

INTRODUCTION TO CORPORATE LAW

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Company Law..

- ▣ A company as an entity has several distinct features which together make it a unique organization.
- ▣ The present law governing the setting up of companies is the Companies Act 2013 which was amended in May 2015

The following are the important features of a company :-

1. **Separate Legal Entity:**

- ▣ Once incorporated a company becomes a separate legal entity as compared to its members.
- ▣ Under the eyes of Law, the company is different and distinct from its members
- ▣ It has its own name and its own seal, its assets and liabilities are separate and distinct from those of its members.
- ▣ The company can own property, incur debt, borrow money, have a bank account, give jobs to people, enter into contracts and sue and get sued separately

Company Law..

2. **Limited Liability**

- ▣ The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him.
- ▣ A member is liable to pay only the uncalled money due on shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets.

3. **Perpetual Succession:**

A company does not die or cease to exist unless it is specifically wound up or the task for which it was formed has been completed.

- ▣ Membership of a company may keep on changing from time to time but that does not affect life of the company.
- ▣ Death or insolvency of member does not affect the existence of the company

Company Law..

4. **Separate Property:**

- ▣ A company is a distinct legal entity and the company's property is its own.
- ▣ A member cannot claim to be owner of the company's property during the existence of the company.

5. **Transferability of Shares:**

Shares in a company are freely transferable, subject to certain conditions,

- ▣ Thus no share-holder is permanently affiliated to a company.
- ▣ When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

Company Law..

6. Common Seal

- ▣ Before the Company Law Amendment made in May 2015 common seal was mandatory at the time of incorporation of a company
- ▣ However the 2015 amendment has made it non-mandatory
- ▣ As the company is an artificial person it does not have a physical presence, as a result of this it acts through its Board of Directors for carrying out its activities and entering into various agreements.
- ▣ In such cases the contracts must be under the seal of the company, if any.

Company Law..

7. Capacity to sue and being sued

- ▣ A company can sue or be sued in its own name as distinct from its members

8) **Separate Management:**

A company is administered and managed by its managerial personnel i.e. the Board of Directors.

- ▣ The shareholders are simply the holders of the shares in the company and may not necessarily be managing the company.
- ▣ Companies have directors ranging from one to fifteen, the maximum of fifteen directorships can be increased if the company passes a special resolution

Company Law..

Distinction between Company and Partnership

- ▣ Partnership firm is sum total of persons who have come together to share the profits of the business carried on by them or any of them.
- ▣ It does not have a separate legal entity.
- ▣ A Company is association of persons who have come together for a specific purpose.
- ▣ The company has a separate legal entity as soon as it is incorporated under law.
- ▣ Liability of the partners is unlimited.
- ▣ However, the liability of shareholders of a limited company is limited to the extent of unpaid share or to the tune of the unpaid amount guaranteed by the shareholder.

Company Law..

- ❑ The property of the firm is owned by the partners and they are collectively entitled to it.
- ❑ In case of a company, the property is owned by the company and not its members.
- ❑ A partner cannot transfer his stake in the partnership firm unless all other partners agree
- ❑ In case of a company, shares may be transferred without the permission of the other members, in absence of provision to contrary in articles of association of the company.
- ❑ In case of partnership, the number of members must not exceed 100 (however this cap of 100 is not applicable if it is formed by professionals who are governed by special Acts (e.g. Chartered Accountants, Advocates etc)
- ❑ A Public company may have as many members as it desires subject to a minimum of 7 members.
- ❑ Whereas a Private company cannot have more than 200 members.

Company Law

- ▣ There must be at least 2 members in order to form a partnership firm.
- ▣ The minimum number of members necessary for a public company is seven and two for a private company, in the case of a “*One Person Company (OPC)*” only one member is needed
- ▣ In case of a partnership, unanimity is needed for any decision whereas in the case of a company decision approved by the majority prevails.
- ▣ On the death of any partner, the partnership is dissolved unless there is provision to the contrary.
- ▣ On the death of the shareholder the company's existence does not get terminated.

