Subject :

Company Law

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SUBJECT TOPICS

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2. CHARACTERISTICS OF A COMPANY.
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17. OPPRESSION AND MISMANAGEMENT.
18. CORPORATE SOCIAL RESPONSIBILTY.

Introduction

Companies play very vital role in any economy. Previously the Companies Act, 1956 primarily regulated the formation, financing, functioning and winding up of companies. The Act prescribes regulatory mechanism regarding all relevant aspects including organisational, financial and managerial aspects of companies. With the objective of meeting the changed national, international and economic environment and to accelerate the expansion and growth of the economy in India. The Act is armed with 470 sections and was passed to overhaul the previous companies law, the Companies Act, 1956 which had 658 sections.

To have a modern legislation for growth and regulation of corporate sector in India. The act was enacted in light of the changing economic and business environment both domestically and globally to facilitate business-friendly corporate regulations, improve corporate governance norms, enhances accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors. The objective of the Companies Act, 2013 is to provide business friendly corporate regulation/ pro-business initiatives; e-Governance Initiatives; good corporate governance and CSR; enhanced disclosure norms; enhanced accountability of management; stricter enforcement of laws; audit accountability; Protection for minority shareholders; Investor protection and Shareholder activism; Robust framework for insolvency regulation; and Institutional structure.

In the series the Companies Act, 2013 has also been amended to extend relief to the business entities governed under the Companies Act, 2013.

Further Company Law Committee submitted its report on November 14, 2019. On the basis of this report, the Finance Ministry has proposed some major amendments in the Companies Act, 2013 under the Companies Amendment Bill, 2020 which was introduced in Lok Sabha on March 17, 2020. Later it was passed by the Lok Sabha on September 19, 2020 and by the Rajya Sabha on September 22, 2020. Finally on September 28, 2020, the Companies (Amendment) Act, 2020 received the assent of Hon'ble President of India.

Some Highlights of The Companies (Amendment) Act, 2020

- Reduction in Penalties: The Companies (Amendment) Act, 2020 removes the imprisonment for certain offenses, substitutes fine by penalty in and reduces amount of payable as penalty across the board.

- The Companies (Amendment) Act, 2020 has omitted certain offences which relate to the non-compliance of orders of the NCLT, i.e. orders with respect to variation of shareholders rights, rectification of register of members, publication of order of the NCLT for reduction of Share Capital, redemption of debentures on maturity or payment of interest etc. Further, offences provided under Section 342(6) of the Companies Act, 2013 related to the penal provisions w.r.t.noncooperation by the Liquidator or any present and past officer of the Company, is omitted, leaving it to the prosecuting court to mandate cooperation.

- Relaxing the framework for Corporate Social Responsibility Under the Companies Act, 2013. The Companies (Amendment) Act, 2020 exempts companies with a CSR liability of up to Rs. 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.

- Change in Definition of Listed Company under Section 2 (52) Prior to the Amendment Act, the definition says that "a company which has listed any of its securities on any recognized stock exchange is a 'Listed Company'". The Company Law Committee felt that classifying a private limited company as a 'listed company' merely based on listing of certain debt securities offered on a private placement basis seems inappropriate and is required to be addressed as they are sceptical about the strict regulations imposed on listed companies as opposed to unlisted private companies.

- Introduction of chapter on Producer Companies.The Companies (Amendment) Act, 2020 has introduced provisions that are similar to the Companies Act, 1956 for the governance of such companies.

- A rights issue is an option exercisable by existing shareholders of a company to purchase further share capital in proportion to their current holding, which is exercisable for a specified period. Reduction of timeline for rights issue.

- The Amendment Act has inserted section 418A with the objective of setting up more benches of National Company Law Appellate Tribunal (NCLAT) that will ordinarily sit in New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify.

***MEANING OF A COMPANY*:-**

A company is an association formed and organized to carry on a business. Sec 2(*20*) of the Companies Act 2013 defines "company" means a company incorporated under this Act or under any previous f company law.

FOLLOWING ARE THE MAIN CHARACTERISTICS OF A COMPANY

1. Legal Entity: A company is an artificial person created by law. So, it has a separate legal entity from its members.

2. Perpetual Succession: Member may come and go but the company never dies. Joint stock company is a corporate body. It acquires a separate legal personality difference from its member with a common seal.

3. Limited Liability: The liability of the shareholders in the public limited company is limited to the extent of the amount of share, they have subscribed. The shareholders are not liable for the payment of excess claim of the creditors even if capital of the company becomes insufficient. Liability can be limited by guarantee also.

4. Common Seal: However, a company being artificial person, it can not sign on documents like natural person. Therefore, a common seal is used as a substitute of signature. The common seal affixed on all documents of the company.

5. Separate Property: A company is a distinct legal entity. 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.

6. Transferability of Shares: Shares in a company are freely transferable subject to certain conditions.

7. Capacity to Sue and be Sued: A company being a legal person, can sue other persons in its corporate name. Similarly, others can also sue the company in their own name. It can also be fined for contravening any law but it cannot be imprisoned for a criminal offense.

8. Not a Citizen: Although a company is a legal person, it is not a citizen under the Indian Constitution. It can act only though natural persons.

Holding and subsidiary company: sec 2 (*46*) "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies.

LIFTING OF THE CORPORATE VEIL

Lifting of the corporate veil means disregarding the corporate personality and looking behind the real person who are in the control of the company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In this regards the court will break through the corporate shell and apply the principle of what is known as ―lifting or piercing through the corporate veil." And while by fiction of law a corporation is a distinct entity, yet in reality it is an association of persons who are in fact the beneficial owners of all the corporate property.

FOR BENEFIT OF REVENUE-

The Court has the power to disregard corporate entity if it is used for tax evasion or to circumvent tax obligations. A clear illustration is DinshawManeckjee Petit, Re;

The assesse was a wealthy man enjoying huge dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan. This way he divided his income into four parts in a bid to reduce his tax liability.

But it was held that, ―the company was formed by the assessee purely and simply as a means of avoiding super tax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans".

ENEMY CHARACTER-

A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company, and declare the company to be an enemy company. In Daimler Co.Ltd V. Continental Tyre And Rubber Co.Ltd, A company was incorporated in England for the purpose of selling in England, tyres made

in Germany by a German company which held the bulk of shares in the English company. The holders of the remaining shares, except one, and all the directors were Germans, residing in Germany. During the First World War, the English company commenced action for recovery of a trade debt. Held,

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WHERE THE COMPANY IS A SHAM-

The Courts also lift the veil where a company is a mere cloak or sham (hoax).

COMPANY AVOIDING LEGAL OBLIGATIONS-

Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

REDUCTION OF NUMBER OF MEMBERS-

Under Section 45 of The Indian Companies Act, 1956, if a company carries on business for more than six months after the number of its members has been reduced to seven in case of a public company and two in case of a private company, every person who knows this fact and is a member during the time that the company so carries on business after the six months, becomes liable jointly and severally with the company for the payment of debts contracted after six months. It is only that member who remains after six months who can be sued.

FRAUDULENT TRADING-

Under Section 542 of The Indian Companies Act, 1956, if any business of a company is carried on with the intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or fine or both. This applies whether or not the company has been or is in the course of being wound up. This was upheld in Delhi Development Authority v. Skipper Constructions Co. Ltd. (1997).

MISDESCRIPTION OF THE COMPANY-

Section 147 (4) of The Indian Companies Act, 1956, provides that if any officer of the company or other person acting on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the companies name is not mentioned in legible letters, he is liable to fine and he is personally liable to the holder of the instrument unless the company has already paid the amount.

Different Types of Companies:

Sec 2 :

(71) ―public company‖ means a company which― (a) is not a private company; (b) has a minimum paid-up share capital 1 *** as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(68) ―private company‖ means a company having a minimum paid-up share capital 1 *** 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; (69) ―promoter‖ means a person― (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(62) ―One Person Company‖ means a company which has only one person as a member;

(42) ―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.

(46) ―holding company‖, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

(87) ―subsidiary company‖ or ―subsidiary‖, 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 share capital either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. Explanation.―For the purposes of this clause,― (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; (b) 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; (c) the expression ―company‖ includes any body corporate; (d) ―layer‖ in relation to a holding company means its subsidiary or subsidiaries.

(45) ―Government company‖ means any company in which not less than fifty-one per cent. of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company;

(21) ―company limited by guarantee‖ means 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;

(22) ―company limited by shares‖ means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(85) -small company'' means a company, other than a public company,― (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to― (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act;

PROMOTER:-

promoter means a person -

a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

c) in accordance with whose advice, directisons or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;The promoters occupy an important position and have wide powers relating to the formation of a company. It is, however, interesting to note that so far as the legal position is concerned, he is neither an agent nor a trustee of the proposed company. But it does not mean that the promoter does not have any legal relationship with the proposed company. The promoters stand in a fiduciary relation to the company they promote and to those persons, whom they induce to become shareholders in it.

