

CHAPTER-6COMPANIES ACT, 2013

Q.1 Describe Meaning and characteristics of Company.

→ Meaning:-

In terms of Companies Act, 2013 section 2(20) A "company" means a company incorporated (registered) under this Act (Companies Act 2013) or under any previous company law.

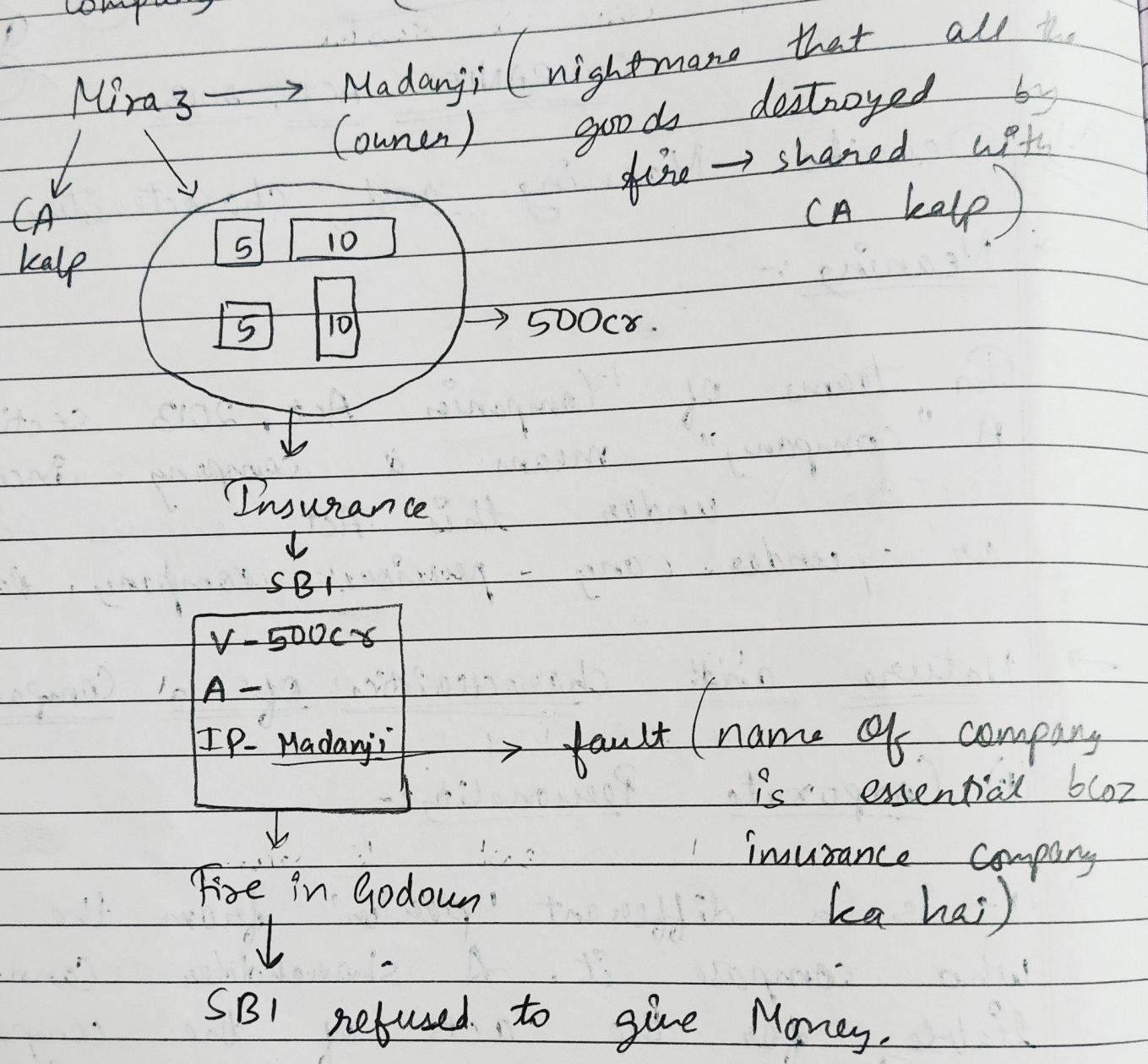
→ Nature and characteristics of a Company:-

(i) Corporate Personality:-

It is a different 'person' from the members who compose it. A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. A member does not even have an insurable interest in the property of the company. The leading case on this point is of *Macaura v. Northern Assurance Co. Limited* (1925).

