COMMERCE HARBOUR

CA AKHIL KUMAR MITTAL' S

ATOMIC LAW BOOKLET 1.0

For CA INTER (NEW SYLLABUS)

MAIN HIGHLIGHTS

- ICAI Study Material
- Chapter-wise notes available
- Chapter wise details & Summary
- Applicable For Dec. 2021 & Onwards
- Mnemonics for easy rememberence
- Notes available in PDF or Hard copy.

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D I S C L A I M E R

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PREPARED IN BHARAT

CH-01 PRELIMINARY CHAPTER OF THE ACT COVERS

Introduction

The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August 2013 and was notified in the Official Gazette on 30th August 2013 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.

Short title, extent, commencement and application

Section 1 of the Companies Act, 2013 deals with the title of the Act according to which this Act may be called as the Companies Act, 2013. Further, section deals with the extent to the applicability of the Act. It says that the Act shall extend to the whole of India. This Section furthermore states of the applicability of the Act.

Section deals with the extent to the applicability of the Act. It says that the Act shall extend to the whole of India. The provisions of this Act shall apply to: -

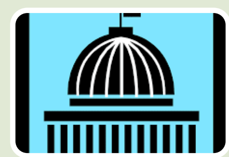
Companies incorporated under this Act

Insurance companies - If provisions not inconsistent with IRDA Act 1999 or Insurance Act, 1938.

Banking companies - If provisions are inconsistent with provisions of Banking Regulation Act, 1949

Companies engaged in the generation or supply of electricity

Any other company governed by any special Act for the time being in force



Body corporate, incorporated by any Act for time being in force, as the Central Government may, specify in this behalf

<u>Some easy way of remembering the terminologies used in law-</u>

Section	:	Ek baat sun...
Sub-section	:	Main bhi bolunga...
Provided that	:	Pehle puri baat sun...
Provided further that	:	Ruk, baat toh khatam hone de...
Explanations	:	Jo baat ki gayi hai vohi karni hai, apna dimag nahi chalana hai...
Circulars	:	Hamari bhi sunte jaao...
Notifications	:	Hum mar gaye kya??
Notwithstanding that	:	Beech me naa bol...
Subject to	:	Pehle jaa uski sun...

Definitions-

Name	Content
Abridged Prospectus*	It contains all the salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. It accompanies the application form of public issues.

* A prospectus is a very voluminous document, and one cannot be expected to read it completely and invest in this fast-pacing world. One needs quick, relevant and crisp information about the company. To serve this purpose, an abridged prospectus is made.

Name	Content
Accounting Standard	Means the standards of accounting or any addendum thereto for companies or class of companies.

* Accounting standards are needed so that financial statements will decently and reliably describe financial performance. Without standards, users of financial statements would need to learn the accounting rules of each organization, and correlations between organizations would be troublesome.

Name	Content
Article	▪ The articles of association of a company as originally framed, or ▪ as altered from time to time, or ▪ applied in pursuance of any previous company law, or ▪ applied in pursuance of this Act;

* AOA is a document which prescribes the rules and bye-laws for the general management of the company and for the attainment of its object as given in the memorandum.

Name	Content
Associate **C**ompany	▪ In relation to that other company means; ▪ means a company in which that other company has a **significant influence***; ▪ but which is not a subsidiary company of the company; ▪ having such influence and includes a **joint venture**** company

* Significance Influence → **Control of atleast 20%.**

** Joint venture → **Means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.**

Name	Content
Auditing Standards	▪ Means standards of auditing for companies referred in sec-143(10). ▪ Section 143 of the Companies Act, 2013 deals with the Powers and Duties of Auditors and Auditing Standards- ➲ Central Government may prescribe standards of auditing as recommended by the ICAI. ➲ Provided that **(Pehle puri baat sun...)** until any auditing standards are notified, any standard of auditing specified by the ICAI shall be deemed to be the auditing standards.

***Auditing standards are a set of systematic guidelines used by auditors when conducting audits on companies' financial records.**

Name	Content
Authorised capital or Nominal capital	Means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

***It is the maximum amount which the company raises by issuing the shares and is mentioned in the capital clause of Memorandum of Association.**

Name	Content
Board of Directors	In relation to a company, means the collective body of the directors of the company.

