

CHAPTER VI THE COMPANIES ACT, 2013

1. What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital. (Module Q)

Ans: -

Company limited by guarantee: Section 2(21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital:

The common features between a 'guarantee company' and 'share company' are legal personality and limited liability. In the latter case, the member's liability is limited by the amount remaining unpaid on the share, which each member holds. Both of them have to state in their memorandum that the members' liability is limited. However, the point of distinction between these two types of companies is that in the former case the members may be called upon to discharge their liability only after commencement of the winding up and only subject to certain conditions; but in the latter case, they may be called upon to do so at any time, either during the company's life-time or during its winding up.

2. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt? (Module Q)

Ans: -

Yes, a non-profit organization be registered as a company under the Companies Act, 2013 by following the provisions of section 8 of the Companies Act, 2013. 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, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in
- promoting its objects and
- prohibiting the payment of any dividend to its members.

The Central Government has the power to issue license for registering a section 8 company.

- (i) Section 8 allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit.
- (ii) The registrar shall on application register such person or association of persons as a company under this section.
- (iii) On registration the company shall enjoy same privileges and obligations as of a limited company.

3. Briefly explain the doctrine of “ultravires” under the Companies Act, 2013. What are the consequences of ultravires acts of the company? (Module Q)

Ans: -

Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers are in their nature limited. To an ordinary citizen, the law permits whatever does the law not expressly forbid.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act - thus far and no further [Ashbury Railway Company Ltd. vs. Riche]. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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. Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. For example, if you have supplied goods or performed service on such a contract or lent money, you cannot obtain payment or recover the money lent. But if the money advanced to the company has not been expended, the lender may stop the company from parting with it by means of an injunction; this is because the company does not become the owner of the money, which is ultra vires the company. As the lender remains the owner, he can take back the property in specie. If the ultra vires loan has been utilised in meeting lawful debt of the company then the lender steps

into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

4. Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 2013. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'. (Module Q)

Ans: -

Doctrine of Indoor Management (the Companies Act, 2013): 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. 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. 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.

The above mentioned doctrine of Indoor Management or Turquand Rule has limitations of its own. That is to say, it is inapplicable to the following cases, namely:

(a) Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

In Howard vs. Patent Ivory Manufacturing Co. where the directors could not defend the issue of debentures to themselves because they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.

Likewise, in *Morris v Kanssen*, a director could not defend an allotment of shares to him as he participated in the meeting, which made the allotment. His appointment as a director also fell through because none of the directors appointed him was validly in office.

(b) **Suspicion of Irregularity:** The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

The protection of the “Turquand Rule” is also not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry. Suspicion should arise, for example, from the fact that an officer is purporting to act in matter, which is apparently outside the scope of his authority. Where, for example, as in the case of *Anand Bihari Lal vs. Dinshaw & Co.* the plaintiff accepted a transfer of a company’s property from its accountant, the transfer was held void. The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to effect transfer of the company’s property.

Similarly, in the case of *Haughton & Co. v. Nothard, Lowe & Wills Ltd.* where a person holding directorship in two companies agreed to apply the money of one company in payment of the debt to other, the court said that it was something so unusual “that the plaintiff were put upon inquiry to ascertain whether the persons making the contract had any authority in fact to make it.” Any other rule would “place limited companies without any sufficient reasons for so doing, at the mercy of any servant or agent who should purport to contract on their behalf.”

(c) **Forgery:** The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity. Forgery may in circumstances exclude the ‘Turquand Rule’. The only clear illustration is found in the *Ruben v Great Fingall Consolidated*. In this case the plaintiff was the transferee of a share certificate issued under the seal of the defendant’s company. The company’s secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.

The plaintiff contended that whether the signature were genuine or forged was apart of the internal management, and therefore, the company should be estopped from denying genuineness of the document. But it was held, that the rule has never been extended to cover such a complete forgery.

5. A, an assessee, had large income in the form of dividend and interest. In order to reduce his tax liability, he formed four private limited company and transferred his investments to them in exchange of their shares. The income earned by the companies was taken back

by him as pretended loan. Can A be regarded as separate from the private limited company he formed? **(Module Q)**

Ans: -

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. 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. 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.

In *Dinshaw Maneckjee Petit* case it was held that the company was not a genuine company at all but merely the assessee himself disguised that the legal entity of a limited company. The assessee earned huge income by way of dividends and interest. So, he opened some companies and purchased their shares in exchange of his income by way of dividend and interest. This income was transferred back to assessee by way of loan. The court decided that the private companies were a sham and the corporate veil was lifted to decide the real owner of the income.

In the instant case, the four private limited companies were formed by A, 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. A was simply to split his income into four parts with a view to evade tax. No other business was done by the company.

Hence, A cannot be regarded as separate from the private limited companies he formed.

6. *Sound Syndicate Ltd.*, a public company, its articles of association empowers the managing agents to borrow both short- and long-term loans on behalf of the company, Mr. Liddle, the director of the company, approached *Easy Finance Ltd.*, a non banking finance company for a loan of ` 25,00,000 in name of the company.

The Lender agreed and provided the above said loan. Later on, *Sound Syndicate Ltd.* refused to repay the money borrowed on the pretext that no resolution authorizing such loan have been actually passed by the company and the lender should have enquired about the same prior providing such loan hence company not liable to pay such loan.

Analyse the above situation in terms of the provisions of Doctrine of Indoor Management under the Companies Act, 2013 and examine whether the contention of Sound Syndicate Ltd. is correct or not? **(Module Q) (MTP May 25 Series 1)**

Ans: -

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

Thus,

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but do not know the information he/she is not privy to.
2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Easy Finance Ltd. being external to the company, need not enquire whether the necessary resolution was passed properly. Even if the company claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Easy Finance Ltd.

7. Examine the following whether they are correct or incorrect along with reasons:

(a) A company being an artificial person cannot own property and cannot sue or be sued.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members. **(Module Q)**

Ans: -

(a) A company being an artificial person cannot own property and cannot sue or be sued

Incorrect: A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual.

Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

(b) A private limited company must have a minimum of two members, while a public limited company must have at least seven members.

Correct: Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company. In the case of a public company, any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration. In exactly the same way, 2 or more persons can form a private company.

8. Mike Limited is incorporated in India having Liaison office at Singapore. Explain in detail meaning of Foreign Company and analysis on whether Mike Limited would be called as Foreign Company as it established a Liaison office at Singapore as per the provisions of the Companies Act, 2013? **(Module Q) (MTP Sept 24 Series 2)**

Ans: -

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

Since Mike Limited is a company incorporated in India, hence, it cannot be called as a foreign company. Even though, Liaison Office was officially established at Singapore, it would not be called as a foreign company as per the provisions of the Companies Act, 2013.

9. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15

Crores during the Financial Year 2023-24. After that the total Paid-up Equity Share

Capital of ABC Limited is ` 100 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? **(Module Q) (MTP Sept 24 Series 1)**

Ans: -

As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but

which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, ABC Ltd. has allotted equity shares with voting rights to XYZ Limited of ` 15 crore, which is less than requisite control of 20% of total share capital (i.e. ` 100 crore) to have a significant influence of XYZ Ltd. Since the said requirement is not complied therefore ABC Ltd. and XYZ Ltd. are not associate companies as per the Companies Act, 2013.

10. Kamal, a Chartered Accountant started his e-commerce business by incorporating a One Person Company (the OPC) on 1st October, 2023. He, being a sole member of the OPC named his brother Sudhakar, with his consent, as his nominee in the Memorandum of Association of the OPC. Now, Kamal intends to replace Sudhakar and to nominate any one of the following short-listed friends as a nominee with effect from 1st January, 2024.