Company Law

Types of Companies

- ▣ A company can be a **public** or a **private** company and could have limited or unlimited liability.
- ▣ A company can be limited by shares or by guarantee.
- ▣ In the former, the personal liability of members is limited to the amount unpaid on their shares while in the latter, the personal liability is limited by a pre-decided nominated amount.
- ▣ For a company with unlimited liability, the liability of its members is unlimited
- ▣ The most prevalent form of large business enterprises is a **company incorporated with limited liability**.
- ▣ Companies limited by guarantee and unlimited companies are very rare (*Cricket Club of India* is a company limited by guarantee)

Company Law

- ▣ According to the Act a private company shall by its Articles
 1. restricts the right of transfer of shares
 2. limits the number of its members to 200, (however in the case of “One Person Company-OPC” there can be only one member)
 - ▣ Prohibits any invitation to the public to subscribe for any securities of the company
 - ▣ It should have a minimum of 2 directors (In the case of a OPC there shall be at least one director)
- (The minimum capital requirement of Rs. 1 lakh has been done away with vide amendment made in May 2015)

One Person Company

- ▣ *One Person Company (OPC) is a new concept introduced by the Companies Act 2013*
- ▣ *OPC means a company which has only one member*
- ▣ OPC is classified as a Private Company for all the legal purposes with only one member.
- ▣ All the provisions dealing with the private company are applicable to an OPC, unless otherwise expressly excluded
- ▣ The member of an OPC has to nominate a nominee with the nominee's written consent, and file it with the Registrar of Companies (RoC).
- ▣ This nominee in the event of death or in event of any other incapacity, shall become a member of an OPC.
- ▣ Only a natural person who is an Indian citizen and resident in India would be eligible to set up OPCs

Company Law

- ❑ The member of an OPC at any time can change the name of the nominee providing a notice to the RoC in such manner as prescribed.
- ❑ On account of death of a member, the nominee is automatically entitled for all shares and liabilities of OPC
- ❑ An OPC is incorporated as a private limited company where there is only one member and prohibition in regard to invitation to the public for subscription of the securities of the company
- ❑ An OPC is required to give a legal identity by specifying a name under which the activities of the business could be carried on.
- ❑ The words 'One Person Company' should be mentioned below the name of the company, wherever the name is affixed, used or engraved.
- ❑ It should have at least one director and the maximum number of directors allowed is fifteen

Company Law

According to the Act a **public company** is a company which is not a private company furthermore

- I. It should have a minimum of 7 members
- II. There is no limit on the number of members it can have
- III. It should have a minimum of 3 directors

(The minimum capital requirement of Rs. 5 lakhs has been done away with vide amendment made in May 2015)

- ▣ Private company which is a subsidiary of a public company shall be deemed to be a public company regardless of its status as private company by virtue of its Articles of Association and thus will be subject to requirements applicable to Public companies

Company Law

Companies with Charitable Objects (Section 8 Companies)

- ▣ Under the law the name of a public limited company must end with the word 'Limited' and the name of a private limited company must end with the word 'Private Limited'
- ▣ But there is an exception given under the law, according to this the Central Government may allow companies to remove the word "Limited / Private Limited" from the name if the following conditions are satisfied
 - i. The company is formed for promoting commerce, sports, science, art, religion, charity or other socially useful objects
 - ii. The company does not intend to pay dividend to its members but apply its profits and other income in promotion of its objects

Company Law

Foreign Company

Foreign company” means any company or body corporate incorporated outside India which —

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

Associate Company

- ▣ Associate Company in relation to another company, means a company in which that other company has a significant influence and includes a joint venture company, (significant influence” means control of at least twenty per cent. of total share capital, or control of business decisions)

Company Law

Holding and Subsidiary Companies

- ▣ A company shall be deemed to be subsidiary of another company if
 - I. That other company controls the composition of its board of directors ; or
 - II. the holding company exercise or control more than half of the total share capital either at its own or together with one or more of its subsidiary companies
 - III. The control in this context means that the holding company has the power at its discretion to appoint or remove all or majority of directors of the subsidiary company without consent or concurrence of any other person. It also includes the right to control the management /policy decisions of the company
- ▣ If Company Y is subsidiary of the Company X and Company Z is subsidiary of Company Y, then Company Z will be considered as a subsidiary of Company X (subsidiary by chain concept)

Company Law

- ▣ Private company which is a subsidiary of a public company shall be deemed to be a public company regardless of its status as private company by virtue of its Articles of Association

Government Companies

- ▣ Any company in which not less than 51% of the paid up share capital is held by the Central Government or any State Government or partly by the Central Government and partly by the one or more State Governments and includes a company which is a subsidiary of a government company.
- ▣ Government Companies are also governed by the provisions of the Companies Act.