Name	Content
Body corporate or Corporation	includes a company incorporated outside India, but does not include: ➲ A co-operative society registered under any law relating to co-operative societies. ➲ Any other body corporate which the Central Government may, by notification, specify in this behalf.

Name	Content
Book & Paper B.M.W. की D.V.D	Include: ➲ **B**ooks of account. ➲ **M**inutes. ➲ **W**ritings. ➲ **D**eeds ➲ **V**ouchers ➲ **D**ocuments. ➲ Registers maintained on paper or in electronic form "E-Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act.

Name	Content
Books of accounts	Includes records maintained in respect of: ➲ **All sums of money received and expended by a company – P&L account** ➲ **all sales and purchases of goods and services by the company – Trading account** ➲ **the assets and liabilities of the company – Balance Sheet** ➲ **Items of cost as may be prescribed under section 148.** Section 148 of the Companies Act, 2013 authorizes Central Government to Specify Audit of Items of Cost in Respect of Certain Companies.

Name	Content
Called up capital	Means such part of the capital, which has been called for payment

*** Generally, the shareholders pay the price of the shares by installments, viz., application, allotment, First call, Final call etc. Therefore, the portion of the face value of the shares which the shareholders are called upon to pay or the company has demanded to pay is called Called-up capital.**

Name	Content
Chief Executive Officer	Means an officer of a company, who has been designated as such by it.

Name	Content
Chief Financial Officer	Means a person appointed as Chief Financial Officer.

Name	Content
Company	Means a company incorporated under this Act or under any previous company laws.

Name	Content
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.

Name	**Content**
Control	Shall Include: ➲ **Right to appoint majority of the directors;** ➲ **Control the management or policy decisions exercisable by a person;** ➲ **By virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.**

* **Control means** नियुक्ति का अधिकार **because** उनके शेयर होल्डिंग या प्रबंधन अधिकारों या शेयरधारकों के साथ समझौता है |

Name	**Content**
Debentures	Include debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. **<u>Some of the exceptions are-</u>** ➲ **Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934;** ➲ **Such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India.** shall not be treated as debenture.

Name	Content
Documents Code to remember **D.R. – S.O.N.**	Includes: ➲ **Declaration, requisition and register + Summons, Order and notice,** ➲ **Maintained on paper or in electronic form whether issued, sent or kept in pursuance of this Act.**

Name	Content
Employee stock option  	Means option given to:- ➲ **Directors, officers or employees of a company or of its holding company or subsidiary company or companies;** ➲ **Which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price?**

Name	Content
Financial Statement	Includes:- ➲ **Profit & Loss account | Income & expenditure account – Non profit** ➲ **Balance Sheet at end of financial year.** ➲ **Cash flow statement for the financial year** ➲ **A statement of changes in equity, if applicable;** ➲ **Any explanatory note annexed to, or forming part of,**

* Provided that (**Pehle puri baat sun…),** with respect to One Person Company, small company and dormant company, Financial statement may not include the cash flow statement.
* Profit and Loss Account = Statement of Profit and Loss.

Name	Content
Financial Year	In relation to any company or body corporate, means:- ➲ The period ending on the 31st day of March every year; **Provided that-** ➲ Where company, which is HOLDING or SUBSIDIARY of a company; ➲ Incorporated outside India; ➲ Is requires to follow different FY because of consolidation of accounts; ➲ Central Government may, on an application made by that company in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year. ➲ Provided that a company/body corporate, existing on commencement of this Act, shall, within a period of 2 years from such commencement, align its financial year as per the provisions of this clause. (वर्ष को सुधारें).

Name	Content
Free Reserves	Means reserves which are available for distribution for dividend. Reserves are as per latest audited balance sheet. Provided that below not to be stated as free reserves: ➲ Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise. ➲ Changes in carrying amount of asset/liability.

Name	Content
Government Company	Means any company in which not less than 51% of paid-up capital is held by- ➲ Central government ➲ State government ➲ Partly by one or more state government and by central government ➲ Includes a company which is a subsidiary company of such govt. company.

Name	Content
Issued Capital	Means such capital as the company issues from time to time for subscription.