(1) Robert, an Indian citizen, and a resident in India shifted his residence to the USA on 31st May, 2022 and has not returned to India till 1st January, 2024.

(2) Dinkar, an Indian citizen, and non-resident in India came for employment in India on 1st April, 2023 and have been continuously staying in India since then.

Referring to the provisions of the Companies Act, 2013, advise Kamal regarding eligibility of his short-listed friends to be appointed nominee and the procedure to be followed for changing the name of the nominee as per the provisions of the Companies Act, 2013. (4 Marks PYQ Sept 24)

Ans: -

As per Rule 3 of the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Here, “resident in India” means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar can be appointed as a nominee in the OPC by Kamal as he is an Indian Citizen and non-resident in India.

Alternative Answer as follows:

As per Rule 3 of the Companies (Incorporation) Rules, 2014:

Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

In the instant case,

(i) Robert cannot be appointed as a nominee in the OPC by Kamal as his stay in the preceding F/Y 2022-23 is only for 61 days which is less than 120 days.

(ii) Dinkar cannot be appointed as a nominee in the OPC by Kamal as he has not stayed in the preceding F/Y 2022-23 for a single day.

Procedure for changing the nominee: The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar.

Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

11. XYZ Ltd. was incorporated to hold the patent for a new product. The company is expecting to start its commercial production within the next two years. In the meanwhile, for timely installation, the company has placed the purchase order for plant and machinery with a down payment of ₹ 1 crore. Referring to the provisions of the Companies Act, 2013 examine, whether the company can go for acquiring the status of a dormant company? (3 Marks PYQ Sept 24) (MTP Jan 25 Series 2) (RTP May 25)(MTP May25 Series 1)

Ans: -

According to Section 455 of the Companies Act, 2013, 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 a dormant company.

In the instant case, XYZ Ltd. has made a significant accounting transaction (down payment of ₹1 crore for plant and machinery), it does not meet the criteria of a dormant company under Section 455 of the Companies Act, 2013.

Therefore, XYZ Ltd. cannot acquire the status of dormant company.

12. Referring to the provisions of the Companies Act, 2013, answer the following:

- (i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions." Explain any three instances. (5 Marks PYQ Sept 24)

(ii) What is the effect of Memorandum and Articles when registered? (2 Marks PYQ Sept 24)

Ans: -

(i) "Corporate veil sometimes fails to protect the members of the company from the liability connected to the company's actions."

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

(1) To determine the character of the company i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.

(2) To protect revenue/tax: In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.

(i) Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity.

(ii) Where the company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited company.

(3) To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another).

(4) Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

(5) Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

(ii) Effect of Memorandum and Articles: As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles.

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

13. JV Limited borrowed a secured loan of ₹ 5 crore from Star Bank Limited (the bank) to meet its working capital requirement. However, the borrowing powers of the company, under its Memorandum of Association, were restricted to ₹ 1 crore. The bank released the loan amount in two instalments of ₹ 1 crore and ₹ 4 crore. On the due date for repayment of the loan, the company refused to accept the liability of ₹ 5 crore on the ground that the borrowing was ultra vires the company. The company's books of account show that the company has utilised the loan amount of ₹ 3 crore for repayment of its lawful debts. The utilisation of the remaining ₹ 2 crore cannot be traced. Referring to the doctrine of ultra-vires under the Companies Act, 2013, examine the validity of the decision of the company denying the repayment of the loan and explore the remedy, if any, available to the bank for recovery of the loan. (4 Marks PYQ Sept 24) (MTP Jan 25 Series 1)

Ans: -

Doctrine of ultra vires: The meaning of the term ultra vires is simply "beyond (their) powers". It is a fundamental rule of Company Law that any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

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. Since the memorandum is a "public document", it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, borrowing more than ₹1 crore was clearly beyond JV Limited's powers as per its MoA, making the loan transaction ultra vires to the extent of the excess amount over ₹1 crore.

Hence, the decision of the company denying the repayment of the loan being ultra vires the company shall be valid for ₹ 4 crore.

If the funds have been applied for legitimate business purposes (such as repaying lawful debts), the lender steps into the shoes of the debtor paid off and consequently he would be entitled to recover his loan to that extent from the company.

Therefore, JV Limited cannot deny repayment of ₹3 crore, as it was utilised for lawful purposes, despite the ultra vires nature of the loan.

Ultimately, the company has no remedy available to recover the balance amount of loan of ₹ 1 crore as the spending thereof is not traceable.

14. After incorporation of Goodwill Private Limited (the company) on 15th May, 2024 the share certificates were issued to Amit, Sumit and Sumati being subscribers to the Memorandum of Association of the company without affixing the common seal thereon and under the signature of Amit and Sumit, the directors of the company. The company has yet to appoint a company secretary. On objection raised by Sumati, a director, about the validity of the share certificate signed by other two directors, Amit and Sumit, clarified that since the company has opted not to have the common seal for the company the share certificates (i.e. the document) signed by two directors are valid. Referring to the provisions of the Companies Act, 2013, examine the correctness of the objection raised by one of the directors and in response, the clarification offered by other directors. Would your answer be different, if the company had a company secretary? **(3 Marks PYQ Sept 24) (MTP Jan 25 Series 1)**

Ans: -

The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

In the instant case, the objection of Sumati is not valid as the share certificate was signed by two directors Amit and Sumit as the company secretary was not appointed.

If the company had a company secretary, then the share certificate has to be signed by a director and the Company secretary.

Hence, yes, the answer will be different.

15. A company, ABC limited as on 31.03.2023 had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC limited had issued additional 10,000 equity shares of ` 10 each which was fully subscribed. Out of 10,000 shares, 5,000 of these shares were issued to XYZ private limited company. XYZ is a holding company of PQR private limited by having control over the composition of its board of directors.

Now, PQR private limited claims the status of being a subsidiary of ABC limited as being a subsidiary of its subsidiary i.e. XYZ private limited. Examine the validity of the claim of PQR private limited.

State the relationship if any, between ABC limited & XYZ private limited as per the provisions of the Companies Act, 2013. **(7 Marks PYQ June 24) (MTP Jan 25 Series 1)**

Ans: -

As per Section 2(46) of the Companies Act, 2013, holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) 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.

In the instant case, as on 31.03.2023, ABC Limited had a paid-up capital of ` 1 lakh (10,000 equity shares of ` 10 each). In June 2023, ABC Limited issued additional 10,000 equity shares, which was fully subscribed. Post-issue, the total paid-up capital of ABC Limited is ` 2 lakhs (20,000 equity shares of ` 10 each).

Out of these, 5,000 shares were issued to XYZ Private Limited. Since XYZ Private Limited holds only 25% of the shares in ABC Limited, it does not have control of more than one-half of the total voting power of ABC Limited. Hence, XYZ Private Limited cannot be considered as a subsidiary company of ABC Limited in terms of the second criteria stated above, that of controlling of voting power.

XYZ Private Limited is the holding company of PQR Private Limited by having control over the composition of its Board of Directors. But since XYZ Private Limited cannot be termed as a subsidiary company of ABC Limited, PQR Private Limited cannot claim the status of being a subsidiary of ABC Limited in terms of the first criteria, that of controlling of the composition of directors.

As per section 2(6) of the Act, Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The expression “significant influence” means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

In terms of the above provision, the relationship between ABC Limited and XYZ Private Limited can be of an Associate Company.

Since XYZ Private Limited holds more than 20 percent of voting power in ABC Limited, it can be considered as an Associate Company of ABC Limited.

