

CH. 6: THE COMPANIES ACT, 2013

Q1) MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January 2022. The company did not start its business till 31st July 2024. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail

Answer:-

Provision: [Section 455 of Companies Act, 2013]

1. Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company.

2. "Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

3. "Significant accounting transaction" means any transaction other than

- payment of fees by a company to the Registrar
- payments made by it to fulfil the requirements of this Act or any other law
- allotment of shares to fulfil the requirements of this Act
- payments for maintenance of its office and records

(Only incase of Case study) - In the instant case, MTK Private Limited was registered on 5th January 2022 and did not start its business till 31st July 2024. Since the Company has not started its business and a period of more than two years has already elapsed, it will be treated as an inactive company.

Q2) The Articles of Association of XYZ Ltd. provides that Board of Directors have authority to issue bonds provided the shareholders authorize such issue by

a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company. Decide referring the relevant provisions of the Companies Act, 2013.

Answer: -

Provision: [Companies Act, 2013]

1. According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly
2. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.
3. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.
4. As per the case of the Royal British Bank vs. Turquand [1856] 6E & B 327, the directors of R.B.B. Ltd. gave a bond to T. The articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact, no such resolution was passed. Notwithstanding that, it was held that T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. This is the doctrine of indoor management, popularly known as Turquand Rule.

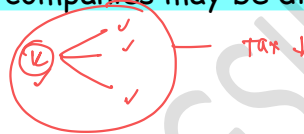
Facts of case:

In given case articles of association of XYZ Ltd. Provides that BOD have authority to issue bonds provided it need to be authorized by resolution passed in general meeting by shareholders of company. Company issued bonds to Mr. X without passing any resolution in general meeting of shareholders.

Conclusion : Since, the given question is based on the above facts, accordingly here in this case Mr. X can recover the money from the company considering that all required formalities for the passing of the resolution have been duly complied.

✓ Q3 Krishna, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to Krishna as a pretended loan. This way, Krishna divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

Answer:-



Provision: [Companies Act, 2013]

✓ The House of Lords in Salomon Vs. Salomon & Co. Ltd. laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts.

2. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. DMP VS CIT
3. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.
4. This is based on the concept called Lifting of Corporate Veil in which by lifting the veil court sees the persons who are actually liable for the misconduct done by such persons who acts behinds the veil of company.

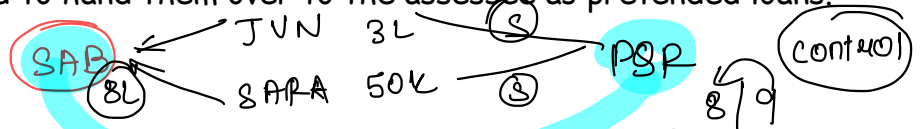
3m

Facts of case:

The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. Krishna was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

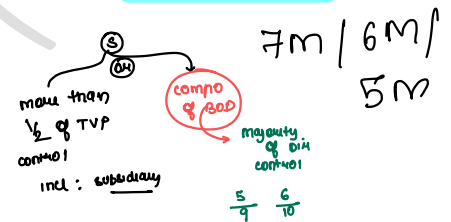
Conclusion:

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans.



Q4) The paid-up share capital of SAB Pvt. Ltd. is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. JVN Pvt. Ltd. and SARA Pvt. Ltd. are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Pvt. Ltd. JVN Pvt. Ltd. and SARA Pvt. Ltd. are the subsidiaries of PQR Pvt. Ltd. With reference to the provisions of the Companies Act, 2013, examine whether SAB Pvt. Ltd. is a subsidiary of PQR Pvt. Ltd.? Would your answer be different if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of SAB Pvt. Ltd.?

Answer-



Provision: [Section 2(87) of Companies Act, 2013]

1. Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary.
2. Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:
 - a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
 - b) When the holding company exercises or controls more than one half of the total voting power either on its own or together with one or more of its subsidiary companies, or
3. Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a subsidiary of C Ltd.

Facts of case:

The paid-up share capital of SAB Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in SAB Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited

Conclusion:

- In the first case, the SAB Pvt. Ltd. will not be the subsidiary of the PQR Pvt. Ltd. as JVN Pvt. Ltd. and SARA Pvt. Ltd. are the subsidiaries of PQR Pvt. Ltd. but they do not hold more than one-half of the share capital of SAB Pvt. Ltd. Hence, SAB Pvt. Ltd. is the holding company of JVN Pvt. Ltd. and SARA Pvt. Ltd. but not a subsidiary of PQR Pvt. Ltd.
- ✓ If, PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of SAB Pvt. Ltd., so, it implies that the PQR Pvt. Ltd. controls the composition of the Board of Directors of SAB Pvt. Ltd. and hence be the holding company of the SAB Pvt. Ltd.