Name	Content
Key Managerial Personnel	In relation to company, includes: - ➲ **Managing Director** ➲ **Whole time director** ➲ **CFO, CEO** ➲ **Company secretary.**

Name	Content
Listed Company	Means a company which has any of its securities listed on any recognized stock exchange.

Name	Content
Members **Subscriber to memorandum (जन्म से सदस्य)** **Every other person who agrees in writing (खुद अपनाया)** **Every person holding shares of the company**	In relation to a company, means- **Shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company.** **Agrees to be a member, in writing, and whose name is entered in register of members of the company.** **Whose name is entered as a beneficial owner in the records of a depository.**

Name	Content
Memorandum	Means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

* MOA of a company defines the constitution and the scope of powers of the company.

Name	Content
Net Worth एक financial टर्म है, जो किसी व्यक्ति,कंपनी, संस्था, के पास शुद्ध सम्पति को बताता है,और साथ ही साथ NETWORTH के द्वारा हम उस व्यक्ति, कंपनी, संस्था के actual financial हालत को समझ सकते है|	Will understand it by mathematical equation- **Paid up capital XXX** **+ All reserves XXX** **+ Securities Premium A/c XXX** **± P&L account XXX** **Total amount XXX** **- Deferred Expenditure XXX** **- Accumulated Losses XXX** **- Miscellaneous expenditure not written off XXX** **Net worth amount XXX**

Name	**Content**
Officer	Includes any director, manager or key managerial personnel with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

Name	**Content**
One person Company	Means a company which has only one person as a member. ☑ **Subscriber to memorandum** ☑ **Every other person who agrees in writing (खुद अपनाया)** ☑ **Every person holding shares of the company**

Name	Content
Office in Default 	An officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment. Officer may include: ➲ **Whole time director (WTD)** ➲ **Key Managerial Person (KMP)** ➲ **No WTD + KMP – Then – Specified by board OR those who have given his/her consent in writing to board.** ➲ **Any person who-** **Under immediate authority of the Board or KMP is charged with any Responsibilities including** **Maintenance, filing or distribution of accounts or records, authorizes, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent.** ➲ **Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than who advise BOD in professional capacity.**

Name	**Content**
One person Company	Means a company which has only one person as a member.

* Companies Act, 2013, has introduced the concept of One Person Company, in which a single individual can start a private limited company.

Name	Content
Ordinary / special resolution	Means an ordinary resolution, or as the case may be, special resolution referred to in section 114.

* **An ordinary resolution** - A resolution passed by the shareholders of a company by a simple or bare majority.

* **Special resolution** - A resolution of the company's shareholders which requires at least 75% of the votes cast by shareholders in favour of it in order to pass

Name	Content
Postal Ballot	Means voting by post or through any electronic mode.

Name	Content
Private Company	Means a company having a minimum paid-up share capital as may be prescribed, and which by its articles. **(a) Restricts the right to transfer its shares; except in case of One Person Company; (Joint shareholders = Single member)** **(b) Prohibits any invitation to the public to subscribe for any securities of the company.**

Exceptions : Not to be included in number of members :-

1. Persons who are in the employment of the company.
2. 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.

Some of the provisions:-

1. Requirement of having a minimum paid up share capital shall not apply to a section 8 company. This exemption shall not apply to sec-8 companies which has defaulted in:
   (a) Filing its financial statements section 137 of the Companies Act, 2013;
   (b) Filing annual return under section 92 of the said Act with Registrar.

Name	Content
Promoter 	Means a person:- (a) Who has been named as such **in a prospectus or is identified by the company in the annual return**; (b) Who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise. (c) In accordance with whose advice, directions or instructions the **Board of Directors of the company is accustomed to act**.

Name	Content
Prospectus	Means: 1. Any document described or issued as a prospectus and includes; 2. a **Red herring prospectus or ***shelf prospectus or any notice, circular, advertisement or other document; 3. Inviting offers from the public for the subscription or purchase of any securities of a body corporate.

* **A prospectus** is a legal disclosure document that provides information about an investment offering to the public. The prospectus contains information about the company, its management team.