[A karp (reliance) → doing hard work → 1 Lac salary]
[No increase ← Mukesh Ambani offered 5 lac for HW ←
→ case by karp → No case bcoz that promise was
done by M. Ambani not by the reliance company
and if it is promised by M. Ambani then written
proof is needed.]

→ { similarly as *Macaura v. Northern Assurance Company Ltd (1925)* }



(2) Perpetual succession :-

Members may die or change, but the company goes on. Death, Unsoundness and Insolvency of all the members do not affect the existence of company.

Shoe Company



Kalp, suraj sir, Harshul



Abundant Profit



all of them goes for travel to Russia



Flight (all 3 died)



What about the company now?



Company will run by the legal head



If there is no one to run the company



Government will run it.

Members asto jate rahenge Company chalti hi rahegi?

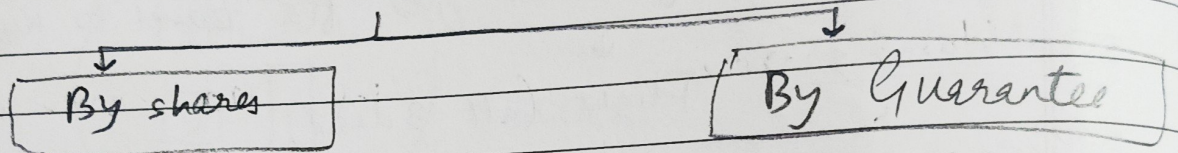
(3) Limited Liability:-

The liability of members will be limited

- In case of company limited by shares:
Liability will be limited till the unpaid face value of shares.
- In case of company limited by guarantee:
Liability will be limited till the amount of guarantee amount.

- In case of unlimited liability company:
In unlimited liability company liability will be unlimited but only towards company not towards third party.

Liability



Mr A (advance share 1 (£100)
Paid £98
unpaid £2)

Mr A li^l liability only £2
li^l hai the company
can ask for only £2
not for £98.

The liability is limited
upto the unpaid value
of the share.

Mr A guarantees advance
(liquidation)

5 lac



liquidation (advance
only ask the limited
5 lac).

The liability is
limited upto the
Amount of guarantee
given.

(4.) Artificial Legal Person:-

A company is an artificial person created
by the process (legal process) other than
natural birth. It legal or judicial as
it is created by law.

- Company can do all the acts like a
natural person except few for example;
taking an oath, marriage. It requires
human beings to carry out its operations (BOD)

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(5.) Common seal:- (stamp)

Common seal is the official signature of company but by amendment of 2015 now there is no compulsion on company to have common seal. (nowadays, it is optional)

Stamp lagana

↓
Affix it.

It's no common seal

↓
Director's
Signature

↓
1 Director
+ Company
Secretary
Signatures.

Q.2 What is corporate veil (curtain) and state the circumstances when this veil will be lifted.

→ Meaning of Corporate veil:-

The term corporate veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors.

Tanzil & Kaniz → TK Ltd drugs company → self-sufficient sale

Judge ko blu bol diya yeh old concept

↓
so much money

Judge be like: mein ulta jawab dunga
(lifting of corporate veil)

↓
Albad Police

⑤ case bataye judge no jisse
lifting of corporate veil
ho gaye

↓
They denied
Police & tell
drugs is at
name of TK
Ltd then
put camp in
Jail or put
fire on it.

Saloman Vs Saloman & Co. Ltd.



Mrs Saloman

↓
Shoes

Debiture

secured
creditors

Saloman
Co. Ltd

- ① Saloman
- ② wife
- ③ Daughter
- ④ Son
- ⑤ Other

Police go to
Judge

Lifting of Corporate veil:-

①

To determine the character of the company
is to find out whether Co. enemy or
friend.