Q5) The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the chairman of the Company acquired the knowledge of arranging finance for the development land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorises the company to carry on any other trade or business which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 1956 ²⁰¹³ examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

Ans)

Provision: [Companies Act, 2013]

1. As per the provisions of the Companies Act, 2013, the meaning of the term 'ultra vires' is simply "beyond powers". The acts done by the company beyond its object clause of the Memorandum of Association are void.

2. The impact of the doctrine of ultra vires is that a company can neither be sued on an ultra vires transaction, nor can it sue on it.
3. In the leading case law of Ashbury Railway Carriage and Iron Company Limited V. Riche, the main business of the company was to make, sell or lend on hire, railway carriages or wagon and to carry on the business of mechanical engineers and general contractors.
4. The directors of the company entered into a contract with Riche for financing the construction of a railway line in Belgium and the company further ratified this act of the directors by passing a special resolution.
5. Riche, however, repudiated the contract as being ultra vires and the company brought an action for damages for breach of contract. Its contention was that the contract was well within the meaning of the word 'general contractors' and hence within its powers.
6. The court decided that the term 'general contractors' was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If the term 'general contractors' was not so interpreted, it would authorize the making of contracts of any kind and every description

Explain

xy

Fact of case:

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the chairman of the Company acquired the knowledge of arranging finance for the development land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorizes the company to carry on any other trade or business, which can, in the opinion of the board of directors, be advantageously carried on, by the company in connection with the company's general business.

Conclusion:

Here, arranging finance or financier is an ultra vires act since, it falls outside the object clause of memorandum. An object contained in the object clause is not valid if it authorizes the company to carry on any other trade or business which can be advantageously carried on by the company.

- a) The company has no power to arrange finance or financier.
- b) The Board cannot take the defence that the memorandum authorizes the company to carry on any business which can be advantageously carried on in connection with company's present business because it is a specified purpose for alternation of object clause.

Q6) The Memorandum of Association is a charter of a company. Discuss. Also explain in brief the contents of Memorandum of Association.

Answer: -

Provision: Companies Act, 2013

1. The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

✓ Imp.

2. Object of registering a memorandum of association:

- a) It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.
- b) It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in.
- c) A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- d) The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.

3. A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure imperative may

be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

4. Contents of the memorandum: The memorandum of a company shall state—

- a) the name of the company (**Name Clause**) with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company. This clause is not applicable on the companies formed under section 8 of the Act.
- b) the **State** in which the registered office of the company (**Registered Office clause**) is to be situated;
- Purpose c) the **objects** for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (**Object clause**);
- d) the liability of members of the company (**Liability clause**), whether limited or unlimited
- e) The amount of authorized capital (**Capital Clause**) divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company not having share capital need not have this clause.
- f) The desire of the subscribers to be formed into a company. The Memorandum shall conclude with the association clause. Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.

Q7) Mr. X had purchased some goods from M/s ABC Limited on credit. A credit period of one month was allowed to Mr. X. Before the due date Mr. X went to the company and wanted to repay the amount due from him. He found only Mr. Z there, who was the factory supervisor of the company. Mr. Z told Mr. X that the accountant and the cashier were on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Z issued a money receipt under his signature. After two months M/s ABC Limited issued a notice to Mr. X for non-payment of the dues within the stipulated period. Mr. X informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Z is an employee of the company to whom he had made the payment and being an outsider, he trusted the words of Mr. Z as duty distribution

is a job of the internal management of the company. Analyse the situation and decide whether Mr. X is free from his liability.

Answer

Provision: [Companies Act, 2013]

1. According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly.
2. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more.
3. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Fact of case:

In the given question, Mr. X has made payment to Mr. Z and he (Mr. Z) gave to receipt of the same to Mr. X. Thus, it will be rightful on part of Mr. X to assume that Mr. Z was also authorised to receive money on behalf of the company.

Conclusion:

Hence, Mr. X will be free from liability for payment of goods purchased from M/s ABC Limited, as he has paid amount due to an employee of the company.

Q9) Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited's prices. On the legal advice from his legal consultant and to refrain from

the provisions of breach of contract, he formed a new company under the name **Seven Stars Timbers Private Limited**. In this company, **his wife and a friend of Mr. Dhruv** were the sole shareholders and directors.