****Red herring prospectus** - means a prospectus that does not have complete particulars on the price of the securities offered and quantum of securities offered.

****Shelf prospectus** - Means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Name	Content
Public Company	Means a company which- (a) **Not a private company.** (b) **Has a minimum paid-up share capital as may be prescribed.**
Provided that **(Pehle puri baat sun...)** 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. Example:- ABC Pvt. Ltd. is wholly owned subsidiary of ABCD Ltd. ABC Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case since ABC Pvt. Ltd.is subsidiary of ABCD Ltd., which is a public company, therefore ABC Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.	

Name	**Content**
Registrar	Means a company which- (a) **A registrar** (b) **Assistant Registrar** (c) **Deputy Registrar** (d) **Additional registrar** (e) **A joint registrar** Having the duty of registering companies and discharging various functions under this Act.

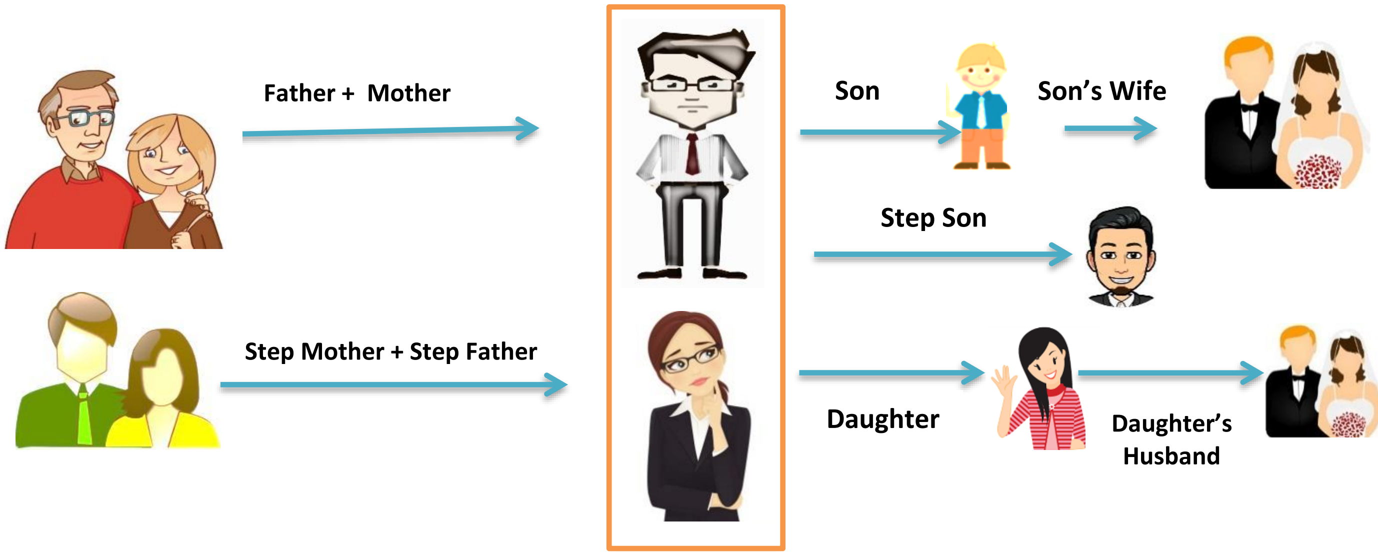
Name	Content	
Related Parties	A director or his relative **(Relative means a member of the same HUF, husband, wife, father, step father, mother, step mother, son, step son, son's wife, daughter, daughter's husband, brother, step brother, sister, step sister).**	Mr. A, B and C are directors & relatives of these Directors are considered as related parties.
	Key managerial personnel or his relative	Mr. Om is a Company secretary & his relatives will be considered related parties.
	A firm in which a director, manager, or relative is a partner	Mr. A is a partner at RSTU Pvt. Ltd, another firm. This firm will also be considered as a related party.
	A private company in which a director, manager, or relative is a member or director	Mr. B is a director in Mad Pvt. Ltd – In this case Mad Pvt. ltd becomes a related party… Even when Mr. B's relative is a member or director in Mad Pvt. ltd, this company will be considered as a related party.
	A public company in which a director or manager is a director and holds along with his relatives more than 2% of its paid-up capital	Mr. C along with his relatives holds more than 2% of the paid-up capital of Night ltd. In this case, Night Ltd will be considered as a related party.
	Any body-corporate whose board of directors, MD or manager is required to act in accordance with the advice, directions or instructions of a director or manager **Exception - In cases when these directions are followed in professional capacity)**	When Mr. D Ltd acts on the directions of Mr. A, Patlu Ltd will be a related party.
	Any person on whose advice, directions or instructions a director or manager is required to act (NA when this is done in professional capacity)	Mr. A holding 51% in LMN Ltd on whose advice Mr. L has to act will be considered as a related party.
	Holding, Subsidiary or Associate of such company Any company which is subsidiary of a holding company to which it is also a subsidiary.	These all will be considered as related parties: • ABC Ltd holding 51% in LMN Ltd (Holding Company) • LMN Ltd holding 51% in XYZ Ltd (Subsidiary Company) • DEF Ltd holding 30% in LMN Ltd (Associate Company) PQR & LMN are both subsidiaries of ABC ltd. Thus, PQR also becomes a related party.