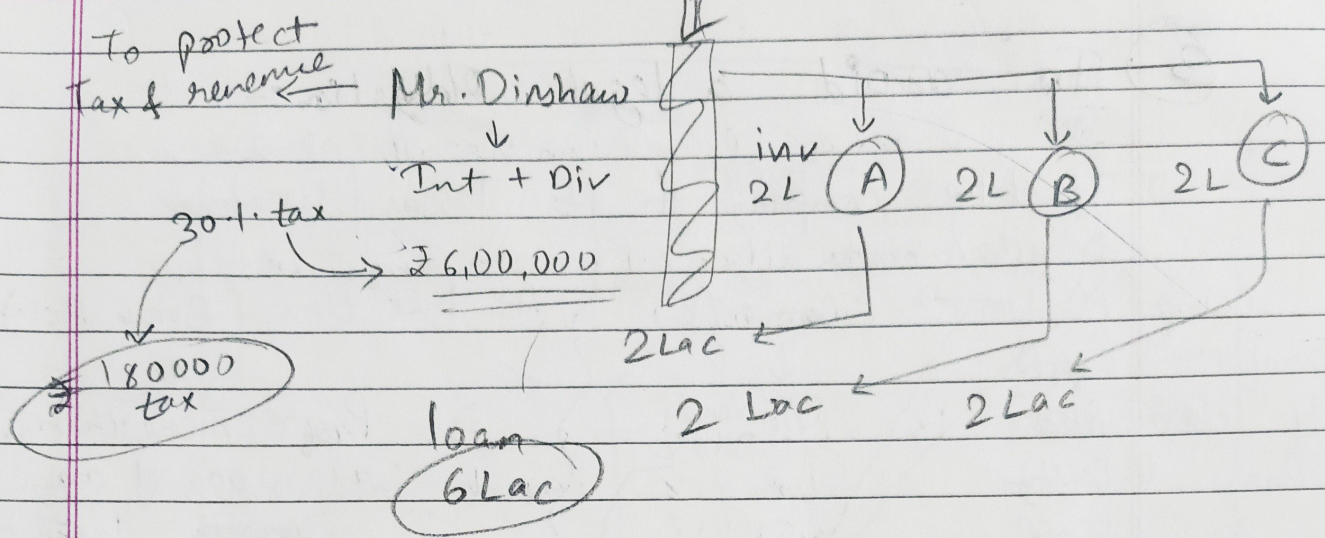
③

Tax

To protect
tax revenue
or
tax

Most Most repeated by ICAI students

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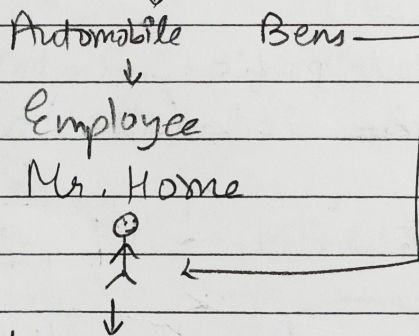


⑤ Company formed for fraud / improper conduct or to defeat law.

very old case when Indian contract Act does not exist

Gilford Motors v/s Mr. Home

Contract



whenever he leaves the company

① same business X

② Customers X

Argument b/w both

Mr. Home leaved the company



Argument b/w both

Mr. Home leaved the company



(established new comp. H Ltd & automobile part + old customers)

