11. Foreign Companies :- (4 marks) Day 29 | 97

⇓

Companies Incorporated outside India

Sec 2(42):- (Defination) Foreign Company

Means a company incorporated outside india having:

Place of Business in India

↓

Whether by – itself or through an agent

↓

Whether through – Physical / E-mode

AND

Conducts any business activity in India in any manner.

E-mode bole toh?

Carrying out following business electronically wheather or not main server is in India or outside India :-

a) – B2B transaction (Amazon Business or Udaan)
– B2C transaction (Flipkart, Alibaba)
– Data Interchange
– Digit supply transaction

b) Offering to accept deposits or subscription to securities from Indian citizens.

c) Following services:
- Finacial settlement (Rozorpay)
- web based marketing (Google Ads)
- Advisory (Interior designing)
- Database services (SAP)
- Supply chain mgt.

d) Online services:
- Tele marking (Naaptop)
- Tele comuting
- Tele medicine
- Education (udemy/coursera)

e) All related data communication via email, mobile, social media etc.

e) ~~All related data communication via email etc.~~

Section 379 :- Applicability of Act to foreign companies :-

Provision

1. Section 380 to 386, ~~387 to 391~~, 392 to 393 — shall apply to Foreign companies.

380 - 386	387 - 391	392/393
Foreign Co.	Co. inc o/s India ~~FC~~ ↓ Prospectus	Foreign Co.

2. Where not less than 50% of PUSC of foreign Co. is held by :

Citizen of India OR Co. incorporated in India OR Both

Such Co. (Foreign Co.) shall comply with the provision of this chapter and this Act, in respect of its Indian Business as if it were co. incorporated IN INDIA.

Raju (Indian citizen) —100% SH.→ Kaju LLC. ↓ China

Indian Co ✗

Foreign Co. ✗

Raju (Indian Citizen) 50%, John (US citizen) 50% → Kaju LLC. — FC

POB — China, US, India — Act ✓ ↓ India ✓

JLR — Co. incorporte o/s india, POB. India ✓ } Foreign Co

↑ 100%

Tata Motors

Section 380:- Documents to ~~filed~~ filed with ROC:-

1. Foreign co. shall of establishment of POB deliver following docs to ROC (New Delhi)

⇓

a) Certified charter documents — MOA / AOA

⇓

If it is any other language, certified translation in English.

b) Full Address — principal office of co. / principal POB in India

c) List of all — Director / secretary (CS) } — Name / Address ... etc

d) Name & Address of a person resident in India

⇓

Who is authorised to accept — Notices / Docs served on FC. (Autho. repo.)

e) particular of — opening / closing } POB in India in earlier occasion.

f) Declaration that — Director / Authorised Representative

⇓

NOT convicted or debarred (मना)(रोक) from PFM (Promotion / Formation / Management) of Co.

g) Other prescribed information

Summary

- MOA/AOA
- Address
- Dir/sec
- AR
- POB
- Debarred
- Other

2. Foreign co. $\xrightarrow[\text{30 day}]{\text{[FC-1]}}$ ROC (New Delhi)

⇓

Alteration $\xrightarrow[\text{FC-2}]{\text{30days}}$ ROC (New Delhi)

Note:- Above application supported by:

Approval of RBI under FEMA if required (OR) Declaration of AR that such approval is NOA.

Note:- If FC

Section 381 :- Accounts of Foreign Company.

Provision

Every FC shall, in every CALENDAR YEAR

Make – BS, – P/L, as prescribed | and | Deliver a copy to ROC

⇓

If not in english = certified translation.

Note :- Along with BS & P/L, FC send List of POB in India as on BS date to ROC. [FC-3]

Companies (Registration of FC) Rules 2014 :

1. FS of Indian operation to be as per Docs as mention in shall be annexed to FS.

Docs w.r.t CFS shall also be filed.
↳ ~~Fin~~ Consolicitated FS.

Imp

2. Annex the following docs with FS :
- R – Statement w.r.t RPT (Related party Transactions)
- P – Statement w.r.t Repatriation of Profit
- T – Statement w.r.t Tranfer of fund.

3. Time Limit for delivery of above docs to ROC :
Within 6m from close of FY.
(ROC may extend upto 3m)

Time Limit for Annual Return → ROC
↓
FC-4
⇓
within 60 days from end of FY

Note : Chp X : Audit and Auditors shall apply.

Section 382 :- Display of name of Foreign Companies:

Every foreign co. shall display:

outside every POB
⇓
- Name
- Country of inc.
- Wheather liability is Limited

⇓
- English
- Local language (POB)

Business letter heads
⇓
- Name
- Country of inc.
- Wheater liability

⇓
- English
- ~~Local language~~

Imp
Section 383 :- Service of Foreign Co:

An notice/docs to be served on Foreign Co. shall be deemed to be sufficiently served if:

Addressed to AR AND **sent by**
- post
- E-mode
- Hand delivery

Section 384 :- Applicability of other section:

71: Debenture
92: Annual Return
135: CSR
128 : Accounts of Co.
Chap (VI): Registration of charges
Chap (XIV): Inq., insp. & investigation

Imp
Note:- If a person not being FC carries on business as FC → $\boxed{\text{shall be liable for investigation u/s 210}}$

Section 386: Interpretation

1. "Certified" means certified to be true copy or correct transaction

2. "Place of business" includes:

STO → Share Transfer Office

SRO → Share Registration Office

387 : 391

Section 387: Dating of Prospectus

No prospectus to subscribe any securities by co. incorporated outside India shall be issued ~~FC~~ unless:

a) It is dated & signed

b) contain particulars of following matters:-
- Instrument defining constitution (MOA/AOA)
- Enactment under which co. is incorporated
- Address where above docs - Inspected
- Date & country of incorporation
- Where co. has POB in India - give address

Not Applicable if prospectus issued > 2 year after incorp.

c) state matter specified u/s 26

Note 1:- Application form shall be issued with prospectus which is in compliance of this chp.

Note 2:- Section 387 shall N/A

- issue is to existing member
- Or
- offer securities which is UNIFORM with securities issued + Listed

Section 388 :- Expert's statement

Where prospectus including expert's statements. Such prospectus shall not be issued unless:

- Expert has given written consent,
- has not withdrawn such consent
- statement to that effect appears in the prospectus.

Section 389: Registration of Prospectus

NO prospectus shall be issued unless:

a) $\boxed{\text{certified}}$ copy has been delivered to ROC

↳ By chairperson AND 2 directors

b) Prospectus states on face of it that a copy is delivered to ROC.

c) Expert's concent to issue is attached

d) Attached other prescribed info.

Co. (Registration of FC) Rules, 2014:

Following docs shall be annexed:

a) Expert concent u/s 388

b) copy of contract OR memorandum } for appt of MD/manager

c) copy of MATERIAL contract in LAST 2 YEARS NOT ~~in~~ OCOB (ordinary cource of Business)

d) copy of underwritting agreement.

e) copy of power of attorney if prospectus is signed on behalf of directors

Section 390: Indian Depository Receipts

NOT RELEVANT

Section 391: Application of other provision

sec 34: criminal Liab
sec 36: Punishment
Chap XX - winding up
sec 35: Civil liability

shall apply

Section 392: Punishment for contravention:

of this chapter

foreign Co.
↓
1lakh - 3lakh

continuing default:
₹50,000/day

OID
↓
25,000 - 5lakh
~~Jail~~

Imp

Sec 393: Validity of Contract:

Company failure to comply with this chapter shall not affect contracts but such foregin co. shall not be entitled to being any suit or make claim untill it has compleed with this chapter.