CHAPTER 1 - PRELIMINARY

DEFINITIONS

1. Private Company [Sec. 2(68)]:

→ Company having minimum paid up share capital (PUSC) of as may be prescribed with following restrictions.

→ T – Restrictions on transferability of shares

→ R – Restriction on membership i.e. Max 200

→ P – Prohibition on issuing prospectus / public issues.



Figure 1 Logo of American Express (India) Pvt. Ltd. - A Private Limited Company

2. Public Company [Sec. 2(71)]:

→ Company other than private company is a public company.

→ Minimum PUSC – may be prescribed

→ A subsidiary of a public ltd. Co. shall be deemed to be a public Co. even when such subsidiary company continues to be a private company in its articles.



Figure 2 Logo of Reliance Industries Limited - A Public Limited Company

3.	Company Limited by Shares [Sec. 2(22)]:
	A registered company whether public or private company having the liability of its members limited by its memorandum to the amount, if any unpaid on shares respectively held by them.
4.	Company Limited by Guarantee [Sec. 2(21)]:
	A registered company having the liability of its members limited by its memorandum to such an amount as the members may respectively undertake by the memorandum to contribute to assets of the company in the event of winding up.
5.	Unlimited Company:
	An unlimited Co. is a Co. not having any limit on the liability of its members. A company registered as an unlimited company may subsequently convert itself as a limited company, subject to the condition that any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the unlimited company before such conversion are not affected by such changed registration.
6.	One Person Company (OPC) [Sec. 2(62)]:
	As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member. The memorandum of One Person Company 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 to become the 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. Such Company is also a Private Company. All the Rules as applicable to a private company shall equally apply to a OPC except for specific provision applicable to OPC.
	Other conditions for One Person Company are as:
•	The memorandum of OPC shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
•	The other person (nominee) 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 along with its Memorandum of Association and Articles of Association
•	Such other person (nominee) may be given the right to withdraw his consent.
•	The member of OPC may at any time change the name of such other person (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.
- Only a natural person who is an Indian citizen *whether resident in India or otherwise* -
  (a) shall be eligible to incorporate One Person Company (OPC;
  (b) shall be a nominee for the sole member of One Person Company (OPC);

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than *120 days* during the immediately preceding financial year.

- A natural person shall not be a member of more than one OPC at any point of time and the said person shall not be a nominee of more than one OPC.
- Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria (as given in point above) within a period of 180 days.
- 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. The procedure of conversion is given in the rules 6 & 7 of Chapter II of the Companies Act, 2013.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact, he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

7. Association not for Profit [Sec. 8]:

The Central Govt may grant such a license if:

→ It is intended to form a company for promoting commerce, art, science, religion, charity or any another useful object.

→ Company prohibits payment of dividend to its members but intends to apply its profits or other

income in promotion of its objects. Such Cos. are called Non-Profit Organisation. These Cos. are registered without the word 'Pvt. Ltd.' or 'Ltd'

→ A firm may be a member of the company registered under this section.

→ A company registered under section 8 shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

→ A company registered under section 8 may convert itself into company of any other kind only after complying with such prescribed conditions.

→ If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable with fine varying from twenty-five thousand rupees to twenty-five lakh rupees and where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

8. Small Company [Sec. 2(85)]:

→ Small company is a new form of private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid-up capital and turnover. In other words, such companies are small sized private companies.

"Small company" means a company, other than a public company -

(i) paid-up share capital of which does not exceed Ten crore rupees or such higher amount as may be prescribed and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed Hundred crore rupees or such higher amount as may be prescribed.

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;

9. Government Company [Sec. 2(45)]:

→ A Govt. co. is one in which min 51% of PUSC is held by Central Govt., or by State Govt. or partly by CG, partly by one or more SG.

→ Explanation. - For the purposes of this clause, the "paid-up share capital" shall be construed as

"total voting power", where shares with differential voting rights have been issued.

→ A subsidiary of a Govt. Co. is also a Govt. Co.

→ Auditor of Govt. Co. is appointed by Comptroller and Auditor General of India. (CAG)

→ Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be prepared within three months of its annual general meeting, and laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

→ Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared within three months of its annual general meeting and laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report, made by the Comptroller and Auditor- General of India.

10. Foreign Company [Sec. 2(42)]:

→ Foreign Co. is a Co. which is incorporated in a country outside India under law of that other Country and has established a place of business in India whether by itself or through an agent, physically or through electronic mode and conducts any business activity in India.

→ Every Foreign Co. which establishes a place of business in India must within 30days of establishment of such place of business, file with ROC of New Delhi.