16. Ram wants to incorporate a company in which he will be the only member. According to provisions of the Companies Act, 2013, what type of company can be incorporated? What are the salient features of this type of company? (7 Marks PYQ June 24) (MTP Jan 25 Series 1)

Ans: -

Section 2(62) of the Companies Act, 2013 defines one person company (OPC) as a company which has only one person as a member.

Ram wants to incorporate a company in which he will be the only member. Hence, he can incorporate an One person Company.

According to section 3(1)(c) of the Companies Act, 2013, OPC is a private limited company with the minimum paid up share capital as may be prescribed and having one member.

OPC (One Person Company) – salient features

- ◆ Only one person as member.
- ◆ Minimum paid up capital – no limit prescribed.
- ◆ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- ◆ The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
- ◆ Such other person may be given the right to withdraw his consent.
- ◆ The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- ◆ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- ◆ Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year.
- ☐ shall be eligible to incorporate an OPC;
- ☐ shall be a nominee for the sole member of an OPC.
- ◆ No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- ◆ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ◆ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
- ◆ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body-corporate.
- ◆ If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

Here the member can be the sole member-cum-director.

17. (i) 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:

- (1) Government of India 20%
- (2) Life Insurance Corporation of India (Public Institution) 8%
- (3) Government of Tamil Nadu 10%
- (4) Government of Rajasthan 10%
- (5) ABC Limited (owned by Government Company) 15%

As per above shareholding, state whether XYZ limited be called a government company under the provisions of the Companies Act, 2013. **(4 Marks PYQ June 24) (RTP Jan 25) (MTP Jan 25 Series 2)**

(ii) M and N holding 70% and 30% of the shares in the company. Both died in an accident. Answer with reference to the provisions of the Companies Act, 2013, what will be the legal effect on the company as both the members have died? **(3 Marks PYQ June 24) (MTP Jan 25 Series 2)**

Ans: -

(i) 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.

(ii) One of the features of a company is that it has perpetual succession. As per this feature, members may die or change, but the company goes on till it is wound up on the grounds specified by the Companies Act, 2013. The shares of the company may change hands infinitely but that does not affect the existence of the company. Since a company is an artificial person created by law, law alone can bring an end to its life. Its existence is not affected by the death or insolvency of its members.

In the instant case, on the death of M and N, who are holding 70% and 30% shares in the Company, the existence of the company is not affected, since the shares held by M and N will be legally transmitted to their legal heirs.

18. The State Government of X, a state in the country is holding 48 lakh shares of Y Limited. The paid up capital of Y Limited is ₹ 9.5 crore (95 lakh shares of ₹ 10 each). Y Limited directly holds 2,50,600 shares of Z Private Limited which is having share capital of ₹ 5 crore in the form of 5 lakh shares of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of ₹ 100 each. Z Private Limited claimed the status of a subsidiary company of Y Limited as well as a Government company. Advise as a legal adviser, whether Z Private Limited is a subsidiary company of Y Limited as well as a Government company under the provisions of the Companies Act, 2013? (4 Marks PYQ Dec 23) (MTP Sept 24 Series 2)

Ans: -

According to Section 2(45) of the 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.

As per Section 2(87) of the Companies Act, 2013, “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) 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.

In the instant case, the State Government of X, a state in the country is holding 48 Lakh shares in Y Limited which is below 51% of the paid up share capital of Y Limited i.e. 48.45 Lakh shares (51% of 95 Lakh shares). Hence Y Limited is not a Government Company.

Further, Y Limited directly holds 2,50,600 shares in Z Private Limited, which is more than one-half of the total shares of Z Limited i.e. 2,50,000 shares (50% of 5 Lakh shares). Thus, the

Company controls more than one-half of the total voting power of Z Limited. Hence Z Private Limited is a subsidiary of Y Limited.

Therefore, we can conclude that Z Private Limited is a subsidiary of Y Limited but not a Government Company since Y Limited is not a Government Company.

19. Explain the kinds of share capital as per the Companies Act, 2013. Also explain when the capital shall be deemed to be preference capital. (6 Marks PYQ Dec 23)(RTP May 25)

Ans: -

Kinds of share capital: Section 43 of the Companies Act, 2013 provides the kinds of share capital. According to the said provision, the share capital of a company limited by shares shall be of two kinds, namely:—

1. “Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;

Equity share capital— can be

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;

2. “Preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

(a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

(b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, despite that it is entitled to either or both of the following rights, namely:—

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified as above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified above, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

20. MTK Private Limited is a company registered under the Companies Act, 2013 on 5th January, 2021. The company has not started its business till now. On 7th April, 2023, a

notice has been received from ROC for non-filing of FORM No-INC-20A. Identify under which category MTK Private Limited company is classified. Explain the definition of the category of the company in detail. **(3 Marks PYQ Dec 23) (MTP Sept 24 Series 1)**

Ans: -

“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. [Explanation (i) to Section 455 of the Companies Act, 2013]

“Significant accounting transaction” means any transaction other than—

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

[Explanation (ii) to Section 455 of the Companies Act, 2013]

In the instant case, MTK Private Limited was registered on 5th January, 2021 and has not started its business till now. On 7th April, 2023, a notice has been received from ROC for non-filing of Form No. INC-20A. Since the Company has not started its business and a period of more than two years have already elapsed, it will be treated as an inactive company.

21. ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crores and convertible preference shares worth ` 10 crores during the financial year 2022-23. After that the total share capital of the company is ` 100 crores.

Comment on whether XYZ Limited would be called an Associate Company as per the provisions of the Companies Act, 2013? Also define an Associate Company. **(4 Marks PYQ June 23)**

Ans: -

Associate company [Section 2(6) of the Companies Act, 2013] in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The expression “significant influence” means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

The term “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

In the instant case, ABC Limited has allotted equity shares with voting rights to XYZ Limited worth ` 15 crore and convertible preference shares worth ` 10 crore during the financial year 2022-23 out of the total share capital of ABC Limited of ` 100 crore.

Since XYZ Limited is holding only 15% significant influence (` 15 crore equity shares with voting rights) in ABC Limited, which is less than twenty per cent, XYZ Limited is not an Associate company of ABC Limited.

Important Note:

It can be assumed that the convertible preference shareholders are having voting rights and due to this, XYZ Limited is holding overall 25% paid up share capital in ABC Limited (with voting rights). Hence, XYZ limited is having significant control over ABC Limited and therefore XYZ is an Associate company of ABC Limited.

22. Explain the concept of 'Corporate Veil'. Briefly state the circumstances when the corporate veil can be lifted as per the provisions of the Companies Act, 2013. (6 Marks PYQ June 23)

Ans: -

Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company. Due to this, members of a company are shielded from liability connected to the company's actions.

Lifting of Corporate Veil: The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) To determine the character of the company i.e. to find out whether co-enemy or friend: It is true that, unlike a natural person, a company does not have mind or conscience; therefore, it cannot be a friend or foe. It may, however, be characterised as an enemy company, if its affairs are under the control of people of an enemy country. For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- (2) To protect revenue/tax: In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue. Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate identity.
- (3) To avoid a legal obligation: Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction.
- (4) Formation of subsidiaries to act as agents: A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.

(5) Company formed for fraud/improper conduct or to defeat law: Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

23. 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. **(3 Marks PYQ June 23)**

Ans: -

Small Company: Small Company as defined under Section 2(85) of the Companies Act, 2013 means a company, other than a public company—

- (i) 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; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ` 40 Crore or such higher amount as may be prescribed which shall not be more than ` 100 crore:

Exceptions: This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

In the instant case, since the paid-up capital of ABC Private Limited is ` 35 Lakhs and turnover is ` 2.5 crore, it can avail the status of a small company as both the requirements with regard to paid-up share capital as well as turnover are fulfilled by the Company.

