

LIST OF IMPORTANT
SECTIONS BASED ON
COMPANIES ACT WITH
COMPLETE SUMMARY
OF COMPANIES
ACT...PART 1

MKG CA
EDUCATION

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| <u>PART-1</u> | |
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| <p><u>Section 1-</u></p> <p><u>Short title, extent, commencement and application</u></p> | <ul style="list-style-type: none"> • Companies incorporated under this Act or under any previous company law, • Insurance companies, • Banking companies, • Companies engaged in the generation or supply of electricity, Any other company governed by any special Act, • Notified by CG <p>Note: <u>Except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999, the Banking Regulation Act, 1949 , Electricity Act, 2003 AS the case may be.</u></p> |
| <p><u>Section 2-</u></p> <p><u>Definitions</u></p> | <p><u>SEC 2(20)</u></p> <p>“Company means a company incorporated under this Act or under any previous company law”</p> <p><u>In the words of professor Haney</u></p> <p>“A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal.”</p> <p><u>Separate Legal Entity:</u></p> <ul style="list-style-type: none"> • When a company is registered, it is clothed with a legal personality. • Its existence is distinct and separate from that of its members. • A company can own property, have bank account, raise loans, incur liabilities and enter into contracts. • <u>A member does not even have an insurable interest in the property of the company.</u> <p><u>Perpetual Succession:</u></p> <ul style="list-style-type: none"> • 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. <p><u>Limited Liability:</u></p> |

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| | | <ul style="list-style-type: none"> • The liability of a member depends upon the kind of company of which he is a member. • The debts of the company in totality do not become the debts of the shareholders. <p><u>Artificial Legal Person:</u></p> <ul style="list-style-type: none"> • A company is an <u>artificial person</u> as it is created by a process <u>other than natural birth</u>. • It is <u>legal</u> or judicial as it is <u>created by law</u>. • It is a <u>person</u> since it <u>is clothed with all the rights of an individual</u>. • 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. • As the company is an <i>artificial person</i>, it can act only through some human agency, viz., directors. <p><u>Common Seal:</u></p> <ul style="list-style-type: none"> • Common seal is the <u>official signature</u> of a company, which is affixed by the officers and employees of the company on its every document. • The Companies (Amendment) Act, 2015 has made the common seal <u>optional</u>. • <u>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</u>, wherever the company has appointed a Company Secretary. <p><u>The term ‘Company’ does not include a company incorporated outside India.</u></p> |
| | <u>SEC 2(21)</u> | <p><u>COMPANY LIMITED BY GUARANTEE</u></p> <ul style="list-style-type: none"> • 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. • In case of company limited by guarantee and having share capital, the liability of a member |

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| | | is limited upto the aggregate of amount unpaid on shares held by him and amount guaranteed by him. |
| | <u>SEC 2(22)</u> | <ul style="list-style-type: none"> • When the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares. • Both the Company limited by share and Company limited by guarantee are required to state in the Memorandum that the members' liability is limited. • Members of Company limited by share may be called upon to discharge their liability either during the company's life time or during its winding up whereas In case of company limited by guarantee having no share capital, the liability of its members, can be enforced only by the liquidator since such liability can be enforced only after the commencement of winding up of the company and not during the life time of the company. |
| | <u>SEC 2(92)</u> | <ul style="list-style-type: none"> • <u>Unlimited company</u> as a company not having any limit on the liability of its members. In such a company, the liability of a member ceases when he ceases to be a member. • 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 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 |
| | <u>SEC 2(62)</u> | <ul style="list-style-type: none"> • One Person Company" means a company which has only one person as a member. • The Memorandum of OPC is required to indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the |

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| | <p>member of the company and the written consent of such person shall be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.</p> <ul style="list-style-type: none"> • Only a natural person who is an Indian citizen whether resident or otherwise – Shall be eligible to incorporate a One Person Company; • Shall be a nominee for the sole member of a One Person Company. • Note:“Resident in India” means a person who has stayed in India for at least 120 days during the immediately preceding one calendar year. • The conversion of OPC in Private Limited or Public Limited Company is also made easier. • Requirement for voluntary conversion of OPC in any kind of Company, at least two years to expire from the incorporation of OPC has been deleted so now OPC can be converted anytime into any other type of company under the Act • The threshold limits of having paid up share capital of Rs.50 Lakhs or less and average annual turnover during the relevant period Rs.2 crore or more is <u>also not required for OPC to convert itself into any kind of company under the Act.</u> |
| | <p><u>SEC 2(68)</u></p> <p>A Private Company means a company which by its articles—</p> <ol style="list-style-type: none"> <u>1.</u> Restricts the right to transfer its shares, if any, <u>2.</u> Limits the number of its members to 200(except in case of One Person Company), <p>Note: For the purposes of limit of 200, present employees who are members and ex-employees who were members while in that employment and have continued to be members after the employment ceased, are excluded and the joint</p> |