- A certified copy of Charter, MOA, AOA → in English, if not in English a certified translation thereof.
- Full address of registered or principal office.
- List of directors and secretary of Co's with their names, address, nationality.
- Name and address of person resident in India who is authorized to accept service of documents.
- Full address of principal place of business in India

Rule 2(c) of the Companies (Registration of Foreign Companies) Rules, 2014 defines 'electronic mode' as carrying out electronically based, whether main server is installed in India or not, including but not limited to -

1. Business to business and business to consumer transactions, data interchange and other digital supply transactions;
2. offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India

	or from citizens of India;
3.	financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
4.	online services such as telemarketing, telecommuting, telemedicine, education and information research; and
5.	all related data communication services.
6.	These transactions may be conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.
	→ Sec. 379: If in foreign co. ≥ 50% of PUSC (ESC+PSC) is held singly/ jointly held by: (1) Indian citizen Or (2) Body corporate incorporated in India (3) Such foreign co. will be treated = as if it were a co. incorporated in India.
11.	Holding Company [Sec. 2(46)] & Subsidiary Company [Sec. 2(87)]:
	→ A Company including body corporate will be a holding Co. if it holds more than 50 % of nominal value of total voting rights. → A company will be Holding Co. if it controls the composition of board of directors. → S. Co. of a S. Co. is the S. of H. Co. (S-Subsidiary, H-Holding) → If the H. Co. along-with its S. Co. or S. Cos. holds more than 50 % of Nominal value of Total voting power in another Co., then that another Co. becomes subsidiary of the main holding Co. reason being shares held by the S. Co. are assumed to be held by H. Co.
12.	Producer Company [Sec. 581A]:
	According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act. The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.
13.	Dormant Company [Sec. 455]:
	→ 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.

→ For the purpose of this definition, "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 record

14. 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

15. Book and Paper and Book or Paper include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

As per the Companies (Specification of definitions details) Rules, 2014, "e- Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;

"Books of account" includes records maintained in respect of -

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

Section 148 of the Companies Act, 2013 authorises Central Government to Specify Audit of Items of Cost in Respect of Certain Companies.

16. Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

Provided that -

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the

	Reserve Bank of India, issued by a company, shall not be treated as debenture
17.	Document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
18.	Employees' stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
19.	Financial year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:2
	Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year;
20.	Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
21.	Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely: -
	(i) whole-time director (WTD);
	(ii) key managerial personnel (KMP);
	(iii) where there are no key managerial personnel, such director or directors as specified by the

Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

Example: In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

22. Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

23. Turnover means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

24. Listed company means 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.
	According to rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely: -
(a)	Public companies which have not listed their equity shares on a recognized stock exchange but have listed their -
	(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
	(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
	(iii) both categories of (i) and (ii) above.
(b)	Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
(c)	Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.
25.	Relative Sec.2(77): Relative, with reference to any person, means anyone who is related to another, if
	➢ they are members of a Hindu Undivided Family;
	➢ they are husband and wife; or
	➢ one person is related to the other in such manner as may be prescribed
	A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely: -
	➢ Father: Provided that the term 'Father' includes step-father.
	➢ Mother: Provided that the term 'Mother' includes step-mother.
	➢ Son: Provided that the term 'Son' includes step-son.
	➢ Son's wife.
	➢ Daughter.
	➢ Daughter's Husband
	➢ Brother: Provided that the term 'Brother' includes step-brother.
	➢ Sister: Provided that the term 'Sister' includes step-sister.

26.	Financial Statement Section 2(40)
	"Financial Statement" in relation to a company, includes—
	(i) a balance sheet as at the end of the financial year;
	(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
	(iii) cash flow statement for the financial year;
	(iv) a statement of changes in equity, if applicable; and
	(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):
	Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.
	The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.
27.	Manager Section 2(53)
	Manager means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
28.	Managing Director Section 2(54)
	Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called
	For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:
	• the power to affix the common seal of the company to any document or
	• to draw and endorse any cheque on the account of the company in any bank or
	• to draw and endorse any negotiable instrument or
	• to sign any certificate of share or to direct registration of transfer of any share,

shall not be deemed to be included within the substantial powers of management;

29. Free Reserves Section 2(43)

Free Reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

30. Associate Company Section 2(6)

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.

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 control of the arrangement have rights to the net assets of the arrangement;

CHAPTER 2-INCORPORATION OF COMPANY

CONCEPTS

Question 1

Define Company and its characteristics.