24. Mr. R, a manufacturer of toys approached MNO Private Limited for supply of raw material worth ` 1,50,000/-. Mr. R was offered a credit period of one month. Mr. R went to the company prior to the due date and met Mr. C, an employee at the billing counter, who convinced the former that the payment can be made to him as the billing-cashier is on leave.

Mr. R paid the money and was issued a signed and sealed receipt by Mr. C. After the lapse of due date, Mr. R received a recovery notice from the company for the payment of ` 1,50,000/-.

Mr. R informed the company that he has already paid the above amount and being an outsider had genuine reasons to trust Mr. C who claimed to be an employee and had issued him a receipt.

The Company filed a suit against Mr. R for non-payment of dues. Discuss the fate of the suit and the liability of Mr. R towards company as on current date in consonance with the provision of the Companies Act 2013? Would your answer be different if a receipt under the company seal was not issued by Mr. C after receiving payment? **(4 Marks PYQ Nov22) (MTP June 24 Series 3)**

Ans: -

(i) Fate of the suit and the liability of Mr. R towards the company:

Doctrine of the Indoor Management

According to the Doctrine of the Indoor Management, the outsiders are not deemed to have notice of the internal affairs of the company. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required. This is the indoor management rule, that the company's indoor affairs are the company's problem. This rule has been laid down in the landmark case-the Royal British Bank vs. Turquand. (Known as "Turquand Rule")

In the instant case, Mr. R is not liable to pay the amount of ` 1,50,000 to MNO Private Limited as he had genuine reasons to trust Mr. C, an employee of the company who had issued him a signed and sealed receipt.

(ii) Liability of Mr. R in case no receipt is issued by Mr. C:

Exceptions to doctrine of indoor management: Suspicion of irregularity is an exception to the doctrine of indoor management. The doctrine of indoor management, in no way, rewards those who behave negligently. It is the duty of the outsider to make necessary enquiry, if the transaction is not in the ordinary course of business.

If a receipt under the company seal was not issued by Mr. C after receiving payment, Mr. R is liable to pay the said amount as this will be deemed to be a negligence on the part of Mr. R and it is his duty to make the necessary enquiry to check that whether Mr. C is eligible to take the payment or not.

25. (i) Mr. Anil formed a One Person Company (OPC) on 16 April, 2018 for manufacturing electric cars. The turnover of the OPC for the financial year ended 31 March, 2019 was about ` 2.25 crores. His friend Sunil wanted to invest in his One Person Company (OPC), so they decided to convert it voluntarily into a private limited company. Can Anil do so, as per the provisions of the Companies Act, 2013? **(4 Marks PYQ Nov22)**

(ii) Explain listed company and unlisted company as per the provisions of the Companies Act, 2013. **(2 Marks PYQ Nov22) (MTP June 24 Series 3)**

Ans: -

(i) Section 2(62) of the Companies Act, 2013 defines one person company as a company which has only one person as a member. However, a private company shall have minimum 2 members without any restriction on the share capital or turnover. If OPC is converted into private company Mr. Anil and Mr. Sunil both can be the members of the company and investment from Mr. Sunil can be accepted.

A One Person Company can voluntarily convert itself into a private company by following the compliances given under the Companies Act, 2013.

In the instant case, OPC formed by Mr. Anil can be voluntarily converted into a private company by following the compliances given under the Companies Act, 2013. Here, the information given relating to turnover for the financial year ended 31st March, 2019 is immaterial.

(ii) Listed company: As per the definition given in the section 2(52) of the Companies Act, 2013, it is a company which has any of its securities listed on any recognised stock exchange. Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

Whereas the word securities as per the section 2(81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Unlisted company means company other than listed company.

26. Mike LLC incorporated in Singapore having an office in Pune, India. Analyse whether Mike LLC would be called as a foreign company as per the provisions of the Companies Act, 2013? Also explain the meaning of foreign company. (3 Marks PYQ Nov22) (RTP June 24) (MTP Jan 25 Series 2)

Ans: -

Mike LLC is incorporated in Singapore and having a place of business in Pune, India. Since, Mike LLC is incorporated outside India and having a Place of business in India, hence it is a foreign Company.

Foreign Company [Section 2(42) of the Companies Act, 2013]: It means any company or body corporate incorporated outside India which—

(i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(ii) conducts any business activity in India in any other manner.

27. BC Private Limited and its subsidiary KL Private Limited are holding 90,000 and 70,000 shares respectively in PQ Private Limited. The paid-up share capital of PQ Private Limited is ₹ 30 Lakhs (3 Lakhs equity shares of ₹ 10 each fully paid). Analyse with reference to provisions of the Companies Act, 2013 whether PQ Private Limited is a subsidiary of BC Private Limited. What would be your answer if KL Private Limited is holding 1,60,000 shares in PQ Private Limited and no shares are held by BC Private Limited in PQ Private Limited? (RTP Jan 25)

Ans: -

(i) Section 2(87) of the Companies Act, 2013 defines “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) 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:

For the purposes of this section —

(I) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(II) “layer” in relation to a holding company means its subsidiary or subsidiaries.

In the instant case, BC Private Limited together with its subsidiary KL Private Limited is holding 1,60,000 shares (90,000+70,000 respectively) which is more than one half in nominal value of the Equity Share Capital of PQ Private Limited. Hence, PQ Private Limited is subsidiary of BC Private Limited.

(ii) In the second case, the answer will remain the same. KL Private Limited is a holding 1,60,000 shares i.e., more than one half in nominal value of the Equity Share Capital of PQ Private Limited (i.e., holding more than one half of voting power). Hence, KL Private Limited is holding company of PQ Private Company and BC Private Limited is a holding company of KL Private Limited.

Hence, by virtue of Chain relationship, BC Private Limited becomes the holding company of PQ Private Limited.

28. Narendra Motors Limited is a Government Company. Shah Auto Private Limited have share capital of ₹ 10 crore in the form of 10,00,000 shares of ₹ 100 each. Narendra Motors Limited is holding 5,05,000 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? (RTP Jan 25)

Ans: -

According to the 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.

29. 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 artwork of economically weaker section of Christian society. The company obtained the status of section 8 company and started operating from 1st April 2021 onwards.

However, on 30th September 2023, 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? (RTP Sept 24)

Ans: -

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. ABC Club was a Section 8 company, and it was observed on 30th September 2023 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:

(i) 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.

(ii) 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.

(iii) 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.

30. HP Polytech Limited has a paid-up share capital divided into 6,00,000 equity shares of ` 100 each. 2,00,000 equity shares of the company are held by the Central Government and 1,20,000 equity shares are held by the Government of Maharashtra. Explain with reference to relevant provisions of the Companies Act, 2013, whether HP Polytech Limited can be treated as a Government Company. (RTP Sept 24)

Ans: -

Government Company [Section 2(45) of the 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.

In the instant case, the paid-up share capital of HP Polytech Limited is 6,00,000 equity shares of ` 100 each. 200,000 equity shares are held by Central government and 1,20,000 equity shares are held by Government of Maharashtra. The holding of equity shares by both government is 3,20,000 which is more than 51% of total paid up equity shares.

Hence, HP Polytech Limited is a government company.

31. No limit 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? (RTP Sept 24) (MTP June 24 Series 2)

Ans: -

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 the 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 though the company is an unlimited company. Mr. Innocent is liable for 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.

32. Mr. Dhruv was appointed as an employee of Sunmoon Timber Private Limited on the condition that if he were 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 filed a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered into 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? (RTP June 24)

Ans: -

It was decided by the court in the case of *Gilford Motor Co. Vs. Horne*, 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 the separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited should be disregarded.