They took over Dhruv's business and continued it. **Sunmoon Timber Private Limited** files a suit against **Seven Stars Timbers Private Limited** for violation of contract. **Seven Stars Timbers Private Limited** argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, **Seven Stars Timbers Private Limited** has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and **Seven Stars Timbers Private Limited** will be disregarded?

Answer

It was decided by the court in the case of **Gilford Motor Co. Vs. Horne**, that if the company is formed simply as a mere device to evade legal obligations, though this is only in limited and discrete circumstances, courts can pierce the corporate veil. In other words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

On considering the decision taken in **Gilford Motor Co. Vs. Horne** and facts of the problem given, it is very much clear that **Seven Stars Timbers Private Limited** was formed just to evade legal obligations of the agreement between Mr. Dhruv and **Sunmoon Timber Private Limited**. Hence, **Seven Stars Timbers Private Limited** is just a sham or cloak and separate legal entity between Mr. Dhruv and **Seven Stars Timbers Private Limited** should be disregarded.

Q10) **Narendra Motors Limited** is a government company. **Shah Auto Private Limited** is a private company having share capital of ten crores in the form of ten lacs shares of ₹100 each. **Narendra Motors Limited** is holding five lacs five thousand shares in **Shah Auto Private Limited**. **Shah Auto Private Limited** claimed the status of **Government Company**. Advise as legal advisor, whether **Shah Auto Private Limited** is **government company** under the provisions of Companies Act, 2013?

Answer -



- ① G.C. ✓
- ② S.C. ✓
- ③ FOC conclusion

According to provisions of Section 2(45) of Companies Act, 2013, Government Company means any company in which not less than 51% of the paid-up share capital is held by-

- (i) the Central Government, or
- (ii) by any State Government or Governments, or
- (iii) partly by the Central Government and partly by one or more State Governments, and the section includes a company which is a subsidiary company of such a Government company.

According to Section 2(87), "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

By virtue of provisions of Section 2(87) of Companies Act, 2013, Shah Auto Private Limited is a subsidiary company of Narendra Motors Limited because Narendra Motors Limited is holding more than one-half of the total voting power in Shah Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Shah Auto Private Limited being subsidiary of Narendra Motors Limited will also be considered as Government Company.

Q11) Jagannath Oils Limited is a public company and having 220 members. Of which 25 members were employee in the company during the period 1st April 2006 to 28th June 2016. They were allotted shares in Jagannath Oils Limited first time on 1st July 2007 which were sold by them on 1st August 2016. After some time, on 1st December 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

- (a) Whether Jagannath Oils Limited is required to reduce the number of members.
- (b) Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April 2006 to 28th June 2017?

2004
2009

Answer

According to Section 2(68) of Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that— (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company

On the other hand, if those 25 members were ceased to be employee on 28th June 2017, they were employee at the time of getting present membership.

Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

Q12) A, B and C has decided to set up a new club with name of ABC club having objects to promote welfare of Christian society. They planned to do charitable

work or social activity for promoting the art work of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April, 2017 onwards. However, on 30th September 2019, it was observed that ABC club was violating the objects of its objective clause due to which it was granted the status of section 8 Company under the Companies Act 2013. Discuss what powers can be exercised by the central government against ABC club, in such a case?

Answer

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects.

Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since ABC Club was a Section 8 company and it was observed on 30th September, 2019 that it had started violating the objects of its objective clause.

Hence in such a situation the following powers can be exercised by the Central Government:

- 1) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- 2) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

- 3) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having **similar objects**, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Q13) 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?

Answer

Section 2(92) of Companies Act, 2013, provides that an unlimited company means a **company not having any limit on the liability of its members**. The liability of each member extends to the whole amount of the company's debts and liabilities, but he will be entitled to **claim contribution** from other members. In case the company has share capital, the Articles of Association must state the amount of share capital and the amount of each share. So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company. The creditors can institute proceedings for winding up of the company for their claims. **The official liquidator may call the members for their contribution towards the liabilities and debts of the company, which can be unlimited.**

On the basis of above, it can be said that Mr. Samuel cannot directly claim his dues against the company from Mr. Innocent, the shareholder of the company even the company is an unlimited company. Mr. Innocent is liable upto his share capital. His unlimited liability will arise when official liquidator calls the members

for their contribution towards the liabilities and debts of the company at the time of winding up of company.