Following are the major Duties of the promoter:

1.Duty to disclose secret profits A promoter is not forbidden to make profit but to make secret profits. He may make a profit out of promotion with the consent of the company, in the same way as an agent may retain a profitobtained through his agency with his principle‘s consent. A promoter is allowed to make a profit out of a promotion but with the consent of the company.

2. Duty of disclosure of interest In addition to his duty for declaration of secret profits, a promoter must disclose to the company any interest he has in a transaction entered into by it. This is so even where a promoter sells property of his own to the company, but does not have to account for the profit he makes from the sale because he bought the property before the promotion began. Disclosure must be made in the same way as though the promoter was seeking the company‘s consent to his retaining a profit for which he is accountable.

3.Promoter‘s**duties under the Indian Contract Act** Promoter‘s duties to the company under the Indian Contract Act have not been dealt with by the courts in any detail. They cannot depend on contract, because at the time the promotion begins, the company is not incorporated, and so cannot contract with its promoters. It seems, therefore, that the promoter‘s duties must be the same as those or a person, who acts on behalf of another without a contract of employment, namely, to shun from deception and to exercise reasonable skill and care. Thus, where a promoter negligently allows the company to purchase property, including his own, for more than its worth, he is liable to the company for the loss it suffers. Similarly, a

promoter who is responsible for making misrepresentations in a prospectus may be held guilty of fraud under section 17, of the Indian Contract Act and consequently liable for damages under section 19 of the Act.

4.Termination of Promoter's Duties A promoter's duties do not come to an end on the incorporation of the company, or even when a Board of directors in appointed. They continue until the company has acquired the property or business which it was formed to manage and has raised its initial share capital and the Board of directors has taken over the management of the company's affairs from the promoters. When these things have been done, the promoter's fiduciary and contractual duties cease.

5.Remedies available to the company against the promoter for breach of his duties Since a promoter owes a duty of disclosure to the company, the primary remedy in the event of breach is for the company to

bring proceedings for rescission of any contract with him or for the recovery of any secret profits which he has made.

Rescission of contract So far as the right to rescind is concerned, this must be exercised on normal contractual principles, that is to say, the company must have done nothing to show an intention to ratify the agreement after finding breach involving non-disclosure or misrepresentation.

To recover secret profit If a promoter makes a secret profit or does not disclose any profit made, the company has a remedy against him.

Liabilities on Promoter

A promoter is subjected to liabilities under the various provisions of the Companies Act. · Section 26 of the Companies Act, 2013 lay down matters to be stated in a prospectus. A promoter may be held liable for non-compliance of the provisions of the section. · Under section 34 and 35, a promoter may be held liable for any untrue statement in the prospectus to a person who subscribes for shares or debentures in the faith of such prospectus. However, the liability of the promoter in such a case shall be limited to the original allottee of shares and would not extend to the subsequent allotters. · According to section 300, a promoter may be liable to examination like any other director or officer of the company if the court so directs on a liquidator's report alleging fraud in the promotion or formation of the company.

Pre-incorporation of contracts

The promoter is obligated to bring the company in the legal existence and to ensure its successful running and in order to accomplish his obligation he may enter into some contract on behalf of prospective company. These types of contract are called _Pre-incorporation Contract. Nature of Pre-incorporation contract is slightly different to ordinary contract. Nature of such contract is bilateral, be it has the features of tripartite contract. In this type of contract, the promoter furnishes the contract with interested person and it

would be bilateral contract between them. But the remarkable part of this contract is that, this contract helps the perspective company, who is not a party to the contract.

Under section 15 (h) of the Specific Relief Act, 1963,
Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-- (a) any party thereto; (b) the representative in interest or the principal, of any party thereto Provided that where the learning , skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party; when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company.

INCORPORATION:-

Section 7 of Companies Act 2013 read with Companies (Incorporation) Rules, 2014 provides for incorporation of companies. There shall be filed with the Registrar within whose jurisdiction the registered office of a Company is proposed to be situated, the following documents and information for registration, namely:—

(*a*) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

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

(*c*) an affidavit a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the document filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

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

(*e*) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate , such particulars as may be prescribed;

(*f*) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

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

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters , the persons named as the first directors of the company and the persons making declaration under clause (*b*) of sub-section (1) shall each be liable for action under section 447.

Sec 3 provides for formation of company.— (1) A company may be formed for any lawful purpose by— (a) seven or more persons, where the company to be formed is to be a public company; (b) two or more persons, where the company to be formed is to be a private company; or (c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration: Provided that the memorandum of One Person Company shall 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 member of the company and the written consent of such person shall also

be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles: Provided further that such other person may withdraw his consent in such manner as may be prescribed: Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed: Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed: Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum. (2) A company formed under sub-section (1) may be either— (a) a company limited by shares; or (b) a company limited by guarantee; or (c) an unlimited company.

Section 8 Company is a company that is registered for charitable or non-profit purpose-

Characteristics of Section 8 :

- company that is registered for charitable or non-profit purpose is incorporated for charity, social welfare, social promotion,
- their main aim is to promote social welfare and work for society, not to earn profits.
- They are licensed by the central government under section 8 of the companies act 2013.
- Section 8 company also forms as a private limited or public limited company having limited liability
- No Distribution of as dividends to its member.

MEMORANDUM OF ASSOCIATION OF THE COMPANY:-

The memorandum of association is also called the charter of the company as it is the company‘s principle document. Like explained before, no company can register without a memorandum of association as it defines the right and objects of the company.

According to section 2(28) of the Companies Act, ―Memorandum means Memorandum of Association as originally framed or as altered from time to time in pursuance of any companies law or of this Act." Evidently the definition is not comprehensive and does not convey the full importance of the document. However it is notable that the act provides for the admission of an altered version of the original memorandum the Memorandum of Association of the company.

In this project the researcher will explicate the importance of Memorandum of Association and elucidate the process and procedure involved in the alteration of Memorandum of Association of a company.

SUBJECT MATTER OF MEMORANDUM

According to Palmer, the Memorandum of Association is a document of great importance in relation to the proposed company. It contains the objects for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires the company and be void

In the celebrated case of Ashbury Railway Carriage and Iron Co. Ltd. v. Richie Lord Carins Observed that the Memorandum of Association of a company defines the limitation on the powers of the company… it contains in it both that which is affirmative and that which negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation and it states, if it is necessary to state, negatively that nothing shall be done beyond that ambit.

CONSTITUENTS OF MEMORANDUM OF ASSOCIATION

Name Clause: Since a company is an artificial person it can be identified only by its name, which is thus of considerable importance. The promoters are free to choose any name for the company but the same is subject to certain limitations.

If a company is limited by shares is to be a private company, the last word of its name must be ―limited" or ―private limited"

If the name chosen according to the opinion of the Central Government is undesirable or it is identical or resembles too nearly, to the name by which a company in existence has been previously registered, it may deem to be undesirable

Registered Office Clause: The Memorandum of Association registered with the RoC must state the geographical location of the company. Every registered company must have a registered office which establishes its domicile and is also the address at which the company‘s statutory books must normally be kept and to which notices and other communications can be sent. The notice of the exact situation of the company has to be submitted to the RoC within 30 days of incorporation.

Objects Clause: The Memorandum of Association of a company should state the objects of the company. The RoC can deny registration to a company which whose objects are unlawful. It is the intention of the legislature that the Memorandum of Association of a company must state the objects for which it is incorporated, and the company is accordingly incorporated only for the purpose of pursuing those objects. Pursuing any other object is said to be ultra vires the company.

Accordingly there can be two objects as far as a company is concerned namely:-Main objects of the company which is to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects

Other objects

Capital Clause: A company can be limited by shares only if it has a share capital and a company limited by shares must state in its memorandum the total amount of share capital it is to have and the way it is divided into shares.

The clause lays down the limit beyond which the company cannot issue shares without altering the memorandum as provided by section 94 of the Companies Act.

The association or subscription Clause: At the end of ever Memorandum of Association there is an association clause or subscription clause.

DOCTRINE OF ULTRA VIRES:-

Objects clause is contained in the memorandum of association and sets out the powers of the directors in running the company. Traditionally, each power of the company had to be numerated, which resulted in detailed statements as to the powers of the company. Companies re now able to use the phrase 'to carry on the business of a general commercial company' rather than use exhaustive lists of enumerated powers.