Company Law

- ▣ However, the Central Government may direct that certain provisions of the Companies Act shall not apply or shall apply only with such exceptions, modifications and adaptations as may be specified to such government companies.

Producer Companies

- ▣ This is a hybrid of a cooperative society and a private limited company
- ▣ The new type is termed as ‘Producer Company’, to indicate that only certain categories of persons can participate in the ownership of such companies.

Company Law

- ▣ The members have necessarily to be ‘primary producers,’ i.e., persons engaged in an activity connected with, or related to, primary produce of agriculture including animal husbandry, horticulture, floriculture
- ▣ The companies shall be termed as limited and the liability of the members will be limited to the amount, if any, unpaid on the shares.
- ▣ On registration, the producer company shall become as if it is a private limited company with the significant difference that a minimum of two persons cannot get them registered (10 producer members needed)
- ▣ The provision relating to a minimum paid-up capital of Rs. 1 lakh will not apply and the maximum number of members is not limited

Company Law

Small Company

- ▣ Small company'' means a company, other than a public company, whose paid-up share capital does not exceed Rs 50 lakhs
(Ministry of Corporate Affairs-MCA can prescribe any higher amount than Rs. 50 lakhs however the amount so prescribed shall not be more than Rs. 5 crores) and
- ▣ Whose turnover as per its last profit & loss account does not exceed Rs. 2 crores or such higher amount as may be prescribed by MCA (but this amount shall not be more than Rs. 20 crores)
- ▣ Small Company cannot be a holding or subsidiary company
- ▣ Small Company cannot be a company or a body corporate governed by a special Act , Section 8 companies etc
- ▣ The Companies Act provides flexibility to small companies and OPC with respect to holding of meeting, filing of financial statements etc

Company Law

Dormant Company

- ▣ Where a company is formed and registered under 2013 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 ROC to obtain status as a dormant company
- ▣ Such a company gets some exemptions from complying with certain provisions
- ▣ Dormant Company is a very important concept under the New Companies Act of 2013

Company Law

- ▣ There are number of Companies in India that are either incorporated for future project or hold only assets or IPRs and are yet to carry out the operations or are in-operational for substantial period.
- ▣ Due to the nature of business of these types of Companies, they were not in operation for the time being.
- ▣ Earlier, there was no relaxation under the law to treat them at a different footing than the active Companies of the same class.
- ▣ They were required to file forms as usual, hold board meetings at prescribed intervals

Company Law

Disadvantages of Incorporation

- ▣ It involves lot of formalities and expenses, various returns and documents have to be filed with the Registrar of Companies (ROC)/other authorities etc
- ▣ It involves loss of privacy as many of the returns, resolutions which will be filed with ROC is open to public scrutiny
- ▣ Members of a company cannot have effective control over its working as in partnership or proprietary business
- ▣ The law provides for a detailed winding up procedure which is very cumbersome and expensive compared to other organisations like firms

Company Law..

- ▣ A company has greater public accountability and thus it cannot go against public interest
- ▣ Few people with business background or with enterprising character can effectively control the entire business with disproportionately low percentage of financial stake, Satyam was controlled by the Raju family with about 3 % stake
- ▣ Since the control of the company is in the hands of few professionals there is always a chance of defrauding the shareholders and creditors

Company Law

Body Corporate

- ▣ Body Corporate/ Corporation means an association of persons formed under some statute which has perpetual succession, common seal and having a legal entity different from the members constituting it
- ▣ It also includes a company incorporated outside India
- ▣ The expression body corporate is wider than the word company
- ▣ This includes all public financial institutions like IFCI, UTI, LIC, NABARD etc, companies incorporated outside the country etc, however it does not include a co-operative society

Lifting the Corporate Veil

- ▣ Piercing the corporate veil describes a legal decision to treat the rights or duties of a corporation as the rights or liabilities of its shareholders or directors.