33. AK Private Limited has borrowed ` 36 crore from BK Finance Limited. However, as per memorandum of AK Private Limited, the maximum borrowing power of the company is ` 30 crore. Examine whether AK Private Limited is liable to pay this debt? State the remedy, if any available to BK Finance Limited. (RTP June 24)

Ans: -

This case is governed by the 'Doctrine of Ultra Vires'. According to this doctrine, any act done, or a contract made by the company which travels beyond the powers of the company conferred upon it by its Memorandum of Association is wholly void and inoperative in law and is therefore not binding on the company. This is because the Memorandum of Association of the company is, in fact, its charter; it defines its constitution and the scope of the powers of the company. Hence, a company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. Hence, any agreement ultra vires the company shall be null and void.

(i) Whether AK Private Limited is liable to pay the debt?

As per the facts given, AK Private Limited borrowed ` 36 crore from BK Finance Limited which is beyond its borrowing power of ` 30 crore.

Hence, contract for borrowing of ` 36 crore, being ultra vires the Memorandum of Association and thereby is void. AK Private Limited is not, therefore, liable to pay the debt.

(ii) Remedy available to BK Finance Limited:

In light of the legal position explained above, BK Finance Limited cannot enforce the said transaction and thus has no remedy against the company for recovery of the money lent. BK Finance limited may take action against the directors of AK Private Limited as it is the personal liability of its directors to restore the borrowed funds. Besides, BK Finance Limited may take recourse to the remedy by means of 'Injunction', if feasible.

34. Define OPC (One Person Company) and state the rules regarding its membership. Can it be converted into a non-profit company under Section 8 or a private company? (MTP Jan 25 Series 2) (MTP June 24 Series 2)

Ans: -

One Person Company (OPC) [Section 2(62) of the Companies Act, 2013]: The Act defines one person company (OPC) as a company which has only one person as a member.

Rules regarding its membership:

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation of the company along with its e-memorandum and e articles.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- Only a natural person who is an Indian citizen whether resident in India or otherwise and has stayed in India for a period of not less than 120 days during the immediately preceding financial year -

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.

OPC cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.

35. Mr. Mohan had purchased some goods from Sunflower Limited on credit. A credit period of one month was allowed to Mr. Mohan. Before the due date, Mr. Mohan went to the company and wanted to repay the amount due from him. He found only Mr. Ramesh there, who was the factory supervisor of the company. Mr. Ramesh told Mr. Mohan that the Accountant and the cashier are on leave, he is in-charge of receiving money and he may pay the amount to him. Mr. Ramesh issued a money receipt under his signature. After two months, Sunflower limited issued a notice to Mr. Mohan for non-payment of the dues

within the stipulated period. Mr. Mohan informed the company that he had already cleared the dues and he is no more responsible for the same. He also contended that Mr. Ramesh is an employee of the company whom he had made the payment and being an outsider, he trusted the words of Mr. Ramesh as duty distribution is a job of the internal management of the company. Analyse the situation and decide whether Mr. Mohan is free from his liability. **(MTP Sept 24 Series 2)**

Ans: -

Doctrine of Indoor Management: The Doctrine of Indoor Management is the exception to the Doctrine of Constructive Notice. The Doctrine of Constructive Notice does not mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the Articles or Memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The doctrine of Indoor Management is important to persons dealing with a company through its directors or other persons.

They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the Articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

In the given question, Mr. Mohan has made payment to Mr. Ramesh and he (Mr. Ramesh) gave to receipt of the same to Mr. Mohan. Thus, it will be rightful on part of Mr. Mohan to assume that Mr. Ramesh was also authorised to receive money on behalf of the company. Hence, Mr. Mohan will be free from liability for payment of goods purchased from Sunflower Limited, as he has paid amount due to an employee of the company.

36. Mr. Rajeev, 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 Mr. Rajeev as a pretended loan. This way, Mr. Rajeev 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. **(MTP Sept 24 Series 2)**

Ans: -

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. When that happens, the courts ignore the corporate entity of the company and look behind the

corporate facade and hold the persons in control of the management of its affairs liable for the acts of the company. 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.

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 facade of the assessee himself. Therefore, the whole idea of Mr. Rajeev was simply to split his income into three parts with a view to evade tax. No other business was done by the company.

The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on 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. The same was upheld in *Re Sir Dinshaw Maneckjee Petit and Juggilal vs. Commissioner of Income Tax*.

37. 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? (MTP Sept 24 Series 1)

Ans: -

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.

38. Alfa school is a section 8 company which started imparting education on 1.4.2015, with the sole objective of providing education to children of weaker society either free of cost

or at a very nominal fee depending upon the financial condition of their parents. However, on 31st March 2023, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? (MTP Sept 24 Series 1)

Ans: -

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, Alfa School was a Section 8 company and 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:

(i) 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.

(ii) 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.

(iii) 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.

39. Powertech Limited was registered as a public company. There are 230 members in the company as noted below:

- (a) Directors and their relatives 190
- (b) Employees 15
- (c) Ex-Employees (Shares were allotted when they were employees) 10
- (d) 5 couples holding shares jointly in the name of husband and wife (5×2) 10
- (e) Others 5

The Board of Directors of Powertech Limited proposes to convert it into a private company. Also advise whether a reduction in the number of members is necessary. (MTP Sept 24 Series 1)

Ans: -

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, 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.

It is further provided 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.

In the instant case, Powertech Limited may be converted into a private company only if the total members of the company are limited to 200.

Total Number of members

- (i) Directors and their relatives 190
 - (ii) 5 Couples (5×1) 5
 - (iii) Others 5
- Total 200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

40. Popular Products Ltd. is company incorporated in India, having a total Share Capital of ` 20 Crores. The Share capital comprises of 20 Lakh equity shares of ` 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 the above three companies namely Delight Products Ltd.; Happy Products Ltd. and Cheerful Products Ltd. Can Jovial Ltd. be termed as a subsidiary company of Popular Products Ltd. State the related provision in favour of your answer, if Jovial Ltd. controls the composition of directors of Popular Products Ltd. (MTP Sept 24 Series 1)

Ans: -

According to Section 2(87) of the Companies Act, 2013 “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) 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.

In the present case, the total share capital of Popular Products Ltd. is ` 20 crores comprised of 20 Lakh equity shares.

Delight Products Ltd., Happy Products Ltd. and Cheerful Products Ltd together hold 8,50,000 shares (2,50,000+3,50,000+2,50,000) in Popular Products Ltd. Jovial Ltd. is the holding company of all above three companies. So, Jovial Ltd. along with its subsidiaries hold 8,50,000 shares in Popular Products Ltd., which amounts to less than one-half of its total voting power. Hence, Jovial Ltd. By virtue of shareholding is not a holding company of Popular Products Ltd.

Secondly, it is given that Jovial Ltd. controls the composition of directors of Popular Products Ltd., hence, Jovial Ltd. is a holding company of Popular Products Ltd. and not a subsidiary company.

41. Mr. Samyak was appointed as an employee of Moonlight 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 the company. He set up his own business under proprietorship and undercut Moonlight 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 Nine Stars Timbers Private Limited.

In this company, his wife and a friend of Mr. Samyak were the sole shareholders and directors. They took over Samyak's business and continued it. Moonlight Timber Private Limited files a suit against Nine Stars Timbers Private Limited for violation of contract. Nine Stars Timbers Private Limited argued that the contract was entered into between Mr. Samyak and Moonlight Timber Private Limited and as the company has separate legal entity, Nine Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited will be disregarded? **(MTP June 24 Series 3)**

Ans: -

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 a 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 Nine Stars Timbers Private Limited was formed just to evade legal obligations of the agreement between Mr. Samyak and Moonlight Timber Private Limited. Hence, Nine Stars Timbers Private Limited is just a sham or cloak and the separate legal entity between Mr. Samyak and Nine Stars Timbers Private Limited should be disregarded.