The Introduction to Doctrine of Ultra Vires

The object clause of the memorandum of the company contains the object for which the company is formed. An act of the company must not be beyond the object clause otherwise it will be ultra vires and therefore, void and cannot be ratified even if all the member wish to ratify. This is called the doctrine of ultra vires. The expression ―ultra vires" consists of two words: _ultra‘ and _vires‘. _Ultra‘ means beyond and _Vires‘ means powers. Thus, the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company, which is beyond the powers conferred on the company by the objects clause of its memorandum. An ultra vires act is void and cannot be ratified even if all the directors wish to ratify it. Sometimes the expression ultra vires is used to describe the situation when the directors of a company have exceeded the powers delegated to them. Where accompany exceeds its power as conferred on it by the objects clause of its memorandum, it‘s not bound by it because it lacks legal capacity to incur responsibility for the action, but when the directors of a company have exceeded the powers delegated to them. This use must be avoided for it is apt to cause confusion between two entirely distinct legal principles. Consequently, here are restricting the meaning of ultra vires objects clause of the company‘s memorandum. Incorporated under the Companies Act 1862, the Ashbury Railway Carriage and Iron Company Ltd‘s memorandum, clause 3, said its objects were "to make and sell, or lend on hire, railway-carriages…" and clause 4 said activities beyond needed a special resolution. But the company agreed to give Riche and his brother a loan to build a railway in Belgium. Later, the company refused the agreement. Riche sued, and the company pleaded the action was ultra vires.

ALTERATION OF MEMORANDUM

As a matter of course Memorandum of Association is not alterable. In fact the words of the Memorandum cannot be changed that easily. It is said that ―Memorandum of Association is an unalterable document alterable only in accordance with the provisions of the law"

2.1 Alteration of Memorandum of Association under the Common Law

Under the Common Law the Joint Stock Companies Act 1856, which introduced the Memorandum of Association into company law, made no provisions for the alteration of a memorandum. Companies Act 1862 permitted a company to change its name and its authorized share capital, but forbade any other alteration. Subsequent acts have extended the range of alteration that may be made. The CA Act 1985 S.2 (7) provides: A company may not alter conditions contained in the memorandum except in the case in the mode and to that extend, for which express provision is made by this Act. The court has in Scott v. Scott Ltd. held that even if inadvertently the memorandum of a company does not correctly express the wishes of its subscribers, the court doesn‘t to have power to rectify the mistake after the company has been registered.

2.2Alteration of Memorandum of Association under Indian Law

Several restrictions have been imposed as far as the alteration of Memorandum of Association is concerned. The quantum of such restrictions can be seen under S.16 of the Companies Act. Alteration of Name Clause Alteration of the name of a company can be effected by two methods. By special Resolutions and

Permission of the government: The Law regarding the change of name of a company is laid down under section 21 of CA. The section provides that the name of a company may be changed at any time by passing a special resolution at a general meeting of the company and with the written approval of the central government. However no such approval is required if the change of name involves addition or deletion of the word ―private"

By rectification of omission in name: If by oversight or mistake a company is registered with a name which is the same or similar to the name of an existing company, the company may change its name by passing an ordinary resolution and getting a written permission from the Central government. In such a case the central government within a period of one year of the first registration or registration under a changed name can direct the company to change its name. In such a situation, the company must alter its name by passing an ordinary resolution within three months from the date of such direction.

After the alteration of name of the company, the registrar should write the new name in the place of old name. Accordingly the certificate of newly incorporated company should be issued. If and when the certificate of newly incorporated company is received, then only the company‘s name is recognized.

With the change of the name of the company the power and responsibilities are not changed. Because of this change of the name legal affairs of the company are not affected. Besides it does not affect the company‘s existence. But after the new name is registered the legal affairs cannot be continued with the old name.

The legal effect of change in name clause can be illustrated by the decision of the Calcutta High Court in the case of Malhati Tea Syndicate v. Revenue Officer wherein a company changed its name from Malhati Tea Syndicate Ltd. to Malhati Tea and Industries Ltd. It filed a writ petition in its former name. Declaring the petition to be invalid the court said that nothing in the Act authorized the company to commence legal proceedings in its former name at a time when it had acquired its new name which has been put on the register of joint stock companies.

Alteration of Registered Office Clause

A company may change the situation of its registered office for the smooth running of its business and the realization of its objects. Such change in the situation can be: (a) from one place to another in the same city or town (b) from one town to another in the same state and (c) from one state to another.

Shifting from one place to another in the same city or town: If the registered office of the company is to be shifted from one place to another in the same city or town, the board of directors must pass a resolution to that effect and give the name address of its registered office to the RoC within 30 days after the date of the change of address.

Shifting from one town to another in the same state: IF the company wants to shift its registered office from one town to another in the state, it shall pass a special resolution to that effect at its general meeting and send the notification to the registrar within 30 days. It shall give the new address of its registered office to the registrar.

Shifting from one state to another: This kind of shifting is a much more complicated affair, as it involves alteration of the memorandum itself. The alteration of the memorandum for this purpose is subject to the provisions of Section 17 which requires, in the first place, a special resolution of the company and in the second, confirmation by the Company Law Board can confirm thealteration only if the shifting of the registered office from one state to another is necessary for any of the purpose detailed in section 17. When this condition is fulfilled, the second stage is reached namely to consider the objections of a person or class of person whose interest will in the opinion of CLB be affected the alteration.

Alteration of Object Clause

Plainly speaking, it is very difficult to alter the objects clause because the law has laid down strict limitations on such alteration. Section 17 of the CA defines the limitations and any alteration must necessarily be within these limitations.

The limits imposed upon the power of alteration are of two kinds, namely substantive and procedural. The former defines the physical limits of alteration and the latter the procedure by which it can be affected.

The alteration of object clause involves:

Special Resolution: In the first place, the company has to call a general meeting of its members and pass a special resolution and file a certified copy of the resolution with the central government.

Ratification by the central government: After this, the application for proposed alteration is filed with the central government. The application shall be scrutinized by the government before confirming the alteration.

Registration of alteration: A certified copy of the order of the central government shall be filed by the company with the RoC along with the printed copy of the altered memorandum within three months from the date of the order. The registrar shall register the same and certify the registration under his hand within one month of the date of filing such documents.

Constructive notice

The memorandum of association and articles of association are two most important documents needed for registration and incorporation of a company. The memorandum of association of a company contains the fundamental conditions upon which alone the company has been incorporated. According to Section 2(28) of the Companies Act, 1956 defines the memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act. According to Palmer, the memorandum of association is a document of great importance in relation to the proposed company. It contains the objects for which the company is formed and therefore identifies the possible scope of its operation scope of its operation beyond which its action cannot go.

The Articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. According to section 2(2) of the Companies Act, 1956 _articles' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies laws or of the present Act.

Both memorandum of association and the articles of association are public documents according to section 610 of the Act. These documents become public documents as soon as they get registered and can be accessible by any members of the public under the provision of the Act. Therefore, notice about the contents of memorandum and articles is said to be within the knowledge of both members and non-members of the company. Such notice is a deemed notice in case of a members and a constructive notice in case of non-members.

The rule of constructive notice extends not merely to Memorandum and Articles but also to all such documents as are required to be registered with the Registrar of Companies. There is however no constructive notice of documents which are filed with the Registrar of Companies for the sake of record only.

THE ARTICLES OF ASSOCIATION OF A COMPANY:-

The articles of association of a company are its by-laws or rules and regulations which govern the management of its internal affairs and the conduct of its business. They are framed with the object of carrying out the aims and objects as set out in the Memorandum of Association. According to Section 2(2) of the Companies Act, 1956 _articles' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies laws or of the present Act, i.e. the Act of 1956.

Contents of Articles of Association ***Articles usually contain provisions relating to the following matters-***

1. Share capital including sub division thereof, rights of various shareholders, the relationship of these rights, payment of commission, share certificates,

2. Lien of shares

3. Calls on shares

4. Transfer of shares

5. Transmission of shares

6. Forfeiture of shares

7. Surrender of shares

8. Conversion of shares into stock

9. Share warrant

10. Alteration of capital

11. General meetings and proceedings thereat

12. Voting rights of members, voting by poll, proxies

13. Directors, including first directors or directors for life, their appointment, remuneration, qualifications, powers and proceedings of Board of directors' meetings

14. Dividends and reserves

15. Accounts and audits

16. Borrowing powers

17. Winding up

DOCTRINE OF INDOOR MANAGEMENT:-

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Shareholders, for example, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

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

The doctrine of indoor management evolved around 150 years ago in the context of the doctrine of constructive notice. The role of doctrine of indoor management is opposed to of the role of doctrine of constructive notice.

Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the doctrine of constructive notice.

Basis for Doctrine of Indoor Management-

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

PROSPECTUS

Meaning of Prospectus:

Sec. 2(36) of the Companies Act describes a prospectus as **―any document issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any share in, or debentures of a body corporate.‖**

In other words, it is a document which invites deposits from the public or invites offers from the public for the subscription of shares in, or debentures of, a company. The words ―inviting deposits from the public‖ were added by the Companies (Amendment) Act, 1974.

Features and Characteristics of Prospectus:

The features and characteristics of the prospectus are:

(i) It is a document issued as a prospectus;

(ii) It is an invitation to the member of the public;

(iii) The public is invited to subscribe to the shares or debentures of the company;

(iv) It includes any notice, circular, advertisement inviting deposits from the public;

(v) It is a document by which the company procures its share capital needed to carry on its activities.

Matters to be stated in prospectus.

(*1*) Every prospectus issued by or on behalf of a public company either withreference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—

(*a*) state the following information, namely:—

(*i*) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(*ii*) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(*iii*) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(*iv*) details about underwriting of the issue;

(*v*) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(*vi*) the authority for the issue and the details of the resolution passed therefor;

(*vii*) procedure and time schedule for allotment and issue of securities;

(*viii*) capital structure of the company in the prescribed manner;

(*ix*) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(*x*) main objects and present business of the company and its location, schedule of implementation of the project;

(*xi*) particulars relating to—

(*A*) management perception of risk factors specific to the project;

(*B*) gestation period of the project;

(*C*) extent of progress made in the project;

(*D*) deadlines for completion of the project; and

(*E*) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediatelypreceding the year of the issue of prospectus against the promoter of the company;

(*xii*) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(*xiii*) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(*xiv*) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(*b*) set out the following reports for the purposes of the financial information, namely:—

(*i*) Reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(*ii*) Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed: Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(*iii*) Reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus: Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date beforethe issue of prospectus; and

(*iv*) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(*c*) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

(*d*) State such other matters and set out such other reports, as may be prescribed.

(*2*) Nothing in sub-section (*1*) shall apply—

(*a*) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (*ii*) of clause (*a*) of sub-section (*1*) of section 62 in favour of any other person; or

(*b*) To the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(*3*) Subject to sub-section (*2*), the provisions of sub-section (*1*) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation :-

The date indicated in the prospectus shall be deemed to be the date of its publication.

(*4*) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(*5*) A prospectus issued under sub-section (*1*) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged

Sec 31. Shelf prospectus.— (1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required. (2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time,prior to the issue of a second or subsequent offer of securities under the shelf prospectus: Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof. (3) Where an information memorandum is filed, every time an offer of securities is made under subsection (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus. Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Sec 32. Red herring prospectus.—(1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. (2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer. (3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus. (4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing

price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

MISSTATEMENT IN PROSPECTUS:

S34. Criminal liability for mis-statements in prospectus.— Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447: Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds tobelieve, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary. 35.

Civil liability for mis-statements in prospectus.—

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;

(b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and

(e) is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Punishment for fraudulently inducing persons to invest money. — Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,— (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution, shall be liable for action under section 447.

SHARES:-

Share means a share capital of a company.In general a share is a part of the ownership of a company. A person who buys a portion of a company‘s capital becomes a shareholder in that company‘s assets and as such receives a share of the company‘s profits in the form of an annual dividend. Lucky or astute investors may also reap a capital gain as the market value of the shares increases. The capital of a company is divided into a number of indivisible units of a fixed amount this units are known as shares.

◦ **2(*84*) —share‖ means a share in the share capital of a company and includes stock;**

*Bacha F. Guzdarvs*The*Commissioner Of Income-Tax*, ... on 28 March, 1952

◦ —Whether 60% of the dividend amounting to Rs 2750 received by the assessee from the two Tea companies is agricultural income and as such exempt under **section 4(3)(viii)** of the Act.

◦ In Halsbury's Laws of England, Vol. 6 (3rd Edn.), p. 234, the law regarding the attributes of shares is thus stated

◦ A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the nature of real estate.

Share certificate:

A certificate issued under the Common Seal , if any, of the Company or signed by **2 Director** or by a Director or a Company Secretary, wherever the Company has appointed a Company Secretary, specifying the shares held by the person , shall be prima facie evidence of the title of the person to such shares.(Bare Act Language).

 certificate shall be signed by **2 Directors** or

 By a Director or a CS if appointed

 certificate shall indicate the number of shares held by such person

 certificate is the solid proof that he is the shareholder of the Company

When to issue duplicate share certificate:

a duplicate share certificate is issued if such certificate is proved to have been lost or destroyed or has been defaced, mutilated or torn and is surrendered to the Company

Rule 5 of Companies (Share Capital and Debentures) Rules, 2014

Whenever a Company issues any share capital, certificate of shares held in name of company shall be issued only when:

 Resolution is passed by the Board in Board Meeting

Every Certificate of shares shall be issued in form **SH1** and such form shall specify the name of the persons in whose favour the certificate is issued, shares to which it relates and the amount paid theron.

The particulars of every share certificates shall be entered in Register of Members maintained in accordance with **section 88 in form MGT1,** along with the name of person to whom it has been issued indicating the date of issue.

share certificate or shares shall not be issued either in exchange of those which are :

1. subdivided

2. consolidated

3. replacement of those which are defaced,

4. militated

5. torn

6. Worn out etc.

Unless the certificate in lieu of which it is issued is surrendered to the Company.

The Company may charge such fees as Board thinks fit, not exceeding 50 per certificate.

Where the certificate is issued in any of the circumstances mentioned above then the word duplicate shall be stamped or printed on face of share certificates.

In case of **Unlisted Companies**, the duplicate share certificates shall be issued within a **period of 3 months** and in case of **listed companies** it shall be issued within a period of **45 days** from date of submission of complete documents with the Company all blank form shall be used for the issue of Share Certificates shall

be printed and such form shall be printed only on Resolution passed by Board at Board Meeting or by Circulation and such blank forms must be consequently numbered.

Following persons shall be Responsible for maintenance and preservation of documents related to Share Certificates including blank forms namely:

1. Committee of Board, if authorized by the Board or if Company has CS , then by such CS

2. If Company does not have CS, then a Director specifically authorized by the Board.

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:-

1. **Equity shares** means that part of the share capital of the company which are not preference shares.

2. **Preference Shares** means shares which fulfill the following 2 conditions.

Therefore, a share which is does not fulfill both these conditions is an equity share. It carries Preferential rights in respect of Dividend at fixed amount or at fixed rate i.e. dividend payable is payable on fixed figure or percent and this dividend must paid before the holders of the equity shares can be paid dividend. It also carries preferential right in regard to payment of capital on winding up or otherwise. It means the amount paid on preference share must be paid back to preference shareholders before anything in paid to the equity shareholders. In other words, preference share capital has priority both in repayment of dividend as well as capital.

Types of Preference Shares:-

1. Cumulative or Non-cumulative:

A non-cumulative or simple preference shares gives right to fixed percentage dividend of profit of each year. In case no dividend thereon is declared in any year because of absence of profit, the holders of preference shares get nothing nor can they claim unpaid dividend in the subsequent year or years in respect of that year. Cumulative preference shares however give the right to the preference shareholders to demand the unpaid dividend in any year during the subsequent year or years when the profits are available for distribution . In this case dividends which are not paid in any year are accumulated and are paid out when the profits are available.

2. Redeemable and Non- Redeemable:

Redeemable Preference shares are preference shares which have to be repaid by the company after the term of which for which the preference shares have been issued. Irredeemable Preference shares means preference shares need not repaid by the company except on winding up of the company. However, under the Indian Companies Act, a company cannot issue irredeemable preference shares.

Issue of bonus shares Bonus:-

shares are issued by converting the reserves of the company into share capital. It is nothing but capitalization of the reserves of the company. Bonus shares can be issued by a company only if the Articles of Association of the company authorises a bonus issue. Where there is no provision in this regard in the articles, they must be amended by passing special resolution act at the general meeting of the company. Care must be taken that issue of bonus shares does not lead to total share capital in excess of the authorised share capital. Otherwise, the authorised capital must be increased by amending the capital clause of the Memorandum of association. If the company has availed of any loan from the financial institutions, prior permission is to obtained from the institutions for issue of bonus shares. If the company is listed on the stock exchange, the stock exchange must be informed of the decision of the board to issue bonus shares immediately after the board meeting. Where the bonus shares are to be issued to the non-resident members, prior consent of the Reserve Bank should be obtained.