Company Law

- ▣ Usually a company is treated as a separate legal person, which is solely responsible for the debts it incurs and the sole beneficiary of the credit it is owed.
- ▣ Common law countries (countries like India, U.K., Australia, Canada, USA) usually uphold this principle of separate personhood, but in exceptional situations may "pierce" or "lift" the corporate veil.
- ▣ The logic behind this is probably that the law will not allow the corporate form to be misused just to defraud the general public.
- ▣ If the court feels that there are certain circumstances in which the corporate personality is being misused it will lift the corporate veil and expose the true character and nature

Company Law..

Following are the Circumstances in which Court may lift the corporate veil

- ▣ Reduction of membership- if at any time the number of members of company is reduced below the statutory minimum and the company carries on business for more than 6 months with the reduced number, then every person who carries on business after the 6 months shall be individually liable for the debts of the company
- ▣ A holding company is required to disclose to its members the accounts of its subsidiaries
- ▣ If any investigation is going on for allegations pertaining to mismanagement then such inspector appointed for that purpose may also investigate into the affairs of another company belonging to the same management/group

Company Law...

- ▣ Fraud-The courts will generally lift the corporate veil when it feels that fraud could be perpetrated behind the veil

Case law: *Gilford motor company ltd v. Horne*

- ▣ In this case Mr. Horne was employed with The Gilford motor company and his employment contract provided that he could not solicit the customers of the company.
- ▣ To get over this limitation he incorporated a limited company in his wife's name and solicited the customers of the company.
- ▣ The company brought an action against him and the Court found that "the company was formed as a device/stratagem, in order to mask the effective carrying on of business of Mr. Horne"

Company Law...

Group Companies

- ▣ Sometimes in the case of group of enterprises the principle of separate legal entity may not be adhered to and the court may lift the veil in order to look at the economic realities of the group

Enemy character

- ▣ In times of war the court shall lift the corporate veil to determine the nature of shareholding as it did in the Daimler case where German shareholders held the shares of an English company during the time of world war 1.

Tax

- ▣ Tax legislations may provide for lifting of the corporate veil.
- ▣ The courts are prepared to disregard the separate legal personality of companies in case of tax evasions or liberal schemes of tax avoidance without any necessary legislative authority.

Company Law

Conversion of Private Company into Public company

- ▣ Conversion by default: when a private company makes a default in complying with the statutory requirements it will become a public company automatically
- ▣ Conversion by Choice : A private company may become a public company by its own choice by taking the following measures
 1. Private company which wants to convert into a public company has to pass a special resolution so as to delete from its articles the provisions relating to private companies like share transfer restrictions
 2. If the number of members is less than seven it must be increased to seven
 3. If the number of directors is less than three the number should be increased to three

Company Law...

4. After complying with all the abovesaid conditions the documents have to be filed with Registrar of Companies

Conversion of Public Company into a Private Company

1. Public company which wants to convert into a private company has to pass a special resolution so as to add in its articles the provisions relating to private companies
2. Changing the name by adding the word private
3. Any change in the articles of a company which has the effect of converting a public company into a private company shall take effect only **if it is approved by the National Company Law Tribunal (NCLT)**

Company Law

Promotion of Companies

- ▣ It covers the entire process by which a company is brought into existence.
- ▣ It commences with the conceptualization of the birth a company and determination of the purpose for which it is to be formed.
- ▣ The persons who conceive the company and bring the initial funds are known as the promoters of the company.
- ▣ The promoters enter into preliminary agreements with vendors and take steps for the preparation, advertisement and the circulation of prospectus and placement of capital.
- ▣ However, a person who merely acts in his professional capacity on behalf of the promoter and who is paid by the promoter is not a promoter

Company Law

The promoters have certain basic duties towards the company formed

- ▣ He must not make any secret profit out of the promotion of the company.
- ▣ He must make full disclosure to the company of all relevant facts including to any profit made by him in transaction with the company.

Promoters may be compensated by the company for his/her efforts in the following ways

- ▣ The company may to pay some remuneration for the services rendered.
- ▣ The promoter may make profits on transactions entered by him with the company after making full disclosure to the company and its members.
- ▣ The promoter may be given commission on shares sold and he may be given an option to buy further shares in the company.

Company Law

Incorporation by Registration

- ❑ The promoters have to decide on the type of company which they want to form i.e a public company or a private company or an unlimited company, etc
- ❑ Thereafter they have to prepare the documents for incorporation of the company.
- ❑ In this connection the Memorandum of Association and Articles of Association (MoA & AoA) are crucial documents to be prepared.

