

1. PRELIMINARY

347
Max. 5 Marks

⇒ Applicability of Co. Act, 2013 :-

(1) on All companies

(2) Insurance co., Banking co., Electricity co. & co. governed by special Act.

Except if prov. are inconsistent

Banking Reg. Act, IRDA Act, 1999, Electricity Act, 2003 & special Act.

(3) Any other co. incorporated under other Act or CGI prescribed by Notification.

⇒ The Companies Act, 2013

Section: 1 Short title, Extent & commencement

↓
The Companies Act, 2013

↓
Whole of India

↓
Diff. section on diff. act

Preamble :-

⇒ ENACTED { To consolidate
&
Ammend } law related to companies

NO. of sections :- 470 sections Totally
schedules :- 7

co. Rules, 2014 :- prescribed by co. time to time

circulans :-

Notifications

chapters :- 29 → out of which 10 ch. in CA INTER

co. Act, 1956 --- --- --- The co. Act, 2013

(1) Improve corporate governance.

(2) Simplification of Regulations.

(3) changed Economic conditions.

(4) strength to minority Investors.

(5) Modern provisions.

section 2 :- Definitions

company :- co. Incorporated under co. Act, 2013 OR

Any other previous co. law like co. Act, 1956

company → status :- citizen (X) AS per constitution of India & citizenship Act, 1955

:- Resident (✓)

:- Nationality (✓)

:- Domicile (✓) (i.e. where co. is situated)

⇒ characteristics of company :-

(1) separate legal Entity :-

- ↳ Members are Different from the company.
- ↳ company got own identity once they Incorporate

(2) Perpetual succession :-

- ↳ Death, Insanity of member doesn't effect existence of co.
- ↳ Member may come or go, company goes forever.

(3) Management of co. :- Different from ownership

Member

Management

Ownership

Board of Directors

Shareholders

(4) company { Can sue } { from others } By its
 { To be sued } { on others } own name

(5) separate property.

use law :- Macra Vs. Northern Assurance :-

- ↳ company property belongs to company
- ↳ it is not owned by members of co.
- ↳ Member of co. doesn't have insurable interest in property of co.

members Vs. company

(corporate veil) ←

- once members incorporate the company, company gets separate identity from members.
- Law creates veil between company & members.
- Now, company is responsible for its own acts, members are not responsible for co. acts or vice versa.
- But sometime, court can ignore concept of corporate veil & uphold this artificial curtain.
- When members/directors involves tax evasion, enemy country contract, To avoid legal obligation or contract, court will disregard separate entity concept & look into real culprits.

Types of company { liability wise }

liability → Members → limited upto unpaid value of shares

- co. can call anytime the unpaid value from members

→ shares

- Fully paid up → Member liability is Nil
- Not fully paid up → Member liability upto the value of unpaid Amt.

Even if company incurred loss.

→ Unpaid Amount can be called by company

During liquidation

Going concern:

• company limited By shares

Initial Funds

Subsequent Funds



From shares capital

other distⁿ contribution

• company limited By Guarantee

- NPO
- clubs
- Trade Association

liability of member Limited → upto the value of guarantee given in MOA

To contribute in the Assets of the co. in case of wind up → given ^{guarantee} by member to co.

→ When company can call guaranteed Amount from members?

During going concern During liquidation

only at the time of liquidation



Guarantee company

Having share capital
↓ (2 fixed liability)

NOT Having share capital

Now, member has to pay

one liability

(if) Unpaid Amt (+) Guarantee Amt

only Guarantee Amt

At any time

At liquidation

At time of liquidation

Initial funds ⇒ from members

Initial funds ⇒ other sources

Working funds ⇒ other sources

Working funds ⇒ other source

No. of Members

Pvt co.

Pub. co.

OPC

⇒ Private co :- By AOA (RtP)

Restriction



Transfer of
Shares

Limitation



No. of members

Max :- 200

Prohibition



on inviting public
for subscription

of shares

Members

↳ Min :- 2

Max :- 200

Employee
having share
of co.

Ex-Employee
having share
of co.

Directors

↳ Min :- 2

Max :- 15

NOT to be included in 200 limit of members

→ "USE PVT LTD after its name"

after Incorporation

→ Joint shareholders are to be treated as one share holder.

⇒ public co. ⇒ A company which is not Pvt. co.