Alternation of capital

Reduction of the share capital can be effected only in the manners specified in Section 100-104 of the Act or by way of buy back under Section 77A and 77B of the Act. Notice of alteration to share capital is required to be filed with the registrar of the company in Form no 5 within 30 days of the alteration of the capital clause of the MA. The Registrar shall record the notice and make necessary alteration in Memorandum and Articles of Association of the company. Any default in giving notice to the registrar renders company and its officers in default liable to punishment with fine which may extend to the Rs50 for each day of default.

Conversion of shares into stocks:

Conversion of fully paid shares into stock may likewise be affected by the ordinary resolution of the company in the general meeting. Notice of the conversion must be given to the Registrar within 30 days of the conversion, the stock may be converted into fully paid shares following the same procedure and notice given to the Registrar in Form no 5. In this connection, the following provisions are important:-

Only fully paid shares can be converted into stocks Direct issue of stock to members is not lawful and cannot be done. The difference between shares and stock is that shares are transferable only in complete units so that transfer of half or any portion of share is not possible whereas stock is expressed in terms of

any amount money and is transferable in any money fractions. Articles may be give the Board of Directors authority to fix minimum amount of stock.

Reduction of capital can take place without the sanction of the court in the following cases Buy back of shares in accordance to the provisions of Section 77A and 77B Forfeiture of shares - A company may if authorised by its articles forfeit shares for non-payment of calls by the shareholders. Such proceedings amount to reduction of capital but the act does not require court sanction for this purpose. Valid surrender of the shares - A company may accept the surrender of shares Cancellation of capital - A company may cancel the shares which has not been taken up or agreed to be taken by the person and diminish the amount of its share capital. Purchase of shares of member by the company under Section 402B. The Company Law Board may, on application made under Section 397 or Section 398, order the purchase of shares or interest of any member of the company by the company. These provisions come in force when a prescribed number of members make a complaint to the CLB for mis-management or oppression of the minority shareholders in the company. Redemption of redeemable preference shares. Where redeemable preference shares are redeemed, it actually amounts to reduction of the capital. However, this does not require the sanction of the court.

Buy-back of shares:

Buy back of its own shares by a company is nothing but reduction of share capital. After the recent amendments in the Companies Act, 1956 buy back of its own shares by a company is allowed without sanction of the Court. It is nothing but a process which enables a company to go back to the holders of its shares and offer to purchase from them the shares that they hold.

There are three main reasons why a company would opt for buy back:-

To improve shareholder value, since with fewer shares earning per share of the remaining shares will increase. As a defense mechanism against hostile take-overs since there are fewer shares available for the hostile acquirer to acquire. Public Signaling of the Management‘s Policy.

No company can purchase its own shares or other specified securities unless:-

the buy-back is authorized by its articles; a special resolution has been passed in general meeting of the company authorizing the buy-back; the buy-back is of less than twenty five per cent of the total paid-up capital and free reserves of the company: the buy-back of equity shares in any financial year shall not exceed twenty five per cent of its total paid-up equity capital in that financial year the ratio of the debt owned by the company is not more than twice the capital and its free reserves after such buy-back. However, the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. all the shares or other specified securities for buy-back are fully paid-up; the buy-back of the shares or other specified securities listed on any recognized stock exchange is

in accordance with the regulations made by the Securities and Exchange Board of India in this behalf; the buy-back in respect of shares or other specified securities other than those specified in clause (g) is in accordance with the guidelines as may be prescribed. The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating a full and complete disclosure of all material facts the necessity for the buy-back the class of security intended to be purchased under the buy-back the amountto be invested under the buy-back and the time limit for completion of buy-back. Every buy-back must be completed within twelve months from the date of passing the special resolution.

The shares must be of a class already issued Issue of the shares at discount must be authorised by resolution passed in the general meeting of company and sanctioned by the company law board. The resolution must also specify the maximum rate of discount at which the shares are to be issued Not less than one year has elapsed from the date on which the company was entitled to commence the business. The shares to be issued at discount must issued within 2 months after the date on which issue is sanctioned by the company law board or within extended as may be allowed by the Company Law Board. The discount must not exceed 10 percent unless the Company Law Board is of the opinion that the higher percentage of discount may be allowed in special circumstances of case.

Issue of shares at premium A company may issue shares at a premium i.e. at a value above its par value. The following conditions must be satisfied in connection with the issue of shares at a premium:- The amount of premium must be transfered to an account to be called share premium account. The provisions of this Act relating to the reduction of share capital of the company will apply as if the share account premium account were paid up share capital of the company. Share premium account can be used only for the following purposes :- In issuing fully paid bonus shares to members. In Writing off preliminary expenses of the company. In writing off public issue expenses such as underwriting commission, advertisement expenses, etcIn providing for the premium payable paid on redemption of any redeemable preference shares or debentures. In buying back its shares.

DIVIDEND:-

Sec 123- Declaration of dividend.

(1) No dividend shall be declared or paid by a company for any financial year except— (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed,or out of both; or (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government: Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company: Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf: Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves:

1[Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.]

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

(3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared: Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

(4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash: Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company: Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

Unpaid Dividend Account

(1) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

(2) The company shall, within a period of ninety days of making any transfer of an amount under subsection (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

(3) If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(5) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under subsection (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(6) All shares in respect of which 1[dividend has not been paid or claimed for seven consecutive years or more shall be] transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed. 2[Explanation.— For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not.

Punishment for failure to distribute dividends

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues: Provided that no offence under this section shall be deemed to have been committed:—

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

DEBENTURE:-

The power to issue debentures can be exercised on behalf of the Company as a meeting of the Board under the provisions of Section 179 (3) of the Companies Act, 2013. Further Section 71 of the Companies Act, 2013 deals with the provisions relating to the issuance of debentures along with the penalties for non compliance of the same which can be summarized as follows:-

 A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided that the issue of debentures with an option to convert such debentures into shares shall be approved by a special resolution passed by the shareholders in a duly convened general meeting of the company.

 Company can issue secured and unsecured debentures. Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Further Company cannot issue any kind of debentures carrying any voting rights.

 Company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the company except for the redemption of debentures.

 Company cannot issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless it has, before such issue or offer, appointed one or more debenture trustees.

 A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with such rules as may be prescribed.

 Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion; Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three fourths in value of the total debentures at a meeting held for the purpose.

 A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

 Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

 Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

 If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

 A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

 And at last, the Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum.

The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

 An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. Provided that a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;

 Such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

 the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and

 the security for the debentures by way of a charge or mortgage shall be created

PROCEDURE TO ISSUE DEBENTURES UNDER THE COMPANIES ACT, 2013

Section 56, 72, of the Companies Act, 2013 read with Rule 18 and 19 of the Companies (Share Capital and Debentures) Rules, 2014

 Call and hold Board meeting and decide which types of the debenture will be issued by the Company.

 If the Company decides to issue secured debenture the company has to comply with the condition prescribed in the Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014.

 In case appointment of Debenture Trustee, consent shall be obtained from a SEBI registered Debenture Trustee, who is proposed to be appointed. If debentures to be issued.

In the Board meeting pass resolutions for i) Approval of Offer letter for private placement in Form No. PAS – 4 and Application Forms (*In case of private placement of debentures*); ii) Approval of Form No. PAS – 5 (*In case of private placement of debentures*); iii) Approval of Debenture Trustee Agreement and appointment of a Debenture Trustee (*In case of Secured Debentures only*); iv) Appointment of an expert for valuation (*In case of private placement of debentures*); v) Approval of increase of borrowing powers, if

required; vi) To authorize for creation of charge on the assets of the company; vii) Approve the Debenture Subscription Agreement; viii) To fix day, date and time for the extraordinary general meeting of shareholders.

 Prepare the draft of i) Debenture Subscription Agreement; ii) Offer Letter for private placement in Form No. PAS – 4 and Application Forms; iii) Records of a private placement offer in Form No. PAS – 5; iv) Debenture Trustee Agreement; v) Mortgage Agreement for creation of charge on assets of the company.

 Issue notices of extraordinary general meeting along with the explanatory statement.

 Hold extraordinary general meeting and pass special resolution to issue convertible secured debentures and increase borrowing powers of the company and to authorize the Board to create charge on the assets of the company.

 File Form No. PAS – 4 and PAS – 5 in Form No. GNL – 2 with the Registrar of Companies.

 File Offer Letter in Form No.MGT – 14 with the Registrar of the Companies.

 File copy of Board resolutions, Special Resolution, Debenture Subscription Agreement, Debenture Trustee Agreement etc in Form No.MGT – 14 with the Registrar of Companies.