Gilford angry's

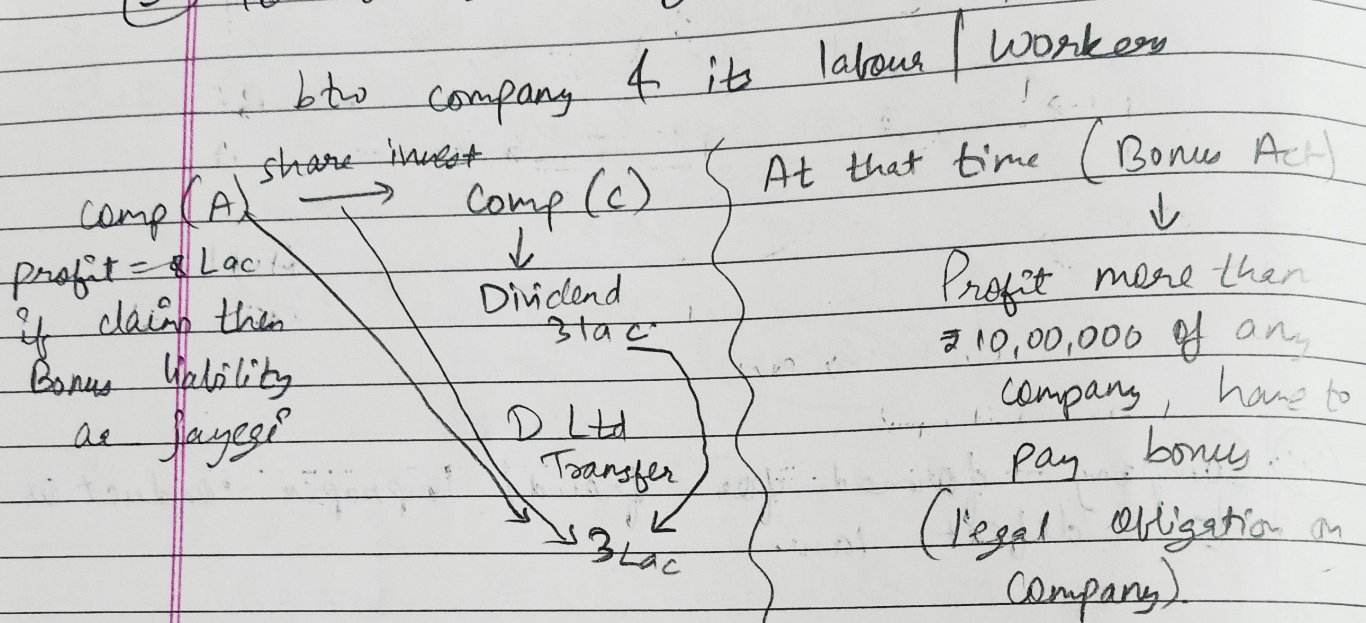
Mr. Home replied that it is done by H Ltd not by me, we are diff (due to diff existence of corp & person)
court (corporate will lifted) bcoz improper conduct & fraud to defeat the law & Mr. Home will be liable

defeat the law

So baat nahi karani thi voh ki

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③ To avoid a legal obligation:-



$$8 + 3 = 11 \text{ Lac}$$

$\rightarrow$ Divided profit

workers against it (8 Lac)

$\downarrow$

Court

$\downarrow$

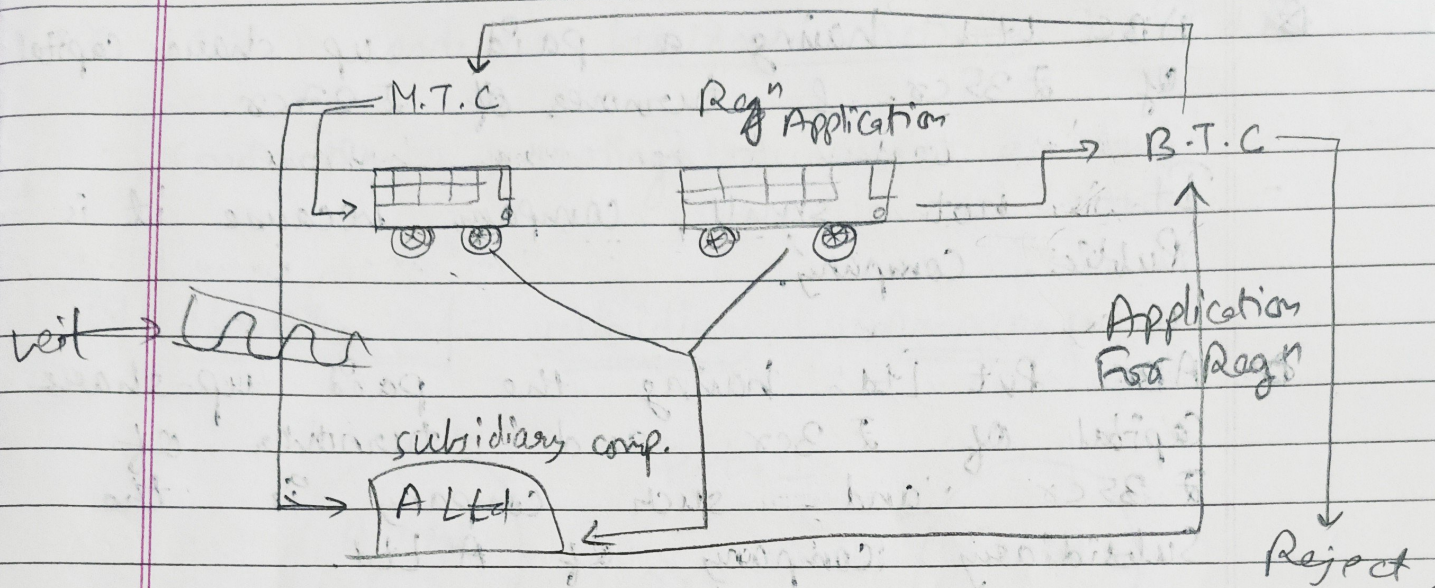
lifting corporate veil & liable to pay bonus