Min. Directors	Max Directors	↳ No. limit on No. of members	
↓	↓	Min members	Max Members
3	15	(7) → sec: 3	(No limit)
↳ NO Restriction on Transfer of shares			
↳ NO prohibition on inviting public for subscription of shares			

→ "Use **LTD** word after its name"

⇒ special Note:-

Pvt. co. ^{subsidiary of} → public co.

↓
Then deemed
to be public co.

↓
No exemptions now as
Applicable to Pvt. co.

Section 3 : Formation of co.

only for lawful purpose

Pvt. co.

pub. co.

OPC

2 or more person

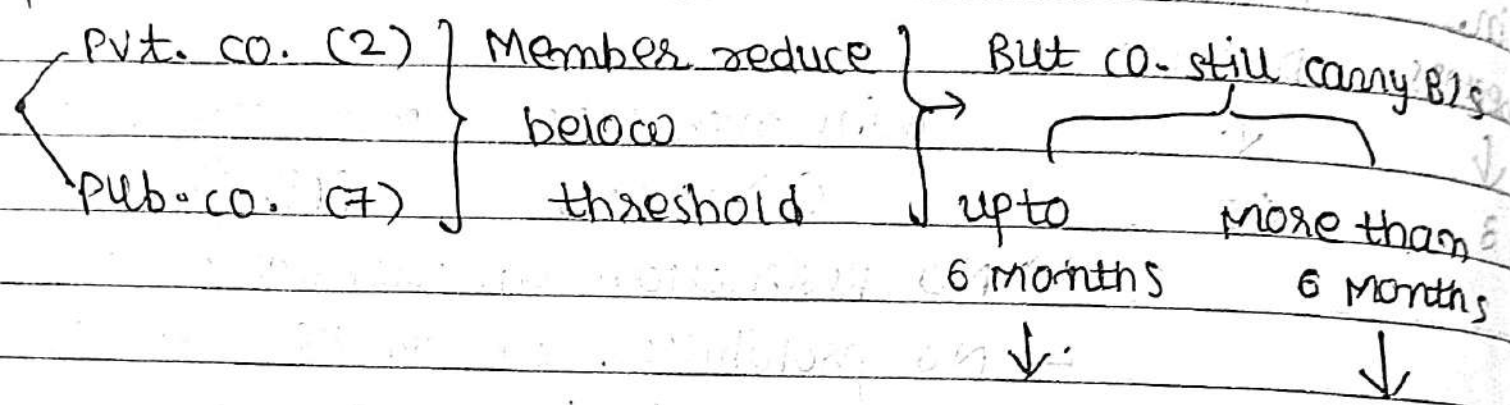
7 or more person

1 person

subscribe their names in MOA

↓
comply All requirement of Registration.

special Note:- section 3A :-



NO ISSUE Every member
during this period
liable personally for All debt
of that period
&
can also be sued personally.

⇒ one person company :-

- OPC should be written as suffix in Bracket → every
- only one person as a member.
- concept suggested by J.J. Isami committee.
- To avoid the requirement of forceful entry of 2nd shareholder.
- Pvt. co. → except some provisions
- Min no. of Director → 1
- NO GM / AGM → Sec. 122 of Co. Act, 2013
- Summary of BOD report applicable.
- Annual Return (Sec: 92)
 - co. secretary → yes → CS (D)
 - Director → will sign

→ No Need of CFS → sec: 129

→ Director Meeting

only 1 director: more than one director

one Board Meeting → in half of calendar year

GAP Between 2 Board Meeting,

→ At least 90 Days

→ Nominee Name ^{given} in succession who will become member at death/incapacity (MOA)

→ Natural ⊙

→ Resident ⊙

More than 120 Days in P.F.Y.

→ Minor ⊗

→ Indian citizen ⊙

→ Nominee will give his written consent Form INC-3

prior approval

→ CO. during

Incorporation

INC-32 + MOA + AOA

⊕

INC-3

} ROE

→ Nominee can withdraw his consent at anytime

Notice

Subscriber → Now this subscriber OPC will appear

new nominee within 15 days from this notice

→ subscriber can also change the Nominee Name at any time.

