



THE COMPANIES ACT, 2013
HAND WRITTEN NOTES BY CJ

CA CHAITANYA JAIN

REGISTRATION PROCESS :-

INCORPORATION OF A COMPANY

SPICE

I For the whole process - You will require -

- ⊙ DIN - Director Identification Number
- ⊙ DSC - Digital Signature Certificate.

II File an application for incorporation **INC-32**

Documents to be attached →

(a) - MOA + AOA **INC-33 § 34 (e)**.

(b) - TWO DECLARATIONS

IV Address (PROPOSED) → Registered Office....

DECLARATIONS

⇒ declaration No. 1 → FROM PROFESSIONALS - CA/CS/Adv.
CMA

↓
All the requirements of the ACT & RULES have been followed - / Complied .
Should be engaged in the process of formation of Company.

⇒ declaration No. 2 → FROM SUBSCRIBERS & 1st DIRECTORS.

- Not convicted for offence → Promotion / Formation / MGT. of Company
- Not been found guilty → 5 YEARS.
↳ under Co's Act
- CORRECT / COMPLETE / TRUE to the knowledge → DOCUMENTS SUBMITTED.

⇒ PARTICULARS - Each subscriber → Name / Surname / Res. Address
Nationality
If Director → DIN

⇒ Mention **INTEREST** → of DIRECTORS
→ In other Firms / Body Corporates

(+) WITH CONSENT.

After attaching all the documents (+) SUBSCRIBER signing → MoA

(Name + Application) (ON-INC-32) + SPICE (A+B)

↓
SUBMIT TO.

ROC

↓
INC-11

CERTIFICATE OF INCORPORATION

COMPLETE PROCESS OF REGISTRATION OF COMPANY Under SECTION 7

- I. File all the documents & Application with proposed Name
 - II. IF REGISTRAR (ROC) satisfied \Rightarrow ISSUE COI.
 - III. Allot CORPORATE IDENTITY NUMBER CIN
-
- IV. Maintain copies of all Documents / INFO \Rightarrow UNTIL DISSOLUTION
 - V. FURNISHING FALSE MATERIAL INFORMATION $\left\{ \begin{array}{l} \text{- At } \textcircled{D} \text{ of INC} \\ \text{- Post INC} \end{array} \right\}$ Promoters
Directors
Professionals 447

AGAINST THE COMPANY

↓
क्या ? TRIBUNAL
NCLT...

Before this

opportunity of being heard (OoBH)

→ Removal of name

→ Limited liability to UL

→ Winding up.

→ Make changes in MOA + AOA

in Interest-Public / members / Creditors

MEMORANDUM OF ASSOCIATION - [SECTION 4]

- CHARTER OF THE COMPANY.
- CONSTITUTION OF THE COMPANY.
- DEFINES - SCOPES/POWERS/OBJECT of the Company.
- FUNDAMENTAL DOCUMENT

WHY ? ⇒ BEYOND WHICH CO.'S ACTIONS CAN'T GO.

- INVESTOR - His money is used/utilized for ? RISK ?

- OUTSIDER - SHAREHOLDER / CREDITOR -- before engaging

PUBLIC DOCUMENT = SECTION 399

Every person before entering into Contract PRESUMED to have
KNOWLEDGE

ARTICLE OF ASSOCIATION - [SECTION]

- INTERNAL MANAGEMENT OF THE COMPANY
- Contains RULES & REGULATIONS of the Company.
 - Examples -
Meetings, Shares etc., day to day working.
- Company may include ADDITIONAL MATTERS also
(जो कभी use में आ सकते हैं)
- May ADOPT ALL or ANY of the Provisions in AoA
(as required)
- ENTRENCHMENT - extra layer
(सख्ती)
 - tough to override
 - Additional safeguard

[Tell ROC about this]

 - Formation
 - Amendment
 - Private - ALL
 - Public - SR

WHICH ACTS can be RATIFIED (Approved by SH)

UV - Co.
\$
OBJECT

- ▷ VOID - ab - Initio / NULL
- ▷ Not operative in Law / Not binding (Co. other)
- ▷ Cannot be ratified even (with 100% voting)

UV -
AOA

- ▷ Company can alter the articles (with SR)
- ▷ It is at the option of shareholders
- ▷ UV - AOA But Intra vires the MOA

UV -
DIRECTOR

- ▷ UV - DIRECTORS but Intra vires the AOA
- ▷ Can be ratified.

JUST STAY UNDER MOA / OBJECT CLAUSE. IF BEYOND DIRECTOR'S POWER / AOA - CAN BE RATIFIED

Answer for DOCTRINE OF ULTRA VIRES →

- Doctrine of Ultra Vires means going beyond the legal powers.
- Fundamental rule of Company law says that the OBJECT CLAUSE of Company as stated in MOA.
- Any act done beyond the powers of [Directors + MOA (Object clause)]
- * Inoperative / null & void / void-ab-initio
- * Not binding on the company
- * Cannot enforce it against the company.
- Company cannot misapply the funds - if done DIR. are [Personally Liable]
- cannot TRADE
- neither be sued / nor can sue on it.
- MOA = Section 399 (Public document) - Deemed presumed ✓

RATIFICATION

(1) Any act done ULTRA VIRES a Company / MoA / Object-
clause / Co's Act \Rightarrow Cannot be Ratified

(2) Sometimes it can be done :-

- UV the powers of directors \Rightarrow YES (SH can Ratify it)
- UV the AoA \Rightarrow YES (can ALTER the AoA)
- Intra Vires the Company
but (IRREGULAR) \Rightarrow YES (can be ratified)
Shareholders can validate it
- UV the Company \Rightarrow Cannot be done even with 100%
Voting.

