Chapter – 1
Introduction of Company

Definition of a company [section 2(20)]:-

A company formed and registered under
- Companies act, 2013

  OR
- Any previous company law.

Meaning of company

A company is an artificial person having separate legal entity with perpetual succession and common seal.

Features: - [Sec 34]

1. **Artificial person :-**
- It is other than the natural person
- It has no physical existence.
- Invisible and intangible
- It exist in the eye of law

2. **Separate legal entity:-**
- It is distinct from its members
- It has its own name
- It has its own right and obligations.

3. **Perpetual succession:-**
- Life of a company does not depend upon the life of its member.
- Member may come and go but the company goes on forever.
- Death, Insolvency, etc. of the member doesn't affect the continuity of the company.

4. **Common seal:-**
- It is an official signature of the company
- Any document on which common seal is affixed then it is treated as the legal document of a company
- The name of the company is engraved on its common seal
- It is to be affixed strictly according to manners prescribed in AOA of the company.

5. **Limited liability:-**

Limited by Shares	Amount unpaid on the shares held by the member.
Limited by Guarantee	Amount guaranteed by member.
Limited by Guarantee & having Share Capital	Amount unpaid on the shares held by the member (+) Amount guaranteed by him.
Unlimited company	Every member is liable to contribute to the assets of company until all the debts are paid in full.

6. Transferability of shares:-

Public company - Shares are free transferable.
Private company - Restricted.

Note:

- Shares are movable property.
- These are transferable in the manner provided by AOA.

Difference between company and partnership:-

Basic	Company	Partnership firm
Meaning	Company is an artificial person has separate legal entity with perpetual succession and common seal.	It is a relation between 2 or more person who has agreed to share the profit of a business carried on by all or any of them acting for all.
Minimum members	Public company - 7 Private company - 2	2
Maximum members	Public company - unlimited Private company – 50	Banking business – 10 Any other business – 20
Separate legal entity	It has separate legal entity	It do not have separate legal entity
Perpetual succession	It has perpetual succession	It does not have perpetual succession.
Liability	Limited by share /limited by guarantee / both	Unlimited liability
Act	Companies act, 2013	Indian Partnership act, 1932
Transferability of shares	Private co – restricted Public co – freely transferable	Transferable but with the consent of all the partners.
Min. Capital	Public co - Rs 5,00,000 Private co - Rs 1,00,000	No limit on capital.

Principle of separate legal entity:-

- It is distinct from its members
- It has its own name
- It has its own rights and obligations
- It can have own property in its own name
- It can be sued and can sue in its own name.

Case law:-
Salomon
V/s
Salomon & Co Ltd.

Legal effects:-

- There can be a transfer of property from a member to a company and vice-versa.
- A person can be a member, director, employee and creditor of a company at the same time.
- A company has its own rights and duties.
- A company is not an agent of members or directors.

Lifting or piercing of corporate veil:-
It means ignoring the separate legal identity of the company.

OR

It means disregarding the corporate personality and looking behind the real person who uses the legal entity of the company for any fraudulent or dishonest means.

Lifting of corporate veil:-
- The separate personality of the company is a statutory privilege
- It must be used for legitimate business purpose only.
- A company cannot act on its own. It acts through the natural person.
- When a fraudulent and dishonest use is made of the legal entity than the individual concern can't take shelter behind the corporate personality the court looks behind the corporate entity and makes the controlling person liable for debts and obligations.

The corporate veil is lifted under two categories:-
1. **Under statutory provisions:-**

(A) **Reduction in membership:-** If the number of member falls below the statutory limit

Public company 7 | Private Company 2

AND

The company continues to carry on the business for more than 6 months.

THEN

The remaining members who are aware of such fact shall be personally liable for the contracted after 6 months.

(B) **Mis description of names:-** if any officer company sign on the behalf of a company any contract or any negotiable instruments

BUT

Fails to correctly mention the name of company

THEN

He shall be personally liable.

(C) **Fraudulent trading:-** At the time of winding of a company

If

The court finds that the business of a company has been carried on to defraud its creditors or any other person

THEN

Any officer or director who are parties to fraud shall be personally liable.

(D) **Arrears of tax :-**
- In case of private company
- at the time of winding up
- any tax which cannot be recovered

- Then every person who was the director at that time shall be jointly and severally liable.

(E) **Ultra virus act: -** The director of a company shall be personally liable for all the ultra virus act done by them on the behalf of the company.

2. Under Judicial decisions:-

(A) Protection of revenue:-
Case law: - Sir Dinshaw Maneckjee Pettit

- An assessee has huge investment from that investment he earns dividend and interest income.
- He forms 4 private companies and transfers the whole investment to these.
- These companies do not have any other business except such investment
- The income receive on these investment are within the exempted limit of tax
- The court held that the only purpose of forming these private companies was to evade the taxes.
- Therefore, income earned by these private companies was treated as the income of the assessee.

(B) Prevention of fraud or improper conduct:-

Case law: - Gilford Motor Co Ltd. V/S Horne

- An employee entered into a contract with the employer that he will not solicit the customers of the employer after leaving the employment.
- After leaving the employment the employee incorporated a company and started soliciting the customers of the employer in the name of company.
- The court held that the purpose of formation of the company was to avoid a legal obligation arising from a contract.
- Therefore, the employee shall be personally liable for the loss sustain by the employer.

(C) Determining the character of a company i.e. enemy company:-

Case law: - Daimler Co Ltd V/S Continental Type & Rubber Co Ltd.

- The court held that the corporate personality of a company is to be ignored and the person in the ultimate control of the company shall be considered.
- Since the person controlling the company were enemies.
- Therefore, they cannot recover their debts.

(D) Check the avoidance of welfare legislation :-

Case law: - Workmen employed in Associated Rubber Industrial Ltd.
V/s
Associated Rubber Industrial Ltd

- As per bonus act 1965 a minimum bonus is to be paid on the profit earned.
- A company was earning huge profit
- Such a company incorporated a subsidiary company and transfer some valuable investments to it
- The subsidiary company has no asset except such investment
- The court held that the subsidiary was formed for the purpose of reducing the liability of bonus payable under the bonus act.
- Therefore, the profit earned by the subsidiary company is treated as the profit of the holding company.

Mandatory use of Limited or Private Limited [Sec 13]

Every Co shall use at the end of its name the word
Limited – For Public Co
Private Limited – For Private Co

Note:
[Sec 453] Fine for Contravention – Min Rs 500 - Max Rs 2000 — For every day of Contravention