★ → change in the name of person (Nominee)
Not to be called as "Alteration of MoA"

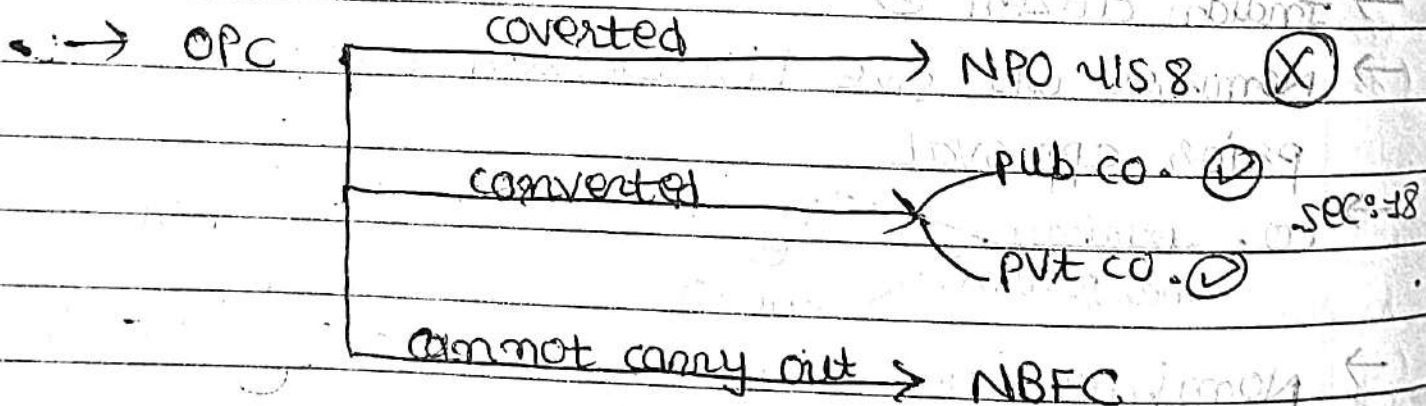
→ suppose subscriber → died → Now, Nominee will become new member, Now position of nominee gets vacated.

↳ so, New Nominee will be appointed within 15 days

→ Three cases

- Withdrawal of consent by Nominee
 - Replace of Nominee by member
 - Nominee becomes member
- } within 30 days
↓
Intimate to ROC

A person { cannot be member of more than 1 OPC
&
shall not nominee of more than 1 OPC



→ In case of OPC, Minor can not become subscriber & ~~the~~ Nominee

⇒ small company :-

→ public co. shall not be small company.

→ pvt. co. $\oplus$ $\rightarrow$ PUSC :- $< 4 \text{ cr} \sim 10 \text{ cr}$ $\rightarrow$ there can time to time increase this limit upto 10/100 cr.
 $\rightarrow$ TIO :- $< 40 \text{ cr} \sim 100 \text{ cr}$
 As per BCL immediately by proceedings

→ Holding co. $\rightarrow$ these can't $\leftarrow$ section 8 (NPO)

subsidiary co. $\rightarrow$ small co. $\leftarrow$ special Act co.

→ some exceptions applicable to small company due to Burden :-

↳ NO Need to prepare CFS

↳ Board Meeting :- Half of calendar year

↳ small companies can be Amalgamated

without court Gap between 2 AM shall not be < 90 days

⇒ subsidiary co.

↳ If BOD of this company controlled by other company (i.e. Holding co.)

↳ If holding company control more than 50% of voting power of this company

By Holding co. OR Subsidiary of Holding co.

↳ If Holding company has power

Appoint

Remove

BOD at discretion

All Majority

Example: (1) A $\xrightarrow[\text{more than 50\% of B}]{\text{controls}}$ B
 Holding company $\downarrow$ subsidiary company

(2) A $\xrightarrow[\text{more than 50\% of PUSC}]{\text{Invest}}$ B $\xrightarrow[\text{55\% of PUSC in 'C'}]{\text{Invest}}$ C
 Holding co. for 'B' & 'C' $\downarrow$ subsidiary co. for 'A' & 'C' $\downarrow$ subsidiary co. for 'A' & 'B'
 & Holding co. for 'C'

A $\left\{ \begin{array}{l} C \\ B \end{array} \right\}$ Both are subsidiary

(3) A $\xrightarrow[\text{PUSC}]{\text{Invest more than 50\% of}}$ B $\xrightarrow[\text{of PUSC}]{\text{Invest 25\%}}$ C
 Invest 28% of PUSC

Now, 'B' is subsidiary of 'A' $\nearrow 50\%$
 & 'C' is subsidiary of 'A' & 'B' $\nearrow 55\%$ (25+28)

Special Note:- If one co. holds more than 50% shares in another co. as investment on behalf of other as trustee (fiduciary relationship)

No Holding $\rightarrow$ sub. Relationship

MCA circular

→ Generally holding company invest money in subsidiary company.
 → So, subsidiary company obvious can not invest in the Holding company (Because $\frac{1}{2}$ share $\frac{1}{2}$ share $\frac{1}{2}$ share)

→ So, there are some restrictions on subsidiary company to hold shares in holding company.