 File Form No. PAS – 3 (Return of allotment) with the Registrar of Companies after making allotment of debentures.

 File Form No CHG – 9 for creation of charge on assets of the Company.

DEBENTURE TRUSTEE

Informally debenture trustee is a person who is responsible for issuance and distribution of debentures. A debenture trustee is a person or entity that serves as the holder of debenture stock for the benefit of another party. When a company is looking to raise capital, one method of accomplishing this is by issuing stock as a form of debt with the obligation to repay the debt at a specific interest rate. The trustee serves as a liaison (the person who keeps in contact with different groups) between the company that issued the debentures and the debenture holders that are collecting interest payments.

According to SEBI Rules, 1993- ―debenture trustee‖ means a trustee of a trust deed for securing any issue of debentures of a body corporate [section 2 (bb)]. (Applicable to public companies only)

Eligibility for a debenture trustee: To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee.

Duties, rights and liabilities of a debenture trustee:

All appointment to be made of the debenture trustee(s) shall be made under section 71 of the Companies Act, 2013.

Liabilities

 No one can be appointed as a debenture trustee if he has a share ownership in the company.

 He cannot be appointed if he is a promoter of the company, employee or the manager.

 No appointment for Creditor to the company.

 The vacancy of the debenture can be filled by the company by the consent of the other trustees.

Duties

 The trustee ensures that there is no breach in the terms of issue of debentures.

 The trustee can take steps to remedy the breach (above mentioned).

 The trustee is the person who informs the debenture holders about such breach.

 The trustee ensures that all the condition regarding creation of security for debentures is met

 The trustee convenes the meeting between the company and the debenture holders

Rights

 Section 18 (c) a company in no cases can issue debentures before appointment of a debenture trustee.

 The company cannot issue debentures before obtaining the consent of the debenture trustee.

CHARGE: Sec 2 (16) of the Companies Act 2013 provides for ―charge‖ means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

REGISTRATION OF CHARGES

Duty to register charges, etc.—(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed: Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87: Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered. (2)

Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created. (3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2). (4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.

DIRECTORS:-

SEC 196. Appointment of managing director, whole-time director or manager.—(1) No company shall appoint or employ at the same time a managing director and a manager. (2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time: Provided that no re-appointment shall be made earlier than one year before the expiry of his term. (3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who — (a) is below the age of twenty-one years or has attained the age of seventy years: Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person; (b) is an undischarged insolvent or has at any time been adjudged as an insolvent; (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months. (4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule: Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar. (5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid. 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.— (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven percent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits: Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,— (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together; (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,— (A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; (B) three per cent. of the net profits in any other case. (2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5). (3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government. (4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity: Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if— (a) the services rendered are of a professional nature; and (b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession. (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be.

Appointment of key managerial personnel.—

(1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,— (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,— (a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses: Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in itssubsidiary company at the same time: Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board: Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel: Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

COMPANY MEETING:-

Apart from minutes of AGM, Listed Companies are required to prepare report on each AGM in a manner prescribed in rule 31 of Companies (Management & Administration) Rules, 2014 including the confirmation to the effect that the same was convened, held and conducted as per the provisions of this Act and rules made there under. The copy of report shall be filed with ROC within 30 days from the date of conclusion of AGM failure to submit that report attract fine on Company of Rs. 1 lakh minimum which may extend to five lakh and on every defaulting officer of Rs. 25 thousand minimum which may extend to 1 lakh.

In case of impracticality to call the meeting of company other then AGM, the Tribunal may either suo-motu or on application of any director or member of the company who would be entitled to vote at the meeting order a meeting of the company to be called, held and conducted in such manner as Tribunal may think fit and give any ancillary or consequential directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of provisions of Act or Articles of the Company. Such directions may include that one member in present or proxy shall be deemed quorum.

NOTICE OF GENERAL MEETING (SEC 101 WITH RULE NO. 18 OF COMPANIES (MANAGEMENT & ADMINISTRATION) RULES, 2014:

21 clear days notice either in writing or through electronic mode***** (E-mode) in such manner as prescribed in rules.

Notice shall specify the day, date, time and place and the hour of the meeting and a statement of business to be transacted at such meeting and shall be given to Every Member of the Company, Legal representative of any deceased member or the assignee of an insolvent member and to the auditors and every director of Company. Accidental omission to give notice or non-receipt of such notice shall not invalidate the proceeding of the meeting.

STATEMENT TO BE ANNEXED TO NOTICE (Sec 102)

In case of any business other than Ordinary Business a statement setting out following material facts concerning each item of business to be transacted at a general meeting shall be annexed to the notice convening such meeting, namely:

(i) Nature of concern or interest, financial or otherwise, if any, in respect of each items of every director and the manager, if any and every other KMP and relatives of the Director, manager or KMP.

(i) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(ii) Where any special business in the meeting of Company affects or relates any other company then shareholding of promoter, directors, manager and KMP shall be stated in the said statement, if that shareholding is 2% or more.

(iii) Where any item of business refers to any documents, which is to be considered at the meeting, the time and placed where the documents can be inspected shall also be specified in the statement.

Special Business in AGM means all businesses other than consideration of financial statements, report of Board and Auditors, declaration of any dividend, appointment of Directors in place of retiring and appointment of and fixation of remuneration of Auditors.

In case of any other General Meeting all business shall be special. In case of benefit arises due to non-disclosure of aforesaid material facts in the statement by promoters/directors/ manager/ KMP than the same shall be held in trust for the benefit of the Company.

Default in complying the provisions of this section every promoter, director, manager or other KMP who is in default shall be penalize with fine which may extend to Rs. 50000 or five times of amount of benefit accruing to promoters/directors/manager/KMP or any of their relatives, whichever is more.

QUORUM: (Sec 103)

In case of public Company if on date of meeting:

- Members <_ 1000 then 5 members personally present.
- Members>1000 but upto 5000 then 15 members personally present.
- Members>5000 then 30 members personally present.

In case of Private Company 2 members personally present shall constitute quorum.

Articles may provide larger quorum

If quorum is not present within half an hour then meeting shall adjourned in same day in the next week on same time and place or such other time and place as board may determine but atleast 3 days notice is required to be given to members either personally or by newspapers advertisement in English and one vernacular language having circulation at the place where registered office of the company is situated. In case of absence of quorum at adjourned meeting, the members present shall be quorum.

APPOINTMENT OF CHAIRMAN OF GENERAL MEETING (Sec 104)

Members personally present at the meeting shall elect one of themselves to be the Chairman thereof on show of hands.

In case of poll is demanded, it shall be taken forthwith in accordance with provisions of this Act and the Chairman elected on show of vote shall be chairman until some other person is elected as a result of poll and that other person shall be chairman for rest of the meeting. Articles of a Company can provide different manner for appointing Chairman.

PROXIES

(Sec 105 with rules 19 of Companies (Management & Administration) rules, 2014))

Member entitled to attend and vote at a meeting of company shall be entitled to appoint another person as proxy to attend and vote at the meeting. Proxy shall not have right to speak and vote except on a poll. C.G. may prescribe the companies whose member shall not appoint proxy other then member of that company and C.G. has prescribed the company registered under section 8.

A person can act as proxy of maximum 50 members if their aggregate holding is not exceeding 10 % of total share capital of company caring voting rights. A member who holds more then 10 % of total share capital carrying voting rights may appoint a single person as his proxy but that proxy shall not act as proxy of other person. Appointment of proxy shall be in form MGT-11.

Notice of Meeting shall contain a statement that a member entitled to attend and vote is entitled to appoint a proxy or where that is allowed, one or more proxies to attend and vote instead of him and that proxy need not be member. Default of mentioning of such statement every officer of company in default shall be liable to fine upto Rs. 5000.

Provisions in articles requiring longer period then 48 hours before the meeting for a depositing of proxy or other document relating to proxy with company shall be deemed as 48 hours.

MEETING OF BOARD OF DIRECTORS AND COMMITTEES OF BOARD

BOARD MEETING (Sec 173)

Applicability for all Companies including OPC

Provisions:

First Board Meeting: within thirty days of the date of its incorporation.

Subsequent Board Meeting: 4 Board meeting in ever year and maximum gap between two Meetings shall be 120 days.

One Person Company, Small Company and Dormant Company may convene Board meeting at least once in half calendar year and gap between two meetings is not less than ninety days.