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| | <p>shareholders are counted as a single member.</p> <p>3. Prohibits any invitation to the public to subscribe for any securities of the company.</p> |
| <u>SEC 2(71)</u> | <p>“Public company” means a company which—</p> <ol style="list-style-type: none"> a) is not a private company; and b) has a minimum paid-up share capital, as may be prescribed: <p>Provided that a company which is a subsidiary of a company, not being a private company, <u>shall be deemed to be public company</u> for the purposes of this Act even where such subsidiary company continues to be a private company in its articles .</p> |
| <u>SEC 2(85)</u> | <p>“Small Company" <u>means a private company—</u></p> <ol style="list-style-type: none"> (i) paid-up share capital of which does not exceed 2 crore or prescribed higher amount which shall not be more than 10 crore ; or (ii) turnover of which as per its last profit and loss account does not exceed 20 crore or prescribed higher amount which shall not be more than 100 crore: <p><u>Following cannot be Small Company:</u></p> <ol style="list-style-type: none"> (i) A holding company or a subsidiary company; (ii) A company registered u/s 8;or (iii) A company or body corporate governed by any Special Act; |
| <u>SEC 2(46)</u> | <p>Holding and subsidiary’ companies are relative terms.</p> <p>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)].</p> |

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| | <u>SEC 2(87)</u> | <p>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:</p> <p>(a) Holding company</p> <p>(i) Controls the composition of the Board of Directors</p> <p>(ii) Exercises or controls <u>> 50% total share capital</u> either at its own or together with one or more of its subsidiary companies.</p> <p>(iii) A company will be subsidiary of another company called holding company, if it is a subsidiary of a subsidiary of the holding company. i.e. CHAIN HOLDING</p> |
| | <u>SEC2(6)</u> | <p>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.</p> <p>The term “significant influence” means control of at least 20% of total share capital, or of business decisions under an agreement</p> |
| | <u>SEC 2(52)</u> | <p>listed company means a company which has any of its securities listed on any recognised stock exchange;</p> <p><u>[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.]</u></p> |
| | <u>SEC 2(45)</u> | <p>A Government Company means “any company in which at least 51% of the paid-up share capital is held</p> <p>(i) By the Central Government or</p> <p>(ii) By any State Government or Governments or</p> <p>(iii) Partly by the Central Government and partly</p> |

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| | | <p>by one or more State Governments <u>And includes a company which is a subsidiary of a government company</u></p> |
| | <p><u>SEC 2(42)</u></p> | <p><u>Foreign Company</u>” means any company or body corporate Incorporated outside India which–</p> <p>(i) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and</p> <p>(ii) Conducts any business activity in India in any other manner.</p> |
| | <p><u>SEC 2(72)</u></p> | <p>The following institutions are to be regarded as <u>public financial institutions.</u></p> <p>(i) The Life Insurance Corporation of India, (ii) The Infrastructure Development Finance Company Limited, (iii) Specified company referred to in the Unit Trust of India (iv) Institutions notified by the Central Government 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:</p> <p><u>Provided that no institution shall be so notified unless—</u></p> <p>(A) It has been <i>established or constituted by or under any Central or State Act</i>; or (B) <i>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.</i></p> |