⇒ Holding co. Hold shares in subsidiary co. ✓

⇒ subsidiary co. CAN NOT hold shares in Holding co. sec: 19

→ So, It means Holding co. can not allot shares to subsidiary co.

→ If Holding co. Allot shares to subsidiary co, then it is to be called void contract.

⇒ Kapila Ltd. → PUSC = 10,000 @ 10
 Kusha Ltd. $\xrightarrow{4000 \text{ shares}}$ more than 50% $\xleftarrow{6000 \text{ shares}}$ Prem Ltd.
 (+)

Red Limited → control 80% of company

Kusha / Prem
 → So, Red Ltd is Holding company

Kusha & Prem → subsidiary co.

∴ Exception:-

Q:3 JKSC Pg no: 1 (Q & A Book)

Exceptions:-

subsidary co. hold shares as legal representative of deceased member of holding co. subsidiary co. hold shares in holding company as trustee. subsidiary co. is a shareholder of holding co. Before the become holding & subsidiary co.

Right to
Vote (✓)

Right to Vote (x)

⇒ Associate company :- (less than 50% PUSC).

- If one co. has significant influence on another company.
- They don't share the relationship of holding co. & subsidiary co.
- Joint venture
- If one company controls at least 20% of voting power.
- Participation in B/S decisions under agreement.

⇒ Dormant company :-

- company Registered for future project
- or hold an Assets (IPR)
- NO significant Accounting Transaction
- Inactive co. from last 2 years.

so, Now apply to ROC
for Apply to Dormant co.

- If payment to ROC for fees.
 - Allotment of shares.
 - For maintenance of office.
 - Fees Payment.
- These are not to be called "significant Accounting Transaction"

⇒ Government company.

- Any co. in which not less than 51% of pasc held by
 - CG
 - SG
 - SG + CG
 - SG₁ + SG₂ + SG₃

- subsidiary co. of Govt. co. is also treated as Govt. co. ("CAFC DEC-23 try yourself.")

⇒ NIDHI company Section: 406

- Incorporated as NIDHI
 - cost saving to members
 - Lend deposits
 - Recieve deposits
- Rules prescribed by CG
- TO / from members

⇒ Foreign company

OR body corporate

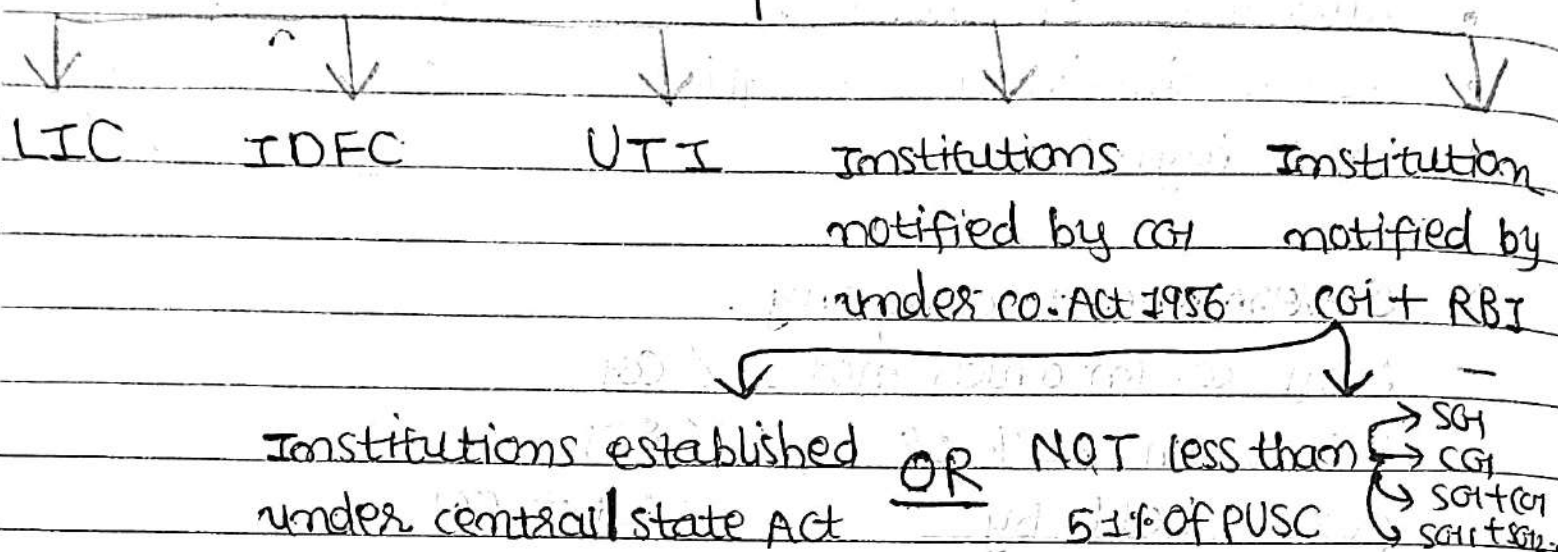
- 1) Any company ↑ Incorporated o/s India (+)
- 2) Having A place of B/S in India

