attach the name OPC to its name.

Q. Doctrine of indoor management & its limitation?

→ The doctrine of indoor management states that the internal affairs, the articles outsiders shall be protected against any loss arising from a contract. It is also known as the Turquand's Rules as it was the doctrine implemented in the famous case of Royal British Bank vs. Turquand's Rule.

# In the following cases stated below the Rules of Indoor Management does not apply.

- 1.) Actual or constructive knowledge :-  
The Rule does not protect any person when the person dealing with the Co. has notice whether actual or constructive of the irregularity.
- 2.) Suspicion of irregularity :- The doctrine does not reward negligence, where the person dealing with Co. has knowledge of irregularity, he shall investigate, inquiry prior to engaging in a business relationship.

Ex) Forgery:- The Doctrine of Indoor Management applies only to irregularities but it cannot apply to forgery where it is nullity.

Q. → Sec-8 company; as per company Act-2013. It is a type of Co having promotion of activity of social welfare, Religion, culture, sports etc at the return of its objective:-

\* The Sec-8 Co cannot distribute dividend to its members.

\* Sec-8, Co. has following privileges under ~~Sec~~ Act:-

- Formed under a special licence by central govt.
- Not Required to attach the name public or private.
- NPO shall not constitute or stake holder committee.
- NPO can call a meeting with shorter notice period of 14 days.
- Partnership firm can become in Sec-8 Co.

# If the NPO is involved in:-

- violation of objection of its formation.
- commits activities against public interest.
- fails to comply with Rules & Regulation Act.
- commits a fraud.

Q. Foreign Co.:-

→ Sec-2(42) define a foreign Co. as a body corporate which is registered outside India:-

1) Having place of business in India, whether by itself or through agent, physically or through electronic mode.

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ii) Conduct any Business Activity in India in any other Manner.

Q. Govt. Co: -

→ As per Sec-2(46) of Co. Act:-

A govt. Co. means any Co. in which not less than 51% of the paid up Share Capital is held by:-

i) The Capital Govt.

ii) By any State Govt.

iii) partly by Control of State; Govt. of the

Section includes a Co. which is a Subsidiary Co. of such a govt Co.

Q. Holding & Subsidiary & Associate Co.

→ Sec-2(46) :- A holding Co. is Co. which has one or more Subsidiary Co.

★ Sec-2(87) :- A Subsidiary Co. in Relation to any other Co. means a Co. in which the holding Co.:-

i) Exercise or Control more than one-half of the total voting power, either on its own or together with one or more Subsidiary.

ii) Controls the composition of its board of Directors:-

→ Sec-2(6) :- In Relation to other Co., means a Co. in which that other Co. has a significant influence but which is not a Subsidiary Co. of the Co. having such influence but includes a Joint venture.