Memorandum of Association of a company :

- ❑ It is widely regarded as the **constitution or charter** of the company and contains the powers of the company.
- ❑ Without the Memorandum of Association no company can be registered

Company Law

Contents of Memorandum

1. Name clause

- ▣ The name of the company has to be mentioned in the name clause.
- ▣ A public limited company must end with the word 'Limited' and a private limited company must end with the words 'Private Limited'.
- ▣ The company cannot have a name which in the opinion of the Central Government is undesirable.
- ▣ A name which is identical with or the nearly resembles the name of another company in existence will not be allowed.
- ▣ A company cannot use a name which is prohibited under the Names and Emblems (Prevention of Misuse Act, 1950 or use a name suggestive of connection to government or State patronage.

Company Law...

2. **Registered Office clause**

- ▣ The state in which the registered office of company is to be situated has to be mentioned here.
- ▣ Any change in the registered office must also be intimated to the Registrar of Companies.
- ▣ The registered office of the company is the official address of the company where the statutory books and records must be normally be kept.
- ▣ Every company must affix or paint its name and address of its registered office on the outside of the every office or place at which its activities are carried on in.

Company Law

3. Objects clause

- ▣ This clause is the most important clause of the company as it specifies what all activities the company can do and what all it cannot do
- ▣ The company cannot carry on any activity which is not authorised by its MoA.
- ▣ It shall contain the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof
- ▣ Thus the clause deals with the principal object and the incidental objects

Company Law

4. Capital clause

- ▣ The amount of share capital with which the company is to be registered divided into shares must be specified giving details of the number of shares and types of shares.
- ▣ A company cannot issue share capital greater than the maximum amount of share capital mentioned in this clause without altering the memorandum

5) Association clause

- ▣ A declaration by the persons for subscribing to the Memorandum that they desire to form into a company and agree to take the shares place against their respective name must be given by the promoters
- ▣ In the case of a OPC the name of the person who, in the event of death of the subscriber, shall become the member of the company shall also be given

Company Law

6. Liability clause

- ▣ A declaration that the liability of the members is limited in case of the company limited by the shares or guarantee must be given.
- ▣ A declaration that the liability of the members is unlimited in case of the unlimited companies must be given.
- ▣ The effect of this clause is that in a company limited by shares, no member can be called upon to pay more than the uncalled amount on his shares.
- ▣ If his/her shares are already fully paid up, he has no liability towards the company.

Company Law

- ▣ Companies can amend the provisions in the MoA by **passing a special resolution** and after complying with the procedure specified in the Act

Change of registered office

- ▣ If the new office is located in the same city/town then it can be done by passing a special resolution
- ▣ If the new office is in a different city in the same state then a special resolution has to be passed by the company along with confirmation from the Regional Director of the Registrar of Companies
- ▣ If the new office is in a city in a different state then a special resolution has to be passed by the company along with approval from the Central Government is needed.

Company Law

- ▣ Company's name can be changed by passing a special resolution and getting approval from central government
- ▣ Change of object clause in the Memorandum is also permitted by a special resolution in general cases
- ▣ However in the case of listed companies, where money from public has been raised through prospectus and still the company has any unutilized amount out of the money so raised, then it shall not change its objects for which it raised the money **unless** a special resolution is passed by the company **and** —
- ▣ *the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations of SEBI*

Doctrine of Ultra Vires

Doctrine of Ultra Vires

- ▣ Any transaction which is outside the scope of the powers specified in the objects clause of the MoA and are not reasonable incidentally or necessary to the attainment of objects is ultra-vires the company and therefore void.
- ▣ No rights and liabilities on the part of the company arise out of such transactions and it is a nullity even if every member agrees to it

Consequences of an ultravires transaction

- ▣ The company cannot sue any person for enforcement of any of its rights.
- ▣ No person can sue the company for enforcement of its rights.
- ▣ The directors of the company may be held personally liable to outsiders for an ultra vires act

Company Law

Articles of Association

- ▣ The Articles of Association (AoA) contain the rules and regulations of the internal management of the company.
- ▣ It is essentially a contract between the company and its members and also between the members themselves that they shall abide by the rules and regulations of internal management of the company specified in the AoA.
- ▣ It clearly specifies the rights and duties of the members and directors.
- ▣ The provisions of the AoA **must not** conflict with the provisions of the MoA
- ▣ However if there is any conflict between MoA and AoA then MoA will prevail.