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| <p style="text-align: center;"><u>SEC455</u></p> <p style="text-align: center;"><u>DORMANT COMPANY</u></p> | <p>Where a company is formed and registered under this Act for</p> <ul style="list-style-type: none"> • a future project or • to hold an asset or • intellectual property and • <i>has no significant accounting transaction,</i> <p>such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed <i>for obtaining the status of a dormant company.</i></p> <p>“Significant accounting transaction” means any transaction other than—</p> <p>(i) Payment of fees by a company to the Registrar;</p> <p>(ii) Payments made by it to fulfill the requirements of this Act or any other law;</p> <p>(iii) Allotment of shares to fulfill the requirements of this Act; and</p> <p>(iv) Payments for maintenance of its office and records.</p> |
| <p style="text-align: center;"><u>SEC 406</u></p> <p style="text-align: center;"><u>NIDHI COMPANIES</u></p> | <p><u>Company which has been incorporated as a Nidhi with the object of:</u></p> <ul style="list-style-type: none"> • cost cutting and savings amongst its members, • receiving deposits from, and lending to, its members only, • for their mutual benefits and which complies with such rules as are prescribed by the Central Government • for regulation of such class of companies.[Section 406 of the Companies Act,2013] |
| <p style="text-align: center;"><u>Section 3-</u></p> <p style="text-align: center;"><u>Formation of company.</u></p> | <p>Section 3 of the Companies Act, 2013 states that a company may be formed for any lawful purpose by 7 or more persons in case of public company, 2 or more persons in case of private company and 1 person in case of a one person company. Hence, a company cannot be formed for an unlawful purpose or for carrying on illegal business.</p> |
| <p style="text-align: center;"><u>Section 3A</u></p> <p style="text-align: center;"><u>Members severally liable in certain cases . +</u></p> <p style="text-align: center;"><u>LIFTING OF CORPORATE VEIL</u></p> | <p>If the company carries on business for more than 6months with no of members reduced below the statutory minimum requirement (i.e. 2 in case of a Pvt. Co and 7 in case of public Co.) all the persons who were members of the company and were aware of this fact shall be personally liable for debts</p> |

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| | <p>contracted after those 6 months.[Sec 3A].<u>Thus, Members of a limited company may have unlimited liability as per Sec3A.</u></p> <p>Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.</p> <p style="text-align: center;"><u>Meaning of the phrase “lifting the veil”.</u></p> <p>Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts are willing to lift the corporate veil</p> |
| <p><u>Section 8- Formation Of Companies With Charitable Objects, Etc.</u></p> | <p>A) ‘Association Not For Profit’ The Central Government May By License Allow A Person Or An An Association Of Persons To Be Registered As A Limited Liability Company Without Using The Words ‘Limited’ Or ‘Private Limited’ As Part Of Its Name.</p> <p>(b) The Central Government Will Grant The License Only If It Is Satisfied That A Person Or An Association Of Persons Proposed To Be Registered As A Limited Liability Company:</p> <p>(i) Has In Its Objects The Promotion Of Commerce, Art, Science, Religion, Charity Or Any Other Useful Object;</p> <p>(ii) Intends To Apply Its Profits, If Any, Or Other Income In Promoting Its Objects;</p> <p style="text-align: center;">And</p> <p>(iii) Prohibits The Payment Of Dividend To Its Members.</p> <p><u>A Firm May Be A Member Of The Company Registered U/S 8</u></p> |
| <p><u>Sec-469</u></p> | <p>Power of CG to make Rules</p> |

Questions Based On Above Summary

Question 1

What do you understand by “separate legal entity of the company?”

Answer

A company in the eyes of law is regarded as an entity separate and distinct from its members. Any of its members can enter into contracts with the company in the same manner as with any other individual.

Further, a shareholder or member of a company cannot be held liable for the acts of the company even if he holds virtually the entire share capital.

The company’s money and property belong to the company, and not to the shareholders. (Salomon v. Salomon & Co. Ltd.).

This principle of differentiating the legal entity of the company from that of its shareholders may be referred to as ‘the veil of incorporation’.

The Courts in general consider themselves bound by this principle. The effect of this principle is that the members or shareholders of a company cannot be held liable in respect of any liability accruing on the company.

A company is expected by law to meet its liabilities and obligations from its own resources and its members cannot be called upon to discharge the same.

Question 2

ABC Pvt. Ltd., is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

Answer

Death of all members of a Private Limited Company. Under the Companies Act, 2013: The most distinguishing feature of a company is its being a separate entity from the shareholders and promoters who form it. This lends stability and perpetuity to the company form of business organization. In short, a company is brought into existence by a process of law and can be terminated or wound up or brought to an end only by a process of law. Its life is not impacted by the death, insolvency or retirement of any or all shareholder(s) or director(s).