Answer

Sec. 2(20) of Companies Act, 2013 Company is an organization formed and registered under the act or any of the previous companies' laws.

Characteristics:

1. Separate legal entity:
   - → In Salomon vs. Salomon & Co. Ltd.: It was held that a co. is a separate legal entity in the eyes of law.
   - → The property of the co. is separate from the property of the members/directors.
   - → Members/directors can contract with the company but they cannot be held personally liable for the debts of the company.
   - → A company can sue others & be sued only in its own name. i.e. even if a member/director hold almost the entire share capital, outsiders can sue only the company not the member/director. Member/director are not the agents of the company.
   - → Members cannot participate in the day-to-day management of the company.
   - → They have to elect the BOD (Board of Directors) who have ultimate control over the affairs of the company.
   - → There is a fictional veil between the members and the BOD which is called the corporate veil.

2. Co. has perpetual succession
   - → It is an artificial person formed by law and therefore it can be wound only as per the law.
   - → Death, insanity, insolvency etc. of any member does not affect the existence of the company.
   - → Perpetual existence means that the company continues to exist irrespective of any change in the composition of its members.
   - → It is generally said that "members may come and go but the company goes on forever." Thus, a company never dies.

3.	Extent of liability of members depends upon the nature of the company
	→ IRO (in respect of) a Company limited by shares: The liability is limited to the extent of amount unpaid on the shares.
	→ IRO a Company limited by guarantee: The liability is limited to the amount guaranteed by every member.
	→ IRO a Company limited by guarantee and having share capital: The Liability is limited to the aggregate of the amount unpaid on shares and the amount guaranteed.
	→ IRO an unlimited company: every member is liable to contribute to the assets of company until all the debts of the company are paid in full.
4.	The common seal is the official signature
	 Figure 1 Sample Picture of Common Seal
	→ It should be affixed on all formal documents like share certificates, debenture certificates, loan agreements, property agreements, negotiable instruments, etc.
	→ Any document bearing the common seal is deemed to be signed by the company.
	→ A special person is authorized to use the common seal.
	→ The common seal should contain the name of the place where it is used.
	→ IRO co. having business in foreign countries, an exact copy of the common seal should be maintained.
	→ Now, a company may have common seal.
5.	Transferability of shares (instruments) depends upon the nature of the company
	→ IRO (In respect of) public co., shares are freely transferable whereas IRO private co. there is a restriction.
	→ Shares are moveable property (Sec. 44 of Companies' Act, 2013)

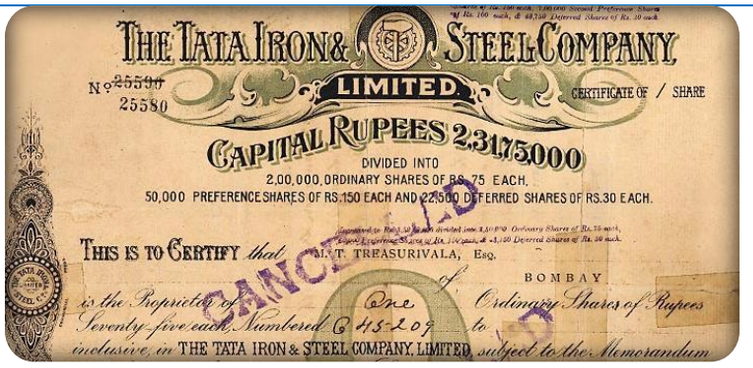

THE TATA IRON & STEEL COMPANY
LIMITED
No 25580
CERTIFICATE OF / SHARE
CAPITAL RUPEES 2,31,75,000
DIVIDED INTO
2,00,000 ORDINARY SHARES OF RS. 75 EACH,
50,000 PREFERENCE SHARES OF RS.150 EACH AND 22,500 DEFERRED SHARES OF RS.30 EACH.
THIS IS TO CERTIFY that M. T. TREASURIVALA, Esq. of BOMBAY
is the Proprietor of One Ordinary Shares of Rupees
Seventy-five each, Numbered Q 45207 to
inclusive, in THE TATA IRON & STEEL COMPANY, LIMITED, subject to the Memorandum
CANCELLED

Figure 2 Sample Share Certificate of The Tata Iron & Steel Company

6. Co. is an artificial person but managed by natural persons in BOD.

7. Legal position

A company can sue others in its own name & can be sued in its own name only.