Company Law

The important aspects dealt under AoA include :-

- ▣ Powers, duties, rights and liabilities of members
- ▣ Powers, duties, rights and liabilities of Directors
- ▣ Voting powers of members, etc
- ▣ Rules for Meetings of the Company , including quorum
- ▣ Borrowing powers of the company
- ▣ Dividends
- ▣ Calls on shares
- ▣ Transfer of shares
- ▣ Alteration of capital
- ▣ Buyback of shares

Company Law

- ❑ The AoA may contain *provisions for entrenchment* 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
- ❑ Entrenchment Provision has been introduced by the Companies Act 2013
- ❑ Such Entrenchment Provisions sub-section (3) shall only be made either at the time of company's 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

Company Law

- ▣ An entrenchment provision protects the interests of minority shareholders by giving them a right to consent for amendments of certain changes in AoA
- ▣ This will be of great advantage to investors like Private Equity investors who can insist on specified Articles which cannot be altered without obtaining permission from them
- ▣ The investors would now be better empowered to enforce agreed upon rights on specific matters by inclusion of Entrenchment Provisions in the AOA.
- ▣ Earlier also such provisions were included by companies in their AoA but the Companies Act 1956 was silent on the validity of such provisions
- ▣ The new Act has thus given statutory recognition to such practices

Company Law

Alteration of Articles of Association :

- ❑ A company can alter any of the provisions of its AoA, subject to provisions of the Companies Act and subject to the conditions contained in the MoA of the company
- ❑ A company, by special resolution at a general meeting of members, alter its articles provided that such alteration does not have the effect of converting a public limited company into a private company unless it has been approved by the National Company Law Tribunal (NCLT)

Doctrine of Constructive Notice & Indoor Management

- ❑ Both memorandum of association and the articles of association are public documents and any person may inspect them

Company Law

- ❑ As a consequence, the knowledge about the contents of the memorandum and articles of a company is not necessarily restricted to the members of the company alone
- ❑ Once these documents are registered with the registrar of companies, these become public documents and are accessible by any members of the public by paying the requisite fees
- ❑ Thus information about the contents of memorandum and articles is said to be within the knowledge of both members and non-members of the company.
- ❑ Thus every person dealing with the company is presumed to have read and understood the contents of the registered documents of the company.

Company Law

- ▣ This is known as the rule of constructive notice.
- ▣ Thus the doctrine or rule of constructive notice is a presumption operating in favour of the company against the outsider.
- ▣ It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires.
- ▣ The doctrine of **indoor management** is an exception to the rule of constructive notice.
- ▣ It imposes an important limitation on the doctrine of constructive notice.
- ▣ According to this doctrine “persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed

Company Law

- ▣ The doctrine of indoor management is also known as the *TURQUAND* rule after *Royal British Bank v. Turquand*.
- ▣ Here the directors of a company issued a bond to Turquand.
- ▣ The directors had the power under the articles to issue such bond provided they were authorized by a resolution passed by the shareholders at a general meeting of the company.
- ▣ But no such resolution was passed by the company.
- ▣ When the case was filed by Turquand, it was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed.

Company Law

- ▣ The rule is based on public convenience and is based on the logic that the internal procedure is not a matter of public knowledge.
- ▣ Even though an outsider is presumed to know the constitution of a company, he may not know what might have taken place within the doors that are closed to him.
- ▣ Thus persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceeding.

The exceptions to the doctrine of indoor management are as under

- ▣ Knowledge of irregularity
- ▣ Utmost negligence
- ▣ Forgery by the party who wants to rely upon this doctrine

Company Law

Types of shares :

- ▣ Shares in the company may be similar i.e they may carry the same rights and liabilities and confer on their holders the same rights, liabilities and duties.
- ▣ There are two types of shares under Indian Company Law
- ▣ *Equity shares* means that part of the share capital of the company which are not preference shares.
- ▣ *Preference Shares* means shares that carry preferential rights in respect of Dividend at fixed amount or at fixed rate and it also carries preferential right in regard to payment of capital on winding up.
- ▣ In other words, preference share capital has priority both in repayment of dividend as well as capital
- ▣ As distinguished from an equity share, a preference share carries voting rights only with respect to matters which directly affect the rights of the preference shareholders