④ Formation of subsidiaries to act as agents:-

Case: Merchantile Transport Co.

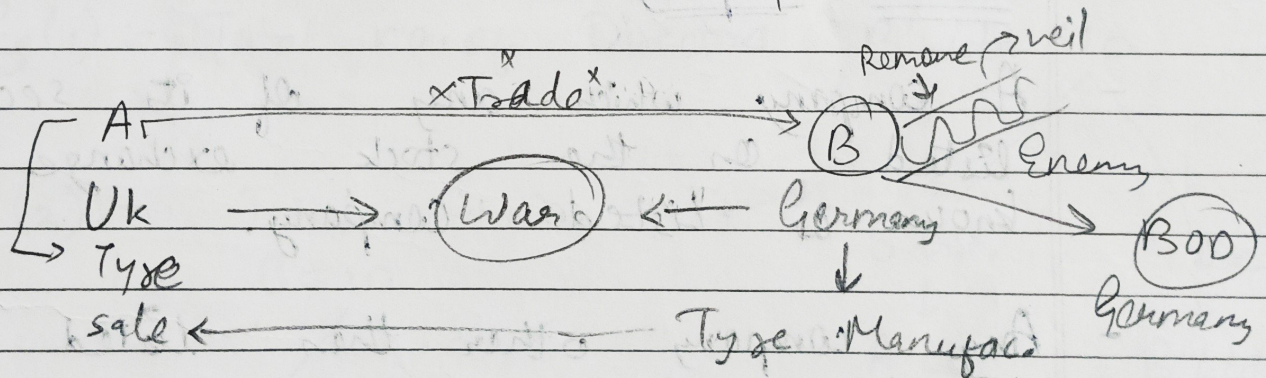
V/s

British Transport Commission



① To determine the character of the company:-
(co-enemy or friend).

Dalmier v/s Continental type
Co. Ltd + rubber Co. Ltd



★ Small Company:-

★ A, B, C Pvt Ltd having paid up share capital of ₹ 3 crores and turnover of ₹ 45 cr.

- It is not a small company because turnover is 45 crores.

ICAI Part 2

ABC Ltd having a paid up share capital of ₹ 35 cr. & turnover of ₹ 27 cr.

- It is not small company because it is Public Company.

★ ABC Pvt Ltd having the paid up share capital of ₹ 3 cr and turnover of ₹ 35 cr and such company is the Subsidiary company of A Ltd.

- No, it is not small company because it is subsidiary company of A Ltd (public company).

★ Listed company:-

- A company which any of its securities listed on the stock exchange is known as Listed Company.
- Any company other than listed company is known as unlisted company.

