

Q. 16

A company registered under Section 8 of the Companies Act, 2013, earned huge profits during the financial year ended on 31st March, 2018 due to some favourable policies declared by the Government of India and implemented by the company. Considering the development, some members of the company wanted the company to distribute dividends to the members of the company. They approached you to advise them about the maximum amount of dividend that can be declared by the company as per the provisions of the Companies Act, 2013. Examine the relevant provisions of the Companies Act, 2013 and advise the members accordingly.

16.)

The Companies Act - 2013

As per the relevant provision of 'The Companies Act 2013', if the company is registered under section 8 of the Companies Act 2013, it is clearly defined that such company is formed for the purpose to social welfare, promoting religious & cultural activity, not to earn or distribute any dividend or any profit to its member. Sec-8 co. intend to apply its profit -

- ① promoting its object
- ② prohibiting the payment of any dividend to its members.

Now, it is clearly mentioned above that Sec-8^{co.} not bound to pay dividend to its member, then for dividend stands invalid & cannot be enforced on company.

Q. 19

Popular Products Ltd. is a company incorporated in India, having a total Share Capital of Rs. 20 Crores. The Share capital comprises of 12 Lakh equity shares of Rs. 100 each and 8 Lakhs Preference Shares of Rs. 100 each. Delight Products Ltd. and Happy products Ltd. hold 2,50,000 and 3,50,000 shares respectively in Popular Products Ltd. Another company Cheerful products Ltd. holds 2,50,000 shares in Popular Products Ltd. Jovial Ltd. is the holding company for all above three companies namely Delight Products Ltd; Happy products Ltd; Cheerful products Ltd. Can Jovial Ltd., be termed as subsidiary company of Popular Products Ltd., if it Controls composition of directors of Popular Products Ltd. State the related provision in the favour of your answer.

Q.19) Holding & Subsidiary companies are Related terms. A Subsidiary Company in relation to any other Company means a company in which the holding company -

- ① controls the composition of Board of Directors Or
- ② Exercise or control more than 1/2 of the total Share Capital either at its own or together with one or more of its Subsidiary Company.

* In the given case Jovial Ltd. is controlling the composition of Board of Directors of Popular Product Ltd. & hence, it can be called as Holding Co. of Popular Product Ltd. & Popular Product Ltd. is its Subsidiary.

ABC Limited has allotted equity shares with voting rights to XYZ Limited worth Rs. 15 Crores and issued Non-Convertible Debentures worth Rs. 40 Crores during the Financial Year 2019-20. After that total Paid-up Equity Share Capital of the company is Rs. 100 Crores and Non-Convertible Debentures stands at Rs. 120 Crores.

Define the Meaning of Associate Company and comment on whether ABC Limited and XYZ Limited would be called Associate Company as per the provisions of the Companies Act, 2013?

22.) As per sec-2(6) of Co. Act-2013, an associate company in relation to another Co. means a Co. in which that other Co. has a significant influence, but which is not a subsidiary company of the company having such influence & includes a joint venture company.

Significant influence means control of atleast 20% of total share capital of business decision under an agreement:-

In the given case; ABC Ltd. is not an associate company. we will ignore the non-convertible portion & we will see the convertible portion which is also not stated, thus we will do:-
 $(15 \times 100) \times 100 \Rightarrow 15\%$, Thus not touching 20% hence, it is not an associate company.

Q. 23

ABC Limited was registered as a public company.

There were 245 members in the company. Their details are as follows:

Directors and their relatives 190

Employees 15

Ex-employees (shares were allotted when they were employees) 20

Others 20

(Including 10 joint holders holding shares jointly in the name of father and son)

The Board of directors of the company propose to convert it into a private company. Advice whether reduction in the number of members is necessary for conversion

23.) According to Sec-2(68) of Companies Act 2013, Private company means a company having a minimum paid up share capital may be prescribed & which by its articles, except in case of OPC, limits the no. of its members to 200.

* However, where 2 or more persons hold one or more shares in a company jointly, they shall for the purpose of this clause - be treated as a single member. It is further provided that:-

A. Person who are in the employment of the company &
 B. Person who, having been formerly in the employment of the company, were members of the company while in that employment & have continued to be members after the employment ceased.