* **Investing company or the venturer of a company**" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

** **Exemption** - This Clause (viii) shall not apply with respect to section 188 to a private company.

Name	Content
Relative	With reference to any person, means anyone who is related to another, if - 1. They are members of a Hindu Undivided Family; 2. They are husband and wife; or 3. One person is related to the other in such manner as may be prescribed…**(Rule 4)**

(Relative means a member of the same HUF, husband, wife, father, step father, mother, step mother, son, step son, son's wife, daughter, daughter's husband, brother, step brother, sister, step sister).



Name	Content
Share	Means a share in the share capital of a company and includes stock

Name	Content
Small Company *Amendment for Nov 2021. AMENDMENT	Means a company, other than a public company- **(i) Paid up share capital < 50 lacs or such higher amount, and shall not be more than 2 crores.** **(ii) Turnover (P&L) for immediately preceding FY < 2 crore or such higher amount, which shall not be more than 20 crore rupees.**
Provided that nothing in this clause shall apply to- **1. A holding company or a subsidiary company** **2. A company registered under section** **3. A company or body corporate governed by any special Act.**	

Name	Content
Subscribed Capital	Means such part of the capital which is for the time being subscribed by the members of a company.

Name	Content
Subsidiary company or Subsidiary	In relation to other company means a company in which holding company: **(i) Controls the composition of the Board of Directors.** **(ii) Exercises or controls more than ½ of total voting power either at its own or together with one or more of its subsidiary companies.**
Some important points to be considered: **(a) Shares held by a company or power exercisable by it in another company in a fiduciary (ज़िम्मेदार व्यक्ति) capacity shall not be counted for the purpose of determining the holding –subsidiary relationship.**	

Name	Content
Sweat Equity Shares	• Means such equity shares as are issued by a company to its directors or employees at a discount; • For consideration, other than cash; • For providing their know-how or making available rights in the nature of intellectual property rights or value addition.
• स्वेट इक्विटी शेयर आम लोगों को नहीं यानी पब्लिक को नहीं जारी किए जाते हैं बल्कि यह सिर्फ कंपनी के आंतरिक फाउंडर, डायरेक्टर्स और कर्मचारियों को ही जारी किए जा सकते हैं । • स्वेट इक्विटी शेयर एकमात्र शेयर है जिसे डिस्काउंट पर जारी किया जा सकता है।	

Name	Content
Total voting power	• Means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company; • Votes – **members or proxies,** • Having a right to vote on that matter are present at the meeting and cast their votes;

Name	Content
Unlimited Company	Means a company not having any limit on the liability of its members;

Name	Content
Turnover	Means gross amount of (a) Revenue recognized in the profit and loss account from the sale, supply, or distribution of goods or (b) On account of services rendered, or both, by a company during FY.

------------------End of the chapter------------------

QUESTION ASNWER SESSION

Example 1:

H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.50 crores; and paid-up share capital was ₹ 40 lacs.

Answer 1:

Since S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a small company it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a small company because it is the subsidiary of another company (H Ltd.). [Proviso to section 2(85)].