42. Pacific Motors Limited is a government company. Rama Auto Private Limited is a private company having share capital of ten crores in the form of ten lacs shares of ` 100 each. Pacific Motors Limited is holding five lacs five thousand shares in Rama Auto Private Limited. Rama Auto Private Limited claimed the status of Government Company. Advise as legal advisor, whether Rama Auto Private Limited is government company under the provisions of Companies Act, 2013? **(MTP June 24 Series 3)(RTP Sept 25)**

Ans: -

According to the 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 onehalf 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, Rama Auto Private Limited is a subsidiary company of Pacific Motors Limited because Pacific Motors Limited is holding more than one-half of the total voting power in Rama Auto Private Limited. Further as per Section 2(45), a subsidiary company of Government Company is also termed as Government Company. Hence, Rama Auto Private Limited, being a subsidiary of Pacific Motors Limited will also be considered as Government Company.

43. Explain the classification of the companies on the basis of control as per the Companies Act, 2013. (MTP June 24 Series 3)

Ans: -

On the basis of control:

(a) Holding and subsidiary companies: 'Holding and subsidiary' companies are relative terms. A company is a holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2(46)]

For the purposes of this clause, the expression "company" includes any body corporate.

Whereas section 2(87) defines "subsidiary company" in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) 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.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

(b) Associate company [Section 2(6)]: In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. — For the purpose of this clause —

(a) the expression "significant influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint

44. A Company registered under Section 8 of the Companies Act, 2013, has been consistently making profits for the past 5 years after a major change in the management structure. Few members contented that they are entitled to receive dividends. Can the company distribute dividend? If yes, what is the maximum percentage of dividend that can be distributed as per provisions of the Companies Act, 2013? Also, to discuss this along with

other regular matters, the company held a general meeting by giving only 14 days' notice.
Is this valid? (MTP June 24 Series 2)

Ans: -

A company registered under Section 8 of the Companies Act, 2013 is prohibited from the payment of any dividends to its members.

Hence in the given case, the contention of the members to distribute dividend from the profits earned is wrong.

Also, Section 8 company is allowed to call a general meeting by giving 14 days instead of 21 days.

45. MNP Private Ltd. is a company registered under the Companies Act, 2013 with Paid Up Share Capital of ` 5 crores and turnover of ` 35 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

(i) Whether the MNP Private Ltd. can avail the status of small company?

(ii) What will be your answer if the turnover of the company is ` 45 crores?

Ans: -

Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than four crore rupees; and

(2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than forty crore rupees.

Nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

(i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 5 crores and having turnover of ` 35 crore. Since only one criteria of turnover of ` 35 crores is met, but the paid up share capital exceeds ` 4 crores and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.

(ii) If the turnover of the company is ` 45 crore, then both the criteria are not fulfilled and MNP Ltd. cannot avail the status of small company in this case also.

46. The paid-up capital of Darshan Photographs Private Limited is ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares (not carrying any voting rights) of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited. State with reason,

(a) Whether Darshan Photographs Private Limited is subsidiary of Shadow Evening Private Limited?

(b) Whether your answer would be different in case Shadow Evening Private Limited is holding 25,000 Equity Shares and 5,000 Preference Shares in Darsha Photographs Private Limited? (MTP June 24 Series 1)

Ans: -

According to Section 2(87) of Companies Act, 2013 “subsidiary company” in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) 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:

For the purposes of this section —

- (I) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (II) the expression “company” includes any body corporate; It is to be noted that Preference share capital will also be considered if preference shareholders have same voting rights as equity shareholders.

In the instant case, Darshan Photographs Private Limited is having paid-up capital of ` 1 Crores in the form of 50,000 Equity Shares of ` 100 each and 50,000 Preference Shares of ` 100 each. Shadow Evening Private Limited is holding 25,000 Equity Shares in Darshan Photographs Private Limited.

(a) On the basis of provisions of Section 2(87) and facts of the given problem, Shadow Evening Private Limited is holding one – half of total equity paid up share capital of Darshan Photographs Private Limited. Therefore, Darshan Photographs Private Limited cannot be considered as subsidiary company of Shadow Evening Private Limited as for being subsidiary company other company should control more than one – half of the total voting power.

(b) Answer would remain same even if Shadow Evening Private Limited is also holding 5,000 preference shares as they do not have voting rights.

47. Explain the 'Doctrine of ultra vires' under the Companies Act, 2013. What are the consequences of 'ultra vires' acts of the company? (MTP June 24 Series 1)

Ans: -

Doctrine of ultra vires: The meaning of the term ultra vires is simply “beyond (their) powers”. The legal phrase “ultra vires” is applicable only to acts done in excess of the legal powers of the doers. This presupposes that the powers in their nature are limited.

It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company. On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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. Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company. An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company. Sometimes, act which is ultra vires can be regularised by ratifying it subsequently.

For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

48. Tycoon Private Limited is the holding company of Glassware Private Limited. As per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was ` 1.80 crore and paid up share capital was ` 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that Glassware Private Limited cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. (MTP June 24 Series 1) (MTP May 25 Series 2) (RTP Sept 25)

Ans: -

(i) As per section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company:

- (i) paid-up share capital of which does not exceed four crore rupees, and
(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
(B) a company registered under section 8; or
(C) a company or body corporate governed by any special Act.

In the instant case, as per the last profit and loss account for the year ending 31st March, 2023 of Glassware Private Limited, its turnover was to the extent of ` 1.80 crore, and paid-up share capital was ` 80 lakh. Though Glassware Private Limited, as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' but it cannot be categorized as a 'small company' because it is the subsidiary of another company (Tycoon Private Limited).

Hence, the contention of the Company Secretary is correct.

49. In the Flower Fans Private Limited, there are only 5 members. All of them go in a boat on a pleasure trip into an open sea. The boat capsizes and all of them died being drowned. Explain with reference to the provisions of Companies Act, 2013:

(A) Is Flower Fans Private Limited no longer in existence?

(B) Further is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? (MTP June 24 Series 1) (MTP May 25 Series 2) (RTP Sept 25)

Ans: -

(A) Perpetual Succession – A company on incorporation becomes a separate legal entity. It is an artificial legal person and have perpetual succession which means even if all the members of a company die, the company still continues to exist. It has permanent existence. The existence of a company is independent of the lives of its members. It has a perpetual succession. In this problem, the company will continue as a legal entity. The company's existence is in no way affected by the death of all its members.

(B) The statement given is incorrect. A company is an artificial person as it is created by a process other than natural birth. It is legal or judicial as it is created by law. It is a person since it is clothed with all the rights of an individual. Further, the company being a separate legal entity can own property, have banking account, raise loans, incur liabilities and enter into contracts. Even members can contract with company, acquire right against it or incur liability to it. It can sue and be sued in its own name. It can do everything which any natural person

can do except be sent to jail, take an oath, marry or practice a learned profession. Hence, it is a legal person in its own sense.