Power of Central Government

C.G. has power to direct that the provisions of sub-section (1) of Section 173 shall not apply in relation to any class or description of Company or shall apply subject to such exceptions, modifications or conditions. Board of Director may participate either personally or by video conferencing or other audio-video means, as prescribed in **Rule No. 3 of Companies (Meeting of Board and its Power) Rules, 2004,** which are capable of recording and recognizing and storing. C.G. may specify by notifications of such matter which may not be dealt with by video conferencing or other audio-video means**.**

Quorum of Board Meeting

1/3rd of total strength or 2 whichever is higher and participation by video conferencing shall also be counted.

Continuing Directors may act notwithstanding any vacancy on the Board, but if and so long as their number is reduced below the quorum fixed by the Act for a meeting of Board, continuing director may act for the purpose of increasing the number of directors to that fixed for quorum or of summoning a General Meeting and no other purpose.

Where at any time interested directors exceed 2/3 or equal to 2/3rd of total strength then those who are not interested and present at the meeting being not less then two shall be quorum during such time.

Where meeting of board couldn‘t be held for want of quorum and articles is silent in that then the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

For calculation of quorum any fraction of a number shall be rounded off as one and total strength shall not include directors whose places are vacant.

AUDIT COMMITTEE MEETING (Sec 177 read with rule 6 of Companies (meeting of Board and its power)

Applicability:

- All Listed Companies

- All public Companies with a paid-up capital of 10 crore or more

- All public Companies having turnover of 100 crore rupees or more

- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposit exceeding 50 crore or more as existing on the date of last audited financial statements.

Composition:

Minimum 3 directors with majority of directors shall be independent. Majority of members of audit committee including chairperson shall have ability to read and understand the financial statement.

Timeline:

Every audit committee of a company existing before the commencement of this Act shall be reconstituted as per the provisions of this Act within one year form the commencement of this Act.

Power & Function:

Audit committee shall accordance with the terms of reference specified in writing by board which shall include:

a) The recommendation for appointment, remuneration and terms of appointment of auditors;

b) Receive and monitor the auditor‘s independence and performance and effectiveness of audit;

c) Examination of financial statement and the report of auditors;

d) Approval of any subsequent modification of transactions of the Company with related parties;

e) Scrutiny of inter corporate loans and investments;

f) Valuation of undertakings or assets of Company wherever necessary;

g) Evaluation of internal control and risk management systems;

h) Monitoring of end use of funds raised through public offers and related matters.

i) Audit Committee shall have authority to investigate into any matters in relation to matters abovementioned a) to h) or any other matters refereed to it by Board and for these purpose to obtain external professional advice and full access to the information and records.

Audit Committee may call comments of auditors about internal control systems, the scope of audit, including observation of auditors and review of financial statement before their submission to the Board and may also discuss any related issues internal or statutory auditors and management of company.

VIGIL MECHANISM: (Sec 177 with rule no. 7 of Companies (Meeting of Board and its Power) rules, 2014

Applicability:

- Every Listed Company

- Every Company which accept deposit from public or which have borrowed money form Banks and PFIs in excess of Rs. 50 crore

Shall establish a vigil mechanism for their Directors and employees to report their genuine concerns or grievances. The vigil mechanism shall provide adequate safeguard and mechanism against victimization of persons who use such mechanism and make provision to direct access to chairperson of Audit Committee in appropriate and exceptional cases.

Companies which are required to constitute audit Committee shall oversee the mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case they should rescue themselves and the others on the committee would deal with the matter on hand.

NOMINATION / REMUNERATION / STAKEHOLDERS RELATIONSHIP COMMITTEE

Applicability:

- All Listed Companies

- All public Companies with a paid-up capital of 10 crore or more

- All public Companies having turnover of 100 crore rupees or more

- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposit exceeding 50 crore or more as existing on the date of last audited financial statements.

Composition:

3 or more non-executive Directors out of which atleast ½ shall be independent. And Chairperson of the Company may be member but shall not be appointed Chairperson of such committee.

Function:

Nomination & Remuneration committee shall identify persons who are qualified to become Directors or may be appointed in senior management in accordance with criteria laid down and recommend to the Board for their appointment or removal and shall carry out their evaluation. The Committee shall formulate criteria for determining qualifications, positive attributes and independence of directors and recommend to the board a policy relating to remuneration for directors, KMP and other employees and while formulating the policy ensure reasonableness and sufficiency of remuneration to retain and motivate Directors and quality to run Company relationship of remuneration to performance and remuneration of Directors, KMP and other senior management. The Policy shall be disclosed in Board Report also.

STAKEHOLDERS COMMITTEE

Applicability:

Company which consist of more than 1000 shareholders, Debenture holders, Deposit holders and any other security holders at any time during a financial year.Composition: Such members as may be decided by Board and the Chairperson shall be a non-executive Director

Function:

The Committee shall consider and resolve the grievances of security holders and the Chairperson of each of the Committees constituted under section 178 or in his absence any other member of the committee authorized by him in its behalf shall attend the General Meetings of the Company. Penalty for contravention of section 177 and 178:

Fine of minimum Rs. 1 lakh and may extend to 5 lakh on Company and on every officer who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine no less than Rs. 25000 which may extended to 1 lakh or with both.

RESOLUTION BY CIRCULATION (SEC 175 WITH RULE 5 OF COMPANIES (BOARD MEETING AND ITS POWER) RULES, 2014

Resolution by circulation shall not be deemed valid unless it is circulated in draft together with necessary documents related thereto to all directors or members of the committee as the case may be, at their address registered with company in India by hand delivery/post/courier/ e-mode (may include email / fax) and has been approved by majority of Directors or members of committee who are entitled to vote on the resolution.

If 1/3 or more of total number of directors require that any resolution by circulation must be decided at Board meeting, the Chairperson shall put the same to be decided at a meeting of Board. Resolution passed by circulation shall be noted at subsequent Board meeting and form part of minute of such meeting.

WINDING UP AND DISSOLUTION:-

Meaning of Winding Up:

―Winding up is a means by which the dissolution of a company is brought about and its assets are realised and applied in the payment of its debts. After satisfaction of the debts, the remaining balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company.‖

1. ―The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. An Administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

2. As per Section 2(94A) of the Companies Act, 2013, ―winding up‖ means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016.

Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution, the legal entity of the company remains and it can be sued in a Tribunal of law.

Meaning of Dissolution of a Company:

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company‘s name shall be struck off by the Registrar from the Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution thus puts an end to the existence of the company.

CIRCUMSTANCES FOR WINDING UP BY TRIBUNAL (SECTION 271):

A company may be wound up by the Tribunal on a petition filed under Section 272 of the Act.

The company may be wound up by Tribunal –

1. If the company is unable to pay its debts;

2. If the company has resolved by special resolution that the company be wound up by the Tribunal;

3. If the company has acted against the interests of the sovereignty and integrity of India, its security of the State, friendly relations with foreign States, public order, decency or morality;

4. If the Tribunal has ordered the winding up of the company under Chapter XIX i.e. in case of a sick company;

5. If, on application by the Registrar or the Government, the Tribunal is of the opinion that the affairs of the company has been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

6. If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

7. If the Tribunal is of the opinion that it is just and equitable to wind up the company.

Who may make petition for winding up?

i. **Petition by the Company** - A company can file a petition to the Tribunal for its winding up when the members of the company have resolved by passing a Special Resolution to wind up the affairs of the company. Managing Director or the directors cannot file such a petition on their own account unless they do it on behalf of the company and with the proper authority of the members in the General Meeting.

ii. **Petition by the Contributories** - A contributory shall be entitled to present a petition for the winding up of the company, notwithstanding that he may be the holder of fully paid-up shares or that the company may have no assets at all, or may have no surplus assets left for distributionamong the holders after the satisfaction of its liabilities. It is no more required of a contributory making petition to have tangible interest in the assets of the company

iii. **Petition by the Registrar** - Registrar may with the previous sanction of the Central Government make petition to the Tribunal for the winding up the company only in the following cases:

(a) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;

(b) If the company has acted against the interests of the sovereignty and integrity of India the security of the State friendly relations with foreign States, public order, decency or morality;

(c) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

iv. **Petition by the Central Government or a State Government** on the ground that company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

v. Any person authorised by the Central Government in that behalf.

COMPANY LIQUIDATOR AND THEIR APPOINTMENTS (SECTION 275):

For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of passing of the order of winding up shall appoint an Official Liquidator or a liquidator from the panel maintained as the Company Liquidator.

Provisional liquidator shall have same powers as a liquidator unless the Tribunal limit or restrict his power by an order.

The provisional liquidator or the Company Liquidator, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals and having at least ten years‘ experience in company matters.

The Central Government may remove the name of any person or firm or body corporate form the penal on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence. The Central Government shall give him or it a reasonable opportunity of being heard before remove him or it from the panel.