Company Law

- ▣ Equity share capital is divided into;
 - a) Equity share capital With voting right; or
 - b) Equity share capital with differential rights as to voting, dividend or other rights
- ▣ Normally one share carries one vote however in the case of shares with differential rights one share may carry less than one voting right
- ▣ Tata Motors, Gujarat NRE Coke, Pantaloons etc are some of the Indian companies which have offered such shares

Company Law

Director

- ▣ A company can only act through natural persons ,i.e it can only act through human beings forming part of the Director Board
- ▣ A Director is an officer of the company
- ▣ Director as per the provisions of the Act is also considered as an officer in default for the purposes of the offences under the Act
- ▣ Within the board of directors some directors may enter into a contract of employment with the company and they will be called working/whole-time/executive directors
- ▣ Managing and whole-time directors fall in this category
- ▣ As per the new Act all listed companies and certain classes of public companies shall have at least one woman director
- ▣ A person cannot be a Director in more than twenty companies out of which more than ten cannot be public companies

Company Law

- ▣ While some directors just attend the board meetings and do not take part in the day to day affairs of the company , they are referred as non-executive directors
- ▣ Usually the powers of general management are vested with the directors acting collectively, but they delegate some or all of the powers to the executive /whole time directors

Legal Position of Directors

- ▣ The true position of director is that of an agent of the company and he/she does not incur any personal liability in the normal course of their duties
- ▣ Directors are also in the position of trustee of the company

Whole-time Director

- ▣ The term whole-time director is not defined under the Act however it is understood that he is a person who is in whole-time employment of the company

Company Law

Duties of Director

- ▣ Director of a company shall act in accordance with the articles of the company.
- ▣ A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members, its employees, the community and for the protection of environment.
- ▣ A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- ▣ A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

Company Law..

Liability under Companies Act

- ▣ All the directors could be treated as officer in default only when the company does not have a managing director or whole-time director and no director is specified by the board on this regard
- ▣ Thus the company may appoint a Managing Director or whole-time director to look after the day to day management of the company and in the event of any default they become officers in default
- ▣ In the case of non-executive/independent directors they cannot be held liable for any violation because they are not concerned with the day to day management of the company

Company Law

Winding Up

- ▣ Winding up is the process by which all the affairs of a company are shut down
- ▣ To be simple, this process involves the realization of all its assets, paying off all the liabilities and distributing the balance (if any) to its members in proportion to their holdings in the company
- ▣ This entire process is conducted by an administrator called the liquidator
- ▣ A company registered under Companies Act can be closed by way of winding up

Winding Up is divided into two

- ▣ a) Compulsory winding up

Company Law

- b) Voluntary winding up which is again sub-divided into member's voluntary winding up and creditor's voluntary winding up

Circumstances for compulsory winding up

- ▣ Company passing a special resolution so as to be wound up by the NCLT,
- ▣ Company not having the requisite number of members prescribed by the Company's Act
- ▣ Company's failure to pay its debts, (debt has been clearly defined)
- ▣ If the NCLT is of the opinion that it is just and equitable to wind up the company,
- ▣ Default in filing balance sheets, profit and loss account before the Registrar of Companies for a continuous period of 5 years,
- ▣ Company acting against the sovereignty and integrity of India, security of state, public order etc

Company Law

Voluntary winding up:

- ▣ It is again sub classified into **member's voluntary winding up** and **creditor's voluntary winding up**
- ▣ In the former the company is financially solvent whereas in the latter it is not

Corporate Social Responsibility : Companies Act 2013

- ▣ Every company satisfying certain financial criteria has to compulsorily spend at least 2 percent of its average net profit of three preceding financial years on specified CSR activities
- ▣ Such companies have to set up a CSR committee which will formulate the CSR policy of the company and effectively monitor the CSR activities of the company.

Company Law

As per the new Act every company having

- a) net worth of Rs 500 crore or more, or -
 - b) turnover of Rs 1000 crore or more ,or -
 - c) net profit of Rs 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board
- ▣ The CSR committee would comprise of three or more directors, out of which at least one director shall be an independent director

Company Law

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