50. Harmony Foundation" is a newly incorporated company focused on promoting education and healthcare services in rural areas. The company is registered as a section 8 company with a clear plan to reinvest all profits into its activities, and a license has been accorded by the Central Government. For the financial year ending on 31st March, 2024, the company earned a substantial profit and transferred some amount to M/s LMP Associates (a Partnership firm and one of the member of the Harmony Foundation). Subsequently, on the complaint of one of the members, the Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the section 8 company and it cannot transfer any part of profit to the firm. Explain, in the light of the provisions of the Companies Act, 2013, whether the ground taken for winding up is sufficient. (4 Marks PYQ Jan 25) (MTP May 25 Series 2)

Ans: -

Formation of companies with charitable objects etc. (Section 8 company):

- Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to
 - o promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
 - o Such company intends to apply its profit in
 - o promoting its objects and
 - o prohibiting the payment of any dividend to its members.
- The Section 8 company operates under a special licence from Central Government and the Licence revoked if conditions contravened.
- On revocation, Central Government may direct it to
 - o Converts its status and change its name
 - o Wind-up
 - o Amalgamate with another company having similar object.
- A partnership firm can be a member of Section 8 company.

In the instant case, "Harmony Foundation" a section 8 company transferred some amount to M/S LMP Associates (a Partnership firm and one of the members of the Harmony Foundation).

The Central Government, after giving an opportunity of being heard, directed the company to be wound up on the ground that a partnership firm cannot be a member of the Section 8 company and it cannot transfer any part of profit to the firm.

Hence, the ground for winding up taken on the basis of transfer of any part of profit by Harmony Foundation to the M/S LMP Associates is correct and sufficient.

However, M/S LMP Associates can become a member of Section 8 company. Therefore, this ground is not correct hence not sufficient.

51. Justice Private Limited has 9 directors on its Board of Directors. The company's Articles of Association currently state that the quorum for board meetings shall be 1/3rd of the total strength or 2 directors, whichever is higher. The company now intends to amend this article to specify that the quorum for board meetings shall be 1/3rd of the total strength or 4 directors, whichever is higher. Advise the company on the procedure for including this entrenchment provision in its Articles, in accordance with the provisions of the Companies Act, 2013. Would your advice differ if the company were a public company? (3 Marks PYQ Jan 25) (MTP May 25 Series 2)

Ans: -

Section 5(4) and (5) of the Companies Act, 2013 contains the following provisions:

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

In the instant case, Justice Private Limited can follow the above procedure i.e. with the consent of all the members and notice to the registrar to include the entrenchment provision in its Articles.

Yes, the advice will differ, if the company is public company, since it has to pass Special Resolution and also inform to the registrar.

52. Write in brief the content and model of the Articles of Association (AOA), according to which the director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. (7 Marks PYQ Jan 25)

Ans:-

The Articles of Association are in fact the Bye-Laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

(1) Contains regulations: The articles of a company shall contain the regulations for management of the company.

(2) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(3) Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(5) Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(6) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

(7) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(8) Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

53. The extract of the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd., are as follows:

Central Government	26%
State of Maharashtra	18%
State of Tamilnadu	24% and
Public	32%

Whether the company would be considered as a Public Financial Institution (PFI) under the provisions of the Companies Act, 2013? Explain in brief about various institutions regarded as 'Public Financial Institutions' under the Companies Act, 2013. (5 Marks PYQ Jan 25)

Ans:-

Conditions for an institution to be notified as PFI (Section 2(72) of the Companies Act, 2013:

No institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous Companies Law; or

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

In the instant case, the major shareholders holding paid-up share capital in Rural Development Fin. Corp. Ltd. by the Central Government and State Governments is 68% (i.e.

Central Government: 26%, State of Maharashtra: 18% and State of Tamilnadu: 24%), hence it will be regarded as 'Public Financial Institution' under the Companies Act, 2013.

By virtue of Section 2(72) of the Companies Act, 2013, the following institutions are to be regarded as public financial institutions:

- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited,
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India.

54. Whether it is mandatory to have common seal for the company? If not, then what are the other options available as per the Companies Act, 2013? (2 Marks PYQ Jan 25)

Ans: -

No, it is not mandatory to have common seal for the company.

In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

55. Ratanmul Milk India Limited is a public company and formed on 01.01.2023. On this date, Mr. Sharman was appointed as Legal Advisor of the company. It was mentioned in the Articles of Association of the company that Mr. Sharman will not be removed from the post of Legal Advisor till 31.03.2027. On 01.07.2024, a Special Resolution was passed for the alteration in Articles of Association and Mr. Sharman was removed from the company. Mr. Sharman filed the suit against Ratanmul Milk India Limited for removal as a Legal Advisor. Referring the provisions of the Companies Act, 2013, whether can company remove Mr. Sharman? (RTP May 25)

Ans: -

The Articles of Association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the Memorandum contains the fundamental conditions

upon which the company is allowed to be incorporated, so also the Articles are the internal regulations of the company (Guinness vs. Land Corporation of Ireland).

In the instant case, the AOA of Ratanmul Milk India Limited provided that Mr. Sharman will be the Legal Advisor of the company and shall not be removed upto 31.03.2027. But company removed him on 01.07.2024 by passing the Special Resolution in the meeting of members and making the alteration in AOA.

On the basis of above provisions of Law and facts of the case, Mr. Sharman cannot enforce any right against the company. Company had right to remove him by making alteration in AOA.

56. Parasnath Infraheight Limited is a public company and having 215 members of which 20 members were employees in the company during the period 1st June, 2022 to 30th June, 2024. They were allotted shares in Parasnath Infraheight Limited on 1st April, 2018 which are held by them till today i.e. 31st August 2024. Now, the company wants to convert itself into a private company. State with reasons, whether Parasnath Infraheight Limited is required to reduce the number of members under the provisions of the Companies Act, 2013? (MTP May 25 Series 1)

Ans: -

According to Section 2(68) of the 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.

In the given problem, Parasnath Infraheight Limited is a public company and wants to convert itself into a private company. It is having 215 members out of which 20 members were employees during the period 1st June, 2022 to 30th June, 2024. These members were members in the company from 1st April, 2018 which are held by them till date i.e. 31st August, 2024.

Following the provisions of Section 2(68) of the Act, 20 members were employees of the company, but they were not employee at the time of getting membership and nor on existing date i.e. 31st August, 2024. Hence, they will be considered as members for the purpose of the limit of 200 members. Therefore, the company is required to reduce the number of members before converting it into a private company.

57. "What documents and information are required to be filed with the Registrar for the registration of a company under the Companies Act, 2013? (MTP May 25 Series 1)

Ans: -

Filing of the documents and information with the registrar: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated-

(i) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

(ii) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.

(iii) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that-

- he is not convicted of any offence in connection with the promotion, formation or management of any company, or
- he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,
- and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(iv) the address for correspondence till its registered office is established;

(v) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

(vi) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the subscribers to the Memorandum and such other particulars including proof of identity as may be prescribed; and

(vii) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

58. Explain the classification of capital under Company Law as per the Companies Act, 2013. Discuss the different types of capital and the statutory definitions associated with each. (MTP May 25 Series 2)

Ans:-

In the domain of Company Law, the term 'capital' is used in the following senses:

(i) Nominal or authorised or registered capital: This form of capital has been defined in section 2(8) of the Companies Act, 2013. "Authorised capital" or "Nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. Thus, it is the sum stated in the memorandum as the capital of the company with which it is to be registered being the maximum amount which it is authorised to raise by issuing shares, and upon which it pays the stamp duty. It is usually fixed at the amount, which, it is estimated, the company will need, including the working capital and reserve capital, if any.

(ii) Issued capital: Section 2(50) of the Companies Act, 2013 defines "issued capital" which means such capital as the company issues from time to time for subscription. It is that part of authorised capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash.

(iii) Subscribed capital: Section 2(86) of the Companies Act, 2013 defines "subscribed capital" as such part of the capital which is for the time being subscribed by the members of a company.

It is the nominal amount of shares taken up by the public. Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a company states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.