(3) UV has become Useless / Why? - Object Clause $\left\{ \begin{array}{l} \text{altered} \\ \text{Special Resolution} \end{array} \right.$

DOCTRINE OF CONSTRUCTIVE NOTICE

IMPLIED of KNOWLEDGE

PROTECTS
THE COMPANY FROM
O/S IGNORANCE

MOA ←

AOA ←

Resolutions ←

PUBLIC documents

with the
REGISTRAR

If available
PUBLICLY

DUTY OF AN OUTSIDER ⇒ INSPECT / READ / UNDERSTAND

Outsider क्या कर सकता है ? ⇒ NO RIGHTS against the Co.

☞ CAN BE INVOKED BY THE COMPANY.

☞ OPERATES IN THE FAVOUR OF THE COMPANY

DOCTRINE OF INDOOR MANAGEMENT

Exception to the Doctrine of Constructive Notice
ताकि Company इसकी Misuse नो करे

Internal Affairs }
Co's Matter not of the
III Party

PROTECTS
O/S from the
Co's irregularity

★ Good Faith ★

OR? ←
SR? ←
Sign? ←

चार दीवार के अन्दर
जो भी किया गया
(Company's) Matter...

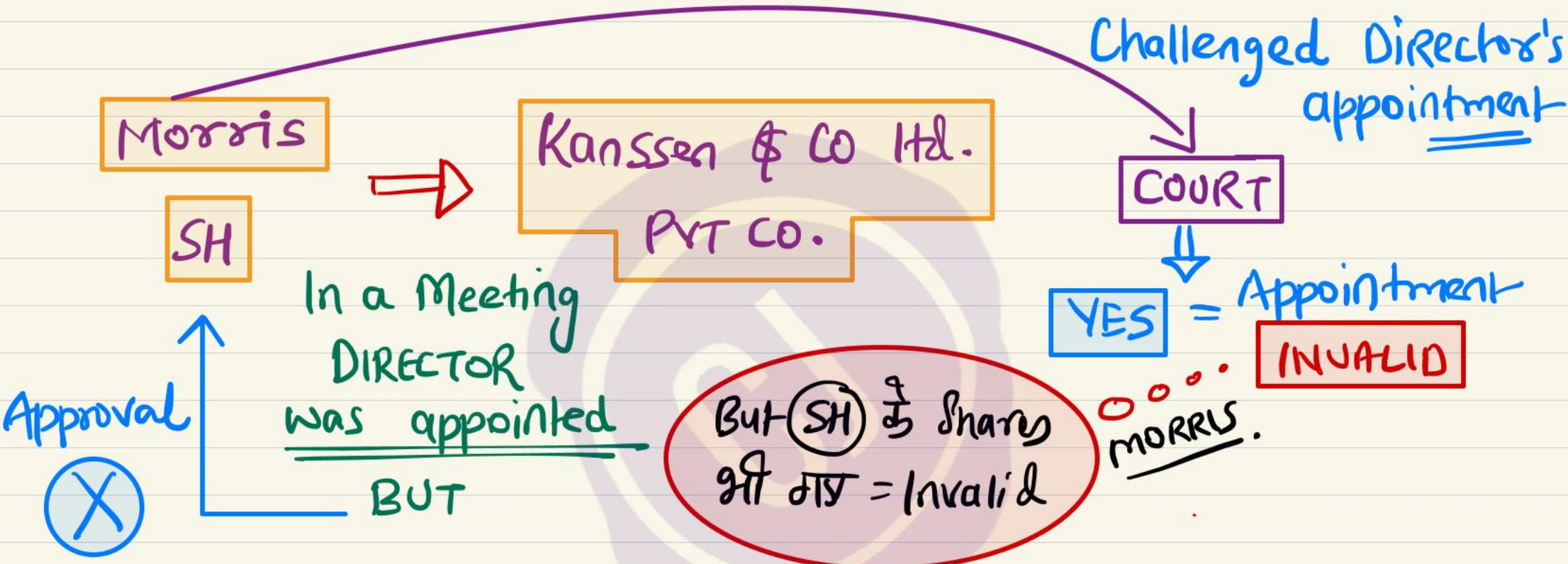
INNOCENT OUTSIDERS ⇒ PRESUMES

Internal formalities [all good]
Taken Care of

☞ CAN BE INVOKED BY THE PERSON dealing with the Co.

☞ OPERATES AGAINST THE COMPANY

MORRIS VS KANSEEN & CO. LTD.



- IMPROPER Appointment of DIRECTOR ≠ VALID
 - Insider = DIRECTOR & Shareholder - NO
 - Outsider = Third party - YES
- } RELY ON? DIM ?

HOWARD VS PATENT IVORY CO.

General Rule :- AOA Beyond DIR Powers.

RIGHT?

:- Can be Ratified by Shareholders

CO.

issued
Additional
Shares

No SH
approval

⇒ REQUIRED BY AOA

Beyond their
Powers...

अब बाद में SH ratify
करने की कोशिश करेंगे ★

CANNOT DO

COURT

ULTRA VIRES

AS Shareholders are
INSIDERS here

Apply Same for :-

DIR

← Got debentures

⇒ Lend money

No
Resolution