The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

REMOVAL AND REPLACEMENT OF LIQUIDATOR (SECTION 276):-

The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator on any of the following grounds, namely:—

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

In the event of death, resignation or removal of the provisional liquidator or Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his

or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.

The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Winding up committee (Sub – Section 4 of Section 277):

Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—

(i) Official Liquidator attached to the Tribunal;

(ii) nominee of secured creditors; and

(iv) a professional nominated by the Tribunal.

The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—

(i) taking over assets;

(ii) examination of the statement of affairs;

(iii) recovery of property, cash or any other assets of the company including benefits derived there from;

(iv) review of audit reports and accounts of the company;

(v) sale of assets;

(vi) finalisation of list of creditors and contributories;

(vii) compromise, abandonment and settlement of claims;

(viii) payment of dividends, if any; and

(ix) any other function, as the Tribunal may direct from time to time.

The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.

The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

STAY OF SUITS ETC. ON WINDING UP ORDER (SECTION 279):

When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

Any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

This Section shall not apply to any proceeding pending in appeal before the Supreme Court or a High court.

JURISDICTION OF TRIBUNAL (SECTION 280):

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company, including claims by or against any of its branches in India;

(c) any application made under section 233;

(d) any scheme submitted under section 262;

(e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company.

Whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

Powers and duties of Company Liquidator:

Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—

1. to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

2. to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company‘s seal;

3. to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

4. to sell the whole of the undertaking of the company as a going concern;

5. to raise any money required on the security of the assets of the company;

6. to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

7. to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;

8. to inspect the records and returns of the company on the files of the Registrar or any other authority;

9. to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

10. to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instrumentshad been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

11. to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

12. to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

13. to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, **affidavit, bond or instrument as may be necessary,—**

i. for winding up of the company;

ii. for distribution of assets;

iii. in discharge of his duties and obligations and functions as Company Liquidator; and

n. to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

VOLUNTARY WINDING UP OF A COMPANY:-

Sec 304**. Circumstances in which company may be wound up voluntarily.—** A company may be wound up voluntarily,— (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or (b) if the company passes a special resolution that the company be wound up voluntarily. 305.

Declaration of solvency in case of proposal to wind up voluntarily.— (1) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

(2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless— (a) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date; (b) it contains a declaration that the company is not being wound up to defraud any person or persons; (c) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and (d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer. (3) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (1). (4) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from theproceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both. 306. Meeting of

creditors.— (1) The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 304. (2) The Board of Directors of the company shall—

(a) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and (b) appoint one of the directors to preside at the meeting. (3) Where two-thirds in value of creditors of the company are of the opinion that— (a) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or (b) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal. (4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof. (5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the director of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.

***OPPRESSION AND MISMANAGEMENT*:**

Sec 241. Application to Tribunal for relief in cases of oppression, etc.— (1) Any member of a company who complains that— (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company_s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

Sec 242. Powers of Tribunal.—

(1) If, on any application made under section 241, the Tribunal is of the opinion— (a) that the company_s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the 86 making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—

(a) The regulation of conduct of affairs of the company in future;

(b) The purchase of shares or interests of any members of the company by other members thereof or by the company; (c) In the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) Restrictions on the transfer or allotment of the shares of the company;

(e) The termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) The termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause;

(g) Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(h) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(i) Removal of the managing director, manager or any of the directors of the company;

(j) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(k) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(l) Appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(m) Imposition of costs as may be deemed fit by the Tribunal;

(n) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon suchterms and conditions as appear to it to be just and equitable.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every

officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

CORPORATE SOCIAL RESPONSIBILITY (SECTION 135):-

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee. (3) The Corporate Social Responsibility Committee shall,— (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time. (4) The Board of every company referred to in sub-section (1) shall,— (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and (b) ensure that the activities as are included in Corporate Social Responsibility.

Policy of the company are undertaken by the company. (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities: Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount. Explanation.—For the purposes of this section ―average net profit‖ shall be calculated in accordance with the provisions of section 198.

Corporate Governance under the Companies Act, 2013

The concept of Corporate Governance evolved in 1990's by the Industry Association On Confederation of Indian Institute which was the first initiative in India as a voluntary measure to be adopted by Indian

companies. Corporate Governance initiative was taken by Securities and Exchange Board of India (SEBI) as Clause 49 of the Listing Agreement as well as from the viewpoint of shareholders, investors and other stakeholders of the company Corporate Governanceinitiative was taken by Naresh Chandra Committee and Narayana Murthy Committee who previewed Corporate Governance model working in companies. Clause 49 of the Equity Listing Agreement consists of mandatory as well as non mandatory provisions. Those which are absolutely essential for corporate governance can be defined with precision and which can

be enforced without any legislative amendments are classified as mandatory. Others, which are either desirable or which may require change of laws are classified as non-mandatory. The non-mandatory requirements may be implemented at the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

Corporate Governance is a multi-faceted subject and difficult to comprehend in a concise definition. The main theme of corporate governance is to integrate sound management policies in the corporate framework in such a manner to bring economic efficiency in the organization in order to achieve twin goals of profit maximization and shareholder welfare.

The significance of corporate governance:

1. Accountability of Management to shareholders and other stakeholders.
2. Transparency in basic operations of the company and integrity in financial reports produced by the company.
3. Component Board comprising of Executive and Independent Directors.
4. Checks & balances is an integral part of good corporate governance.
5. Adherence to the rules of company in law and spirit.
6. Code of responsibility for Directors and Employees of the company.
7. Open Dialogue between management and stakeholders of the company.
8. Investor Loyalty is a guarantor of good corporate governance practices.

The Companies Act, 2013 has introduced various provisions bywhich the company has to mandatorily disclose certain practices . Some of the requirement are as follows:

1. Independent Director under the Companies Act, 2013 The strength of number of Independent Directors for the prescribed companies under Section 149(4) read with Rule 4 of Companies (Appointment and Qualifications of Directors) Rules, 2014 for listed Public Company is at least one third of total number of directors and public.
2. Audit Committee 1. The Audit Committees of the Companies Act, 2013 has undertaken both private and public companies within its ambit to constitute audit committees. The constitution of audit committee has also seen change as compared to clause 49 with minimum with three independent directors on the board along with the chairperson who should be able to read and understand the financial statement. 2. Section 177 of the Companies Act, 2013 and Rule 6 and 7 of Companies (Meetings of Board and its Powers) Rules, 2014 deals with the Audit Committee. 3. The Board of directors of every listed company and the following classes of companies, as prescribed under Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 shall constitute an Audit Committee. I. All public companies with a paid-up capital of Rs. 10 Crores or more; II. All public companies having turnover of Rs. 100 Crores or more; 3. Internal Audit Companies Act, 2013 has mandated the internal audit for certain classes of companies as specified under Section 138 of the Companies Act, 2013.

3. Internal Audit Companies Act, 2013 has mandated the internal audit for certain classes of companies as specified under Section 138 of the Companies Act, 2013.

Corporate Governance practices in the effective management of the company can be seen as introduction to new significant provisions introduced in the Companies Act, 2013 in form of independent directors, women directors on the board, corporate social responsibility and mandatory compliance of Secretarial Standards issued by Institute of Company Secretaries of India as per Section 118 of Companies Act, 2013.

CORPORATE GOVERNANCE

Corporate Governance is the continuous process of applying the best management practices,ensuring law is followed the way intended,and adhering ethical standardsby a firm for effective management ,meeting stakeholder responsibilities,and complying with corporate social responsibilities.

It contains policies and rules to maintain a strong relationship between the owners of the company(shareholders),the Board of Directors,management,and various stakeholders like employees,customers,Government,suppliers and the general public.

PRINCIPLES AND OBJECTIVES OF CORPORATE GOVERNANCE.

The principles of corporate governance are:

1.ACCOUNTABILITY-Accountability means to be answerable and be obliged to take responsibility for ones actions.By doing so,two things can be ensured-

a.That the management is accountable to the board of Directors.

b.That the Board of Dicertor is accountable to the shareholders of the company.

This principle gives confidence to shareholders in the business of the company that is case of any unfavourable situation,the person responsible will be held in charge.

b.FAIRNESS-Fairness gives shareholders an opportunity to voice their grievance and address any issues relating to the violation of shareholders right.The princip deals with the protection of shareholders rights,treating all shareholder equally without any personal favouritism,and granting redressal for any violations of rights.

c.TRANSPARENCY:Providing clear information about a companys policies and practices and the decisions that affect the rights of the shareholders represents transparency.This helps to build trust and a sense of togetherness between the top management and the stakeholders.It ensures accurate and full disclosure timely on material matters like financial conditions,performance, ownership.

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