* In the instant case, total no. of members of ABC Ltd., would be counted as follows:-

1.	Directors & their Relatives	- 190
2.	Other (20 couple) (10x1)	- 20
		<u>200</u>

* Since, No. of member do not exceed 200, therefore, there is no need for reduction in the no. of members.

Q. 24

SK Infrastructure Limited has a paid-up share capital divided into 6,00,000 equity shares of INR 100 each, 2,00,000 equity shares of the company are held by Central Government and 1,20,000 equity shares are held by Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether SK Infrastructure Limited can be treated as Government Company.

24. Legal provision:—As per Sec-2(45) of Co. Act 2013, Govt. Company means any company in which not less than 51% of the paid up share capital held by—

1. The Central Government,
2. By any State Government or govt or
3. partly by the Govt & partly by one or more state government, & the section includes a company which is subsidiary co. of such govt. company

Fact:—Here in the given problem out of 6 lac equity of SK Infrastructure Ltd. (320000, (200000 + 120000) shares are with central govt. & govt. of Maharashtra which is more than 51% of paid up share capital of SK Infrastructure Ltd.

Conclusion:—Analyzing the above legal provision, we can say, SK Infrastructure Ltd. is Govt. Company as per The Companies Act 2013.

Q. 26

AK Private Limited has borrowed ₹ 36 crores from BK Finance Limited. However, as per memorandum of AK Private Limited the maximum borrowing power of the company is ₹ 30 crores. Examine, whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited.

26.) As per the doctrine of ultra vires under Companies Act 2013, as per sec-10, the company cannot undertake acts beyond the scope of its memorandum. The borrowing beyond the prescribed limit (30 crores) is invalid. However, under sec-20, if the money remains unutilized, the lender can seek remedies like Injunction to recover unspent funds or recover amounts used to discharge legitimate liabilities.

* The borrowing of 36 crores by AK Pvt Ltd. is ultra vires & void. The company is not liable to repay the excess amount. BK finance Ltd. may seek an injunction to stop the company from using unspent fund.

ABC Private Limited is a registered company under the Companies Act, 2013 with paid up capital of ₹ 35 lakhs and turnover of ₹ 2.5 crores. Whether the ABC Private Limited can avail the status of a Small Company in accordance with the provisions of the Companies Act, 2013? Also discuss the meaning of a Small Company.

36.) Small Co. - As per (Sec-2(85)) Co. Act 2013, means a company, other than public company -

1. Paid up share capital of which does not exceed 4 crore or such higher amount as may be prescribed which shall not be more than 10 crore &
2. Turnover of which as per profit or loss account for immediately preceding financial year does not exceed ₹ 100 crore or such higher amount as may be prescribed which shall not be more than ₹ 100 crores

Exceptions:- This clause shall not apply to:-

- a) A holding co. or a subsidiary co.
- b) A co. registered under Sec-8.
- c) A co. or body corporate governed by an special Act.

In instant case, since the paid up capital of ABC. Pvt Ltd. is 35 Lak. of turnover ₹ 2.5 Cr., it can avail the status of small co. as both the requirements with regard to paid up share capital as well as turnover fulfilled by the company.

Q. 46 Nov 2022 RTP

Nolimit Private Company is incorporated as unlimited company having share capital of ` 10,00,000. One of its creditors, Mr. Samuel filed a suit against a shareholder Mr. Innocent for recovery of his debt against Nolimit Private Company. Mr. Innocent has given his plea in the court that he is not liable as he is just a shareholder. Explain, whether Mr. Samuel will be successful in recovering his dues from Mr. Innocent?

46) An unlimited co. has no limit on member's liability, extending to all debts & liabilities. However, while the co. is going concern, members are liable only for unpaid share capital. Creditors can claim their dues by initiating winding up proceedings. During winding up, the official liquidator may call members for unlimited contribution to settle debts.

* Mr. Samuel cannot claim dues directly from Mr. Innocent, a shareholder as his liability arises only during winding-up when called upon by the liquidator.