Q14) Mr. Sooraj sold his business of cotton production to a cotton production company, CPL Private Limited, in which he held all the shares except one which was held by his wife. He is also the creditor in the company for a certain amount. He also got the insurance of the stock of cotton of CPL Private Limited in his own name and not in the name of the company. After one month, all the stocks of the cotton of CPL Private Limited were destroyed by fire. Mr. Sooraj filed the claim for such loss with the Insurance company. State with reasons that whether the insurance company is liable to pay the claim?

Answer

According to the decision taken in the case of *Salomon Vs. Salomon & Co. Ltd.*, a company has a separate legal entity. A company is different from its members. Further, according to the decision taken in the case of *Macaura Vs. Northern Assurance Co. Ltd.*, a member or creditor does not have any insurable interest in the property of the company. Members or creditors of the company cannot claim ownership in the property of company.

On the basis of the above provisions and facts, it can be said that Mr. Sooraj and CPL Private Limited are separate entities. Mr. Sooraj cannot have any insurable interest in the property of CPL Private Limited neither as member nor as creditor. Hence, the insurance company is not liable to pay to Mr. Sooraj for the claim for the loss of stock by fire.

Q15) XYZ is a company incorporated under the Companies Act, 2013. The paid up share capital of the company is held by others as on 31.03.2024 in as under:

- Government of India
- LIC
- Government of Tamil Nadu
- Government of Rajasthan
- ABC Limited (owned by Government Company)

20%

08%

10%

10%

15%

40%

X

XXX

As per above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013.

Answer

Under the Companies Act, 2013, a Government company is defined in Section 2(45) as a company in which not less than 51% of the paid-up share capital is held by:

- The Central Government, or
- Any State Government or Governments, or
- Partly by the Central Government and partly by one or more State Governments,

And includes a company which is a subsidiary company of such a Government company.

In the instant case, total Government Shareholding is 40% [i.e. 20% (Government of India) + 10% (Government of Tamil Nadu) + 10% (Government of Rajasthan)] = 40%

The holding of the Life Insurance Corporation of India i.e. 8% and ABC Limited i.e. 15%, total amounting to 23% cannot be taken into account while counting the prescribed limit of 51%.

Since the total shareholding held by the Central Government and State Governments combined is 40%, which is less than 51%, XYZ Limited does not qualify to be a Government company under the provisions of the Companies Act, 2013.

✓ Q16) FAREB Limited was incorporated by acquisition of FAREB & Co., a partnership firm, which was earlier involved in many illegal activities. The promoters furnished some false information and also suppressed some material facts at the time of incorporation of the company. Some members of the public (not being directors or promoters of the company) approached the National

Company Law Tribunal (NCLT) against the incorporation status of FAREB Limited. NCLT is about to pass the order by directing that the liability of the members of the company shall be unlimited.

Given the above, advice on whether the above order will be legal and mention the precaution to be taken by NCLT before passing order in respect of the above as per the provisions of the Companies Act, 2013.

Answer

As per section 7(7) of the Companies Act, 2013, where a company has been got incorporated

by furnishing false or incorrect information or representation or by suppressing any material

fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members shall be unlimited.

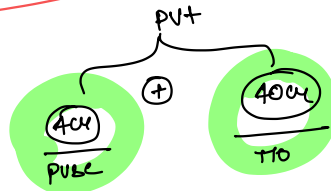
Hence, the order of NCLT will be legal.

Precautions: Before making any order,—

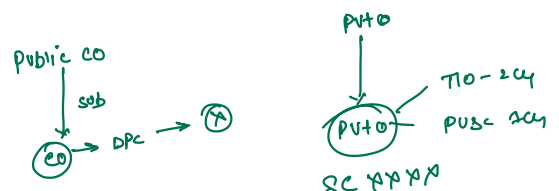
(a) the company shall be given a reasonable opportunity of being heard in the matter; and

(b) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Small CO



- ①. sec 2
- ②. CQ - ✓
- ③. holding 1 sub



CA Indresh Gandhi Teaches CA Foundation Law + CA Inter Law on ultimateca.com

Question Bank (Unitwise Question & Answer) & Chart Book - available at [IGSIR.IN](https://igsir.in)

All Free Youtube sessions at one place – Visit igsir.in & then check [Free Resources Tab](#)

Telegram Channel for all Updates - <https://t.me/caindreshgandhi> (Click link)

CA Inter Audit - Regular classes at [IGSIR.IN](https://igsir.in)

CA Indresh Gandhi (IGSIR)