The provision for transferability or transmission of the shares helps to preserve the perpetual existence of a company by allowing the constitution and identity of shareholders to change.

In the present case, ABC Pvt. Ltd. does not cease to exist even by the death of all its shareholders.

The legal process will be for the successors of the deceased shareholders to get the shares registered in their names by way of the process which is called “transmission of shares”. The company will cease to exist only when it is wound up by a due process of law. Therefore, even with the death of all members (i.e. 5), ABC (Pvt.) Ltd. does not cease to exist.

Question 3

What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having Share Capital.

Answer

Meaning of Guarantee Company: Where it is proposed to register a company with limited liability, the choice before its promoters is either to limit their liability by the value of shares purchased by them or by limiting their liability by the amount of guarantees given by them. Section 2 (21) of the Companies Act, 2013 defines a Company Limited by Guarantee as a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

Thus, the liability of the members of a guarantee company is limited to a stipulated amount in terms of individual guarantees given by members and mentioned in the memorandum. The members cannot be called upon to contribute more than such stipulated amount for which each member has given a guarantee in the memorandum of association. The articles of association of such company shall state the number of members with which the company is to be registered.

Similarities and dis-similarities between the Guarantee Company and the Company having share capital: The common features between a “guarantee company” and the “company having share capital” are legal entity and limited liability. In case of a company limited by shares, the liability of its members is limited to the amount remaining unpaid on the shares held by them. Both these type of companies have to state this fact in their memorandum that the members’ liability is limited.

However, the dissimilarities between a ‘guarantee company’ and ‘company limited by shares’ is that in the former case the members will be called upon to discharge their liability only after commencement of the winding up of the company and only to the extent of amounts guaranteed by them respectively; whereas in the case of a company limited by shares, the members may be called upon to discharge their liability at any time, either during the life of the company or during the course of its winding up and the amount payable by the members will be limited to the unpaid amount on shares held by them respectively.

Further to note, the Supreme Court in **Narendra Kumar Agarwal vs. Saroj Maloo** has laid down that the right of a guarantee company to refuse to accept the transfer by a member of his interest in the company is on a different footing than that of a company limited by shares. The membership of a guarantee company may carry privileges much different from those of ordinary shareholders in companies limited by shares.

It is also clear from the definition of the guarantee company that it does not raise its initial working funds from its members. Therefore, such a company may be useful only where no working funds are needed or where these funds can be had from other sources like endowment, fees, charges, donations etc.

Question 4

Mr. A is an Indian citizen and his stay in India during immediately preceding financial year is for 115 days. He appoints Mr. B as his nominee who is a foreign citizen but has stayed in India for 130 days during immediately preceding financial year.

- (i) Is Mr. A eligible to be incorporated as a One Person Company (OPC). If yes, can he give the name of Mr. B in the memorandum of Association as his nominee to become the member after Mr. A's incapacity to become a member.
- (ii) If Mr. A has contravened any of the provisions of the Act, what are the consequences?

Answer

As per the provisions of the Companies Act, 2013, only a natural person who is an Indian citizen and resident in India or otherwise—

- Shall be eligible to incorporate an OPC
 - Shall be a nominee for the sole member.
- (i) In the given case, though Mr. A is an Indian citizen, his stay in India during the immediately preceding previous year is only 115 days which is not relevant. Hence Mr. A is eligible to incorporate an OPC.

Also, even though Mr. B's name is mentioned in the memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, **he is a foreign citizen and not an Indian citizen**. Hence B's name cannot be given as nominee in the memorandum.

- (ii) Since Mr. A is eligible to incorporate a One Person Company (OPC), he has not contravened the provisions, if he incorporates OPC.

In case contravention was done, in that case, He shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to One thousand rupees every day after the first during which such contravention occurs.

Question 5

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

Answer

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.