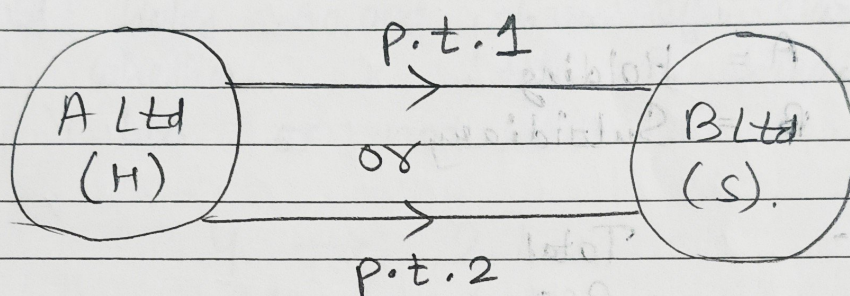
★ Foreign company:-

- A company which is incorporated outside India and having a place of business in India by itself or through its agent physically or electronically.

and conducts business activity in India.

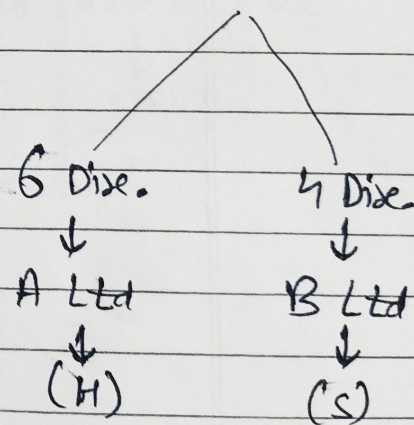
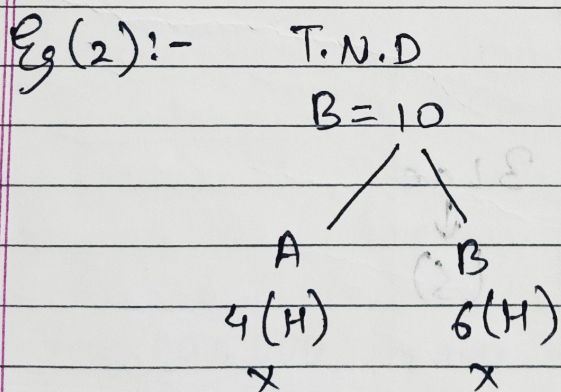
- conducting meetings is not a business activity.

★ Holding & subsidiary Company:-



★ P.t. 1

Eg(1) :- Total no. of Directors 'B' Ltd = 10



If 'A' Ltd Controls the Composition of BOD of B Ltd
If 'A' Ltd appoints / remove all majority of Directors of 'B' Ltd.

A Ltd = Holding
B Ltd = Subsidiary

☆ P.t. 2:-

If 'A' Ltd hold more than $\frac{1}{2}$ of the total voting power of B Ltd.

(either at its own or together with its subsidiary)

A = Holding

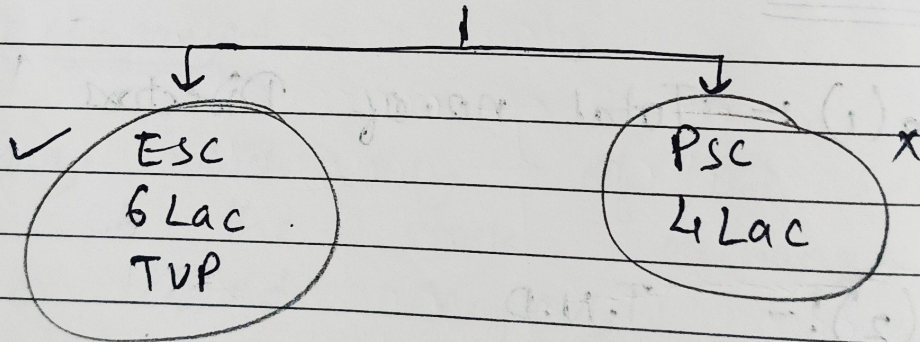
B = Subsidiary

Eg:-

Total
PSC



B Ltd = 10 Lac



A > 3 Lac
↓ ↓
(H) (S)

Inter CA Q.

Q. Y Ltd having 2 Lac Equity shares divided into 2 categories

(i) class A shares 1,50,000 where 1 share = 1 vote.

(ii) class B shares 50,000 where 10 share = 1 vote

X Ltd holds 90,000 shares of class A of Y Ltd whether X Ltd is holding company of Y Ltd or not.