Example 2:

ABC Ltd. was registered with Registrar with an Authorised capital of ₹ 2,00,00,000 where each share is of ₹ 10. In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for ₹ 8 per share

Answer 2:

Authorized share capital = ₹ 2,00,00,000 |**Subscribed capital** = 10,00,000 x 10 = ₹ 1,00,00,000
Issued capital = 7,00,000 x 10 = ₹ 70,00,000 | **Called-up capital** = 7,00,000 x 8 = ₹ 56,00,000
Paid-up capital = 56,00,000 – (6000 x ₹ 8) = ₹ 55,52,000

Example 3:

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 70 lakh and turnover of ₹ 30 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013-

(i) Whether the MNP Private Ltd. can avail the status of small company?
(ii) What will be your answer if the turnover of the company is ₹ 15 crore?

Answer 3:

Fact of the case

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 70 lakh and turnover of ₹ 30 crores.

As per Provisions

1. **Paid up share capital < 50 lacs or such higher amount, and shall not be more than 2 crores**
2. **Turnover (P&L) for immediately preceding FY < 2 crore or such higher amount, which shall not be more than 20 crore rupees.**

Conclusion

In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 70 lakh & having turnover of ₹ 30 crore. Since only one criteria of share capital not exceeding ₹ 2 crores is met, but the second criteria of turnover not exceeding ₹ 20 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company

Example 4:

The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31st March, 2020 is as below:

(1) Paid-up equity share capital ₹ 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of ₹ 10 each. There is no change in the paid-up share capital thereafter.

(2) The turnover is ₹ 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account. You are to advise on the following points explaining the provisions of the Companies Act, 2013.

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement?

Answer 4:

Fact of the case

(i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?

(ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement.

As per Provisions

- Section 2(87) state that subsidiary company, in relation to any other company (that is to say holding company), means a company in which the **holding company exercises or controls more than ½** of total voting power either at its own or together with one or more of its subsidiary companies.
- **Paid up share capital < 50 lacs or such higher amount, and shall not be more than 2 crores.**
- **Turnover (P&L) for immediately preceding FY < 2 crore or such higher amount, which shall not be more than 20 crore rupees.**

Conclusion

(i) Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @₹ 10 totaling ₹ 50 lakhs). Hence, Smart Solutions Private Limited is not a subsidiary of Software Limited and hence it is a private company and not a deemed public company.

(ii) Paid-up share capital (₹50 lakhs) and turnover (₹2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited can be categorized as a small company. Hence, is exempted from filing a cash flow statement as a part of its financial statements. Thus, Smart Solutions Private Limited has not defaulted in filing its financial statements with ROC.

Example 5:

Roma along with her 6 friends has incorporated Roma Trading Ltd. in May 2020. The paid-up share capital of the company is ₹30 lacs. Further, in April 2021, she noticed that in the last financial year, the turnover of the company was well below ₹ 2 crores. Advise whether the company can be treated as a 'small company'.

- Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 50 lacs and also its turnover has not exceeded the threshold limit of ₹ 2 crores.
- The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited companycannot enjoy benefits of 'small company'.
- Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it is treated as a 'small company'.
- If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.

Answer 5:

The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company cannot enjoy benefits of 'small company'.

Example 6:

Abhilash & Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per last P&L account for the year ending 31st March, 2020, its turnover was less than ₹ 2 crores and paid-up share capital was less than ₹ 50 lacs. **Advise.**

- A section 8 company, which meets the criteria of 'turnover' and 'paid- up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.
- If the acquisition of minimum 5% stake in another 'small company' materializes in the 2^{nd} financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with written permission of concerned ROC, it can acquire the status of 'small company'.
- The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.
- A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.

Answer 6:

The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.

Example 7:

Abhilash & Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per last P&L account for the year ending 31st March, 2020, its turnover was less than ₹ 2 crores and paid-up share capital was less than ₹ 50 lacs. **Advise.**

- A section 8 company, which meets the criteria of 'turnover' and 'paid- up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.
- If the acquisition of minimum 5% stake in another 'small company' materializes in the 2nd financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with written permission of concerned ROC, it can acquire the status of 'small company'.
- The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.
- A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.