TEST YOURSELF

A. Mr. S had a sole proprietary business. He transferred all his assets and liabilities to a co. formed by him called S ltd. His family members were the other co members. Mr. S was a member, employee, director & creditor in the co. The co. ran into losses and eventually went into liquidation. The unsecured creditors claim was ₹ 25 lakh & the assets realized ₹ 10 lac. Mr. S held debenture worth ₹ 10 lakh. The amount of ₹ 10 lakh was paid to Mr. S. unsecured creditors called S ltd. a one-man company and contented that the owner cannot owe money to himself. Is the contention valid? Can Mr. S be paid in priority to unsecured creditors?

Ans Salomon vs Salomon Ltd. (Refer Q 1- Point1)

→ Above case Mr. S is member, director, employee and also a secured creditor. His existence as a debenture holder is separate from its existence of the company.

→ Therefore, the contention of the unsecured creditors is invalid & Mr. S has a right to be paid in priority to unsecured creditors.

B. Mr. L was a qualified pilot. He virtually held all shares & he was the only director. He was also, the chief pilot & received salary from the Co. L ltd. He was killed in an air accident while working for the Co. Can Mr. L's widow sue the Co. L ltd. for claiming compensation?

Ans. → Same facts in Lee vs. Lee Air Farming Ltd.

→ In above case.....

→ Mrs. L can claim compensation from L Ltd.

C. ABC Pvt. Ltd. had 5 members only. All the members were going to Mumbai in relation to some business. An accident took place, all of them died. Has the Co. come to an end?

Ans.

→ (Q.1 – pt. 2) - perpetual succession.

→ In above case.....

→ Since the existence of a Co. does not depend upon the life of any/all members of the co. , even on the death of all members. The co. is still in existence. It can come to an end only as per the provisions of the law i.e. liquidation of the co.

Question 2

Corporate veil/ lifting/ piercing of corporate veil? (LOCV)

Answer:

(Q.1-Pt no.1) Saloman vs. Saloman Ltd.: Lifting/ piercing of corporate veil is done only as per statutory provisions/ at discretion of court.

A. LOCV as per statutory provisions:

→ If it appears to the court at the time of winding up of the co. that the intention of the co. was to defraud its creditors/ others, then the court can order that all the directors or officers who are parties to the fraud will be personally liable.

→ Reduction in membership below the statutory limit (2/7) makes all the members personally liable if the business is carried on with the less membership for more than 6 months severally liable for the payment of the whole debts of the company *contracted during that time, and may be severally sued therefor.".*

→ In respect of any ultra vires Act, all directors shall be personally liable.

→ Mis-description of name of the co. by any officer while signing any contract or negotiable instrument shall make him personally liable for the same.

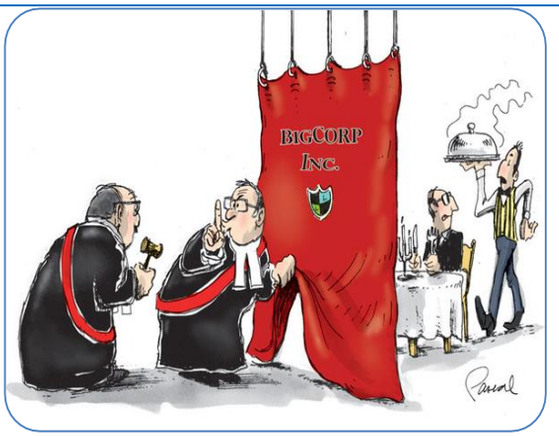


Figure 3 Illustrative image showing Lifting of Corporate Veil

B. LOCV under judicial decisions:

→ The LOCV can be done for prevention of fraud.

→ The LOCV can be done for protection of revenue.

→ The LOCV can be done for checking avoidance of welfare legislations.

→ The LOCV can be done for determining whether the co. is genuine just a sham/ useless/ bogus/ fake.

→ The LOCV can be done for determining the true character of a co. i.e. whether it is an enemy co.

TEST YOURSELF

A. An assessee Mr. D was receiving huge dividend and interest income on certain investments. He formed 4 private companies & transferred all the investments to these pvt.co. The interest income received was well within the exempted limits under the income tax act. These companies did not have any business nor did they have any asset other than these investments. The income received by the co. was diverted to Mr. D as loan which he never repaid. Can the court order that the income of all these Pvt. Co. should be treated as income of Mr. D?