Physically OR electronically → whether server is in India or o/s India

By itself OR Agent

- 3) (+) conducts Any B/S Activity in India

⇒ Public Financial Institutions (PFI)



* CAN we convert one company to another co.?

Ans:- • yes ⇒ 4/5 18 of co. Act, 2013

- Pvt. co. → convert → Pub. co. ✓
- Pub. co. → Pvt. co. ✓
- OPC
 - Pvt. co. ✓
 - Pub. co. ✓
- Pvt. co. → OPC ✓
- Pub. co. → OPC ✗

* Pvt. co. $\xrightarrow[\text{4/5 18}]{\text{convert}}$ Pub. co. छोटे से बड़े पर जना

- 1) Pass SR for Alter AOA.
- 2) Delete "RLP" from AOA → Restriction, limitation, prohibition → delete.
- 3) PASS SR for Alter MOA.
- 4) delete word "Pvt co." from its name.
- 5) Altered MOA / AOA $\xrightarrow[\text{within 15 days}]{\text{copy}}$ sent to ROC

6) copy of SR $\xrightarrow[\text{MGT-14}]{\text{copy within 30 days}}$ sent to ROC

7) Now, ROC registers & issue certificate of Incorporation (COI) $\rightarrow$ New

8) If Pvt. $\xrightarrow{\text{convert}}$ Pub. co.

No. of members = 2 $\rightarrow$ increase upto 7

No. of directors = 2 $\rightarrow$ increase upto 3

* Public co. $\xrightarrow[\text{4/5/18}]{\text{convert}}$ Pvt. co. (बड़े से छोटे पर जाना)

1) Alter AOA $\rightarrow$ By pass SR

2) Add RLP (Restriction Limitation prohibition) in AOA.

3) Obtain CG Approval *

4) Alter MOA $\rightarrow$ By pass SR

5) Add Private at the name end.

6) Altered MOA / AOA / CG Approval $\xrightarrow[\text{15 days}]{\text{copy}}$ ROC

7) copy of SR $\xrightarrow[\text{30 days}]{\text{within}}$ ROC (MGT-14)

8) ROC $\xrightarrow{\text{Issue}}$ New COI

9) decrease member upto 200 (if required)

* OPC $\xrightarrow[\text{yes, 4/5/18}]{\text{convert}}$ Pub. co. / Pvt. co.

1) Increase No. of members from one $\rightarrow$ Pvt = 2
 $\rightarrow$ Pub = 7

2) Increase No. of directors $\rightarrow$ Pvt = 2
 $\rightarrow$ Pub = 3

3) Alter AOA / MOA $\rightarrow$ Pass SR

- 4) copy of SR/ AOA/ MOA/ Application $\rightarrow$ ROC
 If he satisfied with All compliances, he will close old & Register OPC & Issue New COI.

* Pvt. Co. $\xrightarrow[4/5/18]{\text{convert}}$ OPC

(1) Pass SR

2) Take NOC $\rightarrow$ Member } of co.
 $\rightarrow$ Creditors }

3) copy of SR $\xrightarrow[30 \text{ days}]{\text{MGT-14}}$ ROC

4) File INC-6 (conversion Appln)

5) Director Affidavit $\rightarrow$ Members & Creditors $\rightarrow$ consent

6) List of members & Creditors

7) Audited $\rightarrow$ B/S & P/L

8) NOC copy

9) If ROC satisfied $\rightarrow$ New COI $\rightarrow$ Pvt. Co. $\rightarrow$ OPC

$\Rightarrow$ Listed company

$\rightarrow$ Whose security are listed on any Recognized Stock exchange.