Solⁿ

Y $\rightarrow$ 2 Lac

(A)

1,50,000

1 share = 1 vote

(B)

50,000

10 share = 1 vote

$\downarrow$
5000

155000

$$\frac{90,000}{15,5000} \times 100 = 58.60\%$$

X $\rightarrow$ (H)
Y $\rightarrow$ (S)

Q. Company X Ltd is subsidiary company of your company in which the holding of your company is 8,50,000 equity shares of ₹10 each fully paid up which constitutes 85% of the total capital. Now X Ltd wants to issue further 8 Lac equity shares of ₹10 each on which initially a sum of ₹3 will be paid to A Ltd to meet its long term capital requirement decide whether, after such issue X Ltd will be your subsidiary or not.

K. Ltd (H)

↓

X Ltd (S)

8,50,000 → 85%

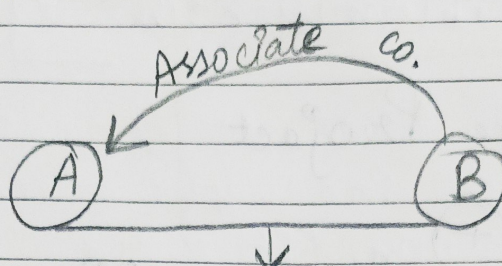
10,00,000 → 100%

$$\frac{8,50,000}{85\%} = \frac{10,00,000}{+ 8 \text{ Lac}}$$

$$18,00,000$$

$$\frac{8.5}{18} \times 100 = \underline{\underline{47.22}}$$

* Associate Company :-



Significant
Influence.
B ← A
atleast
20%

Total
Voting
Power
Hold

OR

Business decisions
as per the
agreement

atleast 20%
to 50%
TVP

Que

1.) A → B
32% TSC ☐

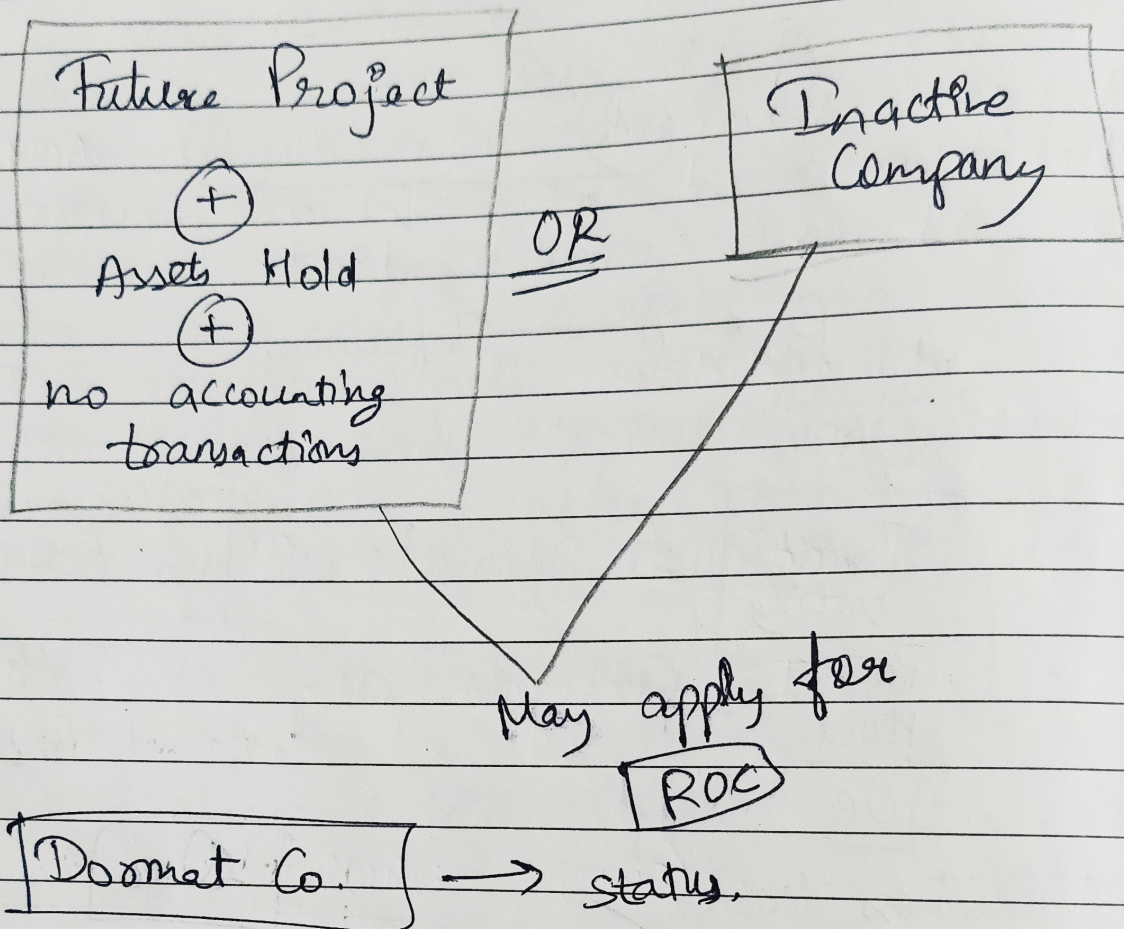
2.) A → B
19% TVP ☐

3.) A → B
26% TVP ☒

4.) A → B
57% TV ☐

H → S
Co.

* Dormant Company.



Significant accounting Transaction (S.A.T)	<u>Other than</u>	<u>Inactive Co.</u>
	Payment of fees of	1) not carrying business operation or SAT, during last 2 years.
	1) ROC	2) Not filed financial stat. & annual returns last 2 years
	2) fulfill requirements	
	3) allotment of shares.	
	4) Payment for maintenance of its office & records.	

* Government Company

T.S.C

51%

- state
- central
- state or central

Explanation

Normal Case

TSC
= 10 Lac

ESC = 6 Lac

PSC = 4 Lac

→ 51%

Mentor Case

TSC = 10 Lac

→ ESC = 6 Lac

PSC = 4 Lac

→ 51% ESC

DVR Based Issue.

(IMP).

Memorandum of Association

- MOA is the base document of the company or it can be considered as a chartered document of the company.
- It describes the constitution & scope of the powers of the company.
- It contains the objects of the company.
- It is a public document because it is filled to the ROC.

* Contents of MOA :- (IMP)

1) Name clause :-