(iv) Called-up capital: Section 2(15) of the Companies Act, 2013 defines “called-up capital” as such part of the capital, which has been called for payment. It is the total amount called up on the shares issued.

(v) Paid-up capital is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears.

59. (i) State with reasons whether the following companies can be treated as Small Companies with reference to the provisions of the Companies Act, 2013:

1. STS Pvt. Ltd., having a turnover of ` 10 crores and the paid-up capital of ` 1 crore (1,00,000 equity shares of ` 100 each). Out of these 60,000 equity shares are held by UV Infratech Pvt. Ltd.
2. ZX Ltd., having a paid-up capital of 3 crores and turnover of 35 crores. (4 Marks)

(ii) The paid-up equity share capital of ACD Ltd. is 80 crores & preference share capital of 20 crores. B Ltd. holds equity shares in ACD Ltd. worth 15 crores and preference shares worth 10 crores. Can B Ltd. be considered as an Associate Company of ACD Ltd.? (3 Marks)
(PYQ May 25)

Ans: -

(i) According to Section 2(85) of the Companies Act, 2013, Small company means a company, other than a public company—

(i) paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Exceptions: This clause shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

In the instant case,

(i) STS Pvt. Ltd. though is a small company taking into account its turnover and paid up share capital (i.e. ` 10 crores and ` 1 crore respectively), but since it is the subsidiary company of UV Infratech Pvt. Ltd. (UV Infratech Pvt. Ltd. holds ` 60,00,000 equity share capital of STS Pvt. Ltd.), hence STS Pvt. cannot be considered as small company.

(ii) ZX Ltd. cannot be considered as a small company since it is a public company.

(ii) As per Section 2(6) of the Companies Act, 2013, an Associate Company in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

The term “significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

In the given case, the paid up share capital of ACD Ltd. is ` 80 crores. B Ltd. holds equity share capital of ` 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore ACD Ltd. cannot be considered as an Associate Company of B Ltd.

Alternate conclusion

Since the question is asked with reference to B Ltd. who had stake of ` 15 crores in the ACD Ltd. to be considered as an associate company or not.

So, the conclusion may be alternatively as follows:

In the given case, the paid up share capital of ACD Ltd. is ` 80 crores. B Ltd. holds equity share capital of ` 15 crore in ACD Ltd. i.e. less than 20% significant influence. Therefore, B Ltd. cannot be considered as an Associate Company.

60. Doctrine of indoor management allows all those who deal with the company to assume that the officers of the company have observed the provisions of the articles. In light of the above statement, explain the doctrine of indoor management and its exceptions, if any, according to provisions of the Companies Act, 2013. (7 Marks) (PYQ May 25)

Ans: -

Doctrine of Indoor Management: 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.

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. They are

fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. Thus, the doctrine of indoor management aims to protect outsiders against the company.

The above-mentioned doctrine of Indoor Management has limitations/exceptions of its own. That is to say, it is inapplicable to the following cases, namely:

(a) Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(b) Suspicion of Irregularity: The doctrine in no way, rewards those who behave negligently. Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or not in the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.

(c) Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction, but it cannot apply to forgery which must be regarded as nullity.

61. (i) The Object clause of Memorandum of Association of ABC Pvt. Ltd. authorized the company to carry on the business of trading in property in Gurgaon. Since the company was not doing well, the Directors of the company in a recent board meeting planned to diversify the business and enter into Construction business. For this purpose, they borrowed a sum of ` 5 crores from Magnum Finance Ltd. But the members of the company did not approve the decision of the board hence, company refused to repay the loan. According to provisions of the Companies Act, 2013 what is the recourse available to Magnum Finance Ltd. for recovery of the loan? (4 Marks)

(ii) SNM Ltd. was registered in 2021 with a share capital of ` 50 Lakh divided into 5 lakhs equity share of ` 10 each under Section 8 of the Companies Act, 2013 for promotion of art in Jaipur. Company earned huge profits during the financial year ending on 31st March 2025 due to boom in the market. On 10th May 2025, 75% members of the company demanded to distribute 10% dividend to the equity shareholders. For this purpose, they passed special resolution in EGM.

With reference to provisions of the Companies Act, 2013 decide whether SNM Ltd. can declare dividend @ 10% to equity shareholders for the year ending 31st March 2025. (3 Marks) (PYQ May 25)

Ans: -

(i) It is a fundamental rule of Company Law that the objects of a company as stated in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further. In consequence, any act done or a contract made by the company which travels beyond the powers not only of the directors but also of the company is wholly void and inoperative in law and is therefore not binding on the company.

On this account, a company can be restrained from employing its fund for purposes other than those sanctioned by the memorandum. Likewise, it can be restrained from carrying on a trade different from the one it is authorised to carry on.

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.

Since the memorandum is a “public document”, it is open to public inspection. Therefore, when one deals with a company one is deemed to know about the powers of the company. If in spite of this you enter into a transaction which is ultra vires the company, you cannot enforce it against the company.

In the instant case, ABC Pvt. Ltd. was authorised to trade in property only, so taking loan for construction business was ultra virus the power of the company.

Therefore, Magnum Finance Ltd. cannot enforce against ABC Pvt. Ltd. for recovery of the loan. But,

(a) It can recover the money to the extent it has been utilised in meeting lawful debt of the company, then it steps into shoes of the debtor paid off and consequently it would be entitled to recover the loan to that extent from the company.

(b) if the money is not spent, it may stop ABC Pvt. Ltd. from spending by means of injunction and recover the unspent amount.

(ii) Formation of companies with charitable objects etc. (Section 8 company): 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, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company intends to apply its profit in promoting its objects and
- prohibiting the payment of any dividend to its members.

In the instant case, SNM Ltd. cannot declare dividend @10% to equity shareholders for the year ending 31st March, 2025 as it is a Section 8 company which are specifically prohibited from paying dividend. The profits of a section 8 company must be applied towards promoting its objects. Therefore, the special resolution passed in the EGM to declare a dividend is invalid.

62. An employee, Mr. Karan, signed a contract with his employer company, ABC Limited, that he will not solicit the customers after leaving the employment from the company.

But after Mr. Karan left ABC Limited, he started up his own company, PQR Limited and started soliciting the customers of ABC Limited for his own business purposes.

ABC Limited filed a case against Mr. Karan for breach of employment contract and for soliciting their customers for own business. Mr. Karan contended that there is a corporate veil between him and his company and he should not be personally held liable for this.

In this context, the ABC Limited seeks your advice as to the meaning of corporate veil and when the veil can be lifted to make the owners liable for the acts done by a company.
(RTP Sept 25)

Ans: -

Corporate Veil: Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.

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. In other words, they enjoy corporate insulation.

Thus, the shareholders are protected from the acts of the company.

However, under certain exceptional circumstances, the courts lift or pierce the corporate veil by ignoring the separate entity of the company and the promoters and other persons who have managed and controlled the affairs of the company. Thus, when the corporate veil is lifted by the courts, the promoters and persons exercising control over the affairs of the company are held personally liable for the acts and debts of the company.

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (i) To determine the character of the company i.e. to find out whether co-enemy or friend.
- (ii) To protect revenue/tax
- (iii) To avoid a legal obligation
- (iv) Formation of subsidiaries to act as agents
- (v) Company formed for fraud/improper conduct or to defeat law

Based on the above provisions and leading case law of *Gilford Motor Co. Vs Horne*, the company PQR Limited was created to avoid the legal obligation arising out of the contract, therefore that employee Mr. Karan and the company PQR Limited created by him should be treated as one and thus veil between the company and that person shall be lifted. Karan has formed the company only for fraud/improper conduct or to defeat the law. Hence, he shall be personally held liable for the acts of the company.

Harshal Kshirsagar