Ans. → Ans. 2, point B, 2 & 4

→ In above case, the only purpose for incorporating these pvt.co. was to evade taxes. The co.= sham. Therefore, the income of these co. = income of the assessee

B. X Ltd. has only 7 shareholders, all the shares are fully paid up. All the shares of one such shareholder sold by the court in an auction and purchased by another shareholder. The company continues to carry on business thereafter. Discuss the liability of the shareholders of

	the co. as per the provisions of the companies Act, 2013.
Ans.	→ Ans. 2-point A, 2
	→ In above case, no. of members has gone below 7, the business is carried on with the reduced membership for more than 6 months.
	→ Therefore, all the members during that time will have unlimited liability for the payment of the whole debts of the company *contracted during that time, and may be severally sued therefor.*
C.	X Ltd. has only 7 shareholders, all the shares are fully paid up. On 30 April 2010, all the shares of X (a shareholder of the co.) were sold to Y (another shareholder of same co.) in an auction by the order of court. Z (a shareholder of the co.) was in USA for business trip since Jan 2010 & was therefore not aware of the developments. The co. continued to carry on the business thereafter. In Dec 2010, co. borrowed a sum of ₹ 25 lakh from unique bank. Later, the co. was wound up and the assets of co. were not sufficient to pay off the liabilities. The bank filed a suit against Y & Z for recovery of loan from them. Decide the liabilities of Y & Z. What if the loan was taken in the month of March 2010?
Ans.	→ Ans.2 point A, 2
	→ In above case, no. of members has reduced below 7.
	→ Y = aware of reduction.
	→ Z was not aware of such reduction as he was out of the India.
	→ Therefore, All members will be personally liable for the debt incurred by the co. after 31.10.2010.
	→ If the loan was taken in March 2010, no one will have personal liability. Co will be held liable.
D.	As per Bonus Act, 1965, the basis of the payment of bonus is the profits earned. A co. was earning huge profits. The co. incorporated a subsidiary co. and transferred some valuable investments to it. The subsidiary co. didn't do any business, had no assets except the assets transferred to it. The subsidiary co. made no profits and therefore no bonus was paid. Can it be said that the concept of corporate veil has been disregarded? Remedial action?
Ans.	→ Ans.2 point B, 3
	→ In above case, LOCV applicable.
	→ The Court should disregard the corporate veil as this concept has been abused in the above case.

The subsidiary co. seems to be formed only for the purpose of reducing liability of bonus as per the Bonus Act, 1965.

→ Therefore, intention is to avoid welfare legislation. The Profits earned by subsidiary co. should be the profits of holding co.

E. A co. was formed in England for the purpose of selling tyres made by the German co. The German co. virtually held the entire share capital of the English co. All the directors were German residents. During the first world war, the English co. commenced an action to recover a trade debt from another English co. Is the concept of corporate veil disregarded?

Ans. → Ans. 2-point B, 5

→ In above case, the co. is an enemy co. since the person controlling the company is enemy and the suit could not be won

F. An employee entered into a contract with his employer that he will not solicit the customers of the employer after leaving employment. But the employee incorporated a co. and he, his wife and one other person were the only member of the co. The co. started soliciting the customers of the employer. Is it a valid reason for LOCV?

Ans. → Ans. 2-point B, 1.

→ In above case, intention = fraud. It is a case of improper conduct.

→ The purpose of incorporating the co. was to solicit customers of the employer which was not allowed.

→ Therefore, LOCV applicable, the co. should be restrained from soliciting the customers of the employer.

Question 3

Explain Private companies

Answer

Sec 2(68) of Companies Act, 2013 A private company is a company with minimum PUSC of as may be prescribed by Central Govt. The PUSC could consist of ESC/ PSC/ both.

(PUSC – Paid Up Share Capital)

The AOA of a Private Company contain following restrictions:

Memory Map	TRP
1. Restriction on Transferability of shares. 2. Max. 200 members are allowed. Employee – members & ex-employee members are excluded. Joint holders are counted as single member. 3. Prohibition on public issue.	

Question 4

How is transferability of shares restricted in a pvt. Co.?

Answer

Restrictions on transferability of shares is regulated in following manner:

→ Member has to communicate in writing with BOD before transfer his shares.

→ BOD may compel the member to transfer his shares to a particular member only.

→ The co. and auditor may decide the transfer price.

Question 5

Explain Public company

Answer

Sec. 2(71) of Companies Act, 2013:

→ A public co. is not a Pvt. Co.

→ A public co. is a company with min. PUSC of as may be prescribed by CG.

→ The PUSC could consist of ESC/PSC/both.

→ Subsidiary of public co. is public co.

→

Question 6

Conversion of Pvt. Co. into public co. by choice?

Answer

Conversion of Private Company into a Public Company

The Companies Act 2013 vide section 14 lays down the provisions for the conversion of a Private Company into a Public Company and vice versa.