This clause suggest the name of the company if the last word is Ltd. it would be a public Ltd. company and if the last word is Pvt. Ltd, it would be Private Ltd. company and this clause is not applicable on the section 8 company (Nidhi company).

Section 8

Company → Foundation, Forum, Association, Federation, Chambers
Confederation, Council, Electoral Trust, etc.

2/p Registered Office clause:

This contains the name of the state in which the registered office of the company is situated.

3/p Object clause:

This contains the object for which company is incorporated and any matters necessary for the continuation of the main purpose.

Note : If any company change its activities which are not reflected in its name such company shall change its name within a period of 6 months from the change of activity.

4/p Liability clause:

This clause contains whether a company is limited by shares or not or limited by guarantee or not.

5/p Capital clause:

Max. Capital
This clause contains the information regarding the amount of authorised capital divided into number of shares.

6) Association clause :

This clause contains details of the subscribers who form the company and every subscriber has to take at least one share.

A minor cannot be a subscriber.

Articles of Association

- The article of association is a chartered Document of the Company.
- It describes the rules and regulations which are framed for the management of the internal affairs of the company.
- It is also a public Document filed to ROC.

Definition of Promoter

According to (section 2 clause 69) section 2(69) promoter means a person

1. ✓ whose name is identified as promoter in the prospectus or annual return of the company Or;
2. ✓ who has control over the affairs of the company directly or indirectly whether as a shareholder, director or ~~or~~ otherwise Or;
3. ✓ In accordance with whose advice Board of Directors are accustomed to act.
BOD are bound to do

Note : Person acting in a professional capacity will not be considered as promoter.

A, B, C & D are formed a company where the name of Mr. A and B was in the prospectus in the