Question 6

Mr. Dhruv was appointed as an employee in Sunmoon Timber Private Limited on the condition that if he was to leave his employment, he will not solicit customers of the company. After some time, he was fired from company. He set up his own business under proprietorship and undercut Sunmoon Timber Private Limited’s prices. On the legal advice from his legal consultant and to refrain from the provisions of breach of contract, he formed a new company under the name Seven Stars Timbers Private Limited. In this company, his wife and a friend of Mr. Dhruv were the sole shareholders and directors. They took over Dhruv’s business and continued it. Sunmoon Timber Private Limited files a suit against Seven Stars Timbers Private Limited for violation of contract. Seven Stars Timbers Private Limited argued that the contract was entered between Mr. Dhruv and Sunmoon Timber Private Limited and as company has separate legal entity, Seven Stars Timbers Private Limited has not violated the terms of agreement. Explain with reasons, whether separate legal entity between Mr. Dhruv and Seven Stars Timbers Private Limited will be disregarded?

Answer

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

words, if the company is mere sham or cloak, the separate legal entity can be disregarded.

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

Question 7

The paid-up capital of Ram Private Limited is 10 Crores in the form of 7,00,000 Equity Shares of ₹ 100 each and 3,00,000 Preference Shares of ₹ 100 each. Lakhan Private Limited is holding 3,00,000 Equity Shares and 3,00,000 Preference Shares in Ram Private Limited. State with reason, Whether Ram Private Limited is subsidiary of Lakhan Private Limited?

Answer

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, Ram Private Limited is having paid-up capital of 10 Crores in the form of 7,00,000 Equity Shares of ₹ 100 each and 3,00,000 Preference Shares of ₹ 100 each. Lakhan Private Limited is holding 3,00,000 Equity Shares and 3,00,000 Preference Shares in Ram Private Limited.

As in the given problem it is not clear that whether Preference Shares are having voting rights or not, it can be taken that there is no voting right with these shares.

On the basis of provisions of Section 2(87) and facts of the given problem, Lakhan Private Limited is holding 3,00,000 Equity Shares of total equity paid up share capital of Ram Private Limited. Therefore, as Lakhan Private Limited does

not exercises or controls more than one-half of the total voting power in Ram Private Limited, Ram Private Limited is not subsidiary of Lakhan Private Limited.

Question 8

Is it correct to say that a company being an artificial person cannot own property and cannot sue or be sued? Explain with reference to the provisions of Companies Act, 2013.

Answer

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.

Question 9

Jagannath Oils Limited is a public company and having 220 members of which 25 members were employee in the company during the period 1st April, 2006 to 28th June 2016.

They were allotted shares in Jagannath Oils Limited first time on 1st July, 2007 which were sold by them 1st August, 2016. After sometime, on 1st December, 2016, each of those 25 members acquired shares in Jagannath Oils Limited which they are holding till date. Now company wants to convert itself into a private company. State with reasons:

Whether Jagannath Oils Limited is required to reduce the number of members.

Would your answer be different if above 25 members were the employee in Jagannath Oils Limited for the period from 1st April, 2006 to 28th June, 2017?

Answer

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

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company.
 - (I) Following the provisions of Section 2(68), 25 members were employees of the company but not during present membership which was started from 1st December 2016 i.e. after the date on which these 25 members were ceased to the employee in Jagannath Oils Limited. Hence, they will be considered as members for the purpose of the limit of 200 members. The company is required to reduce the number of members before converting it into a private company.
 - (II) On the other hand, if those 25 members were ceased to be employee on 28th June 2017 ,they were employee at the time of getting present membership. Hence, they will not be counted as members for the purpose of the limit of 200 members and the total number of members for the purpose of this sub-section will be 195. Therefore, Jagannath Oils Limited is not required to reduce the number of members before converting it into a private company.

Question 10

Mani car Limited has allotted equity shares with voting rights to Nani car Limited worth 10 Crores and issued Non- Convertible Debentures worth 30 Crores during the Financial Year 2017-18. After that total Paid-up Equity Share Capital of the company is 100 Crores and Non –Convertible Debentures stands at 150 Crores.

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

Answer

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 share capital, or control of business decisions under an agreement.

The term "Total Share Capital", means the aggregate of the-

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital.

In the given case, as Mani car Ltd. Has allotted equity shares with voting rights to Nani car Limited of Rs. 10 crores, which is less than requisite control of 20% of total share capital (i.e.100crore) to have a significant influence of Nani car Ltd. Since the said requirement is not complied, therefore Mani car Ltd. And Nani car Ltd. are not associate companies as per the Companies Act, 2013.

Further holding / allotment of non-convertible debentures has no relevance for ascertaining significant influence. Hence the issue of non-convertible debentures will not make both the companies Associate Company.