NOT TO BE called listed co.

pub co. $\xrightarrow[\text{NOT listed}]{\text{equity shares}}$ But listed on PVT. placement on Rec. stock exchange

Pvt. Co. $\xrightarrow[\text{Pvt. placement on RSE}]{\text{listed Non convertible}}$

Non convertible debt security OR/Both Non convertible Redeemable pref. shares $\rightarrow$ Equity share listed on

Section 8: NPO company

→ For promotion of

ART / science / sports / culture / charitable / Religion / commerce / Education / Environment

→ NPO $\xrightarrow{\text{dividend } 4/5/23}$ Members

→ surplus earn $\xrightarrow{\text{only can utilise on above activity}}$

→ NO minimum paid up share capital

→ NO need to Add Ltd / Pvt. Ltd with name

→ Limited liability

→ Govt has power to issue license $\rightarrow$ Now with ROC

→ partnership firm $\xrightarrow{\text{members}}$ NPO

→ NPO $\xrightarrow{\text{Alter}}$ AOA / MoA } only Approval of Govt required

→ conversion possible $\rightarrow$ pass SR

→ Amalgamation only with NPO $\rightarrow$ possible
 $\rightarrow$ Not with others

→ NPO $\xrightarrow{\text{Application to ROC}}$ SPICE + (Incorporation)

⊕ MOA / AOA

⊕ future predicted $\leftarrow$ Income & Exp. A/c $\rightarrow$ Next 3 years

⊕ source of Income

⊕ objects of NPO exp.

⊕ Declaration

CA
CS
CMA
Advocate } Practice
 MoA $\rightarrow$ AD $\rightarrow$ All rules & regulations 4/5 & are complied 4/5 & are controlled

- conversion procedure $\rightarrow$ By pass SR

- (1) Pass SR
- (2) Notice + Explanatory statement (Sec: 101/102)
- (3) copy of (1) & (2) $\xrightarrow{\text{file}}$ Regional Director (RD)
- (4) (1) + (2) + (3) $\xrightarrow{\text{copy file}}$ ROC
- (5) Notice $\xrightarrow{\text{publish}}$ vernacular + English newspaper
 $\xrightarrow{\text{publish}}$ website of co.

- (6) Financial statements - Have been $\rightarrow$ Before Appr & Returns (Annual) filed with Authority Give to RD

(*) suppose

Application to RD made after 3 Months from end of P.F.Y. then financial position certified by CA (made at least 30 days Before) submission to RD.

- (7) If RD satisfied $\rightarrow$ Allow conversion $\rightarrow$ can also impose some conditions After giving opportunity of being heard

- (8) Now, company Alter

AOA

MOA

By passing SR $\xrightarrow{\text{copy of SR}}$ ROC (MGT-14)

- (9) ROC $\xrightarrow{\text{Issue}}$ New COI

* NPO $\xrightarrow{\text{license issue}}$ CGI $\xrightarrow{\text{Power Delegate}}$ ROC

delegate these $\leftarrow$ so, CGI can REVOKE licence if
powers to RD

- 1) NPO $\xrightarrow{\text{contravene}}$ conditions $\rightarrow$ on the basis of
or Requisition license issued
- 2) Affairs of co. $\xrightarrow{\text{conducted}}$ fraudently
- 3) Objects of co. $\xrightarrow{\text{prejudicial to}}$ public interest
- 4) If co. $\xrightarrow{\text{violate}}$ objects of co.

* so, before revocation opportunity of $\rightarrow$ co.
being heard
(+) written Notice

Pvt. Ltd / Ltd. $\xrightarrow{\text{Add}}$ to the Name of co.

CGI $\xrightarrow{\text{while Revoking license}}$ Pass order $\rightarrow$ in public interest

- change Name/status of co. $\rightarrow$ After settlement of ~~co's~~ debtors, assets
 - wound up the co.
 - Amalgamation with another NPO having similar objective
- If Anything Remain $\rightarrow$ either transfer ~~OR~~ sale $\rightarrow$ Proceed to another NPO

Now CGI Amalgamate to form a single co.

Transfer $\downarrow$
Insolvency & Bankruptcy Code